

REVISOR'S REPORT

TITLE 2
INSURANCE CODE

A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
THE TEXAS DEPARTMENT OF INSURANCE, THE
BUSINESS OF INSURANCE, AND CERTAIN
RELATED BUSINESSES

Submitted to the 76th Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas
1999

FOREWORD

The Texas Legislative Council is required by law (Section 323.007, Government Code) to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable--all toward promoting the stated purpose of making the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law.

Under the new classification scheme adopted by the council, our statutes will eventually consist of 26 codes. To date, the council has produced and the legislature has enacted the Agriculture Code, Alcoholic Beverage Code, Business & Commerce Code, Civil Practice and Remedies Code, Education Code, Election Code (which was a substantive revision), Finance Code, Government Code, Health and Safety Code, Human Resources Code, Labor Code, Local Government Code, Natural Resources Code, Parks and Wildlife Code, Property Code, Tax Code (Title 1 of which was a substantive revision), Transportation Code, Utilities Code, and Water Code. During the regular session of the 76th Legislature, in addition to Title 2, Insurance Code, the legislature enacted portions of the Occupations Code. The council staff also assisted the state bar in the Penal Code and Family Code projects, which were substantive revisions, and revised miscellaneous criminal procedure provisions into Title 2 of the Code of Criminal Procedure.

Title 2, Insurance Code, is a nonsubstantive revision of the Texas statutes relating to the Texas Department of Insurance, the business of insurance, and certain related businesses. The material from which Title 2 is derived comes largely, but not exclusively, from Chapter 1 of the Insurance Code of 1951.

The material that is incorporated in the nonsubstantive revision is added to the Insurance Code of 1951 as Title 2. Existing material in the Insurance Code that is not affected by the revision is redesignated as Title 1. When the revision of the Insurance Code is complete, the code will be divided into titles, subtitles, chapters, subchapters, and sections. Sections will be numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Note that gaps in chapter and section numbering are for future expansion.

The revisor's report reflects Title 2, Insurance Code, as enacted into law by the passage of S.B. No. 1467, Acts of the 76th Legislature, Regular Session, 1999. The revisor's report states the Revised Law, which is the text of the new law, and then provides the Source Law, which is the text of the former law from which the revised law is taken. If further explanation of either the revised law or the source law is required, a Revisor's Note is

included after the source law. All substance in the source law is revised in the revised law or the reason for its omission is explained in a revisor's note.

Because of the extensive reorganization of many statutes, and even sentences within a statute, it may be helpful to refer to the source law as printed in the Insurance Code as it existed before the revision (so that the quoted source law may be seen in its former context) and to the disposition table (showing where the former statutes appear, as revised, in the code). The disposition table is printed as Appendix C to the revisor's report.

The revision required conforming amendments to several statutes. These conforming amendments, which were also enacted into law by the passage of S.B. No. 1467, are printed in Appendix A to the revisor's report. Appendix A also includes a section listing the laws repealed effective September 1, 1999, and a section stating the legislature's intent that the code be a nonsubstantive revision.

In reviewing the revisor's report to Title 2, Insurance Code, the reader should keep in mind the following:

(1) The Code Construction Act (Chapter 311, Government Code) applies to the code. That Act sets out certain principles of statutory construction applicable to new codes and also provides some definitions. The Act is printed as Appendix B to the revisor's report.

(2) The proposed code is written in modern American English. Where possible, the present tense is used; the active rather than the passive voice is preferred; and the singular is used in preference to the plural.

(3) This is a nonsubstantive revision. The staff's authority does not include improving the substance of law. The sole purpose of this project was to compile all the relevant law, arrange it in a logical fashion, and rewrite it without altering its meaning or legal effect. If a particular source statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity was preserved.

This project was under the direction of Deborah Fulton, Legislative Counsel, of the council staff. Questions may be directed to her at P.O. Box 12128, Capitol Station, Austin, Texas 78711, or at telephone number (512) 463-1155.

1 SECTION 1. ADOPTION OF TITLE. The Insurance Code is amended
2 by adding Title 2 to read as follows:

3 TITLE 2. TEXAS DEPARTMENT OF INSURANCE
4 SUBTITLE A. ADMINISTRATION OF THE
5 TEXAS DEPARTMENT OF INSURANCE

- 6 CHAPTER 30. GENERAL PROVISIONS
- 7 CHAPTER 31. ORGANIZATION OF DEPARTMENT
- 8 CHAPTER 32. ADMINISTRATIVE POWERS AND DUTIES
- 9 CHAPTER 33. STANDARDS OF CONDUCT
- 10 CHAPTER 34. IMMUNITY FROM LIABILITY
- 11 [Chapter 35 reserved for expansion]
- 12 CHAPTER 36. DEPARTMENT RULES AND PROCEDURES
- 13 CHAPTER 37. RATEMAKING AND POLICY FORM PROCEEDINGS
- 14 CHAPTER 38. DATA COLLECTION AND REPORTS
- 15 CHAPTER 39. PUBLIC ACCESS
- 16 CHAPTER 40. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS
17 AND COMMISSIONER IN CERTAIN PROCEEDINGS; RATE
18 SETTING PROCEEDINGS

19 [Chapters 41-80 reserved for expansion]

- 20 SUBTITLE B. DISCIPLINE AND ENFORCEMENT
- 21 CHAPTER 81. GENERAL PROVISIONS REGARDING DISCIPLINE AND
22 ENFORCEMENT
- 23 CHAPTER 82. SANCTIONS
- 24 CHAPTER 83. EMERGENCY CEASE AND DESIST ORDERS
- 25 CHAPTER 84. ADMINISTRATIVE PENALTIES
- 26 CHAPTER 85. GENERAL CRIMINAL ENFORCEMENT

27 [Chapters 86-100 reserved for expansion]

- 28 CHAPTER 101. UNAUTHORIZED INSURANCE
- 29 CHAPTER 102. CHARITABLE GIFT ANNUITIES

30 TITLE 2. TEXAS DEPARTMENT OF INSURANCE
31 SUBTITLE A. ADMINISTRATION OF THE TEXAS DEPARTMENT OF INSURANCE
32 CHAPTER 30. GENERAL PROVISIONS

33 Sec. 30.001. PURPOSE OF TITLE 2

1 Sec. 30.002. CONSTRUCTION OF TITLE 2
2 Sec. 30.003. REFERENCE IN LAW TO STATUTE REVISED BY TITLE 2

3 CHAPTER 30. GENERAL PROVISIONS

4 Revised Law

5 Sec. 30.001. PURPOSE OF TITLE. (a) This title is enacted
6 as a part of the state's continuing statutory revision program,
7 begun by the Texas Legislative Council in 1963 as directed by the
8 legislature in the law codified as Section 323.007, Government
9 Code. The program contemplates a topic-by-topic revision of the
10 state's general and permanent statute law without substantive
11 change.

12 (b) Consistent with the objectives of the statutory revision
13 program, the purpose of this title is to make the law encompassed
14 by this title more accessible and understandable by:

15 (1) rearranging the statutes into a more logical
16 order;

17 (2) employing a format and numbering system designed
18 to facilitate citation of the law and to accommodate future
19 expansion of the law;

20 (3) eliminating repealed, duplicative,
21 unconstitutional, expired, executed, and other ineffective
22 provisions; and

23 (4) restating the law in modern American English to
24 the greatest extent possible. (New.)

25 Revised Law

26 Sec. 30.002. CONSTRUCTION OF TITLE. Chapter 311, Government
27 Code (Code Construction Act), applies to the construction of each
28 provision in this title except as otherwise expressly provided by
29 this title. (New.)

30 Revised Law

31 Sec. 30.003. REFERENCE IN LAW TO STATUTE REVISED BY TITLE.
32 A reference in a law to a statute or a part of a statute revised by
33 this title is considered to be a reference to the part of this
34 title that revises that statute or part of that statute. (New.)

1 CHAPTER 31. ORGANIZATION OF DEPARTMENT

2 SUBCHAPTER A. GENERAL PROVISIONS

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11 [Sections 31.008-31.020 reserved for expansion]

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20 [Sections 31.028-31.040 reserved for expansion]

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29 CHAPTER 31. ORGANIZATION OF DEPARTMENT

30 SUBCHAPTER A. GENERAL PROVISIONS

31 Revised Law

32 Sec. 31.001. DEFINITIONS. In this code and other insurance
33 laws:

34 (1) "Commissioner" means the commissioner of

1 insurance.

2 (2) "Department" means the Texas Department of
3 Insurance. (V.T.I.C. Art. 1.01A, Subsec. (a).)

4 Source Law

5 Art. 1.01A

6 (a) In this code and other insurance laws:

7 (1) "Department" means the Texas
8 Department of Insurance.

9 (2) "Commissioner" means the Commissioner
10 of Insurance appointed under Article 1.09 of this code.

11 Revised Law

12 Sec. 31.002. DUTIES OF DEPARTMENT. In addition to the other
13 duties required of the Texas Department of Insurance, the
14 department shall:

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

16 and

17 (2) ensure that this code and other laws regarding

18 insurance and insurance companies are executed. (V.T.I.C.

19 Art. 1.01A, Subsec. (b) (part); Art. 1.10, Sec. 1.)

20 Source Law

21 [Art. 1.01A]

22 (b) The Texas Department of Insurance is created
23 to regulate the business of insurance in this
24 state. . . .

25 Art. 1.10

26 In addition to the other duties required of the
27 Department, the Department shall perform duties as
28 follows:

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

32 Revisor's Note

33 (1) Subsection (b), V.T.I.C. Article 1.01A,

34 states that "[t]he Texas Department of Insurance is

35 created" to regulate insurance. The revised law omits

36 the quoted language referring to the creation of the

37 department because it is executed.

38 (2) Section 1, V.T.I.C. Article 1.10, requires

39 the department to ensure that relevant laws are

40 "faithfully executed." The revised law omits

41 "faithfully" as unnecessary because the word does not

1 add to the clear meaning of the law. There is no
2 difference in result between a law that is "executed"
3 and a law that is "faithfully executed."

4 Revised Law

5 Sec. 31.003. COMPOSITION OF DEPARTMENT. The department is
6 composed of the commissioner and other officers and employees
7 required to efficiently implement:

8 (1) this code;

9 (2) other insurance laws of this state; and

10 (3) other laws granting jurisdiction or applicable to
11 the department or the commissioner. (V.T.I.C. Art. 1.01A, Subsec.
12 (b) (part).)

13 Source Law

14 (b) . . . The department is composed of the
15 Commissioner and other officers and employees required
16 to efficiently implement the purpose of this code,
17 other insurance laws of this state, and other laws
18 providing jurisdiction in or applicable to the
19 department or Commissioner.

20 Revised Law

21 Sec. 31.004. SUNSET PROVISION. The Texas Department of
22 Insurance is subject to Chapter 325, Government Code (Texas Sunset
23 Act). Unless continued in existence as provided by that chapter,
24 the department is abolished September 1, 2005. (V.T.I.C.
25 Art. 1.02, Subsec. (c).)

26 Source Law

27 (c) The Texas Department of Insurance is subject
28 to Chapter 325, Government Code (Texas Sunset Act).
29 Unless continued in existence as provided by that
30 chapter, the department is abolished September 1, 2005.

31 Revised Law

32 Sec. 31.005. DEFENSE BY ATTORNEY GENERAL. The attorney
33 general shall defend an action brought against the commissioner or
34 an employee or officer of the department as a result of that
35 person's official act or omission, whether or not at the time of
36 the institution of the action that person has terminated service
37 with the department. (V.T.I.C. Art. 1.40, Subsec. (a) (part).)

1 Source Law

2 (a) . . . The attorney general shall defend any
3 actions brought against a board member, employee, or
4 officer by reason of his or her official act or
5 omission, whether or not at the time of the institution
6 of the action the defendant has terminated service with
7 the board.

8 Revisor's Note

9 Subsection (a), V.T.I.C. Article 1.40, refers to
10 "a board member" and "the board." Chapter 685, Acts of
11 the 73rd Legislature, Regular Session, 1993, abolished
12 the State Board of Insurance and transferred its
13 functions to the commissioner of insurance and the
14 Texas Department of Insurance. Throughout this
15 chapter, references to the board and board members have
16 been changed as appropriate.

17 Revised Law

18 Sec. 31.006. TEXAS WORKERS' COMPENSATION COMMISSION NOT
19 AFFECTED. This code does not affect the duties imposed by law on
20 the Texas Workers' Compensation Commission. (V.T.I.C. Art. 1.07.)

21 Source Law

22 Art. 1.07. Nothing in this Code shall be
23 construed to in any manner affect the duties imposed by
24 law on the Texas Workers' Compensation Commission or to
25 take from said commission the performance of the duties
26 imposed on said commission by law.

27 Revised Law

28 Sec. 31.007. REFERENCES TO BOARD. A reference in this code
29 or other law to the State Board of Insurance, the Board of
30 Insurance Commissioners, or an individual commissioner means the
31 commissioner or the department as consistent with the respective
32 duties of the commissioner and the department under this code and
33 other insurance laws. (V.T.I.C. Art. 1.01A, Subsec. (c);
34 Art. 1.02, Subsec. (a) (part).)

35 Source Law

36 [Art. 1.01A]

37 (c) Except as otherwise provided by law, all
38 references in this code and other statutes of this
39 state to the board, the Board of Insurance
40 Commissioners, the State Board of Insurance, or
41 individual commissioners mean the department or the
42 Commissioner as consistent with the respective duties

1 of the Commissioner or the department under this code
2 and other laws relating to the business of insurance in
3 this state.

4 Art. 1.02

5 (a) . . . A reference in this code or another
6 insurance law to the State Board of Insurance means the
7 Commissioner of Insurance or the Texas Department of
8 Insurance, as consistent with the respective powers and
9 duties of the Commissioner and the department under
10 this article.

11 Revisor's Note

12 Subsection (a), V.T.I.C. Article 1.02, refers in
13 part to potential conflicts arising from references to
14 the State Board of Insurance in acts of the 73rd
15 Legislature. The revised law omits the reference
16 because that provision is executed. The omitted law
17 reads:

18 Art. 1.02. (a) A provision of this
19 code or another insurance law, including an
20 enactment or reenactment of a provision of
21 this code or another insurance law by the
22 73rd Legislature, Regular Session, 1993,
23 that references the State Board of
24 Insurance is not intended to conflict with
25 this article.

26 [Sections 31.008-31.020 reserved for expansion]

27 SUBCHAPTER B. COMMISSIONER OF INSURANCE

28 Revised Law

29 Sec. 31.021. CHIEF EXECUTIVE. (a) The commissioner is the
30 department's chief executive and administrative officer. The
31 commissioner shall administer and enforce this code, other
32 insurance laws of this state, and other laws granting jurisdiction
33 or applicable to the department or the commissioner.

34 (b) The commissioner has the powers and duties vested in the
35 department by this code and other insurance laws of this state.
36 (V.T.I.C. Art. 1.02, Subsec. (b) (part); Art. 1.09, Subsec. (a)
37 (part).)

38 Source Law

39 [Art. 1.02]

40 (b) The powers, functions, authority,
41 prerogatives, duties, obligations, and responsibilities
42 vested in the department shall be exercised, performed,
43 carried out, and administered by the Commissioner as
44 the chief executive and administrative officer of the
45 department

1 Art. 1.09. (a) The Commissioner of Insurance is
2 the department's chief executive and administrative
3 officer charged with the primary responsibility of
4 administering, enforcing, and carrying out the
5 provisions of the Insurance Code, other insurance laws
6 of this state, and other laws providing jurisdiction in
7 or applicable to the department or commissioner,
8

9 Revisor's Note

10 (1) Subsection (b), V.T.I.C. Article 1.02,
11 refers to the "powers, functions, authority,
12 prerogatives, duties, obligations, and
13 responsibilities" vested in the department. The revised
14 law refers to "powers and duties" and omits the
15 remaining words because they are included within the
16 meaning of "powers and duties."

17 (2) The requirement in Subsection (b), V.T.I.C.
18 Article 1.02, that the commissioner perform duties and
19 exercise powers in accordance with certain laws, rules,
20 and regulations is omitted from the revised law as
21 unnecessary. The other laws, rules, and regulations
22 that prescribe the duty are sufficient authority for
23 the duty. The omitted law reads:

24 (b) . . . in accordance with the
25 pertinent laws of this state and the rules
26 and regulations for uniform application
27 adopted by the Commissioner.

28 Revised Law

29 Sec. 31.022. APPOINTMENT; TERM. (a) The governor, with the
30 advice and consent of the senate, shall appoint the commissioner.
31 The commissioner serves a two-year term that expires on February 1
32 of each odd-numbered year.

33 (b) The governor shall appoint the commissioner without
34 regard to the race, color, disability, sex, religion, age, or
35 national origin of the appointee. (V.T.I.C. Art. 1.09, Subsec. (b)
36 (part).)

37 Source Law

38 (b) The governor, with the advice and consent of
39 the senate, shall appoint the commissioner for a
40 two-year term ending on February 1 of each odd-numbered
41 year. . . . The appointment of the commissioner shall

1 be made without regard to the race, color, disability,
2 sex, religion, age, or national origin of the
3 appointee. . . .

4 Revised Law

5 Sec. 31.023. QUALIFICATIONS. The commissioner must:

6 (1) be a competent and experienced administrator;

7 (2) be well informed and qualified in the field of
8 insurance and insurance regulation; and

9 (3) have at least 10 years of experience as an
10 executive in the administration of business or government or as a
11 practicing attorney or certified public accountant, with at least
12 five years of that experience in the field of insurance or
13 insurance regulation. (V.T.I.C. Art. 1.09, Subsec. (b) (part).)

14 Source Law

15 (b) . . . The commissioner must be a competent
16 and experienced administrator, be well informed and
17 qualified in the field of insurance and insurance
18 regulation, have had at least 10 years of experience as
19 an executive in the administration of business or
20 government, or as a practicing attorney or certified
21 public accountant, and at least five years of that
22 experience in the field of insurance or insurance
23 regulation. . . .

24 Revised Law

25 Sec. 31.024. INELIGIBILITY FOR PUBLIC OFFICE. The
26 commissioner is ineligible to be a candidate for a public elective
27 office in this state, unless the commissioner has resigned and the
28 governor has accepted the resignation. (V.T.I.C. Art. 1.09-2,
29 Subsec. (a).)

30 Source Law

31 Art. 1.09-2. (a) The members of the State Board
32 of Insurance and the Commissioner of Insurance shall be
33 ineligible to run for any public office, or to have
34 their names placed on the official ballot for any
35 office in any election in this state, except and unless
36 such Board member or Commissioner of Insurance has
37 resigned and his resignation has been accepted by the
38 Governor.

39 Revised Law

40 Sec. 31.025. BOND. Before taking office, the commissioner
41 must execute with a surety company licensed to do business in this
42 state a bond for \$50,000 payable to this state and conditioned on

1 the faithful discharge of the commissioner's duties. (V.T.I.C.
2 Art. 1.09, Subsec. (c).)

3 Source Law

4 (c) The commissioner shall first give a bond to
5 the State of Texas, executed by a surety company
6 licensed to do business in the State of Texas, in the
7 sum of Fifty Thousand Dollars (\$50,000.00), to be
8 approved by the Board, conditioned upon the faithful
9 discharge of the duties of his office.

10 Revised Law

11 Sec. 31.026. COMPENSATION. The commissioner is entitled to
12 compensation as provided by the General Appropriations Act.
13 (V.T.I.C. Art. 1.09, Subsec. (d).)

14 Source Law

15 (d) Compensation to be paid the commissioner
16 shall be such sum as is provided for by the General
17 Appropriations Act.

18 Revised Law

19 Sec. 31.027. GROUNDS FOR REMOVAL. (a) It is a ground for
20 removal from office if the commissioner:

21 (1) does not have at the time of appointment the
22 qualifications required by Section 31.023;

23 (2) does not maintain during service as commissioner
24 the qualifications required by Section 31.023;

25 (3) violates a prohibition established by Section
26 33.001, 33.003, 33.004, or 33.005; or

27 (4) cannot, because of illness or disability,
28 discharge the commissioner's duties for a substantial part of the
29 commissioner's term.

30 (b) The validity of an action of the commissioner or the
31 department is not affected by the fact that it is taken when a
32 ground for removal of the commissioner exists. (V.T.I.C.
33 Art. 1.09, Subsecs. (i), (j).)

34 Source Law

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

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

40 (2) does not maintain during service as
41 commissioner the qualifications required by Subsection

1 (b) of this section;
2 (3) violates a prohibition established by
3 Subsection (b) of this section or Article 1.06, 1.06A,
4 or 1.06B of this code; or
5 (4) cannot discharge the commissioner's
6 duties for a substantial part of the term for which the
7 commissioner is appointed because of illness or
8 disability.
9 (j) The validity of an action of the
10 commissioner or the department is not affected by the
11 fact that it is taken when a ground for removal of the
12 commissioner exists.

13 [Sections 31.028-31.040 reserved for expansion]

14 SUBCHAPTER C. PERSONNEL

15 Revised Law

16 Sec. 31.041. DEPARTMENT PERSONNEL. (a) Subject to the
17 General Appropriations Act or other law, the commissioner shall
18 appoint deputies, assistants, and other personnel as necessary to
19 carry out the powers and duties of the commissioner and the
20 department under this code, other insurance laws of this state, and
21 other laws granting jurisdiction or applicable to the department or
22 the commissioner.

23 (b) A person appointed under this section must have the
24 professional, administrative, and insurance experience necessary to
25 qualify the person for the position to which the person is
26 appointed.

27 (c) A person appointed as an associate or deputy
28 commissioner or to hold an equivalent position must have at least
29 five years of the experience required for appointment as
30 commissioner under Section 31.023. At least two years of that
31 experience must be in work related to the position to be held.
32 (V.T.I.C. Art. 1.09, Subsec. (f).)

33 Source Law

34 (f) The commissioner shall appoint such
35 deputies, assistants, and other personnel as are
36 necessary to carry out the duties and functions
37 devolving upon the commissioner and the department
38 under the Insurance Code, other insurance laws of this
39 state, and other laws providing jurisdiction in or
40 applicable to the department or the commissioner,
41 subject to the authorization by the Legislature in its
42 appropriations bills or otherwise. A person appointed
43 under this subsection must have the professional,
44 administrative, and insurance experience necessary to
45 qualify the person for the particular position to which
46 the person is appointed. An associate or deputy

1 commissioner, or a person holding an equivalent
2 position, must have at least five years of the
3 experience required for appointment as Commissioner of
4 Insurance under Subsection (b) of this article and at
5 least two years of this experience must be in work
6 related to the position to be held.

7 Revised Law

8 Sec. 31.042. DIVISION OF RESPONSIBILITIES. The commissioner
9 shall develop and implement policies that clearly define the
10 respective responsibilities of the commissioner and the staff of
11 the department. (V.T.I.C. Art. 1.02, Subsec. (g).)

12 Source Law

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

17 Revised Law

18 Sec. 31.043. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

19 (a) The commissioner or the commissioner's designee shall prepare
20 and maintain a written policy statement to ensure implementation of
21 a program of equal employment opportunity under which all personnel
22 transactions are made without regard to race, color, disability,
23 sex, religion, age, or national origin. The policy statement must
24 include:

25 (1) personnel policies, including policies relating to
26 recruitment, evaluation, selection, appointment, training, and
27 promotion of personnel that are in compliance with Chapter 21,
28 Labor Code;

29 (2) a comprehensive analysis of the department
30 workforce that meets federal and state guidelines;

31 (3) procedures by which a determination can be made of
32 significant underuse in the department workforce of all persons for
33 whom federal or state guidelines encourage a more equitable
34 balance; and

35 (4) reasonable methods to appropriately address those
36 areas of significant underuse.

37 (b) A policy statement prepared under this section must:

38 (1) cover an annual period;

- 1 (2) be updated annually;
2 (3) be reviewed by the Commission on Human Rights for
3 compliance with Subsection (a); and
4 (4) be filed with the governor.

5 (c) The governor shall deliver a biennial report to the
6 legislature based on the information received under Subsection (b).
7 The report may be made separately or as a part of other biennial
8 reports made to the legislature. (V.T.I.C. Art. 1.02, Subsecs.
9 (d), (e), (f).)

10 Source Law

11 (d) The Commissioner or the Commissioner's
12 designee shall prepare and maintain a written policy
13 statement to ensure implementation of a program of
14 equal employment opportunity under which all personnel
15 transactions are made without regard to race, color,
16 disability, sex, religion, age, or national origin.
17 The policy statement must include:

18 (1) personnel policies, including policies
19 relating to recruitment, evaluation, selection,
20 appointment, training, and promotion of personnel that
21 are in compliance with the Commission on Human Rights
22 Act (Article 5221k, Vernon's Texas Civil Statutes);

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

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

30 (4) reasonable methods to appropriately
31 address those areas of significant underuse.

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

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

42 Revisor's Note

43 Subsection (d)(1), V.T.I.C. Article 1.02, refers
44 to the Human Rights Act (Article 5221k, Vernon's Texas
45 Civil Statutes). That statute was codified in 1993 as
46 Chapter 21, Labor Code. The revised law is drafted
47 accordingly.

48 Revised Law

49 Sec. 31.044. QUALIFICATIONS AND STANDARDS OF CONDUCT. The

1 commissioner shall provide to department employees, as often as
2 necessary, information regarding their:

3 (1) qualification for office or employment under this
4 code; and

5 (2) responsibilities under applicable laws relating to
6 standards of conduct for state employees. (V.T.I.C. Art. 1.02,
7 Subsec. (h).)

8 Source Law

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

14 Revised Law

15 Sec. 31.045. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

16 (a) The commissioner or the commissioner's designee shall develop
17 an intra-agency career ladder program. The program must require
18 intra-agency posting of all nonentry level positions concurrently
19 with any public posting.

20 (b) The commissioner or the commissioner's designee shall
21 develop a system of annual performance evaluations. All merit pay
22 for department employees must be based on the system established
23 under this subsection. (V.T.I.C. Art. 1.09, Subsecs. (g), (h).)

24 Source Law

25 (g) The commissioner or the commissioner's
26 designee shall develop an intra-agency career ladder
27 program. The program shall require intra-agency
28 posting of all nonentry level positions concurrently
29 with any public posting.

30 (h) The commissioner or the commissioner's
31 designee shall develop a system of annual performance
32 evaluations. All merit pay for department employees
33 must be based on the system established under this
34 subsection.

35 CHAPTER 32. ADMINISTRATIVE POWERS AND DUTIES

36 SUBCHAPTER A. RECORDS

37 Sec. 32.001. GIVING CERTIFIED COPIES AND CERTIFICATES 15

38 Sec. 32.002. RECORD OF DEPARTMENT PROCEEDINGS 16

39 Sec. 32.003. STATEMENTS REGARDING CONDITION OF

40 EXAMINED COMPANIES 16

1 [Sections 32.004-32.020 reserved for expansion]

2 SUBCHAPTER B. REPORTS

3 Sec. 32.021. ANNUAL REPORTS 18

4 Sec. 32.022. BIENNIAL REPORT TO LEGISLATURE 19

5 Sec. 32.023. REPORTS TO OTHER STATES 20

6 [Sections 32.024-32.040 reserved for expansion]

7 SUBCHAPTER C. FORMS

8 Sec. 32.041. FORMS 21

9 CHAPTER 32. ADMINISTRATIVE POWERS AND DUTIES

10 SUBCHAPTER A. RECORDS

11 Revised Law

12 Sec. 32.001. GIVING CERTIFIED COPIES AND CERTIFICATES. (a)

13 On request and on payment of the required fee, the department

14 shall:

15 (1) certify a copy of a paper or a record in a

16 department office and give the certified copy to any person when

17 the commissioner determines that providing the copy is not

18 prejudicial to the public interest; and

19 (2) give a certificate as provided by other law.

20 (b) A fee collected by the department under this section

21 shall be deposited in the general revenue fund to the credit of the

22 Texas Department of Insurance operating account. (V.T.I.C.

23 Art. 1.10, Sec. 11.)

24 Source Law

25 11. Give Certified Copies. At the request of

26 any person, and on the payment of the legal fee, the

27 Department shall give certified copies of any record or

28 papers in its office, when the Commissioner deems it

29 not prejudicial to public interest and shall give such

30 other certificates as are provided for by law. The

31 fees collected by the Department under this section

32 shall be deposited in the State Treasury to the credit

33 of the Texas Department of Insurance operating fund.

34 Revisor's Note

35 Section 11, V.T.I.C. Article 1.10, requires fees

36 to be deposited in the state treasury to the credit of

37 the Texas Department of Insurance operating fund.

38 Under the authority of Chapter 4, Acts of the 72nd

1 Legislature, 1st Called Session, 1991, the Texas
2 Department of Insurance operating fund was converted to
3 an account in the general revenue fund. The revised
4 law has been drafted accordingly.

5 Revised Law

6 Sec. 32.002. RECORD OF DEPARTMENT PROCEEDINGS. The
7 department shall maintain a complete record of the department's
8 proceedings. (V.T.I.C. Art. 1.10, Sec. 10 (part).)

9 Source Law

10 10. Shall Keep Records. The Department shall
11 preserve in a permanent form a full record of the
12 Department's proceedings and

13 Revisor's Note

14 Section 10, V.T.I.C. Article 1.10, requires that
15 the department preserve "in a permanent form" a full
16 record of the department's proceedings. The revised
17 law substitutes the term "maintain" for "preserve"
18 because the terms are synonomous and the term
19 "maintain" is more commonly used. The reference to "in
20 a permanent form" is omitted from the revised law
21 because "in a permanent form" is included within the
22 meaning of "maintain."

23 Revised Law

24 Sec. 32.003. STATEMENTS REGARDING CONDITION OF EXAMINED
25 COMPANIES. The department shall maintain a concise statement of
26 the condition of each company or agency visited or examined.
27 (V.T.I.C. Art. 1.10, Sec. 10 (part).)

28 Source Law

29 10. Shall Keep Records. The Department shall
30 preserve in a permanent form . . . a concise statement
31 of the condition of each company or agency visited or
32 examined.

33 Revisor's Note

34 Section 10, V.T.I.C. Article 1.10, requires that
35 the department preserve statements "in a permanent
36 form." The term "maintain" is substituted for

1 "preserve" and the reference to "in a permanent form"
2 is omitted from the revised law for the reasons stated
3 in the revisor's note to Section 32.002.

4 Revisor's Note
5 (End of Subchapter)

6 V.T.I.C. Article 1.23 provides that certain
7 instruments and copies of certain papers and records
8 shall be received as evidence if authenticated as
9 provided by the article. The revised law omits the
10 article, enacted as part of the Insurance Code in 1951,
11 as unnecessary because Rules 902(1) and (4), Texas
12 Rules of Civil Evidence, and Rules 902(1) and (4),
13 Texas Rules of Criminal Evidence, are substantively
14 identical to the article. The cited rules were
15 originally adopted in 1983 and 1986, respectively, as
16 provided by Sections 22.004 and 22.109, Government
17 Code.

18 The cited rules apply to all proceedings to which
19 the article could apply. The Texas Rules of Civil
20 Evidence apply to civil proceedings in all courts other
21 than small claims courts. Under Section 28.033,
22 Government Code, proceedings in small claims courts are
23 informal, and so specific rules and statutes regarding
24 receipt of evidence are unnecessary. The Texas Rules
25 of Civil Evidence also apply under Section 2001.081,
26 Government Code, to contested case hearings governed by
27 Chapter 2001, Government Code. The Texas Rules of
28 Criminal Evidence apply to all criminal proceedings.
29 The omitted law reads:

30 Art. 1.23. Every instrument executed
31 by any member of the Board of Insurance
32 Commissioners, or by the Commissioner of
33 Insurance of any other state or by an
34 officer of any other state having a title
35 of similar import, relating to insurance
36 and which has been or shall be executed
37 pursuant to authority conferred by law, and
38 authenticated by the seal of office of the
39 Board or such other officer executing the
40 instrument, shall be received as evidence;

1 and copies of papers and records in the
2 office of the Board or in the office of
3 such other officer, certified by a member
4 of the Board if the paper or record is in
5 the office of the Board or by such other
6 officer in whose office such papers or
7 records are found, and authenticated by the
8 appropriate seal of office, shall be
9 received as evidence with the same effect
10 as the originals.

11 [Sections 32.004-32.020 reserved for expansion]

12 SUBCHAPTER B. REPORTS

13 Revised Law

14 Sec. 32.021. ANNUAL REPORTS. (a) The department shall file
15 annually with the governor and the presiding officer of each house
16 of the legislature a complete and detailed written report that
17 includes:

18 (1) an accounting of all funds received and disbursed
19 by the department during the preceding fiscal year;

20 (2) a description of the commissioner's official acts;

21 (3) a description of the condition of companies doing
22 business in this state; and

23 (4) other information that exhibits the affairs of the
24 department.

25 (b) The annual report required by Subsection (a) must be in
26 the form and reported in the time provided by the General
27 Appropriations Act.

28 (c) The department shall:

29 (1) send a copy of the annual report required by
30 Subsection (a) to the insurance commissioner or other similar
31 officer of every state; and

32 (2) on request, send a copy to any company doing
33 business in this state.

34 (d) The department shall print a separate premium and loss
35 report that contains and arranges in tabular form the premium and
36 loss information contained in the annual statements for companies
37 doing business in this state.

38 (e) The department shall file the report required by

1 Subsection (d) with the Legislative Reference Library and the Texas
2 State Library with the annual report required by Subsection (a).

3 (f) The department shall notify the legislature of the
4 availability of the reports required by this section. (V.T.I.C.
5 Art. 1.10, Secs. 12, 13; Art. 1.25, Subsec. (b).)

6 Source Law

7 [Art. 1.10]

8 12. Report to Governor and Legislature. The
9 Department shall file annually with the Governor and
10 the presiding officer of each house of the Legislature
11 a complete and detailed written report accounting for
12 all funds received and disbursed by the Department
13 during the preceding fiscal year. The annual report
14 must be in the form and reported in the time provided
15 by the General Appropriations Act. The report shall
16 also contain the Commissioner's official acts, the
17 condition of companies doing business in this State,
18 and such other information as will exhibit the affairs
19 of the Department.

20 13. Send Copies of Reports To. The Department
21 shall send a copy of the annual report to the Insurance
22 Commissioner or other similar officer of every state
23 and, on request, shall send a copy to each company
24 doing business in Texas.

25 [Art. 1.25]

26 (b) The Board shall cause the Texas premium and
27 loss information contained in the annual statement of
28 companies to be arranged in tabular form and printed in
29 a single document. This document shall be filed by the
30 Board with the Legislative Reference Library and the
31 State Library along with the Board's annual report and
32 the legislature shall be notified of the availability
33 of both reports.

34 Revisor's Note

35 Subsection (b), V.T.I.C. Article 1.25, refers to
36 the "Board," meaning the State Board of Insurance.
37 Chapter 685, Acts of the 73rd Legislature, Regular
38 Session, 1993, abolished the board and transferred its
39 functions to the commissioner of insurance and the
40 Texas Department of Insurance. Throughout this
41 chapter, references to the board have been changed as
42 appropriate.

43 Revised Law

44 Sec. 32.022. BIENNIAL REPORT TO LEGISLATURE. (a) On or
45 before December 31 of each even-numbered year, the department shall
46 submit to the appropriate committees of each house of the

1 legislature a written report that indicates any needed changes in
2 the laws relating to regulation of the insurance industry or any
3 other industry or occupation under the jurisdiction of the
4 department and that states the reasons for the needed changes.

5 (b) If the commissioner determines that any capital or
6 surplus requirements established by this code for any insurance
7 companies are inadequate, the department shall:

8 (1) include in the biennial report specific
9 recommendations relating to the amounts at which the capital or
10 surplus requirements should be set and the findings and evidence on
11 which those recommendations are based; and

12 (2) submit the biennial report to the governor.

13 (V.T.I.C. Art. 1.25, Subsec. (a); Art. 1.25A.)

14 Source Law

15 Art. 1.25. (a) On or before December 31 of each
16 even-numbered year, the State Board of Insurance shall
17 submit to the appropriate committees of each house of
18 the legislature a written report that indicates any
19 needed changes in the laws relating to regulation of
20 the insurance industry or any other industry or
21 occupation under the jurisdiction of the Board and
22 states the reasons for those needed changes.

23 Art. 1.25A. (a) If the State Board of Insurance
24 determines that any capital or surplus requirements
25 established by this code for any insurance companies
26 are inadequate, the board shall include in its report
27 to the governor and the legislature specific
28 recommendations relating to the amounts at which those
29 capital or surplus requirements should be set and the
30 findings and evidence on which those recommendations
31 are based.

32 (b) The State Board of Insurance shall submit
33 its report to the governor and the legislature not
34 later than December 31 of each even-numbered year.

35 Revised Law

36 Sec. 32.023. REPORTS TO OTHER STATES. On request, the
37 department shall provide to the insurance commissioner or other
38 similar officer of another state information relating to a company
39 of this state that does business in the other state if:

40 (1) the other state has enacted the substantial
41 provisions of the insurance laws of this state; and

42 (2) the commissioner or other similar officer has a
43 legal duty to obtain the information. (V.T.I.C. Art. 1.10, Sec.

1 14.)

2 Source Law

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

11 [Sections 32.024-32.040 reserved for expansion]

12 SUBCHAPTER C. FORMS

13 Revised Law

14 Sec. 32.041. FORMS. The department shall furnish to the
15 companies required to report to the department the necessary forms
16 for the required statements. (V.T.I.C. Art. 1.10, Sec. 9.)

17 Source Law

18 9. Shall Furnish Blanks. The Department shall
19 furnish to the companies required to report to the
20 Department the necessary blank forms for the statements
21 required.

22 CHAPTER 33. STANDARDS OF CONDUCT

23 Sec. 33.001. APPLICATION OF LAW RELATING TO ETHICAL

24 CONDUCT 21

25 Sec. 33.002. INSURANCE BUSINESS INTEREST; SERVICE AS

26 COMMISSIONER 22

27 Sec. 33.003. INSURANCE BUSINESS INTEREST; EMPLOYEE 24

28 Sec. 33.004. TRADE ASSOCIATIONS 24

29 Sec. 33.005. LOBBYING ACTIVITIES 26

30 Sec. 33.006. FORMER SERVICE 26

31 Sec. 33.007. PROHIBITED REPRESENTATION 27

32 CHAPTER 33. STANDARDS OF CONDUCT

33 Revised Law

34 Sec. 33.001. APPLICATION OF LAW RELATING TO ETHICAL CONDUCT.
35 The commissioner and each employee or agent of the department is
36 subject to the code of ethics and the standard of conduct imposed
37 by Chapter 572, Government Code, and any other law regulating the
38 ethical conduct of state officers and employees. (V.T.I.C.
39 Art. 1.09-3.)

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

4 (b) A person is not eligible for appointment as commissioner
5 if the person:

6 (1) is a stockholder, director, officer, attorney,
7 agent, or employee of an insurance company, insurance agent,
8 insurance broker, or insurance adjuster; or

9 (2) is directly or indirectly interested in a business
10 described by Subdivision (1).

11 (c) Subsection (b) does not apply to:

12 (1) a person solely because the person is insured by
13 an insurer or is the beneficiary of insurance; or

14 (2) a person who:

15 (A) is appointed as a receiver, liquidator,
16 supervisor, or conservator of an insurer; or

17 (B) is an employee of a receiver, liquidator,
18 supervisor, or conservator of an insurer with respect to duties
19 under that employment. (V.T.I.C. Art. 1.06, Subsec. (a);
20 Art. 1.09, Subsec. (b) (part).)

21 Source Law

22 Art. 1.06. (a) No person who is a stockholder,
23 director, officer, attorney, agent, or employee of any
24 insurance company, insurance agent, insurance broker,
25 or insurance adjuster, or who is in any way directly or
26 indirectly interested in any such business, shall be a
27 member of the State Board of Insurance, be
28 Commissioner, or be appointed to, or accept, any office
29 under the Board or the Commissioner. This ineligibility
30 does not extend or apply to persons who are:

31 (1) merely insured by an insurer, or are
32 merely beneficiaries of such insurance;

33 (2) in their official capacity, appointed
34 as a receiver, liquidator, supervisor, or conservator
35 for an insurer; or

36 (3) employees of the receiver, liquidator,
37 supervisor, or conservator with respect to their duties
38 under that employment.

39 [Art. 1.09]

40 (b) . . . A person is not eligible for
41 appointment as commissioner if the person, the person's
42 spouse, or any person that resides in the same
43 household as the person:

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

46 (2) is employed by or participates in the

1 management of a business entity or other organization
2 regulated by the department or receiving funds from the
3 department;

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

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

12 Revisor's Note

13 Subsection (a), V.T.I.C. Article 1.06, refers to
14 an "office under . . . the Commissioner." The revised
15 law omits the quoted reference because the commissioner
16 of insurance is the only officer of the Texas
17 Department of Insurance.

18 Revised Law

19 Sec. 33.003. INSURANCE BUSINESS INTEREST; EMPLOYEE. (a) A
20 person who is a director, officer, attorney, agent, or employee of
21 an insurance company, insurance agent, insurance broker, or
22 insurance adjuster may not be employed by the department.

23 (b) A person who resides in the same household as a person
24 who is an officer, managerial employee, or paid consultant in the
25 insurance industry may not be employed in an exempt salary position
26 as defined by the General Appropriations Act. (V.T.I.C. Art. 1.06,
27 Subsec. (b); Art. 1.06AA.)

28 Source Law

29 [Art. 1.06]

30 (b) No person who is a director, officer,
31 attorney, agent, or employee of any insurance company,
32 insurance agent, insurance broker, or insurance
33 adjuster shall be an employee of the department.

34 Art. 1.06AA. A person may not be employed in an
35 exempt salary position as defined by the General
36 Appropriations Act who at the time of employment
37 resides in the same household as a person who is an
38 officer, managerial employee, or paid consultant in the
39 insurance industry.

40 Revised Law

41 Sec. 33.004. TRADE ASSOCIATIONS. (a) A person who is an
42 officer, employee, or paid consultant of a trade association in the
43 field of insurance may not be:

1 (1) the commissioner; or

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

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

10 (1) the commissioner; or

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

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

21 (V.T.I.C. Art. 1.06A.)

22 Source Law

23 Art. 1.06A. (a) An officer, employee, or paid
24 consultant of a trade association in the field of
25 insurance may not be commissioner or an employee of the
26 department who is exempt from the state's position
27 classification plan or is compensated at or above the
28 amount prescribed by the General Appropriations Act for
29 step 1, salary group 17, of the position classification
30 salary schedule.

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

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

1 Revisor's Note

2 Subsections (a) and (b), V.T.I.C. Article 1.06A,
3 refer to an employee "compensated at or above the
4 amount prescribed by the General Appropriations Act for
5 step 1, salary group 17, of the position classification
6 salary schedule." Under the General Appropriations Act
7 for the 1996-1997 and earlier state bienniums, there
8 was a single position classification salary schedule.
9 Under Article IX of the General Appropriations Act for
10 the 1998-1999 state fiscal biennium (Chapter 1452, Acts
11 of the 75th Legislature, Regular Session, 1997), there
12 are three position classification salary schedules.
13 "Salary group 17" under the former schedule corresponds
14 to "salary group A17" under the current schedule. The
15 revised law is drafted accordingly.

16 Revised Law

17 Sec. 33.005. LOBBYING ACTIVITIES. A person may not serve as
18 the commissioner or act as the general counsel to the commissioner
19 if the person is required to register as a lobbyist under Chapter
20 305, Government Code, because of the person's activities for
21 compensation on behalf of a profession related to the operation of
22 the department. (V.T.I.C. Art. 1.06B.)

23 Source Law

24 Art. 1.06B. A person may not serve as
25 commissioner or act as the general counsel to the
26 commissioner if the person is required to register as a
27 lobbyist under Chapter 305, Government Code, because of
28 the person's activities for compensation on behalf of a
29 profession related to the operation of the department.

30 Revised Law

31 Sec. 33.006. FORMER SERVICE. A person may not serve as the
32 commissioner if the person served as a member of the State Board of
33 Insurance. (V.T.I.C. Art. 1.09, Subsec. (b) (part).)

34 Source Law

35 (b) . . . No former or present member of the
36 State Board of Insurance shall be appointed
37 commissioner. . . .

1 Revisor's Note

2 As explained in the revisor's note to Section
3 33.001, the State Board of Insurance has been
4 abolished. The revised law accordingly omits the
5 reference to "present member" of the board.

6 Revised Law

7 Sec. 33.007. PROHIBITED REPRESENTATION. (a) A person who
8 served as the commissioner, the general counsel to the
9 commissioner, or the public insurance counsel, or as an employee of
10 the State Office of Administrative Hearings who was involved in
11 hearing cases under this code or another insurance law of this
12 state, commits an offense if the person represents another person
13 in a matter before the department or receives compensation for
14 services performed on behalf of another person regarding a matter
15 pending before the department during the one-year period after the
16 date the person ceased to be the commissioner, the general counsel
17 to the commissioner, the public insurance counsel, or an employee
18 of the State Office of Administrative Hearings.

19 (b) A person who served as a member of the State Board of
20 Insurance or as a staff employee of a member of the State Board of
21 Insurance, or who served as the commissioner, the general counsel
22 to the commissioner, or the public insurance counsel or as an
23 employee of the department or the State Office of Administrative
24 Hearings, commits an offense if, after the person ceased to serve,
25 the person represents another person or receives compensation for
26 services performed on behalf of another person regarding a matter
27 with which the person was directly concerned during the person's
28 service. For purposes of this subsection, a person was directly
29 concerned with a matter if the person had personal involvement with
30 the matter or if the matter was within the scope of the person's
31 official responsibility.

32 (c) An offense under this section is a Class A misdemeanor.

33 (d) This section does not apply to a department employee
34 whose position is eliminated as a direct result of a reduction in

1 the department's workforce. (V.T.I.C. Art. 1.06C.)

2 Source Law

3 Art. 1.06C. (a) A person serving as a member of
4 the former State Board of Insurance, commissioner,
5 general counsel, public counsel, staff employee of a
6 member of the former State Board of Insurance, or an
7 employee of the State Office of Administrative Hearings
8 who is involved in hearing cases under this code or
9 another insurance law of this state may not, for a
10 period of one year after the date the person ceases to
11 be a board member, commissioner, general counsel,
12 public counsel, or employee, represent any person in a
13 matter before the department or receive compensation
14 for services rendered on behalf of any person regarding
15 a matter pending before the department.

16 (b) A former member of the former State Board of
17 Insurance, a former commissioner, a former general
18 counsel, a former public counsel, a staff employee of a
19 member of the former State Board of Insurance, or a
20 former employee of the board or the State Office of
21 Administrative Hearings may not represent any person or
22 receive compensation for services rendered on behalf of
23 any person regarding a matter with which the former
24 member, commissioner, general counsel, public counsel,
25 division head, or employee was directly concerned
26 during the period of service or employment on or with
27 the board or State Office of Administrative Hearings or
28 as commissioner, either through personal involvement or
29 because the matter was within the member's,
30 commissioner's, general counsel's, public counsel's, or
31 employee's official responsibility while associated
32 with the board or State Office of Administrative
33 Hearings.

34 (c) A former member or employee of the former
35 State Board of Insurance or State Office of
36 Administrative Hearings or a former commissioner,
37 general counsel, public counsel, or staff employee of a
38 member of the former State Board of Insurance commits
39 an offense if the former member, employee,
40 commissioner, general counsel, or public counsel
41 violates this section. An offense under this
42 subsection is a Class A misdemeanor.

43 (d) This section does not apply to an employee
44 of the Texas Department of Insurance whose employment
45 is terminated based on the elimination of the
46 employee's position of employment that is a direct
47 result of a reduction in the agency's workforce.

48 Revisor's Note

49 (1) Subsection (a), V.T.I.C. Article 1.06C,
50 prohibits a person serving in specified positions from
51 engaging in certain conduct for a period of one year
52 after the person's service ceases. The revised law
53 omits the references to service "as a member of the
54 former State Board of Insurance" or as a "staff
55 employee of a member of the former State Board of
56 Insurance" as unnecessary. Chapter 685, Acts of the

1 73rd Legislature, Regular Session, 1993, abolished the
2 State Board of Insurance, effective September 1, 1993.
3 Therefore, the one-year period applicable to a person
4 who served in either capacity has expired.

5 (2) Subsection (b), V.T.I.C. Article 1.06C,
6 refers to a "former member, commissioner, general
7 counsel, public counsel, division head, or employee."
8 The revised law omits the reference to "division head"
9 because it is included within the meaning of
10 "employee."

11 CHAPTER 34. IMMUNITY FROM LIABILITY

12 Sec. 34.001. PERSONAL IMMUNITY 29
13 Sec. 34.002. IMMUNITY FOR FURNISHING INFORMATION RELATING
14 TO FRAUD 30
15 Sec. 34.003. IMMUNITY FOR INVESTIGATIONS AND RELATED
16 REPORTS 32
17 Sec. 34.004. IMMUNITY FOR USE OF ANNUAL STATEMENT
18 INFORMATION 32
19 Sec. 34.005. EFFECT OF CHAPTER ON OTHER IMMUNITY 33

20 CHAPTER 34. IMMUNITY FROM LIABILITY

21 Revised Law

22 Sec. 34.001. PERSONAL IMMUNITY. A person who is the
23 commissioner or an employee of the department is not personally
24 liable in a civil action for:

25 (1) an act performed in good faith within the scope of
26 that person's authority; or

27 (2) damages caused by an official act or omission of
28 that person unless the act or omission is corrupt or malicious.

29 (V.T.I.C. Art. 1.40, Subsec. (a) (part).)

30 Source Law

31 Art. 1.40. (a) A member of the State Board of
32 Insurance, the commissioner of insurance, or another
33 officer or employee of the Texas Department of
34 Insurance shall not be personally liable for any act
35 performed in good faith within the scope of his or her
36 authority or for damages occasioned by his or her
37 official acts or omissions except for an act or
38 omission that is corrupt or malicious. . . .

1 Revisor's Note

2 (1) Subsection (a), V.T.I.C. Article 1.40,
3 refers to "the State Board of Insurance." Chapter 685,
4 Acts of the 73rd Legislature, Regular Session, 1993,
5 abolished the board and transferred its functions to
6 the commissioner of insurance and the Texas Department
7 of Insurance. Throughout this chapter, references to
8 the board and board members have been changed as
9 appropriate. As part of a nonsubstantive revision,
10 these changes do not affect the liability of a person,
11 including a member of the former State Board of
12 Insurance, under former law.

13 (2) Subsection (a), V.T.I.C. Article 1.40,
14 refers to the commissioner of insurance "or another
15 officer . . . of the Texas Department of Insurance."
16 The revised law omits the quoted reference because the
17 commissioner of insurance is the only officer of the
18 Texas Department of Insurance. Similar changes have
19 been made throughout this chapter.

20 (3) The revised law adds the phrase "in a civil
21 action" for clarification and consistency with the
22 remainder of V.T.I.C. Article 1.40 revised in this
23 chapter.

24 Revised Law

25 Sec. 34.002. IMMUNITY FOR FURNISHING INFORMATION RELATING TO
26 FRAUD. (a) A person is not liable in a civil action, including an
27 action for libel or slander, and a civil action may not be brought
28 against the person, for furnishing information relating to
29 suspected, anticipated, or completed fraudulent insurance acts if
30 the information is provided to or received from:

- 31 (1) the commissioner or an employee of the department;
32 (2) a law enforcement agency of this state, of another
33 state, or of the United States or an employee of the agency;
34 (3) the National Association of Insurance

1 Commissioners or an employee of the association; or

2 (4) a state or federal governmental agency established
3 to detect and prevent fraudulent insurance acts or to regulate the
4 business of insurance or an employee of the agency.

5 (b) A person may furnish information as described in
6 Subsection (a) orally or in writing, including through publishing,
7 disseminating, or filing bulletins or reports.

8 (c) Subsection (a) does not apply to a person who acts with
9 malice, fraudulent intent, or bad faith.

10 (d) A person to whom Subsection (a) applies who prevails in
11 a civil action arising from the furnishing of information as
12 described in Subsection (a) is entitled to attorney's fees and
13 costs if the action was not substantially justified. In this
14 subsection, "substantially justified" means there was a reasonable
15 basis in law or fact to bring the action at the time the action was
16 initiated. (V.T.I.C. Art. 1.40, Subsecs. (b), (c), (d).)

17 Source Law

18 (b) A person acting without malice, fraudulent
19 intent, or bad faith is not subject to civil liability
20 based on filing reports or furnishing, orally or in
21 writing, other information relating to suspected,
22 anticipated, or completed fraudulent insurance acts if
23 those reports or information are provided to or
24 received from:

25 (1) a member of the State Board of
26 Insurance, the commissioner of insurance, or another
27 officer or employee of the Texas Department of
28 Insurance;

29 (2) any law enforcement agency of this
30 state, of another state, or of the United States, or an
31 employee of such an agency; or

32 (3) the National Association of Insurance
33 Commissioners, a state or federal governmental agency
34 established to detect and prevent fraudulent insurance
35 acts or to regulate the business of insurance, or an
36 employee of such an association or governmental agency.

37 (c) A person to whom Subsection (b) of this
38 section applies or an employee or agent of such a
39 person when performing an authorized activity,
40 including the publication or dissemination of any
41 related bulletin or reports, and while acting without
42 malice, fraudulent intent, or bad faith, is not subject
43 to civil liability for libel, slander, or any other
44 relevant tort, and a civil cause of action of any
45 nature may not exist against that person based on those
46 activities.

47 (d) A person to whom Subsection (b) of this
48 section applies or an employee or agent of such a
49 person is entitled to attorney's fees and costs if the
50 person, employee, or agent is a prevailing defendant in
51 a civil cause of action for libel, slander, or any

1 other relevant tort based on activities performed under
2 Subsection (b) of this section and the party bringing
3 the action was not substantially justified in bringing
4 the action. For purposes of this subsection, an action
5 is "substantially justified" if there was a reasonable
6 basis in law or fact to bring the action at the time
7 that the action was initiated.

8 Revisor's Note

9 Subsections (c) and (d), V.T.I.C. Article 1.40,
10 refer to "an employee or agent" of a person who is
11 immune from liability under the article. These
12 references are omitted from the revised law because
13 "employee or agent" is included within the meaning of
14 "person."

15 Revised Law

16 Sec. 34.003. IMMUNITY FOR INVESTIGATIONS AND RELATED
17 REPORTS. (a) A person who is the commissioner or an employee,
18 agent, or designee of the department is not liable in a civil
19 action, including an action for libel or slander, because of:

20 (1) an investigation of a violation of this code or an
21 alleged fraudulent insurance act; or

22 (2) the publication or dissemination of an official
23 report related to the investigation.

24 (b) Subsection (a) does not apply to a person who acts with
25 malice. (V.T.I.C. Art. 1.40, Subsec. (f).)

26 Source Law

27 (f) A member of the State Board of Insurance,
28 the commissioner of insurance, or an employee, an
29 agent, or a designee of the department, acting without
30 malice, is not subject to civil liability for libel,
31 slander, or any other cause of action by virtue of an
32 investigation of any violation of this code or of an
33 alleged fraudulent insurance act, or the publication or
34 dissemination of any official report related to the
35 investigation.

36 Revised Law

37 Sec. 34.004. IMMUNITY FOR USE OF ANNUAL STATEMENT
38 INFORMATION. (a) A person is not liable in a civil action,
39 including an action for libel or slander, for collecting,
40 reviewing, analyzing, disseminating, or reporting information
41 collected from annual statements filed under Article 1.11 if the

1 person is:

2 (1) the department, the commissioner, or an employee
3 of the department;

4 (2) a member or employee of or delegate to the
5 National Association of Insurance Commissioners or an authorized
6 committee, subcommittee, or task force of that association; or

7 (3) another person who is responsible for collecting,
8 reviewing, analyzing, and disseminating information from filed
9 annual statement convention blanks.

10 (b) Subsection (a) does not apply to a person who acts with
11 malice. (V.T.I.C. Art. 1.40, Subsec. (e).)

12 Source Law

13 (e) In the absence of malice, any of the
14 following persons who are responsible for collecting,
15 reviewing, analyzing, and disseminating the information
16 developed from the filing of annual statement
17 convention blanks is not subject to civil liability for
18 libel, slander, or any other cause of action based on
19 the collection, review, analysis, dissemination, or
20 report of information collected from the filings
21 required by Article 1.11 of this code:

22 (1) the department, board, commissioner,
23 or other officer or employee of the department; or

24 (2) members of the National Association of
25 Insurance Commissioners, their duly authorized
26 committees, subcommittees, task forces, delegates, and
27 employees, and all other persons charged with the
28 responsibility of collecting, reviewing, analyzing, and
29 disseminating the information developed from the filing
30 of annual statement convention blanks.

31 Revised Law

32 Sec. 34.005. EFFECT OF CHAPTER ON OTHER IMMUNITY. This
33 chapter does not affect or modify any common law or statutory
34 privilege or immunity. (V.T.I.C. Art. 1.40, Subsec. (g).)

35 Source Law

36 (g) This section does not affect or modify any
37 common law or statutory privilege or immunity.

38 [Chapter 35 reserved for expansion]

39 CHAPTER 36. DEPARTMENT RULES AND PROCEDURES

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3 CHAPTER 36. DEPARTMENT RULES AND PROCEDURES

4 SUBCHAPTER A. RULES

5 Revised Law

6 Sec. 36.001. RULES FOR GENERAL AND UNIFORM APPLICATION. (a)
7 The commissioner may adopt rules for the conduct and execution of
8 the powers and duties of the department only as authorized by
9 statute.

10 (b) Rules adopted under this section must have general and
11 uniform application.

12 (c) The commissioner shall publish the rules in a format
13 organized by subject matter. The published rules shall be kept
14 current and be available in a form convenient to any interested
15 person. (V.T.I.C. Art. 1.03A.)

16 Source Law

17 Art. 1.03A. The Commissioner may adopt rules and
18 regulations for the conduct and execution of the duties
19 and functions of the department only as authorized by a
20 statute. Rules and regulations adopted in accordance
21 with this subsection must be for general and uniform
22 application and shall be published by the Commissioner
23 on the basis of a systematic organization of such rules
24 by their subject matter and content. Such published
25 rules shall be kept current and shall be available in a
26 form convenient to all interested persons.

27 Revisor's Note

28 (1) V.T.I.C. Article 1.03A refers to the "duties
29 and functions of the department." The revised law
30 substitutes "powers and duties" for "duties and
31 functions" because, in context, the phrases are
32 synonymous and "powers and duties" is more commonly
33 used.

34 (2) V.T.I.C. Article 1.03A refers to "rules and
35 regulations." The reference to "regulations" is
36 omitted from the revised law because under Section
37 311.005(5), Government Code (Code Construction Act), a
38 rule is defined to include a regulation. That

1 definition applies to the revised law.

2 (3) V.T.I.C. Article 1.03A refers to
3 organization of rules by "subject matter and content."
4 The revised law omits the reference to "content"
5 because "content" is included within the meaning of
6 "subject matter."

7 Revised Law

8 Sec. 36.002. FISCAL IMPACT OF DEPARTMENT RULES. (a) A rule
9 adopted by the commissioner under Chapter 2001, Government Code, is
10 void if:

11 (1) the fiscal note or the public benefit-cost note
12 required by Section 2001.024, Government Code, does not accurately
13 state the reasonable actual costs required; and

14 (2) the reasonable actual costs required exceed the
15 stated costs by at least 25 percent.

16 (b) A rule that is void under this section is void beginning
17 on the date the rule is adopted. (V.T.I.C. Art. 1.03B.)

18 Source Law

19 Art. 1.03B. (a) This article applies to any
20 rule adopted by the commissioner in accordance with the
21 Administrative Procedure and Texas Register Act
22 (Article 6252-13a, Vernon's Texas Civil Statutes).

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

32 Revisor's Note

33 V.T.I.C. Article 1.03B refers to the
34 Administrative Procedure and Texas Register Act
35 (Article 6252-13a, Vernon's Texas Civil Statutes) and
36 to Subdivisions (4) and (5), Section 5(a), of that act.
37 The relevant portion of that act was codified as
38 Chapter 2001, Government Code, and Subdivisions (4) and
39 (5), Section 5(a), were codified as part of Section
40 2001.024, Government Code. The revised law is drafted

1 accordingly.

2 Revised Law

3 Sec. 36.003. RULES RESTRICTING ADVERTISING OR COMPETITIVE
4 BIDDING. The commissioner may not adopt rules restricting
5 advertising or competitive bidding by a person regulated by the
6 department except to prohibit false, misleading, or deceptive
7 practices by the person. (V.T.I.C. Art. 21.20-1.)

8 Source Law

9 Art. 21.20-1. The commissioner may not adopt
10 rules restricting competitive bidding or advertising by
11 a person regulated by the department except to prohibit
12 false, misleading, or deceptive practices by the
13 person.

14 Revised Law

15 Sec. 36.004. COMPLIANCE WITH NATIONAL ASSOCIATION OF
16 INSURANCE COMMISSIONERS REQUIREMENTS. The department may not
17 require an insurer to comply with a rule, regulation, directive, or
18 standard adopted by the National Association of Insurance
19 Commissioners, including a rule, regulation, directive, or standard
20 relating to policy reserves, unless application of the rule,
21 regulation, directive, or standard is expressly authorized by
22 statute and approved by the commissioner. (V.T.I.C. Art. 1.27.)

23 Source Law

24 Art. 1.27. The department may not require an
25 insurer to comply with any rule, regulation, directive,
26 or standard adopted by the National Association of
27 Insurance Commissioners unless application of the rule,
28 regulation, directive, or standard, including policy
29 reserves, is expressly authorized by statute and
30 approved by the commissioner.

31 [Sections 36.005-36.100 reserved for expansion]

32 SUBCHAPTER B. DEPARTMENT PROCEDURES

33 Revised Law

34 Sec. 36.101. APPLICABILITY OF CERTAIN LAWS. Except as
35 specifically provided by law, the department is subject to Chapters
36 2001 and 2002, Government Code. (V.T.I.C. Art. 1.33A (part).)

37 Source Law

38 Art. 1.33A. The department and the board are
39 subject . . . except as otherwise specifically provided
40 by this code, to the Administrative Procedure and Texas
41 Register Act (Article 6252-13a, Vernon's Texas Civil

1 Statutes).

2 Revisor's Note

3 (1) V.T.I.C. Article 1.33A refers to "the
4 board," meaning the State Board of Insurance. Chapter
5 685, Acts of the 73rd Legislature, Regular Session,
6 1993, abolished the board and transferred its functions
7 to the commissioner of insurance and the Texas
8 Department of Insurance. Throughout this chapter,
9 references to the board and board members have been
10 changed as appropriate.

11 (2) V.T.I.C. Article 1.33A refers to the
12 Administrative Procedure and Texas Register Act
13 (Article 6252-13a, Vernon's Texas Civil Statutes).
14 That act was codified as Chapters 2001 and 2002,
15 Government Code. The revised law is drafted
16 accordingly.

17 Revised Law

18 Sec. 36.102. SUMMARY PROCEDURES FOR ROUTINE MATTERS. (a)
19 The commissioner by rule may:

20 (1) create a summary procedure for routine matters;
21 and

22 (2) designate department activities that otherwise
23 would be subject to Chapter 2001, Government Code, as routine
24 matters to be handled under the summary procedure.

25 (b) An activity may be designated as a routine matter only
26 if the activity is:

27 (1) voluminous;

28 (2) repetitive;

29 (3) believed to be noncontroversial; and

30 (4) of limited interest to anyone other than persons
31 immediately involved in or affected by the proposed department
32 action.

33 (c) The rules may establish procedures different from those
34 contained in Chapter 2001, Government Code. The procedures must

1 require, for each party directly involved, notice of a proposed
2 negative action not later than the fifth day before the date the
3 action is proposed to be taken.

4 (d) The rules may provide for the delegation of authority to
5 take action on a routine matter to a salaried employee of the
6 department designated by the commissioner. (V.T.I.C. Art. 1.33,
7 Subsecs. (a), (b), (c).)

8 Source Law

9 Art. 1.33. (a) The State Board of Insurance
10 may, by rules adopted in accordance with Section 5,
11 Administrative Procedure and Texas Register Act
12 (Article 6252-13a, Vernon's Texas Civil Statutes),
13 create a summary procedure and designate certain
14 activities of the agency that are deemed by the board
15 to be routine matters that should be handled by such
16 summary procedure authorized by this article, although
17 such activities would otherwise be subject to the
18 Administrative Procedure and Texas Register Act. The
19 designation of activities as routine matters shall be
20 confined to activities that are voluminous, repetitive,
21 believed to be noncontroversial, and of limited
22 interest to any persons other than those immediately
23 involved in or affected by the proposed agency action.

24 (b) State Board of Insurance rules creating
25 summary procedures for the processing of routine
26 matters may establish procedures alternative to those
27 contemplated by the Administrative Procedure and Texas
28 Register Act. Such alternative procedures must provide
29 to parties directly involved notice of any proposed
30 negative action not later than the fifth day before the
31 action is proposed to be taken.

32 (c) Such summary procedure rules may provide for
33 the delegation of authority to take action on routine
34 matters to such deputies, assistants, and other
35 salaried personnel of the State Board of Insurance as
36 the board may designate.

37 Revisor's Note

38 (1) Subsection (a), V.T.I.C. Article 1.33,
39 requires rules to be adopted in accordance with Section
40 5, Administrative Procedure and Texas Register Act
41 (Article 6252-13a, Vernon's Texas Civil Statutes). The
42 revised law omits the reference to that section of the
43 act (codified as part of Subchapter B, Chapter 2001,
44 Government Code) because under V.T.I.C. Article 1.33A,
45 revised in this chapter in part as Section 36.101, the
46 department is subject to the entire act, and it is not
47 necessary to restate a requirement regarding Section 5

1 in this section.

2 (2) Subsections (a) and (b), V.T.I.C. Article
3 1.33, refer to activities subject to the Administrative
4 Procedure and Texas Register Act (Article 6252-13a,
5 Vernon's Texas Civil Statutes). The relevant portion
6 of that act was codified as Chapter 2001, Government
7 Code. The revised law is drafted accordingly.

8 (3) Subsection (c), V.T.I.C. Article 1.33,
9 refers to "deputies, assistants, and other salaried
10 personnel of the State Board of Insurance as the board
11 may designate." The revised law substitutes "employee"
12 for "personnel" because the terms are synonymous and
13 "employee" is more commonly used. The references to
14 "deputies" and "assistants" are omitted from the
15 revised law because those terms are included within the
16 meaning of "salaried employee."

17 Revised Law

18 Sec. 36.103. REVIEW OF ACTION ON ROUTINE MATTER. (a) A
19 person directly or indirectly affected by an action of the
20 commissioner or the department on a routine matter taken under the
21 summary procedure adopted under Section 36.102 is entitled to a
22 review of the action under Chapter 2001, Government Code.

23 (b) The person must apply to the commissioner not later than
24 the 60th day after the date of the action to be entitled to the
25 review.

26 (c) The timely filing of the application for review
27 immediately stays the action pending a hearing on the merits.

28 (d) The commissioner may adopt rules relating to an
29 application for review under this section and consideration of the
30 application. (V.T.I.C. Art. 1.33, Subsec. (d).)

31 Source Law

32 (d) Any person affected, directly or indirectly,
33 by the action of the State Board of Insurance on a
34 routine matter shall have a right to have such action
35 reviewed in accordance with the procedures established
36 pursuant to the Administrative Procedure and Texas
37 Register Act by making application to the board no more

1 than 60 days after such action. The timely filing of
2 such application for review shall immediately stay the
3 action taken pursuant to the summary procedure pending
4 a hearing on its merits. The board may make such other
5 rules and regulations respecting such applications and
6 their consideration as it deems advisable, not
7 inconsistent with this section.

8 Revisor's Note

9 (1) Subsection (d), V.T.I.C. Article 1.33,
10 refers to procedures established under the
11 Administrative Procedure and Texas Register Act
12 (Article 6252-13a, Vernon's Texas Civil Statutes). The
13 relevant portion of that act was codified as Chapter
14 2001, Government Code. The revised law is drafted
15 accordingly.

16 (2) Subsection (d), V.T.I.C. Article 1.33,
17 refers to "rules and regulations." The reference to
18 "regulations" is omitted from the revised law for the
19 reason stated in Revisor's Note (2) to Section 36.001.

20 (3) Subsection (d), V.T.I.C. Article 1.33,
21 permits the adoption of rules "not inconsistent with
22 this section." The revised law omits the quoted phrase
23 as unnecessary because a state agency is not authorized
24 to make rules that are inconsistent with general law.

25 Revised Law

26 Sec. 36.104. INFORMAL DISPOSITION OF CONTESTED CASE. The
27 commissioner may, on written agreement or stipulation of each party
28 and any intervenor, informally dispose of a contested case in
29 accordance with Section 2001.056, Government Code, notwithstanding
30 any provision of this code that requires a hearing before the
31 commissioner. (V.T.I.C. Art. 1.33, Subsec. (e) (part).)

32 Source Law

33 (e) Without limiting the authority granted by
34 the other sections of this article, the commissioner
35 may, upon written agreement or stipulation of all
36 parties and any intervenor, in the commissioner's sole
37 discretion: . . . (ii) informally dispose of any
38 contested case as provided by Section 13(e),
39 Administrative Procedure and Texas Register Act
40 (Article 6252-13a, Vernon's Texas Civil Statutes), or
41 any subsequent amendment thereto, notwithstanding any
42 provision of this code which would otherwise require a

1 hearing before the commissioner.

2 Revisor's Note

3 (1) Subsection (e), V.T.I.C. Article 1.33,
4 states that the authority granted by the subsection is
5 granted "[w]ithout limiting the authority granted by
6 the other sections of this article." The revised law
7 omits the quoted phrase as unnecessary because the
8 provision does not purport to limit other authority
9 granted by the article.

10 (2) Subsection (e), V.T.I.C. Article 1.33,
11 permits informal resolution of a contested case "as
12 provided by Section 13(e), Administrative Procedure and
13 Texas Register Act (Article 6252-13a, Vernon's Texas
14 Civil Statutes), or any subsequent amendment thereto."
15 Section 13(e) of that act was codified as Section
16 2001.056, Government Code, and the revised law is
17 drafted accordingly. The revised law omits the
18 reference to "subsequent amendments" because under
19 Section 311.027, Government Code (Code Construction
20 Act), unless expressly provided otherwise, a reference
21 to a statute applies to all reenactments, revisions, or
22 amendments of the statute.

23 Revised Law

24 Sec. 36.105. NEWSPAPER PUBLICATION. Except as otherwise
25 provided by law, a notice or other matter that this code requires
26 to be published must be published for three successive weeks in two
27 newspapers that:

28 (1) are printed in this state; and

29 (2) have a general circulation in this state.

30 (V.T.I.C. Art. 21.30.)

31 Source Law

32 Art. 21.30. Whenever by any provision of this
33 code, any notice or other matter is required to be
34 published, it shall, unless otherwise provided, be
35 published for three successive weeks in two newspapers
36 printed in this State which have a general circulation
37 in this State.

1 Revised Law

2 Sec. 36.106. WAIVER OF CERTAIN NOTICE REQUIREMENTS. The
3 commissioner may, on written agreement or stipulation of each party
4 and any intervenor, waive or modify the notice publication
5 requirement of Article 2.01, 2.03, 3.04, or 22.03. (V.T.I.C.
6 Art. 1.33, Subsec. (e) (part).)

7 Source Law

8 (e) Without limiting the authority granted by
9 the other sections of this article, the commissioner
10 may, upon written agreement or stipulation of all
11 parties and any intervenor, in the commissioner's sole
12 discretion: (i) waive or modify the publication of
13 notice required by Articles 2.01, 2.03, 3.04, 3.05,
14 22.03, and 22.04 of this code, and

15 Revisor's Note

16 (1) Subsection (e), V.T.I.C. Article 1.33,
17 states that the authority granted by the subsection is
18 granted "[w]ithout limiting the authority granted by
19 the other sections of this article." The revised law
20 omits the quoted phrase for the reason stated in
21 Revisor's Note (1) to Section 36.104.

22 (2) Subsection (e), V.T.I.C. Article 1.33,
23 refers to "publication of notice required by
24 Articles . . . 3.05 . . . and 22.04 of this code." The
25 revised law omits the reference to those articles
26 because those articles do not contain a publication of
27 notice requirement.

28 Revised Law

29 Sec. 36.107. ACCEPTANCE OF ACTUARIAL OPINION. An opinion of
30 an actuary requested by the commissioner under this code, another
31 insurance law of this state, or a rule of the commissioner is
32 presumed to be accurate and valid, and the department shall accept
33 the opinion unless controverted. The department may employ, at the
34 department's expense, another actuary to provide an alternative
35 opinion. (V.T.I.C. Art. 1.11A.)

36 Source Law

37 Art. 1.11A. (a) In any case in which the
38 commissioner requests or requires the opinion of an

1 actuary under this code, another insurance law of this
2 state, or a rule adopted by the commissioner, including
3 an opinion of a qualified actuary submitted in
4 accordance with Section 2A, Article 3.28, of this code,
5 the opinion is presumed to be accurate and valid and
6 the department shall accept the opinion unless
7 controverted.

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

12 Revisor's Note

13 Subsection (a), V.T.I.C. Article 1.11A, refers to
14 an opinion of an actuary under this code, "including an
15 opinion of a qualified actuary submitted in accordance
16 with Section 2A, Article 3.28, of this code." The
17 revised law omits the quoted language because it is
18 clearly included within the meaning of "the opinion of
19 an actuary under this code."

20 [Sections 36.108-36.150 reserved for expansion]

21 SUBCHAPTER C. GENERAL SUBPOENA POWERS; WITNESSES AND
22 PRODUCTION OF RECORDS

23 Revised Law

24 Sec. 36.151. DEFINITION. In this subchapter, "records"
25 includes books, accounts, documents, papers, correspondence, and
26 other material. (V.T.I.C. Art. 1.19-1, Secs. 1(a) (part), (e)
27 (part), 2 (part), 3 (part), 5(a) (part); New.)

28 Source Law

29 Art. 1.19-1

30 Sec. 1. (a) [The commissioner and at least one
31 member of the board may require . . . the production
32 of] any books, accounts, records, papers,
33 correspondence, or other records

34 (e) . . . [the commissioner and at least one
35 member of the board may furnish all] materials,
36 documents, reports, complaints, or

37 Sec. 2. . . . [On joint certification by the
38 commissioner] . . . any books, records, papers, and
39 documents [produced] . . . the books, records, papers,
40 documents, and . . . books, records, documents, and
41 papers, or

42 Sec. 3. . . . [the court may issue an order
43 requiring the person subpoenaed to obey the subpoena or
44 give evidence, or produce] books, accounts, records,
45 and papers. . . .

46 Sec. 5. (a) Any books, accounts, records,

1 papers, correspondence, or other documents [subpoenaed
2 and produced under this article] . . . books, accounts,
3 records, papers, correspondence, or other documents, or
4 of any other of such books, accounts, records, papers,
5 correspondence, or other documents

6 Revisor's Note

7 The definition of "records" is new and is added
8 to avoid frequent, unnecessary repetition of the
9 substance of the definition and to ensure consistent
10 use of terminology throughout the subchapter.

11 Revised Law

12 Sec. 36.152. SUBPOENA AUTHORITY. (a) With respect to a
13 matter that the commissioner has authority to consider or
14 investigate, the commissioner may issue a subpoena applicable
15 throughout the state that requires:

- 16 (1) the attendance and testimony of a witness; and
17 (2) the production of records.

18 (b) In connection with a subpoena, the commissioner may
19 require attendance and production of records before the
20 commissioner or the commissioner's designee:

- 21 (1) at the department's offices in Austin; or
22 (2) at another place designated by the commissioner.

23 (c) In connection with a subpoena, the commissioner or the
24 commissioner's designee may administer an oath, examine a witness,
25 or receive evidence.

26 (d) Subject to Section 36.102(d), the commissioner must
27 personally sign and issue the subpoena. (V.T.I.C. Art. 1.19-1,
28 Sec. 1(a) (part).)

29 Source Law

30 Art. 1.19-1

31 Sec. 1. (a) The commissioner and at least one
32 member of the board may require, by subpoena issued by
33 the commissioner and at least one member of the board,
34 the attendance and testimony of witnesses and the
35 production of [any books, accounts, records, papers,
36 correspondence, or other records] relating to any
37 matter that the commissioner or board has authority to
38 consider or investigate. To accomplish this purpose,
39 the commissioner and the board member shall both
40 personally sign and issue any subpoena. In this
41 connection, the commissioner and the board member have
42 statewide subpoena power and may compel attendance and
43 production of records before the commissioner or board

1 member or a designated person at the board's offices in
2 Austin, Texas, or at any other places as the
3 commissioner and the board member shall designate,
4 including the offices of any person, to administer
5 oaths and affirmations, examine witnesses, and receive
6 evidence.

7 Revisor's Note

8 (1) Section 1(a), V.T.I.C. Article 1.19-1,
9 states that certain action may be taken by the
10 "commissioner and at least one member of the board."
11 As explained in Revisor's Note (1) to Section 36.101,
12 the State Board of Insurance was abolished in 1993.
13 Throughout this subchapter, references to powers
14 granted jointly to the commissioner and a member of the
15 board have been replaced with a reference to the
16 commissioner only.

17 (2) Section 1(a), V.T.I.C. Article 1.19-1,
18 refers to the attendance of witnesses and the
19 production of records at "any other places as the
20 commissioner . . . shall designate, including the
21 offices of any person." The revised law omits the
22 reference to the "offices of any person" because that
23 phrase is clearly included within the meaning of
24 "another place designated by the commissioner."

25 (3) Section 1(a), V.T.I.C. Article 1.19-1,
26 refers to "oaths and affirmations." The revised law
27 omits the reference to "affirmations" because Section
28 311.005(1), Government Code (Code Construction Act),
29 states that an oath includes an affirmation.

30 (4) Section 1(a), V.T.I.C. Article 1.19-1,
31 states that the commissioner shall personally sign and
32 issue a subpoena. For the convenience of the reader,
33 the revised law adds a reference to Section 36.102(d)
34 of this chapter, the provision under which the
35 commissioner may delegate the authority to take action
36 on routine matters.

1 Revised Law

2 Sec. 36.153. SERVICE OF SUBPOENA. (a) A subpoena issued by
3 the commissioner may be served, at the discretion of the
4 commissioner, by the commissioner, an authorized agent of the
5 commissioner, a sheriff, or a constable.

6 (b) The sheriff's or constable's fee for serving the
7 subpoena is the same as the fee paid to the sheriff or constable
8 for similar services. (V.T.I.C. Art. 1.19-1, Sec. 4(b).)

9 Source Law

10 (b) The sheriff's or constable's fee for serving
11 a subpoena shall be the same as those paid the sheriff
12 or constable for similar services. Any subpoena issued
13 by the commissioner and a board member may be served,
14 at the discretion of the commissioner and the board
15 member, by the commissioner and the board member, an
16 authorized agent of the commissioner and the board
17 member, a sheriff, or a constable.

18 Revised Law

19 Sec. 36.154. ENFORCEMENT OF SUBPOENA. (a) On application
20 of the commissioner in the case of disobedience of a subpoena or
21 the contumacy of a person, a district court may issue an order
22 requiring a person subpoenaed to obey the subpoena, to give
23 evidence, or to produce records if the person has refused to do so.

24 (b) A court may punish as contempt the failure to obey a
25 court order under Subsection (a).

26 (c) If the court orders compliance with the subpoena or
27 finds the person in contempt for failure to obey the order, the
28 commissioner, or the attorney general when representing the
29 department, may recover reasonable costs and fees, including
30 attorney's fees and investigative costs incurred in the
31 proceedings.

32 (d) An application under Subsection (a) must be made in a
33 district court in Travis County or in the county in which the
34 subpoena is served. (V.T.I.C. Art. 1.19-1, Sec. 3 (part).)

35 Source Law

36 Sec. 3. In case of disobedience of any subpoena,
37 or of the contumacy of any person appearing before the
38 commissioner or board, or a designated representative,
39 the commissioner or board may invoke the aid of a
40 district court in Travis County, or a district court in

1 the county in which the subpoena was served, and the
2 court may issue an order requiring the person
3 subpoenaed to obey the subpoena or give evidence, or
4 produce [books, accounts, records, and papers].
5 Failure to obey such an order of the court may be
6 punished by the court as contempt. In the event that
7 the court orders compliance with the subpoena or finds
8 the person in contempt for failure to obey the order,
9 the board, commissioner, or the attorney general, when
10 representing the Texas Department of Insurance, may
11 recover its reasonable costs and fees including
12 attorney's fees and investigative costs incurred in
13 those proceedings.

14 Revisor's Note

15 Section 3, V.T.I.C. Article 1.19-1, states that
16 the commissioner of insurance may "invoke the aid" of a
17 court. The revised law substitutes "on application of
18 the commissioner" for the quoted phrase because, in
19 context, the phrases are synonymous and "on application
20 of the commissioner" is more commonly used.

21 Revised Law

22 Sec. 36.155. COMPENSATION FOR ATTENDANCE. A person required
23 by subpoena to attend a proceeding before the commissioner or the
24 commissioner's designee is entitled to:

25 (1) reimbursement for mileage in the same amount for
26 each mile as the mileage travel allowance for a state employee for
27 traveling to or from the place where the person's attendance is
28 required, if the place is more than 25 miles from the person's
29 place of residence; and

30 (2) a fee for each day or part of a day the person is
31 required to be present as a witness that is equal to the greater
32 of:

33 (A) \$10; or

34 (B) a state employee's per diem travel
35 allowance. (V.T.I.C. Art. 1.19-1, Sec. 4(a).)

36 Source Law

37 Sec. 4. (a) Each person who is required by
38 subpoena to attend any proceeding before the
39 commissioner or board or designee of the commissioner
40 or board is entitled to receive:

41 (1) reimbursement for mileage in the same
42 amount per mile as the mileage travel allowance for
43 state employees for going to or returning from the
44 place where the witness's presence is required, if the

1 place is more than 25 miles from the witness's place of
2 residence; and

3 (2) a fee of not less than \$10 a day for
4 each day or part of a day the witness is necessarily
5 present as a witness provided that in lieu of this \$10
6 fee, a witness will receive a fee equal to the per diem
7 travel allowance of a state employee if the amount
8 exceeds \$10.

9 Revised Law

10 Sec. 36.156. OUT-OF-STATE MATERIALS. (a) A person with
11 materials located outside this state that are requested by the
12 commissioner may make the materials available for examination at
13 the place where the materials are located.

14 (b) The commissioner may designate a representative,
15 including an official of the state in which the materials are
16 located, to examine the materials.

17 (c) The commissioner may respond to a similar request from
18 an official of another state or of the United States. (V.T.I.C.
19 Art. 1.19-1, Sec. 1(b).)

20 Source Law

21 (b) A person with materials located outside this
22 state that are requested by the commissioner and at
23 least one member of the board may make the materials
24 available to the commissioner or board member or a
25 representative of the commissioner or board member for
26 examination at the place where the materials are
27 located. The commissioner and the board member may
28 designate representatives, including officials of the
29 state in which the materials are located, to examine
30 the materials, and may respond to similar requests from
31 an official of another state or of the United States.

32 Revised Law

33 Sec. 36.157. USE AS EVIDENCE IN CERTAIN CASES. (a) This
34 section applies to testimony or records resulting in a case
35 involving an allegation of engaging in the business of insurance
36 without a license.

37 (b) On certification by the commissioner under official
38 seal, testimony taken or records produced under this subchapter and
39 held by the department are admissible in evidence in a case
40 without:

41 (1) prior proof of correctness; and

42 (2) proof, other than the certificate of the

1 commissioner, that the testimony or records were received from the
2 person testifying or producing the records.

3 (c) The certified records, or certified copies of the
4 records, are prima facie evidence of the facts disclosed by the
5 records.

6 (d) This section does not limit any other provision of this
7 subchapter or any law that makes provision for the admission or
8 evidentiary value of certain evidence. (V.T.I.C. Art. 1.19-1, Sec.
9 2 (part).)

10 Source Law

11 Sec. 2. This section applies to materials and
12 testimony resulting in cases involving allegations of
13 engaging in the business of insurance without a
14 license. On joint certification by the commissioner
15 and at least one member of the board under official
16 seal, [any books, records, papers, and documents]
17 produced or testimony taken pursuant to this article
18 and held by the Texas Department of Insurance are
19 admissible in evidence in all cases without prior proof
20 of their correctness and without other proof except the
21 certificate of the board member and the commissioner
22 that [the books, records, papers, documents, and]
23 testimony were received from the person producing the
24 material or testifying. The certified [books, records,
25 documents, and papers, or] certified copies of them,
26 are prima facie evidence of the facts disclosed
27 thereby. This section may not be construed to limit
28 any other provision of this article or any law that
29 makes provision for the admission of certain evidence
30 or for its evidentiary value.

31 Revisor's Note

32 Section 2, V.T.I.C. Article 1.19-1, refers to
33 "materials and testimony." The revised law substitutes
34 "records" for "materials" because "records" is the
35 defined term for the many types of tangible evidence
36 that may be obtained under this subchapter.

37 Revised Law

38 Sec. 36.158. ACCESS TO INFORMATION. (a) A record or other
39 evidence acquired under a subpoena under this subchapter is not a
40 public record for the period the commissioner considers reasonably
41 necessary to:

- 42 (1) complete the investigation;
43 (2) protect the person being investigated from

1 unwarranted injury; or

2 (3) serve the public interest.

3 (b) The record or other evidence is not subject to a
4 subpoena, other than a grand jury subpoena, until:

5 (1) the record or other evidence is released for
6 public inspection by the commissioner; or

7 (2) after notice and a hearing, a district court
8 determines that obeying the subpoena would not jeopardize the
9 public interest and any investigation by the commissioner.

10 (c) Except for good cause, a district court order under
11 Subsection (b) may not apply to:

12 (1) a record or communication received from another
13 law enforcement or regulatory agency; or

14 (2) the internal notes, memoranda, reports, or
15 communications made in connection with a matter that the
16 commissioner has the authority to consider or investigate.

17 (V.T.I.C. Art. 1.19-1, Sec. 1(d).)

18 Source Law

19 (d) Any information or material acquired under
20 this article under a subpoena is not a public record
21 for as long as the board or commissioner considers
22 reasonably necessary to complete the investigation,
23 protect the person being investigated from unwarranted
24 injury, or serve the public interest. The information
25 or material is not subject to a subpoena, except a
26 valid grand jury subpoena, until released for public
27 inspection by at least one member of the board and the
28 commissioner or, after notice and a hearing, a district
29 court determines that the public interest and any
30 investigation by the board member and the commissioner
31 would not be jeopardized by obeying the subpoena.
32 Except for good cause, an order issued by a district
33 court may not extend to a record or communication
34 received from other law enforcement or regulatory
35 agencies or to the internal notes, memoranda, reports,
36 or communications made in connection with a matter that
37 the commissioner or board has the authority to consider
38 or investigate.

39 Revisor's Note

40 (1) Section 1(d), V.T.I.C. Article 1.19-1,
41 refers to "information or material" acquired under
42 subpoena. The revised law substitutes "record or other
43 evidence" for "information or material" for consistency

1 with other usage in the subchapter and because "record"
2 is the defined term for the many types of tangible
3 evidence that may be obtained under this subchapter.

4 (2) Section 1(d), V.T.I.C. Article 1.19-1,
5 refers to a "valid grand jury subpoena." The revised
6 law omits "valid" as unnecessary because the word does
7 not add to the clear meaning of the law. For example,
8 a document purporting to be a grand jury subpoena is
9 not a grand jury subpoena if it was issued without
10 authority or if it is a forgery.

11 Revised Law

12 Sec. 36.159. PRIVILEGED AND CONFIDENTIAL RECORDS AND
13 INFORMATION; PROTECTIVE ORDERS. (a) A record subpoenaed and
14 produced under this subchapter that is otherwise privileged or
15 confidential by law remains privileged or confidential until
16 admitted into evidence in an administrative hearing or a court.

17 (b) The commissioner may issue a protective order relating
18 to the confidentiality or privilege of a record described by
19 Subsection (a) to restrict the use or distribution of the record:

20 (1) by a person; or

21 (2) in a proceeding other than a proceeding before the
22 commissioner.

23 (c) Specific information relating to a particular policy or
24 claim is privileged and confidential while in the possession of an
25 insurance company, organization, association, or other entity
26 holding a certificate of authority from the department and may not
27 be disclosed by the entity to another person, except as
28 specifically provided by law. (V.T.I.C. Art. 1.19-1, Secs. 5(a)
29 (part), (b).)

30 Source Law

31 Sec. 5. (a) [Any books, accounts, records,
32 papers, correspondence, or other documents] subpoenaed
33 and produced under this article that are otherwise
34 privileged or confidential by law remain privileged or
35 confidential unless and until admitted into evidence at
36 any administrative hearing or in a court of competent
37 jurisdiction. Either the commissioner of insurance or
38 the State Board of Insurance may issue a protective

1 order as to the confidentiality or privilege of those
2 documents and restrict and limit the use or
3 distribution of any of those [books, accounts, records,
4 papers, correspondence, or other documents, or of any
5 other of such books, accounts, records, papers,
6 correspondence, or other documents,] by any person or
7 in any proceeding, other than before the commissioner
8 or board.

9 (b) Any specific facts and information relating
10 to particular policies or claims shall be privileged
11 and confidential while in the possession of an
12 insurance company, organization, association, or other
13 entity holding a certificate of authority from the
14 State Board of Insurance and shall not be disclosed by
15 such company, organization, association, or entity to
16 any other person, except as specifically provided in
17 this code or other applicable law.

18 Revisor's Note

19 (1) Section 5(a), V.T.I.C. Article 1.19-1,
20 refers to introduction of evidence into a court "of
21 competent jurisdiction." The revised law omits the
22 quoted language as unnecessary. Evidence has not been
23 introduced in a court if it has been introduced into a
24 court that does not have jurisdiction.

25 (2) Section 5(b), V.T.I.C. Article 1.19-1,
26 refers to "specific facts and information." The revised
27 law omits the reference to "facts" because "facts" is
28 included within the meaning of "information."

29 Revised Law

30 Sec. 36.160. COOPERATION WITH LAW ENFORCEMENT. On request,
31 the commissioner may furnish records or other evidence obtained by
32 subpoena to:

33 (1) a law enforcement agency of this state, another
34 state, or the United States; or

35 (2) a prosecuting attorney of a municipality, county,
36 or judicial district of this state, another state, or the United
37 States. (V.T.I.C. Art. 1.19-1, Sec. 1(e) (part).)

38 Source Law

39 (e) On request, the commissioner and at least
40 one member of the board may furnish all [materials,
41 documents, reports, complaints, or] other evidence
42 obtained by subpoena to any law enforcement agency of
43 this state, of another state, or of the United States,
44 or any prosecuting attorney of any municipality,
45 county, or judicial district of this state, of another
46 state, or of the United States.

1 Revised Law

2 Sec. 36.161. CERTAIN SUBPOENAS ISSUED TO FINANCIAL
3 INSTITUTIONS. A subpoena issued to a bank or other financial
4 institution as part of a criminal investigation is not subject to
5 Section 30.007, Civil Practice and Remedies Code. (V.T.I.C.
6 Art. 1.19-1, Sec. 1(c).)

7 Source Law

8 (c) A subpoena issued to a bank or other
9 financial institution as part of a criminal
10 investigation is not subject to Section 30.007, Civil
11 Practice and Remedies Code.

12 Revised Law

13 Sec. 36.162. EFFECT ON CONTESTED CASE. Sections 36.152,
14 36.156, 36.158, 36.160, and 36.161 do not affect the conduct of a
15 contested case under Chapter 2001, Government Code. (V.T.I.C.
16 Art. 1.19-1, Sec. 1(g).)

17 Source Law

18 (g) This section does not affect the conduct of
19 contested cases under the Administrative Procedure and
20 Texas Register Act (Article 6252-13a, Vernon's Texas
21 Civil Statutes).

22 Revisor's Note

23 Section 1(g), V.T.I.C. Article 1.19-1, refers to
24 the Administrative Procedure and Texas Register Act
25 (Article 6252-13a, Vernon's Texas Civil Statutes). The
26 relevant portion of that act was codified as Chapter
27 2001, Government Code. The revised law is drafted
28 accordingly.

29 Revisor's Note
30 (End of Subchapter)

31 The revised law omits as unnecessary Section
32 1(f), V.T.I.C. Article 1.19-1, relating to the
33 cumulative effect of that article. An accepted general
34 principle of statutory construction requires a statute
35 to be given cumulative effect with other statutes
36 unless it provides otherwise or unless the statutes are
37 in conflict. The general principle applies to this

1 revision. The omitted law reads:

2 (f) The authority granted under this
3 article is in addition to other provisions
4 of this code authorizing the State Board of
5 Insurance and its employees to obtain or
6 require information.

7 [Sections 36.163-36.200 reserved for expansion]

8 SUBCHAPTER D. JUDICIAL REVIEW

9 Revised Law

10 Sec. 36.201. ACTION SUBJECT TO JUDICIAL REVIEW. An action
11 of the commissioner subject to judicial review under this
12 subchapter includes a decision, order, rate, rule, form, or
13 administrative or other ruling of the commissioner. (V.T.I.C.
14 Art. 1.04, Subsec. (a) (part).)

15 Source Law

16 Art. 1.04. (a) [If any insurance company or
17 other party at interest be dissatisfied with] any
18 ruling, action, decision, regulation, order, rate,
19 rule, form, act, or administrative ruling adopted by
20 the Commissioner, . . . [may file a petition setting
21 forth the particular objection to] such ruling, action,
22 decision, regulation, order, rate, rule, form, act, or
23 administrative ruling, or [Judicial review of]
24 a ruling, action, decision, regulation, order, rate,
25 rule, form, act, or administrative ruling of the
26 Commissioner [The filing of a petition for
27 judicial review of] a ruling, action, decision,
28 regulation, order, rate, rule, form, act, or
29 administrative ruling of the Commissioner

30 Revisor's Note

31 Subsection (a), V.T.I.C. Article 1.04, refers to
32 both a rule and a regulation of the commissioner. The
33 reference to a "regulation" is omitted from the revised
34 law for the reason stated in Revisor's Note (2) to
35 Section 36.001.

36 Revised Law

37 Sec. 36.202. PETITION FOR JUDICIAL REVIEW. (a) After
38 failing to get relief from the commissioner, any insurance company
39 or other party at interest who is dissatisfied with an action of
40 the commissioner may file a petition for judicial review against
41 the commissioner as defendant.

42 (b) The petition must state the particular objection to the

1 action and may be filed only in a district court in Travis County.
2 (V.T.I.C. Art. 1.04, Subsec. (a) (part).)

3 Source Law

4 Art. 1.04. (a) If any insurance company or
5 other party at interest be dissatisfied with
6 any . . . [action] . . . such dissatisfied company or
7 party at interest after failing to get relief from the
8 Commissioner, may file a petition setting forth the
9 particular objection to such . . . [action] . . . to
10 either or all of them, in the District Court of Travis
11 County, Texas, and not elsewhere, against the
12 Commissioner as defendant. . . .

13 Revised Law

14 Sec. 36.203. JUDICIAL REVIEW. Judicial review of the action
15 is under the substantial evidence rule and shall be conducted under
16 Chapter 2001, Government Code. (V.T.I.C. Art. 1.04, Subsec. (a)
17 (part).)

18 Source Law

19 (a) . . . Judicial review of [a ruling, action,
20 decision, regulation, order, rate, rule, form, act, or
21 administrative ruling of the Commissioner] is subject
22 to the substantial evidence rule and shall be conducted
23 under the Administrative Procedure and Texas Register
24 Act (Article 6252-13a, Vernon's Texas Civil
25 Statutes). . . .

26 Revisor's Note

27 Subsection (a), V.T.I.C. Article 1.04, refers to
28 the Administrative Procedure and Texas Register Act
29 (Article 6252-13a, Vernon's Texas Civil Statutes). The
30 relevant portion of that act was codified as Chapter
31 2001, Government Code. The revised law is drafted
32 accordingly.

33 Revised Law

34 Sec. 36.204. ACTION NOT VACATED. (a) The filing of a
35 petition for judicial review of an action under this subchapter
36 does not vacate the action.

37 (b) After notice and hearing, the court may vacate the
38 action if the court finds it would serve the interest of justice to
39 do so. (V.T.I.C. Art. 1.04, Subsec. (a) (part).)

40 Source Law

41 (a) . . . The filing of a petition for judicial
42 review of [an action] under this subsection does not

1 vacate a decision of the Commissioner. After notice
2 and hearing, the court may vacate the decision of the
3 Commissioner if the court finds it would serve the
4 interest of justice to do so. . . .

5 Revised Law

6 Sec. 36.205. APPEAL. (a) A party to the action under
7 Section 36.202 may appeal to an appellate court that has
8 jurisdiction, and the appeal is at once returnable to that court.

9 (b) An appeal under this section has precedence in the
10 appellate court over any cause of a different character pending in
11 the court.

12 (c) The commissioner is not required to give an appeal bond
13 in an appeal arising under this subchapter. (V.T.I.C. Art. 1.04,
14 Subsecs. (a) (part), (b).)

15 Source Law

16 (a) . . . Any party to the action may appeal to
17 the Appellate Court having jurisdiction of the cause
18 and the appeal shall be at once returnable to the
19 Appellate Court having jurisdiction of the cause and
20 the action so appealed shall have precedence in the
21 Appellate Court over all causes of a different
22 character therein pending.

23 (b) The Commissioner is not required to give any
24 appeal bond in any cause arising under this article.

25 Revisor's Note
26 (End of Chapter)

27 V.T.I.C. Article 1.33A provides that the Texas
28 Department of Insurance and the former State Board of
29 Insurance are subject to the open meetings law, Chapter
30 271, Acts of the 60th Legislature, Regular Session,
31 1967 (Article 6252-17, Vernon's Texas Civil Statutes),
32 codified as Chapter 551, Government Code. The revised
33 law omits that reference as unnecessary because Section
34 551.002, Government Code, requires a state agency to
35 comply with the open meetings law. The Texas
36 Department of Insurance is a state agency for purposes
37 of that provision. The omitted law reads:

38 Art. 1.33A. [The department and the
39 board are subject] to the open meetings
40 law, Chapter 271, Acts of the 60th
41 Legislature, Regular Session, 1967 (Article
42 6252-17, Vernon's Texas Civil Statutes),
43 and

1 CHAPTER 37. RATEMAKING AND POLICY FORM PROCEEDINGS

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 37.001. CERTAIN PROCEEDINGS RELATING TO RATEMAKING

4 AND POLICY FORMS; RULES 58

5 [Sections 37.002-37.050 reserved for expansion]

6 SUBCHAPTER B. CERTAIN PROCEEDINGS RELATING TO RATES

7 Sec. 37.051. STREAMLINED PROCEDURES 59

8 Sec. 37.052. ROLE OF DEPARTMENT 60

9 CHAPTER 37. RATEMAKING AND POLICY FORM PROCEEDINGS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Revised Law

12 Sec. 37.001. CERTAIN PROCEEDINGS RELATING TO RATEMAKING AND
13 POLICY FORMS; RULES. (a) The commissioner shall adopt rules
14 governing proceedings necessary to approve or promulgate rates,
15 policy forms, or policy form endorsements under this code or
16 another insurance law of this state.

17 (b) The commissioner shall conduct the proceedings in
18 accordance with the rules adopted under this section.

19 (c) Rules adopted under this section must comply with this
20 code and any other insurance law of this state and must be adopted
21 in accordance with Chapter 2001, Government Code. (V.T.I.C.
22 Art. 1.33C, Subsecs. (a), (b).)

23 Source Law

24 Art. 1.33C. (a) The commissioner shall adopt
25 rules governing hearings and other proceedings
26 necessary for the promulgation or approval of rates and
27 approval or promulgation of policy forms or policy form
28 endorsements under this code or other insurance laws of
29 this state. The commissioner shall conduct these
30 hearings or proceedings in accordance with the rules
31 adopted under this article.

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

37 Revisor's Note

38 (1) Subsection (a), V.T.I.C. Article 1.33C,
39 refers to "hearings and other proceedings." The
40 revised law omits the reference to "hearings" because

1 "hearings" is included within the meaning of
2 "proceedings."

3 (2) Subsection (b), V.T.I.C. Article 1.33C,
4 refers to the Administrative Procedure and Texas
5 Register Act (Article 6252-13a, Vernon's Texas Civil
6 Statutes). The relevant portion of that act was
7 codified in 1993 as Chapter 2001, Government Code, and
8 the revised law is drafted accordingly.

9 [Sections 37.002-37.050 reserved for expansion]

10 SUBCHAPTER B. CERTAIN PROCEEDINGS RELATING TO RATES

11 Revised Law

12 Sec. 37.051. STREAMLINED PROCEDURES. (a) The department
13 shall study and the commissioner may adopt and implement procedures
14 for streamlining insurance rate proceedings under this code or
15 another insurance law of this state. The procedures must ensure
16 due process to each affected party.

17 (b) The commissioner shall consider this section in adopting
18 rules under Section 37.001. (V.T.I.C. Art. 1.33C, Subsec. (c);
19 Art. 5.121.)

20 Source Law

21 [Art. 1.33C]

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

24 Art. 5.121. The department shall study and the
25 commissioner may adopt and implement procedures for
26 streamlining insurance rate proceedings under this
27 chapter, this code, and other insurance laws of this
28 state. The procedures must ensure due process to all
29 affected parties.

30 Revisor's Note

31 V.T.I.C. Article 5.121 refers to "this chapter,
32 this code, and other insurance laws of this state."
33 The reference to "this chapter" is to V.T.I.C. Chapter
34 5 and is omitted from the revised law because it is
35 included within "this code or another insurance law of
36 this state."

1 Revised Law

2 Sec. 37.052. ROLE OF DEPARTMENT. (a) The application of
3 this section is subject to Chapter 40.

4 (b) The commissioner may designate the general counsel or an
5 assistant general counsel to serve as a hearings officer in a
6 proceeding in which insurance rates are set or in a prehearing
7 proceeding. The commissioner must make the final decision relating
8 to the rates to be set.

9 (c) The department shall provide evidence in proceedings
10 before the commissioner or the designated hearings officer that
11 promotes the adoption of fair and reasonable rates for underserved
12 areas to promote access to full insurance coverage for those areas.

13 (d) The department may appear as a matter of right as a
14 party, present evidence, or question a witness in a proceeding
15 before the commissioner or the designated hearings officer in which
16 insurance rates are set under this code. This subsection expires
17 September 1, 2001. (V.T.I.C. Art. 1.09-5.)

18 Source Law

19 Art. 1.09-5. (a) The department may appear as a
20 matter of right as a party, present evidence, or
21 question witnesses in any proceeding before the
22 commissioner or the designated hearings officer in
23 which insurance rates are set under this code. This
24 subsection is temporary and expires September 1, 2001.

25 (b) The general counsel or an assistant general
26 counsel may be designated by the commissioner and may
27 serve as a hearings officer in any proceeding in which
28 insurance rates are set or any prehearing proceeding,
29 provided that any final decision relating to rates to
30 be set must be made by the commissioner.

31 (c) The department shall provide evidence in
32 proceedings before the commissioner or the designated
33 hearings officer promoting the adoption of rates that
34 promote access to full insurance coverage at rates that
35 are fair and reasonable for underserved areas.

36 Revisor's Note

37 The revised law adds a reference to Chapter 40 to
38 alert the reader that it applies to most proceedings to
39 set rates and prevails over this section in the event
40 of a conflict.

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10 CHAPTER 38. DATA COLLECTION AND REPORTS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Revised Law

13 Sec. 38.001. INQUIRIES. (a) In this section,
14 "authorization" means a permit, certificate of registration, or
15 other authorization issued or existing under this code.

16 (b) The department may address a reasonable inquiry to an
17 insurance company, agent, or holder of an authorization relating
18 to:

19 (1) the person's business condition; or

20 (2) any matter connected with the person's
21 transactions that the department considers necessary for the public
22 good or for the proper discharge of the department's duties.

23 (c) A person receiving an inquiry under Subsection (b) shall
24 respond to the inquiry in writing not later than the 10th day after
25 the date the inquiry is received.

26 (d) A response made under this section that is otherwise
27 privileged or confidential by law remains privileged or
28 confidential until introduced into evidence at an administrative
29 hearing or in a court. (V.T.I.C. Art. 1.24.)

30 Source Law

31 Art. 1.24. The Board is authorized to address
32 any reasonable inquiries to any insurance company or
33 insurance agent, or to the holder of any permit,
34 certificate of registration, or other authorization
35 issued or existing under the authority or authorization
36 of this code, in relation to the company's, agent's, or
37 holder's business condition, or any matter connected
38 with its transactions which the Board may deem

1 necessary for the public good or for a proper discharge
2 of its duties. It shall be the duty of the addressee
3 to answer such inquiries in writing not later than the
4 10th day after the date the request is received. A
5 response made under this article that is otherwise
6 privileged or confidential by law remains privileged or
7 confidential unless and until introduced into evidence
8 at an administrative hearing or in a court of competent
9 jurisdiction.

10 Revisor's Note

11 (1) V.T.I.C. Article 1.24 refers to the "Board,"
12 meaning the State Board of Insurance. Chapter 685,
13 Acts of the 73rd Legislature, Regular Session, 1993,
14 abolished the board and transferred its functions to
15 the commissioner of insurance and the Texas Department
16 of Insurance. Throughout this chapter, references to
17 the board have been changed as appropriate.

18 (2) V.T.I.C. Article 1.24 states that certain
19 information is privileged or confidential "unless and
20 until" introduced into evidence. The revised law omits
21 "unless" because, in context, "unless" is included
22 within the meaning of "until."

23 (3) V.T.I.C. Article 1.24 refers to introduction
24 of evidence in a court "of competent jurisdiction."
25 The revised law omits the quoted language as
26 unnecessary. Evidence cannot be properly introduced in
27 a court without jurisdiction.

28 Revised Law

29 Sec. 38.002. UNDERWRITING GUIDELINES; CONFIDENTIALITY.

30 (a) The department or the office of public insurance counsel may
31 obtain a copy of an insurer's underwriting guidelines.

32 (b) Underwriting guidelines are confidential, and the
33 department or the office of public insurance counsel may not make
34 the guidelines available to the public.

35 (c) The department or the office of public insurance counsel
36 may disclose to the public a summary of an insurer's underwriting
37 guidelines in a manner that does not directly or indirectly
38 identify the insurer.

1 (d) When underwriting guidelines are furnished to the
2 department or the office of public insurance counsel, only a person
3 within the department or the office of public insurance counsel
4 with a need to know may have access to the guidelines. The
5 department and the office of public insurance counsel shall
6 establish internal control systems to limit access to the
7 guidelines and shall keep records of the access provided.

8 (e) This section does not preclude the use of underwriting
9 guidelines as evidence in prosecuting a violation of this code.
10 Each copy of an insurer's underwriting guidelines that is used in
11 prosecuting a violation is presumed to be confidential and is
12 subject to a protective order until all appeals of the case have
13 been exhausted. If an insurer is found, after the exhaustion of
14 all appeals, to have violated this code, a copy of the underwriting
15 guidelines used as evidence of the violation is no longer presumed
16 to be confidential.

17 (f) A violation of this section is a violation of Chapter
18 552, Government Code. (V.T.I.C. Art. 1.24D.)

19 Source Law

20 Art. 1.24D. (a) The department or the office of
21 public insurance counsel may request and receive copies
22 of an insurer's underwriting guidelines. Underwriting
23 guidelines are confidential and the department or the
24 office of public insurance counsel may not make the
25 guidelines available to the public, provided, however,
26 that the department or the office of public insurance
27 counsel may disclose a summary of the underwriting
28 guidelines in a manner that does not directly or
29 indirectly identify the insurer who provided the
30 guidelines.

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

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

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

6 Revisor's Note

7 Subsection (d), V.T.I.C. Article 1.24D, refers to
8 Chapter 424, Acts of the 63rd Legislature, Regular
9 Session, 1973 (Article 6252-17a, Vernon's Texas Civil
10 Statutes). That law is codified as Chapter 552,
11 Government Code. The revised law is drafted
12 accordingly.

13 [Sections 38.003-38.050 reserved for expansion]

14 SUBCHAPTER B. HEALTH BENEFIT PLAN PROVIDER REPORTING

15 Revised Law

16 Sec. 38.051. DEFINITION. In this subchapter, "health
17 benefit plan provider" means an insurance company, group hospital
18 service corporation, or health maintenance organization that
19 issues:

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

25 (2) a long-term care insurance policy, as defined by
26 Section 2, Article 3.70-12. (V.T.I.C. Art. 3.90, Subsec. (a);
27 New.)

28 Source Law

29 Art. 3.90. (a) This article applies to any
30 insurance company, group hospital service corporation,
31 or health maintenance organization that issues:

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

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

1 Revisor's Note

2 (1) The definition of "health benefit plan
3 provider" is added to the revised law for drafting
4 convenience and to eliminate frequent, unnecessary
5 repetition of the substance of the definition.
6 Throughout this subchapter, the term "health benefit
7 plan provider" is used instead of the term "insurer"
8 because under Subsection (a), V.T.I.C. Article 3.90,
9 revised as this section, Article 3.90 applies not only
10 to insurance companies but also to entities such as
11 health maintenance organizations, which are not
12 insurance companies.

13 (2) Subsection (a), V.T.I.C. Article 3.90,
14 refers to "subsequent amendments" of a referenced
15 statute. The revised law omits the quoted language as
16 unnecessary. Under Section 311.027, Government Code
17 (Code Construction Act), a reference to any portion of
18 a statute applies to each reenactment, revision, or
19 amendment of the statute. Section 311.027 applies to
20 the revised law.

21 Revised Law

22 Sec. 38.052. REQUIRED INFORMATION; RULES. (a) A health
23 benefit plan provider shall submit information required by the
24 department relating to the health benefit plan provider's:

- 25 (1) loss experience;
26 (2) overhead; and
27 (3) operating expenses.

28 (b) The department may also request information about
29 characteristics of persons covered by a health benefit plan
30 provider, including information relating to:

- 31 (1) age;
32 (2) gender;
33 (3) health status;
34 (4) job classification; and

1 (5) geographic distribution.

2 (c) A health benefit plan provider may not be required to
3 submit information under this section more frequently than
4 annually.

5 (d) The commissioner shall adopt rules governing the
6 submission of information under this subchapter. (V.T.I.C.
7 Art. 3.90, Subsecs. (b), (c).)

8 Source Law

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

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

21 [Sections 38.053-38.100 reserved for expansion]

22 SUBCHAPTER C. DATA COLLECTION AND REPORTING

23 RELATING TO HIV AND AIDS

24 Revised Law

25 Sec. 38.101. DEFINITIONS. In this subchapter:

26 (1) "HIV" and "AIDS" have the meanings assigned by
27 Section 81.101, Health and Safety Code.

28 (2) "Health benefit plan coverage" means a group
29 policy, contract, or certificate of health insurance or benefits
30 delivered, issued for delivery, or renewed in this state by:

31 (A) an insurance company subject to Chapter 3;

32 (B) a group hospital service corporation under
33 Chapter 20;

34 (C) a health maintenance organization under the
35 Texas Health Maintenance Organization Act (Chapter 20A, Vernon's
36 Texas Insurance Code); or

37 (D) a self-insurance trust or mechanism
38 providing health care benefits. (V.T.I.C. Art. 1.24C, Subsecs.
39 (b)(1), (2).)

1 Source Law

2 (b) In this article:

3 (1) "HIV" and "AIDS" have the meanings
4 assigned by Section 81.101, Health and Safety Code.

5 (2) "Health insurance coverage" means any
6 group policy, contract, or certificate of health
7 insurance or benefits delivered, issued for delivery,
8 or renewed in this state by an insurance company
9 subject to Chapter 3 of this code, a group hospital
10 service corporation under Chapter 20 of this code, a
11 health maintenance organization under the Texas Health
12 Maintenance Organization Act (Chapter 20A, Vernon's
13 Texas Insurance Code), and any self-insurance trust or
14 mechanism providing health care benefits.

15 Revisor's Note

16 (1) Subsection (b), V.T.I.C. Article 1.24C,
17 defines the phrase "health insurance coverage." In
18 this section and throughout this subchapter, the
19 revised law substitutes the term "health benefit plan
20 coverage" for the term "health insurance coverage"
21 because the term as defined includes types of coverage,
22 such as coverage provided by a health maintenance
23 organization, that are not insurance.

24 (2) Subsection (b), V.T.I.C. Article 1.24C,
25 defines "board" as the State Board of Insurance. As
26 indicated in Revisor's Note (1) to Section 38.001, the
27 former State Board of Insurance has been abolished, and
28 references to the board have been changed throughout
29 this chapter as appropriate. For this reason, the
30 definition of board is omitted from the revised law.
31 The omitted law reads:

32 (3) "Board" means the State
33 Board of Insurance.

34 Revised Law

35 Sec. 38.102. PURPOSE. The purpose of this subchapter is to:

36 (1) ensure that adequate health insurance and benefits
37 coverage is available to the citizens of this state;

38 (2) ensure that adequate health care is available to
39 protect the public health and safety; and

40 (3) ascertain the continuing effect of HIV and AIDS on

1 health insurance coverage and health benefits coverage availability
2 and adequacy in this state for purposes of meeting the public's
3 health coverage needs. (V.T.I.C. Art. 1.24C, Subsec. (a).)

4 Source Law

5 Art. 1.24C. (a) It is the legislature's intent
6 in adopting this article to assure that adequate health
7 insurance and benefits coverage is available to the
8 citizens of this state, to assure that adequate health
9 care is available to protect the public health and
10 safety, and to ascertain the continuing effect of HIV
11 and AIDS on health insurance coverage and health
12 benefits coverage availability and adequacy in this
13 state for purposes of meeting the public's health
14 coverage needs.

15 Revisor's Note

16 Subsection (a), V.T.I.C. Article 1.24C, refers to
17 the legislature's intent in adopting that article. The
18 reference to the intent of the legislature is omitted
19 from the revised law as executed.

20 Revised Law

21 Sec. 38.103. DATA COLLECTION PROGRAM. (a) The department
22 shall maintain a program to gather data and information relating to
23 the effect of HIV and AIDS on the availability, adequacy, and
24 affordability of health benefit plan coverage in this state.

25 (b) The commissioner may adopt rules necessary to implement
26 this subchapter, including rules relating to:

- 27 (1) reporting schedules;
28 (2) report forms;
29 (3) lists of data and information required to be
30 reported; and
31 (4) reporting procedures, guidelines, and criteria.

32 (V.T.I.C. Art. 1.24C, Subsecs. (c), (d).)

33 Source Law

34 (c) The board shall establish and maintain a
35 program through which it can gather data and
36 information relating to the effect of HIV and AIDS on
37 the availability and adequacy of and the affordability
38 of premiums and charges for medical reimbursement and
39 health insurance coverage in this state.

40 (d) The board by rule may adopt reporting
41 schedules, report forms, lists of information and data
42 required to be reported, reporting procedures,
43 guidelines, and criteria and may adopt any other rules
44 necessary to carry out this article.

1 Revisor's Note

2 (1) Subsection (c), V.T.I.C. Article 1.24C,
3 requires the board to "establish and maintain" a data
4 collection program. The revised law omits the
5 reference to establishing the program because it is
6 executed.

7 (2) Subsection (c), V.T.I.C. Article 1.24C,
8 refers to "affordability of premiums and charges for
9 medical reimbursement and health insurance coverage."
10 The revised law omits the reference to "medical
11 reimbursement" coverage because it is included within
12 the meaning of the defined term "health benefit plan
13 coverage," which the revised law substitutes for
14 "health insurance coverage." See Revisor's Note (1) to
15 Section 38.101. The revised law omits the reference to
16 "premiums and charges" because these terms are included
17 within the concept of "affordability of health benefit
18 plan coverage."

19 Revised Law

20 Sec. 38.104. COMPILATION OF DATA AND INFORMATION; REPORT.

21 (a) The department shall compile the data and information included
22 in reports required by this subchapter into composite form and
23 shall prepare at least annually a written report of:

24 (1) the composite data and information; and

25 (2) the department's analysis of the availability,
26 adequacy, and affordability of health benefit plan coverage in this
27 state.

28 (b) Subject to Section 38.106, the department shall make the
29 report available to the public and may charge a reasonable fee for
30 the report to cover the cost of making the report available.
31 (V.T.I.C. Art. 1.24C, Subsec. (e).)

32 Source Law

33 (e) The board shall compile the data and
34 information included in reports required by this
35 article into composite form and shall prepare at least
36 annually a written report of the composite data and

1 information and the board's analysis of the
2 availability and adequacy of and the affordability of
3 premiums and charges for health insurance coverage in
4 this state. The board shall make the report available
5 to the public and may charge a reasonable fee for the
6 report to cover the costs in making the report
7 available.

8 Revisor's Note

9 (1) Subsection (e), V.T.I.C. Article 1.24C,
10 refers to the "affordability of premiums and charges"
11 for health insurance coverage. The revised law omits
12 the reference to "premiums and charges" for the reason
13 stated in Revisor's Note (2) to Section 38.103.

14 (2) The revised law adds a reference to Section
15 38.106, under which certain data and information may be
16 found to be confidential.

17 Revised Law

18 Sec. 38.105. RECOMMENDATIONS AND REPORTS TO LEGISLATURE.

19 (a) The commissioner may submit to the legislature written
20 recommendations for legislation the commissioner considers
21 necessary to resolve problems related to the effect of HIV and AIDS
22 on the availability, adequacy, and affordability of health benefit
23 plan coverage in this state.

24 (b) The department, on request of the lieutenant governor,
25 the speaker of the house of representatives, or the presiding
26 officer of a legislative committee, shall provide to the
27 legislature additional composite data and information and analyses
28 based on the reports required by this subchapter. Reports prepared
29 under this subsection shall be available to the public as required
30 by Section 38.104. (V.T.I.C. Art. 1.24C, Subsecs. (f), (g).)

31 Source Law

32 (f) The board may submit to the legislature
33 written recommendations for legislation the board
34 considers necessary to resolve problems related to the
35 impact of HIV and AIDS on the availability and adequacy
36 of and the affordability of premiums and charges for
37 health insurance coverage in this state.

38 (g) The board on request of the lieutenant
39 governor, speaker of the house, or the chairman of a
40 legislative committee shall provide to the legislature
41 further composite data and information and analyses
42 based on the reports required by this article, and
43 these reports shall be available to the public as

1 provided by Subsection (e) of this article for other
2 reports.

3 Revisor's Note

4 Subsection (f), V.T.I.C. Article 1.24C, refers to
5 the "affordability of premiums and charges" for health
6 insurance coverage. The revised law omits the
7 reference to "premiums and charges" for the reason
8 stated in Revisor's Note (2) to Section 38.103.

9 Revised Law

10 Sec. 38.106. INFORMATION CONFIDENTIAL. (a) If the
11 commissioner determines that information or reports submitted under
12 this subchapter would reveal or might reveal the identity of an
13 individual or associate an individual with a company, the
14 commissioner shall declare the information or reports confidential,
15 and the information or reports may not be made available to the
16 public.

17 (b) Information made confidential under this section may be
18 examined only by the commissioner and department employees.

19 (c) Data and information reported by an insurer under this
20 subchapter are not subject to public disclosure to the extent that
21 the information is protected under Chapter 552, Government Code.
22 The data and information may be compiled into composite form and
23 made public if information that could be used to identify the
24 reporting insurer is removed. (V.T.I.C. Art. 1.24C, Subsecs. (h),
25 (i).)

26 Source Law

27 (h) If the board determines that certain
28 information or reports submitted under this article
29 would reveal or might reveal the identity of any
30 individual or associate specific individuals with a
31 specific company, the board shall declare that
32 information or those reports confidential and that
33 information or those reports may not be made available
34 to the public. Information made confidential under
35 this article may be examined only by the members of the
36 board, the commissioner of insurance, and employees of
37 the board.

38 (i) Data and information reported by an insurer
39 are not subject to public disclosure to the extent that
40 the information is protected under the open records
41 law, Chapter 424, Acts of the 63rd Legislature, Regular
42 Session, 1973 (Article 6252-17a, Vernon's Texas Civil
43 Statutes). The data and information may be compiled

1 into composite form and made public if information that
2 could be used to identify the reporting insurer is
3 removed.

4 Revisor's Note

5 Subsection (i), V.T.I.C. Article 1.24C, refers to
6 Chapter 424, Acts of the 63rd Legislature, Regular
7 Session, 1973 (Article 6252-17a, Vernon's Texas Civil
8 Statutes). That law is codified as Chapter 552,
9 Government Code. The revised law is drafted
10 accordingly.

11 [Sections 38.107-38.150 reserved for expansion]

12 SUBCHAPTER D. LIABILITY INSURANCE CLOSED CLAIM REPORTS

13 Revised Law

14 Sec. 38.151. DEFINITIONS. In this subchapter:

15 (1) "Insurer" means:

16 (A) an insurance company or other entity that is
17 admitted to do business and authorized to write liability insurance
18 in this state, including:

19 (i) a county mutual insurance company;
20 (ii) a Lloyd's plan insurer; and
21 (iii) a reciprocal or interinsurance
22 exchange; and

23 (B) a pool, joint underwriting association, or
24 self-insurance mechanism or trust authorized by law to insure its
25 participants, subscribers, or members against liability.

26 (2) "Liability insurance" means:

27 (A) general liability insurance;
28 (B) medical professional liability insurance;
29 (C) professional liability insurance other than
30 medical professional liability insurance;
31 (D) commercial automobile liability insurance;
32 (E) the liability portion of commercial
33 multiperil insurance coverage; and
34 (F) any other type or line of liability
35 insurance designated by the commissioner under Section 38.163.

1 (V.T.I.C. Art. 1.24B, Secs. 1(1), (2) (part).)

2 Source Law

3 Sec. 1. In this article:

4 (1) "Liability insurance" means the
5 following types of insurance:

- 6 (A) general liability;
7 (B) medical professional liability;
8 (C) professional liability other
9 than medical professional liability;
10 (D) commercial automobile liability;
11 (E) the liability portion of
12 commercial multiperil coverage; and
13 (F) any other types or lines of
14 liability insurance designated by the State Board of
15 Insurance under Section 5 of this article.

16 (2) "Insurer" means:

- 17 (A) each insurance company or other
18 entity admitted to do business and authorized to write
19 liability insurance in this state, including county
20 mutual insurance companies, Lloyd's plan companies, and
21 reciprocal or interinsurance exchanges but . . . ; and
22 (B) each pool, joint underwriting
23 association, or self-insurance mechanism or trust
24 authorized by law to insure its participants,
25 subscribers, or members against liability.

26 Revised Law

27 Sec. 38.152. EXEMPTION. This subchapter does not apply to a
28 farm mutual insurance company or to a county mutual fire insurance
29 company writing exclusively industrial fire insurance as described
30 by Article 17.02. (V.T.I.C. Art. 1.24B, Sec. 1(2) (part).)

31 Source Law

32 (2) "Insurer" means:

- 33 (A) . . . excluding farm mutual
34 insurance companies and county mutual fire insurance
35 companies writing exclusively industrial fire insurance
36 as defined by Article 17.02 of this code

37 Revised Law

38 Sec. 38.153. CLOSED CLAIM REPORT. (a) Not later than the
39 10th day after the last day of the calendar quarter in which a
40 claim for recovery under a liability insurance policy is closed,
41 the insurer shall file with the department a closed claim report if
42 the indemnity payment for bodily injury under the coverage is
43 \$25,000 or more.

44 (b) A closed claim report must be filed, in a form
45 prescribed by the commissioner. (V.T.I.C. Art. 1.24B, Secs. 2(a),
46 5(a) (part).)

1 Source Law

2 Sec. 2. (a) Not later than the 10th day after
3 the last day of the calendar quarter in which a claim
4 for recovery under a liability insurance policy is
5 closed, the insurer shall file with the State Board of
6 Insurance a closed claim report on a form prescribed by
7 the board for that closed claim if the indemnity
8 payment made on the claim under the coverage was
9 \$25,000 or more for damages for bodily injury.

10 Sec. 5. (a) The State Board of
11 Insurance . . . may prescribe the form and content of
12 the closed claim reports and . . . to be filed.

13 Revised Law

14 Sec. 38.154. CONTENT OF CLOSED CLAIM REPORT FORM. (a) The
15 closed claim report form adopted by the commissioner for a report
16 under Section 38.153 must require information relating to:

17 (1) the identity of the insurer;

18 (2) the liability insurance policy, including:

19 (A) the type or types of insurance;

20 (B) the policy limits;

21 (C) whether the policy was an occurrence or
22 claims-made policy;

23 (D) the classification of the insured; and

24 (E) reserves for the claim;

25 (3) details of:

26 (A) any injury, damage, or other loss that was
27 the subject of the claim, including:

28 (i) the type of injury, damage, or other
29 loss;

30 (ii) where and how the injury, damage, or
31 other loss occurred;

32 (iii) the age of any injured party; and

33 (iv) whether an injury was work-related;

34 (B) the claims process, including:

35 (i) whether a lawsuit was filed;

36 (ii) where a lawsuit, if any, was filed;

37 (iii) whether attorneys were involved;

38 (iv) the stage at which the claim was

1 closed;

2 (v) any court verdict;

3 (vi) any appeal;

4 (vii) the number of defendants; and

5 (viii) whether the claim was settled
6 outside of court and, if so, at what stage; and

7 (C) the amount paid on the claim, including:

8 (i) the total amount of a court award;

9 (ii) the amount paid by the insurer;

10 (iii) any amount paid by another insurer;

11 (iv) any amount paid by another defendant;

12 (v) any collateral source of payment;

13 (vi) any structured settlement;

14 (vii) the amount of noneconomic
15 compensatory damages;

16 (viii) the amount of prejudgment interest;

17 (ix) the amount paid for defense costs;

18 (x) the amount paid for punitive damages;

19 and

20 (xi) the amount of allocated loss
21 adjustment expenses; and

22 (4) any other information that the commissioner
23 determines to be significant in allowing the department and the
24 legislature to monitor the liability insurance industry to ensure
25 its solvency and to ensure that liability insurance is available,
26 is affordable, and provides adequate protection in this state.

27 (b) The department may require an insurer to include in a
28 closed claim report information relating to payment made for
29 property damage and other damage on the claim under the coverage.

30 (V.T.I.C. Art. 1.24B, Secs. 2(b), 3.)

31 Source Law

32 [Sec. 2]

33 (b) The State Board of Insurance may require the
34 insurer to include in a closed claim report filed under
35 Subsection (a) of this section information relating to
36 payments made for property damage and other damage on
37 the claim under the coverage.

1 Sec. 3. The closed claim report form adopted by
2 the State Board of Insurance for reports under
3 Subsection (a) of Section 2 of this article must
4 include provisions for reporting:

5 (1) information relating to the
6 identification of the insurer;

7 (2) information relating to the liability
8 insurance policy including the type or types of
9 insurance, the amounts of various policy limits,
10 whether the policy was occurrence or claims-made, the
11 classification of the insured, and reserves for the
12 claim;

13 (3) details concerning any injury, damage,
14 and other losses that were the subject of the claim,
15 including the types of injuries, damages, and other
16 losses, where and how injuries, damages, and other
17 losses occurred, age of any injured party, and whether
18 an injury was work-related;

19 (4) details relating to the claims process
20 including whether suit was filed, where suit was filed,
21 whether attorneys were involved, stage at which claim
22 was closed, court verdict, information relating to
23 appeals, number of defendants, and whether claim was
24 settled outside of court and, if so, at what stage;

25 (5) detailed information relating to the
26 amounts paid on the claim including information
27 relating to total amount of a court award, the amount
28 paid by the insurer, amounts paid by other insurers,
29 amounts paid by other defendants, collateral sources,
30 structured settlements, amount of noneconomic
31 compensatory damages, amount of prejudgment interest,
32 amounts paid for defense costs, amounts paid for
33 punitive damages, and amounts of allocated loss
34 adjustment expenses; and

35 (6) any other information that the State
36 Board of Insurance determines to be significant in
37 allowing the board and the legislature to monitor the
38 liability insurance industry to assure its solvency and
39 to assure that liability insurance is available,
40 affordable, and providing adequate protection in Texas.

41 Revisor's Note

42 Section 3(5), V.T.I.C. Article 1.24B, refers to
43 "collateral sources." The revised law refers to "any
44 collateral source of payment" to clarify the reference
45 for the convenience of the reader.

46 Revised Law

47 Sec. 38.155. SUMMARY CLOSED CLAIM REPORT. (a) An insurer
48 shall file with the department a summary closed claim report for a
49 claim for recovery under a liability insurance policy if the
50 indemnity payment for bodily injury under the coverage is less than
51 \$25,000 but more than \$10,000.

52 (b) A summary closed claim report must be filed, in a form
53 prescribed by the commissioner, not later than the 10th day after

1 the last day of the calendar quarter in which the claim is closed.
2 (V.T.I.C. Art. 1.24B, Secs. 2(c), 5(a) (part).)

3 Source Law

4 [Sec. 2]

5 (c) For a claim under a liability insurance
6 policy that is closed for which the insurer makes
7 indemnity payments under the coverage for an amount
8 less than \$25,000 but more than \$10,000 for bodily
9 injury, the State Board of Insurance shall require the
10 insurer closing the claim to file with the board a
11 summary claim report of the claim. The report shall be
12 filed on a form prescribed by the board not later than
13 the 10th day after the last day of the calendar quarter
14 in which a claim for recovery under a liability
15 insurance policy covered by this subsection is closed.

16 Sec. 5. (a) The State Board of
17 Insurance . . . may prescribe the form and content of
18 the . . . summary claims reports to be filed.

19 Revised Law

20 Sec. 38.156. CONTENT OF SUMMARY CLOSED CLAIM REPORT FORM.

21 The summary closed claim report form adopted by the commissioner
22 for a report under Section 38.155 must require information
23 relating to:

- 24 (1) the identity of the insurer;
- 25 (2) the liability insurance policy, including:
- 26 (A) the type or types of insurance;
- 27 (B) the classification of the insured; and
- 28 (C) reserves for the claim;
- 29 (3) details of:
- 30 (A) the claims process, including:
- 31 (i) whether a lawsuit was filed;
- 32 (ii) whether attorneys were involved;
- 33 (iii) the stage at which the claim was
34 closed;
- 35 (iv) any court verdict;
- 36 (v) any appeal; and
- 37 (vi) whether the claim was settled outside
38 of court and, if so, at what stage; and
- 39 (B) the amount paid on the claim, including:
- 40 (i) the total amount of a court award;

1 (ii) the amount paid to the claimant by
2 the insurer;
3 (iii) the amount paid for defense costs;
4 (iv) the amount paid for punitive damages;
5 and
6 (v) the amount of loss adjustment
7 expenses; and

8 (4) any other matter that the commissioner determines
9 to be significant in allowing the department and the legislature to
10 monitor the liability insurance industry to ensure its solvency and
11 to ensure that liability insurance is available, is affordable, and
12 provides adequate protection in this state. (V.T.I.C. Art. 1.24B,
13 Sec. 4.)

14 Source Law

15 Sec. 4. The summary closed claim report forms
16 adopted by the State Board of Insurance for reports
17 required under Section 2(c) of this article must
18 include provisions for reporting:

19 (1) information relating to identification
20 of the insurer;

21 (2) information relating to the liability
22 insurance policy including the type or types of
23 insurance, the classification of the insured, and
24 reserves for the claim;

25 (3) details relating to the claims process
26 including whether suits were filed, whether attorneys
27 were involved, the stage at which claims were closed,
28 court verdict, information relating to appeals, and
29 whether the claims were settled outside of court and at
30 what stage;

31 (4) information relating to the amounts
32 paid on the claim including the total amount of a court
33 award, the amount paid to the claimant by the insurer,
34 amounts paid for defense costs, punitive damages, and
35 loss adjustment expenses; and

36 (5) any other information that the State
37 Board of Insurance determines to be significant in
38 allowing the board and the legislature to monitor the
39 insurance industry to assure its solvency and to insure
40 that liability insurance is available, affordable, and
41 providing adequate protection in Texas.

42 Revised Law

43 Sec. 38.157. AGGREGATE REPORT. (a) An insurer shall file
44 with the department one report containing the information required
45 under this section for all claims closed within the calendar year
46 for which the indemnity payments for bodily injury under the
47 coverage are \$10,000 or less, including claims for which an

1 indemnity payment is not made on closing.

2 (b) The report must include, in summary form, at least the
3 following information:

4 (1) the aggregate number of claims; and

5 (2) the aggregate dollar amount paid out.

6 (c) The report must be filed in a form and in a manner
7 prescribed by the commissioner. (V.T.I.C. Art. 1.24B, Sec. 2(d).)

8 Source Law

9 (d) For all claims under liability policies
10 which claims are closed for which the insurer makes
11 indemnity payments for an amount of \$10,000 or less for
12 bodily injury, including claims for which no indemnity
13 payment is made on closing, the State Board of
14 Insurance shall require the insurer closing the claim
15 to file with the board one report containing the total
16 pertinent figures for all such claims closed within the
17 calendar year including, in summary form, at least the
18 following minimum information: the total aggregate
19 number of claims and the total aggregate dollar amount
20 paid out. This report shall be filed on a form and in
21 a manner prescribed by the board.

22 Revisor's Note

23 Section 2(d), V.T.I.C. Article 1.24B, refers to
24 the "total aggregate number of claims" and the "total
25 aggregate dollar amount paid out." The revised law
26 omits the reference to "total" in each phrase because
27 "total" is included within the meaning of "aggregate."

28 Revised Law

29 Sec. 38.158. ALTERNATIVE REPORTING. After notice and public
30 hearing, the commissioner may provide for alternative reporting in
31 the form of sampling of the required closed claim data instead of
32 requiring insurers to file the closed claim data required by this
33 subchapter. (V.T.I.C. Art. 1.24B, Sec. 5(b).)

34 Source Law

35 (b) In lieu of requiring insurers to file the
36 reports required by Section 2, the State Board of
37 Insurance may, following notice and public hearing,
38 provide for alternative reporting in the form of
39 sampling of the required closed claim data.

40 Revised Law

41 Sec. 38.159. COMPILATION OF DATA; REPORT. The department
42 shall compile the data included in individual closed claim reports

1 and summary closed claim reports into a composite form and shall
2 prepare annually a written report of the composite data. The
3 department shall make the report available to the public.
4 (V.T.I.C. Art. 1.24B, Secs. 6(a), (b) (part).)

5 Source Law

6 Sec. 6. (a) The State Board of Insurance shall
7 compile the data included in individual closed claim
8 reports and summary claims reports into a composite
9 form and shall prepare annually a written report of
10 this composite data.

11 (b) The report shall be available to the public,
12 and

13 Revised Law

14 Sec. 38.160. ELECTRONIC DATABASE. The commissioner may:

15 (1) establish an electronic database composed of
16 reports filed with the department under this subchapter;

17 (2) provide the public with access to that data;

18 (3) establish a system to provide access to that data
19 by electronic data transmittal processes; and

20 (4) set and charge a fee for electronic access to the
21 database in an amount reasonable and necessary to cover the costs
22 of access. (V.T.I.C. Art. 1.24B, Sec. 6(d).)

23 Source Law

24 (d) The board may establish an electronic data
25 base composed of reports filed with the board, provide
26 the public with access to that data, establish a system
27 to provide access by electronic data transmittal
28 processes to that data, and set and charge a fee for
29 electronic access to the data base in an amount
30 reasonable and necessary to cover the costs of access.

31 Revised Law

32 Sec. 38.161. REPORT TO LEGISLATURE. (a) The department
33 shall submit copies of the report required by Section 38.159 to the
34 presiding officers of each house of the legislature.

35 (b) The department, on request of the lieutenant governor,
36 the speaker of the house of representatives, or the presiding
37 officer of a legislative committee, shall provide to the
38 legislature additional composite data based on closed claim reports
39 and summary closed claim reports. Reports prepared under this
40 subsection shall be available to the public. (V.T.I.C. Art. 1.24B,

1 Secs. 6(b) (part), (c).)

2 Source Law

3 (b) . . . copies of the report shall be
4 submitted to the presiding officers of each house of
5 the legislature.

6 (c) The State Board of Insurance on request of
7 the lieutenant governor, speaker of the house, or the
8 chairman of a legislative committee shall provide to
9 the legislature further composite data based on closed
10 claim reports and summary claims reports. The reports
11 prepared under this subsection shall be available to
12 the public.

13 Revised Law

14 Sec. 38.162. INFORMATION CONFIDENTIAL. (a) Information
15 included in an individual closed claim report or an individual
16 summary closed claim report submitted by an insurer under this
17 subchapter is confidential and may not be made available by the
18 department to the public.

19 (b) Information included in an individual closed claim
20 report or an individual summary closed claim report may be examined
21 only by the commissioner and department employees. (V.T.I.C.
22 Art. 1.24B, Sec. 7.)

23 Source Law

24 Sec. 7. (a) Information included in individual
25 closed claim reports and individual summary claims
26 reports submitted by insurers under this article is
27 confidential and may not be made available by the State
28 Board of Insurance to the public.

29 (b) Information included in the individual
30 closed claim reports and individual summary claims
31 reports may be examined only by the members of the
32 State Board of Insurance, the commissioner of
33 insurance, and the employees of the State Board of
34 Insurance.

35 Revised Law

36 Sec. 38.163. RULES AND FORMS. The commissioner may adopt
37 necessary rules to:

- 38 (1) implement this subchapter;
- 39 (2) define terminology, criteria, content, and other
40 matters relating to the reports required under this subchapter; and
- 41 (3) designate other types or lines of liability
42 insurance required to provide information under this subchapter.
43 (V.T.I.C. Art. 1.24B, Sec. 5(a) (part).)

1 Source Law

2 Sec. 5. (a) The State Board of Insurance may
3 promulgate necessary rules to carry out this article,
4 to define terminology, criteria, content, and other
5 matters relating to the reports, and to designate other
6 types or lines of liability insurance required to
7 provide information under this article and

8 Revisor's Note

9 Section 5(a), V.T.I.C. Article 1.24B, refers to
10 the authority of the State Board of Insurance to
11 "promulgate" rules. The revised law substitutes "adopt"
12 for "promulgate" because the terms are synonymous in
13 context and the former is more commonly used.

14 [Sections 38.164-38.200 reserved for expansion]

15 SUBCHAPTER E. STATISTICAL DATA COLLECTION

16 Revised Law

17 Sec. 38.201. DEFINITION. In this subchapter, "designated
18 statistical agent" means an organization designated or contracted
19 with by the commissioner under Section 38.202. (New.)

20 Revisor's Note

21 The definition of "designated statistical agent"
22 is added to the revised law for drafting convenience
23 and to eliminate frequent, unnecessary repetition of
24 the substance of the definition.

25 Revised Law

26 Sec. 38.202. STATISTICAL AGENT. The commissioner may, for a
27 line or subline of insurance, designate or contract with a
28 qualified organization to serve as the statistical agent for the
29 commissioner to gather data relevant for regulatory purposes or as
30 otherwise provided by this code. (V.T.I.C. Art. 21.69, Subsec.
31 (a).)

32 Source Law

33 Art. 21.69. (a) The commissioner may, for a
34 line or subline of insurance, designate or contract
35 with a qualified organization to serve as the
36 statistical agent for the commissioner to gather data
37 relevant for regulatory purposes or as otherwise
38 provided in this code.

1 Revised Law

2 Sec. 38.203. QUALIFICATIONS OF STATISTICAL AGENT. To
3 qualify as a statistical agent, an organization must demonstrate at
4 least five years of experience in data collection, data
5 maintenance, data quality control, accounting, and related areas.
6 (V.T.I.C. Art. 21.69, Subsec. (b).)

7 Source Law

8 (b) To qualify as a statistical agent, an
9 organization must demonstrate at least five years of
10 experience in data collection, data maintenance, data
11 quality control, accounting, and related areas.

12 Revised Law

13 Sec. 38.204. POWERS AND DUTIES OF STATISTICAL AGENT. (a) A
14 designated statistical agent shall collect data from reporting
15 insurers under a statistical plan adopted by the commissioner.

16 (b) The statistical agent may provide aggregate historical
17 premium and loss data to its subscribers. (V.T.I.C. Art. 21.69,
18 Subsecs. (d), (f).)

19 Source Law

20 (d) A statistical agent designated or contracted
21 with by the commissioner under this article shall
22 collect data from reporting insurers under a
23 statistical plan promulgated by the commissioner.

24 (f) The statistical agent may provide aggregate
25 historical premium and loss data to its subscribers.

26 Revisor's Note

27 Subsection (d), V.T.I.C. Article 21.69, refers to
28 a statistical plan "promulgated" by the commissioner of
29 insurance. The revised law substitutes "adopted" for
30 the reason stated in the revisor's note to Section
31 38.163.

32 Revised Law

33 Sec. 38.205. DUTY OF INSURER. An insurer shall provide all
34 premium and loss cost data to the commissioner or the designated
35 statistical agent as the commissioner or agent requires. (V.T.I.C.
36 Art. 21.69, Subsec. (e).)

1 Source Law

2 (e) An insurer shall provide all premium and
3 loss cost data to the commissioner or the
4 commissioner's agent designated or contracted with
5 under this article as the commissioner or the agent
6 requires.

7 Revised Law

8 Sec. 38.206. FEES. (a) A designated statistical agent may
9 collect from a reporting insurer any fees necessary for the agent
10 to recover the necessary and reasonable costs of collecting data
11 from that reporting insurer.

12 (b) A reporting insurer shall pay the fee to the statistical
13 agent for the data collection services provided by the statistical
14 agent. (V.T.I.C. Art. 21.69, Subsec. (c).)

15 Source Law

16 (c) The commissioner's designation or
17 contracting with a statistical agent under this article
18 authorizes the statistical agent to collect from the
19 reporting insurers any fees necessary for the
20 statistical agent to recover the necessary and
21 reasonable costs of data collection from the reporting
22 insurers for data collection services provided by the
23 statistical agent. A reporting insurer shall pay the
24 fee to the statistical agent for the data collection
25 services provided by the statistical agent.

26 Revised Law

27 Sec. 38.207. RULES. The commissioner may adopt rules
28 necessary to accomplish the purposes of this subchapter. (V.T.I.C.
29 Art. 21.69, Subsec. (g).)

30 Source Law

31 (g) The commissioner may adopt rules necessary
32 to accomplish the purposes of this article.

33 CHAPTER 39. PUBLIC ACCESS

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36	Sec. 39.003. PUBLIC REPRESENTATION ON ADVISORY BODY	86

37 CHAPTER 39. PUBLIC ACCESS

38 Revised Law

39 Sec. 39.001. ACCESS TO PROGRAMS AND FACILITIES. (a) The
40 commissioner shall prepare and maintain a written plan that
41 describes how a person who does not speak English may be provided

1 reasonable access to the department's programs.

2 (b) The department shall comply with federal and state laws
3 for program and facility accessibility. (V.T.I.C. Art. 1.04C,
4 Subsec. (a).)

5 Source Law

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

12 Revised Law

13 Sec. 39.002. PUBLIC COMMENT. The commissioner shall develop
14 and implement policies that provide the public with a reasonable
15 opportunity to appear before the commissioner and to speak on any
16 issue under the jurisdiction of the commissioner. (V.T.I.C.
17 Art. 1.04C, Subsec. (b).)

18 Source Law

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

24 Revised Law

25 Sec. 39.003. PUBLIC REPRESENTATION ON ADVISORY BODY.

26 (a) At least one-half of the membership of each advisory body
27 appointed by the commissioner, other than an advisory body whose
28 membership is determined by this code or by another law relating to
29 the business of insurance in this state, must represent the general
30 public.

31 (b) A public representative may not be:

32 (1) an officer, director, or employee of an insurance
33 company, insurance agency, agent, broker, solicitor, adjuster, or
34 any other business entity regulated by the department;

35 (2) a person required to register with the Texas
36 Ethics Commission under Chapter 305, Government Code; or

37 (3) a person related within the second degree by
38 affinity or consanguinity to a person described by Subdivision (1)

1 or (2). (V.T.I.C. Art. 1.35C.)

2 Source Law

3 Art. 1.35C. (a) At least one-half of the
4 membership of each advisory body appointed by the board
5 or the commissioner, other than an advisory body whose
6 membership is determined by this code or by another law
7 relating to the business of insurance in this state,
8 must represent the general public.

9 (b) A public representative may not be:

10 (1) an officer, director, or employee of
11 an insurance company, insurance agency, agent, broker,
12 solicitor, adjuster, or any other business entity
13 regulated by the board;

14 (2) a person required to register with the
15 secretary of state under Chapter 305, Government Code;
16 or

17 (3) related to a person described by
18 Subdivision (1) or (2) of this subsection within the
19 second degree of affinity or consanguinity.

20 Revisor's Note

21 (1) V.T.I.C. Article 1.35C refers to "the
22 board," or the State Board of Insurance. Chapter 685,
23 Acts of the 73rd Legislature, Regular Session, 1993,
24 abolished the board and transferred its functions to
25 the commissioner of insurance and the Texas Department
26 of Insurance. The revised law has been drafted to
27 reflect those changes.

28 (2) V.T.I.C. Article 1.35C refers to a person
29 "required to register with the secretary of state under
30 Chapter 305, Government Code." The revised law
31 substitutes a reference to the Texas Ethics Commission
32 for the reference to the secretary of state because
33 under Chapter 304, Acts of the 72nd Legislature,
34 Regular Session, 1991, a person formerly required to
35 register with the secretary of state must now register
36 with the Texas Ethics Commission under Chapter 305,
37 Government Code.

38 CHAPTER 40. DUTIES OF STATE OFFICE OF ADMINISTRATIVE
39 HEARINGS AND COMMISSIONER IN CERTAIN PROCEEDINGS;
40 RATE SETTING PROCEEDINGS

41 SUBCHAPTER A. GENERAL PROVISIONS

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18 Sec. 40.059. CONSIDERATION OF PROPOSAL FOR DECISION 95
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20 CHAPTER 40. DUTIES OF STATE OFFICE OF ADMINISTRATIVE
21 HEARINGS AND COMMISSIONER IN CERTAIN PROCEEDINGS;
22 RATE SETTING PROCEEDINGS

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Revised Law

25 Sec. 40.001. DEFINITION. In this chapter, "office" means
26 the State Office of Administrative Hearings. (New; V.T.I.C.
27 Art. 1.33B, Subsec. (b) (part).)

28 Source Law

29 (b) The State Office of Administrative Hearings
30 established under Chapter 2003, Government
31 Code,

32 Revisor's Note

33 The definition of "office" is added to the
34 revised law for drafting convenience and to avoid
35 frequent, unnecessary repetition of the substance of

1 the definition.

2 Revised Law

3 Sec. 40.002. DUTIES OF STATE OFFICE OF ADMINISTRATIVE
4 HEARINGS. The office shall conduct an administrative hearing
5 required to be held or that may be held under this code or another
6 insurance law of this state. (V.T.I.C. Art. 1.33B, Subsec. (b)
7 (part).)

8 Source Law

9 (b) The . . . Office . . . shall conduct any
10 administrative hearing required to be held or that may
11 be held under this code or another insurance law of
12 this state. . . .

13 Revised Law

14 Sec. 40.003. APPLICATION OF CHAPTER; EXCEPTIONS. (a) This
15 chapter applies only to a hearing required to be held before a
16 decision may be rendered or action taken by the commissioner or the
17 department.

18 (b) If a provision of this code or another insurance law of
19 this state requires that the commissioner take an action at a
20 hearing subject to this chapter, the commissioner shall take the
21 action after receipt of a proposal for decision from the office
22 regarding the hearing conducted by the office.

23 (c) This chapter does not apply to a proceeding conducted
24 under Article 1.04D or to a proceeding relating to:

25 (1) approving or reviewing rates or rating manuals
26 filed by an individual company, unless the rates or manuals are
27 contested;

28 (2) adopting a rule;

29 (3) adopting or approving a policy form or policy form
30 endorsement; or

31 (4) adopting or approving a plan of operation for an
32 organization subject to the jurisdiction of the department.
33 (V.T.I.C. Art. 1.33B, Subsecs. (a), (b) (part), (e).)

34 Source Law

35 Art. 1.33B. (a) This article does not apply to
36 a hearing or proceeding:
37 (1) relating to the approval or review of

1 rates or rating manuals filed by individual companies,
2 unless they are contested;

3 (2) relating to the promulgation of rules;
4 (3) relating to the promulgation or
5 approval of a policy form or policy form endorsement;

6 (4) relating to the adoption or approval
7 of a plan of operation for an organization subject to
8 the jurisdiction of the department; or

9 (5) conducted in accordance with Article
10 1.04D of this code.

11 (b) . . . This article applies only to hearings
12 required to be held before a decision may be rendered
13 or action taken by the commissioner or the department.

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

21 Revisor's Note

22 (1) Subsection (a), V.T.I.C. Article 1.33B,
23 refers to a "hearing or proceeding." The revised law
24 omits the reference to a "hearing" because "hearing" is
25 included within the meaning of "proceeding."

26 (2) Subsection (e), V.T.I.C. Article 1.33B,
27 refers to receipt of a "report" from the State Office
28 of Administrative Hearings. The revised law
29 substitutes "proposal for decision" for "report"
30 because "proposal for decision" is the phrase used in
31 Subsection (c)(4), V.T.I.C. Article 1.33B, revised in
32 this chapter as Section 40.058. This phrase is
33 consistent with the terminology used in Section
34 2001.062, Government Code, which is the portion of the
35 Administrative Procedure Act that governs reports of
36 this type.

37 (3) Subsection (a), V.T.I.C. Article 1.33B,
38 refers to "promulgation" of rules, policy forms, and
39 policy form endorsements. The revised law substitutes
40 "adopting" for "promulgating" because the terms are
41 synonymous in context and the former is more commonly
42 used.

1 Revised Law

2 Sec. 40.004. MEMORANDUM OF UNDERSTANDING. (a) The
3 commissioner and the chief administrative law judge of the office
4 by rule shall adopt a memorandum of understanding governing
5 hearings conducted by the office under this code or another
6 insurance law of this state.

7 (b) The memorandum of understanding must require the chief
8 administrative law judge and the commissioner to cooperate in
9 conducting hearings under this chapter and may authorize the office
10 to perform any procedural act, including giving notice, that is
11 required to be performed by the commissioner under this code or
12 another insurance law of this state. (V.T.I.C. Art. 1.33B, Subsec.
13 (d).)

14 Source Law

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

29 Revised Law

30 Sec. 40.005. CONFLICT WITH OTHER LAW. This chapter prevails
31 over another provision of this code or another insurance law of
32 this state unless the provision or other law states that this
33 chapter does not apply. (V.T.I.C. Art. 1.33B, Subsec. (f).)

34 Source Law

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

40 [Sections 40.006-40.050 reserved for expansion]

1 SUBCHAPTER B. PROCEEDINGS RELATING TO PROMULGATION OF
2 RATES

3 Revised Law

4 Sec. 40.051. APPLICATION OF SUBCHAPTER. Subject to Section
5 40.003, a proceeding to promulgate rates is governed by this
6 subchapter. (V.T.I.C. Art. 1.33B, Subsec. (c)(1) (part).)

7 Source Law

8 (c)(1) Rate promulgation proceedings shall be
9 governed by the provisions of this subsection
10 and

11 Revisor's Note

12 The revised law adds a reference to Section
13 40.003 because that section specifies certain rate
14 proceedings that are not subject to this chapter.

15 Revised Law

16 Sec. 40.052. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. A
17 proceeding to promulgate rates is a contested case under Chapter
18 2001, Government Code, and to the extent not inconsistent with this
19 subchapter, that chapter and the Texas Rules of Civil Procedure
20 apply. (V.T.I.C. Art. 1.33B, Subsec. (c)(1) (part).)

21 Source Law

22 (c)(1) Rate promulgation proceedings . . . shall
23 be treated as a contested case under the Administrative
24 Procedure Act, Chapter 2001, Government Code.
25 Accordingly, the procedures before the commissioner
26 shall be guided by the principles and procedures for
27 contested cases as provided by the Administrative
28 Procedure Act, Chapter 2001, Government Code, and the
29 Texas Rules of Civil Procedure to the extent not
30 inconsistent with the provisions of this subsection.

31 Revisor's Note

32 Subsection (c)(1), V.T.I.C. Article 1.33B, refers
33 to "procedures before the commissioner." The revised
34 law omits the reference to the commissioner because
35 under Subsection (b) of the article, revised in this
36 chapter as Section 40.002, hearings held in proceedings
37 to promulgate rates are held before an administrative
38 law judge of the State Office of Administrative
39 Hearings.

1 Revised Law

2 Sec. 40.053. PRESENTATION OF EVIDENCE. The administrative
3 law judge shall provide each interested party an opportunity to
4 respond to and present evidence and argument concerning all issues
5 in the proceeding. (V.T.I.C. Art. 1.33B, Subsec. (c)(2) (part).)

6 Source Law

7 (2) Opportunity must be afforded all
8 interested parties to respond to and present evidence
9 and argument concerning all issues involved in the
10 proceeding. . . .

11 Revisor's Note

12 Subsection (c)(2), V.T.I.C. Article 1.33B, states
13 that "[o]ppportunity must be afforded" for a party to
14 respond to and present evidence and argument concerning
15 issues in the rate proceeding. The revised law makes
16 clear that the administrative law judge, who is
17 responsible for conducting the proceeding, is
18 responsible for providing the opportunity to the party.

19 Revised Law

20 Sec. 40.054. WITNESSES AND CROSS-EXAMINATION. (a) The
21 testimony of a witness, other than an expert witness, may be
22 presented either orally by the witness at the hearing or by
23 affidavit.

24 (b) Each party is entitled to cross-examine each witness
25 called to testify by another party to the proceeding. The
26 attendance of a witness providing testimony by affidavit is
27 required if a party files a written request that the witness appear
28 for cross-examination.

29 (c) If a witness providing testimony by affidavit fails to
30 appear for cross-examination after the filing of a written request
31 that the witness appear, the administrative law judge shall exclude
32 the affidavit from evidence and may not consider the affidavit for
33 any purpose. (V.T.I.C. Art. 1.33B, Subsec. (c)(2) (part).)

34 Source Law

35 (2) . . . The testimony of a witness,
36 other than an expert witness, may be presented either
37 orally by the witness at the hearing or by affidavit.

1 Each party to the proceeding shall be accorded the
2 right to cross-examine each witness called to testify
3 by any other party to the proceeding. Accordingly, the
4 attendance of any person providing testimony by
5 affidavit shall be required if any party files a
6 written request that the witness appear for
7 cross-examination. If the person providing testimony
8 by affidavit fails to appear for cross-examination
9 after the filing of a written request that the person
10 appear, the administrative law judge shall exclude the
11 affidavit from evidence and shall not consider the
12 affidavit of that person for any purpose. . . .

13 Revised Law

14 Sec. 40.055. TESTIMONY OF EXPERT WITNESS; PREFILING
15 REQUIRED. The direct testimony of each expert witness to be called
16 must be prefiled in accordance with a schedule established by the
17 administrative law judge. (V.T.I.C. Art. 1.33B, Subsec. (c)(2)
18 (part).)

19 Source Law

20 (2) . . . The direct testimony of each
21 expert witness to be called must be prefiled in
22 accordance with a schedule to be established by the
23 administrative law judge. . . .

24 Revised Law

25 Sec. 40.056. DEADLINES. The administrative law judge shall
26 establish reasonable deadlines for the filing of affidavits, the
27 designation of witnesses, and other matters as are necessary or
28 appropriate. (V.T.I.C. Art. 1.33B, Subsec. (c)(2) (part).)

29 Source Law

30 (2) . . . The administrative law judge
31 shall also establish reasonable deadlines for the
32 filing of affidavits, the designation of witnesses, and
33 such other matters as are necessary or appropriate.

34 Revised Law

35 Sec. 40.057. INFLUENCE OF COMMISSIONER PROHIBITED. The
36 commissioner may not attempt to influence the administrative law
37 judge's findings of fact, conclusions of law, or application of the
38 law to the facts. (V.T.I.C. Art. 1.33B, Subsec. (c)(3).)

39 Source Law

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

1 Revised Law

2 Sec. 40.058. PROPOSAL FOR DECISION. The administrative law
3 judge shall:

4 (1) prepare a proposal for decision that includes
5 proposed findings of fact and conclusions of law; and

6 (2) serve the proposal for decision by registered mail
7 on each party to the proceeding. (V.T.I.C. Art. 1.33B, Subsec.
8 (c)(4) (part).)

9 Source Law

10 (4) The proposal for decision prepared by
11 the administrative law judge, which shall include the
12 proposed findings of fact and conclusions of law, shall
13 be served by registered mail upon the parties by the
14 administrative law judge, and

15 Revised Law

16 Sec. 40.059. CONSIDERATION OF PROPOSAL FOR DECISION. (a)
17 The commissioner shall provide to each party an opportunity to file
18 exceptions to the proposal for decision and briefs related to the
19 issues addressed in the proposal.

20 (b) After the opportunity to file exceptions and briefs
21 under Subsection (a), the commissioner shall, in open meeting,
22 consider:

23 (1) the proposal for decision; and

24 (2) the exceptions, briefs, and arguments of the
25 parties.

26 (c) The commissioner may amend the proposal for decision,
27 including any finding of fact. The commissioner shall accompany
28 any amendment with an explanation of the basis of the amendment.
29 The commissioner shall base any amendment and the order adopting
30 the rate solely on the record made before the administrative law
31 judge.

32 (d) The commissioner may refer the matter back to the
33 administrative law judge to:

34 (1) reconsider findings and conclusions in the
35 proposal for decision;

36 (2) take additional evidence; or

1 (3) make additional findings of fact or conclusions of
2 law. (V.T.I.C. Art. 1.33B, Subsecs. (c)(4) (part), (5) (part).)

3 Source Law

4 (4) . . . an opportunity shall be given
5 to each party to file exceptions to the proposal and
6 briefs related to the issues addressed in the proposal
7 for decision.

8 (5) The commissioner shall thereafter in
9 open meeting consider the proposal for decision
10 prepared by the administrative law judge, the
11 exceptions of the parties, and the briefs and arguments
12 of the parties. The commissioner may amend the
13 proposal for decision, including any finding of fact,
14 but any such amendment thereto and the order of the
15 commissioner promulgating the rate shall be based
16 solely upon the record made before the administrative
17 law judge. Any such amendment by the commissioner
18 shall be accompanied by an explanation of the basis of
19 the amendment. The commissioner may also refer the
20 matter back to the administrative law judge to
21 reconsider findings and conclusions set forth in the
22 proposal for decision or to take additional evidence or
23 to make additional findings of fact or conclusions of
24 law. . . .

25 Revisor's Note

26 Subsection (c)(4), V.T.I.C. Article 1.33B, states
27 that "an opportunity shall be given" to a party to file
28 exceptions and briefs. The revised law makes clear
29 that the commissioner of insurance, who is required to
30 consider the exceptions and briefs, is responsible for
31 providing the opportunity to the party.

32 Revised Law

33 Sec. 40.060. COMMISSIONER'S ORDER. The commissioner shall
34 serve on each party a copy of the commissioner's order, including
35 the commissioner's findings of fact and conclusions of law.
36 (V.T.I.C. Art. 1.33B, Subsec. (c)(5) (part).)

37 Source Law

38 (5) . . . The commissioner shall serve a
39 copy of the commissioner's order, including the
40 commissioner's findings of fact and conclusions of law,
41 upon each party.

42 [Chapters 41-80 reserved for expansion]

1 SUBTITLE B. DISCIPLINE AND ENFORCEMENT
2 CHAPTER 81. GENERAL PROVISIONS REGARDING
3 DISCIPLINE AND ENFORCEMENT

4 Sec. 81.001. LIMITATIONS PERIOD FOR CERTAIN DISCIPLINARY
5 ACTIONS 97
6 Sec. 81.002. NOTICE OF CERTAIN ORDERS AND DECISIONS 98
7 Sec. 81.003. NOTIFICATION OF CERTAIN DISCIPLINARY ACTIONS
8 OCCURRING IN OTHER STATES; CIVIL PENALTY 99
9 Sec. 81.004. REPORT TO ATTORNEY GENERAL 102

10 CHAPTER 81. GENERAL PROVISIONS REGARDING
11 DISCIPLINE AND ENFORCEMENT

12 Revised Law

13 Sec. 81.001. LIMITATIONS PERIOD FOR CERTAIN DISCIPLINARY
14 ACTIONS. (a) Except as provided by Subsection (b), the department
15 or commissioner may not begin an action to impose a sanction,
16 penalty, or fine, including an administrative penalty, against an
17 insurer, agent, or other license holder who is subject to the
18 jurisdiction of the department for conduct that is a violation of
19 this code or another insurance law of this state after the earlier
20 of:

21 (1) the fifth anniversary of the date on which the
22 conduct that is a violation occurred; or

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

24 (A) the date on which the conduct that is a
25 violation is first discovered by the department; or

26 (B) the date on which the conduct that is a
27 violation is made known to the department.

28 (b) The department or commissioner may not begin an action
29 to impose a sanction, penalty, or fine, including an administrative
30 penalty, against an insurer, agent, or other license holder who is
31 subject to the jurisdiction of the department for conduct that is a
32 violation of this code or another insurance law of this state and
33 that involves fraud by the insurer, agent, or license holder, after
34 the fifth anniversary of the earlier of:

1 (1) the date on which the conduct that is a violation
2 is first discovered by the department; or

3 (2) the date on which the conduct that is a violation
4 is made known to the department.

5 (c) This section does not apply to conduct that is a
6 violation that is ongoing at the time the department seeks to
7 impose the sanction, penalty, or fine. (V.T.I.C. Art. 1.41.)

8 Source Law

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

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

19 (2) the second anniversary of the earlier
20 of:

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

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

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

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

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

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

41 Revised Law

42 Sec. 81.002. NOTICE OF CERTAIN ORDERS AND DECISIONS.
43 Notwithstanding Section 2001.142, Government Code, in a contested
44 case before the department or the commissioner the department shall
45 mail to each party and the party's attorney of record, by certified
46 mail, return receipt requested, a copy of the department's or
47 commissioner's written decision or order in that case. (V.T.I.C.
48 Art. 1.10B.)

49 Source Law

50 Art. 1.10B. Notwithstanding Section 2001.142,

1 Government Code, the department shall mail to each
2 party and the party's attorney of record in a contested
3 case before the department or the commissioner a copy
4 of the department's or commissioner's written decision
5 or order in that case by certified mail, return receipt
6 requested.

7 Revised Law

8 Sec. 81.003. NOTIFICATION OF CERTAIN DISCIPLINARY ACTIONS
9 OCCURRING IN OTHER STATES; CIVIL PENALTY. (a) In this section,
10 "insurer" means any organization, corporation, or other person who
11 transacts insurance business, other than an organization,
12 corporation, or other person who is specifically made exempt from
13 this section by a reference to this section, without regard to
14 whether the organization, corporation, or other person is listed in
15 this subsection. The term includes:

- 16 (1) a capital stock company;
- 17 (2) a title insurance company;
- 18 (3) a reciprocal or interinsurance exchange;
- 19 (4) a Lloyd's plan insurer;
- 20 (5) a fraternal benefit society;
- 21 (6) a mutual company, including a mutual assessment
22 company;
- 23 (7) a statewide mutual assessment company;
- 24 (8) a local mutual aid association;
- 25 (9) a burial association;
- 26 (10) a county mutual insurance company;
- 27 (11) a farm mutual insurance company; and
- 28 (12) a fidelity, guaranty, or surety company.

29 (b) An insurer shall notify the commissioner and shall
30 deliver a copy of any applicable order or judgment to the
31 commissioner not later than the 30th day after the date of the:

- 32 (1) suspension or revocation of the insurer's right to
33 transact business in another state;
- 34 (2) receipt of an order to show cause why the
35 insurer's license in another state should not be suspended or
36 revoked; or

1 (3) imposition of a penalty, forfeiture, or sanction
2 on the insurer for a violation of the insurance laws of another
3 state.

4 (c) An insurer who violates Subsection (b) is liable for a
5 civil penalty, recoverable by a civil action, in an amount not to
6 exceed \$500 for each violation. In addition to the civil penalty,
7 the commissioner may suspend or revoke the license of an insurer or
8 agent for a wilful violation of Subsection (b). (V.T.I.C.
9 Art. 1.30, Secs. 1(a) (part), 2, 3.)

10 Source Law

11 Art. 1.30

12 Sec. 1. (a) "Insurer" shall include but not be
13 limited to capital stock companies, title insurance
14 companies, reciprocal or interinsurance exchanges,
15 Lloyds associations, fraternal benefit societies,
16 mutual and mutual-assessment companies of all kinds and
17 types, statewide assessment associations, local mutual
18 aids, burial associations, county and farm mutual
19 associations, fidelity, guaranty and surety companies,
20 . . . and all other organizations, corporations, or
21 persons transacting an insurance business, whether or
22 not named above, unless such insurers are by statute
23 specifically by naming this article exempted from the
24 operation of this article.

25 Sec. 2. An insurer shall notify the commissioner
26 and deliver a copy of any order or judgment to the
27 commissioner within 30 days of the happening in another
28 state of any one or more of the following:

- 29 (1) suspension or revocation of his right
30 to transact business;
31 (2) receipt of an order to show cause why
32 its license should not be suspended or revoked;
33 (3) imposition of any penalty, forfeiture,
34 or sanction on it for any violation of the insurance
35 laws of such other state.

36 Sec. 3. Any insurer who has failed to notify the
37 commissioner and to deliver a copy of any order or
38 judgment to him pursuant to Section 2 of this article
39 shall forfeit to the people of the state a sum not to
40 exceed \$500 for each such violation, which may be
41 recovered by a civil action. The board may also
42 suspend or revoke the license of an insurer or agent
43 for any such wilful violation.

44 Revisor's Note

45 (1) Section 1(a), V.T.I.C. Article 1.30, states
46 that the term "insurer" shall "include but not be
47 limited to" specified entities. "[B]ut not be limited
48 to" is omitted as unnecessary because Section
49 311.005(13), Government Code (Code Construction Act),

1 and Section 312.011(19), Government Code, provide that
2 "includes" and "including" are terms of enlargement and
3 not of limitation and do not create a presumption that
4 components not expressed are excluded.

5 (2) Section 1(a), V.T.I.C. Article 1.30, defines
6 "insurer" to include "trust companies organized under
7 the provisions of Chapter 7 of Texas Insurance Code."
8 Those provisions were derived originally from Chapter
9 10, General Laws, Acts of the 29th Legislature, 1st
10 Called Session, 1905, and were eventually transferred
11 to the Insurance Code on the enactment of that code in
12 1951. The revised law omits the reference to "trust
13 companies" because Section 1, Chapter 388, Acts of the
14 55th Legislature, Regular Session, 1957, repealed the
15 Chapter 7, Insurance Code, provisions. The remainder
16 of Chapter 388 enacted new requirements applicable to
17 the creation and organization of trust companies, some
18 of which were added to Vernon's Texas Civil Statutes as
19 Article 1513a. That article was repealed by Chapter
20 168, Acts of the 70th Legislature, 1987, which added
21 the substance of Article 1513a to the law on the
22 organization of trust companies contained in Chapter
23 XI, The Texas Banking Code (Article 342-1101 et seq.,
24 Vernon's Texas Civil Statutes). To the extent that any
25 trust companies organized under Chapter 7, Insurance
26 Code, still exist and operate as insurers, they are
27 included in the reference under Subsection (c) of the
28 revised law to "a person who transacts insurance
29 business." The omitted law reads:

30 (a) . . . trust companies organized
31 under the provisions of Chapter 7 of Texas
32 Insurance Code,

33 (3) Section 3, V.T.I.C. Article 1.30, refers to
34 the authority of the "board" (State Board of Insurance)
35 to suspend or revoke a license. Chapter 685, Acts of

1 the 73rd Legislature, Regular Session, 1993, abolished
2 the board and transferred its functions to the
3 commissioner of insurance and the Texas Department of
4 Insurance. Consequently, the revised law substitutes
5 "commissioner" for "board" in this section.

6 (4) Sections 1(b) and (c), V.T.I.C. Article
7 1.30, define the State Board of Insurance and the
8 Commissioner of Insurance, respectively. Those
9 definitions are omitted from the revised law. The
10 definition of "board" is unnecessary for the reason
11 stated in Revisor's Note (3) under this section. The
12 definition of "commissioner" is unnecessary because
13 V.T.I.C. Article 1.01A, revised in Chapter 31, defines
14 "commissioner" for purposes of this code and the other
15 insurance laws of this state to mean the commissioner
16 of insurance. The omitted law reads as follows:

- 17 (b) "Board" means the State Board of
18 Insurance of Texas.
- 19 (c) "Commissioner" means the
20 Commissioner of Insurance of Texas.

21 Revised Law

22 Sec. 81.004. REPORT TO ATTORNEY GENERAL. The department
23 shall report to the attorney general, promptly and in detail, any
24 violation of law relating to insurance companies or the business of
25 insurance. (V.T.I.C. Art. 1.10, Sec. 8.)

26 Source Law

27 8. Report to Attorney General. The Department
28 shall report promptly and in detail to the Attorney
29 General any violation of law relative to insurance
30 companies or the business of insurance.

31 CHAPTER 82. SANCTIONS

32 SUBCHAPTER A. GENERAL PROVISIONS

33 Sec. 82.001. DEFINITION 103
34 Sec. 82.002. APPLICATION OF CHAPTER 103
35 Sec. 82.003. PROCEEDINGS UNDER OTHER LAW 106

36 [Sections 82.004-82.050 reserved for expansion]

37 SUBCHAPTER B. IMPOSITION OF SANCTIONS

1 Sec. 82.051. CANCELLATION OR REVOCATION OF
2 AUTHORIZATION 106
3 Sec. 82.052. OTHER SANCTIONS 108
4 Sec. 82.053. RESTITUTION 109
5 Sec. 82.054. CANCELLATION ON FAILURE TO COMPLY 110
6 Sec. 82.055. INFORMAL DISPOSITION 110
7 Sec. 82.056. NOTICE TO OTHER STATES 111

8 CHAPTER 82. SANCTIONS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Revised Law

11 Sec. 82.001. DEFINITION. In this chapter, "authorization"
12 means a permit, license, certificate of authority, certificate of
13 registration, or other authorization issued or existing under the
14 commissioner's authority or this code. (V.T.I.C. Art. 1.10, Sec.
15 7(a) (part); New.)

16 Source Law

17 (a) . . . any permit, license, certificate of
18 authority, certificate of registration, or other
19 authorization issued or existing under the
20 Commissioner's authority or the authorization of this
21 Code

22 Revisor's Note

23 The definition of "authorization" is derived from
24 Section 7(a), V.T.I.C. Article 1.10. That law has
25 been revised as a definition for drafting convenience
26 and to eliminate frequent, unnecessary repetition of
27 the substance of the definition.

28 Revised Law

29 Sec. 82.002. APPLICATION OF CHAPTER. (a) This chapter
30 applies to each company regulated by the commissioner, including:

- 31 (1) a domestic or foreign, stock or mutual, life,
32 health, or accident insurance company;
- 33 (2) a domestic or foreign, stock or mutual, fire or
34 casualty insurance company;
- 35 (3) a Mexican casualty company;
- 36 (4) a domestic or foreign Lloyd's plan insurer;

- 1 (5) a domestic or foreign reciprocal or interinsurance
2 exchange;
- 3 (6) a domestic or foreign fraternal benefit society;
- 4 (7) a domestic or foreign title insurance company;
- 5 (8) an attorney's title insurance company;
- 6 (9) a stipulated premium insurance company;
- 7 (10) a nonprofit legal service corporation;
- 8 (11) a health maintenance organization;
- 9 (12) a statewide mutual assessment company;
- 10 (13) a local mutual aid association;
- 11 (14) a local mutual burial association;
- 12 (15) an association exempt under Article 14.17;
- 13 (16) a nonprofit hospital, medical, or dental service
14 corporation, including a company subject to Chapter 20;
- 15 (17) a county mutual insurance company; and
- 16 (18) a farm mutual insurance company.

17 (b) This chapter also applies to:

- 18 (1) an agent of an entity described by Subsection (a);
- 19 and
- 20 (2) a person who:
- 21 (A) is engaged in the business of insurance;
- 22 (B) holds an authorization; or
- 23 (C) is regulated by the commissioner.

24 (c) The commissioner's authority under this chapter applies
25 to each form of authorization and each person holding an
26 authorization. (V.T.I.C. Art. 1.10, Secs. 7(f) (part), (g).)

27 Source Law

28 (f) The authority vested in the Commissioner in
29 this Article . . . shall be applicable to every form of
30 authorization to any person or entity holding or
31 possessing the same.

32 (g) This section applies to all companies
33 regulated by the Commissioner, including but not
34 limited to domestic and foreign, stock and mutual life,
35 health, and accident insurance companies; domestic and
36 foreign, stock and mutual, fire and casualty insurance
37 companies; Mexican casualty companies; domestic and
38 foreign Lloyd's plan insurers; domestic and foreign
39 reciprocal or interinsurance exchanges; domestic and
40 foreign fraternal benefit societies; domestic and
41 foreign title insurance companies; attorney's title

1 insurance companies; stipulated premium insurance
2 companies; nonprofit legal service corporations; health
3 maintenance organizations; statewide mutual assessment
4 companies; local mutual aid associations; local mutual
5 burial associations; exempt associations under Article
6 14.17 of this Code; nonprofit hospital, medical, or
7 dental service corporations including but not limited
8 to companies subject to Chapter 20 of this Code; county
9 mutual insurance companies; and farm mutual insurance
10 companies. Also, this section applies to all agents of
11 those companies and generally to all other individuals,
12 corporations, associations, partnerships, and other
13 natural or artificial persons engaged in the business
14 of insurance or that hold a permit, certificate,
15 registration, license, or other authority under this
16 Code or that are regulated by the Commissioner.

17 Revisor's Note

18 (1) Section 7(f), V.T.I.C. Article 1.10, refers
19 to a "person or entity" holding or possessing an
20 authorization. Section 7(g), V.T.I.C. Article 1.10,
21 refers to "other individuals, corporations,
22 associations, partnerships, and other natural or
23 artificial persons." The revised law substitutes
24 "person" for the quoted phrases because under Section
25 311.005(2), Government Code (Code Construction Act),
26 "person" is defined to include an individual, a
27 corporation, or any other legal entity. That definition
28 applies to the revised law.

29 (2) Section 7(f), V.T.I.C. Article 1.10, refers
30 to a person or entity "holding or possessing" an
31 authorization. The reference to "possessing" is
32 omitted from the revised law because "possessing" is
33 included within the meaning of "holding."

34 (3) Section 7(g), V.T.I.C. Article 1.10, refers
35 to companies "including, but not limited to" certain
36 companies. "[B]ut not limited to" is omitted from the
37 revised law as unnecessary because Section 311.005(13),
38 Government Code (Code Construction Act), and Section
39 312.011(19), Government Code, provide that "includes"
40 and "including" are terms of enlargement and not of
41 limitation and do not create a presumption that

1 components not expressed are excluded.

2 (4) Section 7(g), V.T.I.C. Article 1.10, refers
3 to "a permit, certificate, registration, license, or
4 other authority under this Code." The revised law
5 substitutes "an authorization" for the quoted phrase
6 because "authorization" is defined by Section 82.001 to
7 include a permit, certificate, registration, license,
8 or other authority under the code.

9 Revised Law

10 Sec. 82.003. PROCEEDINGS UNDER OTHER LAW. The
11 commissioner's authority under this chapter is in addition to any
12 other authority to enforce a sanction, penalty, fine, forfeiture,
13 denial, suspension, or revocation otherwise authorized by law.
14 (V.T.I.C. Art. 1.10, Sec. 7(f) (part).)

15 Source Law

16 (f) The authority vested in the Commissioner in
17 this Article shall be in addition to and not in lieu of
18 any other authority to enforce or cause to be enforced
19 any sanctions, penalties, fines, forfeitures, denials,
20 suspensions, or revocations otherwise authorized by
21 law, and

22 Revisor's Note

23 (1) Section 7(f), V.T.I.C. Article 1.10, refers
24 to authority that is "in addition to and not in lieu
25 of" any other authority. The revised law omits "and
26 not in lieu of" because, in context, "not in lieu of"
27 is included within the meaning of "in addition to."

28 (2) Section 7(f), V.T.I.C. Article 1.10, refers
29 to authority "to enforce or cause to be enforced." The
30 reference to "cause to be enforced" is omitted from the
31 revised law because, in context, "cause to be enforced"
32 is included within the meaning of "to enforce."

33 [Sections 82.004-82.050 reserved for expansion]

34 SUBCHAPTER B. IMPOSITION OF SANCTIONS

35 Revised Law

36 Sec. 82.051. CANCELLATION OR REVOCATION OF AUTHORIZATION.

1 After notice and opportunity for a hearing, the commissioner may
2 cancel or revoke an authorization if the holder of the
3 authorization is found to be in violation of, or to have failed to
4 comply with, this code or a rule of the commissioner. (V.T.I.C.
5 Art. 1.10, Sec. 7(a) (part).)

6 Source Law

7 7. (a) After notice and opportunity for a
8 hearing, the Commissioner may cancel or revoke any
9 [permit, license, certificate of authority, certificate
10 of registration, or other] authorization [issued or
11 existing under the Commissioner's authority or the
12 authorization of this Code] if the holder or possessor
13 of same is found to be in violation of, or to have
14 failed to comply with, a specific provision of the Code
15 or any duly promulgated rule or regulation of the
16 Commissioner. . . .

17 Revisor's Note

18 (1) Section 7(a), V.T.I.C. Article 1.10, refers
19 to specific types of authorizations. The revised law
20 substitutes "authorization" for the reason stated in
21 Revisor's Note (4) to Section 82.002.

22 (2) Section 7(a), V.T.I.C. Article 1.10, refers
23 to a "holder or possessor" of an authorization. The
24 reference to "possessor" is omitted from the revised
25 law because "possessor" is included within the meaning
26 of "holder."

27 (3) Section 7(a), V.T.I.C. Article 1.10, refers
28 to a violation of "a specific provision" of the code.
29 The revised law omits "specific provision" as
30 unnecessary because a person who violates the code
31 necessarily violates a specific provision.

32 (4) Section 7(a), V.T.I.C. Article 1.10, refers
33 to "any duly promulgated rule or regulation" of the
34 commissioner. The revised law omits "duly promulgated"
35 as unnecessary. A rule or regulation has no effect if
36 it is not promulgated in accordance with law. The
37 reference to "regulation" is omitted from the revised
38 law because under Section 311.005(5), Government Code

1 (Code Construction Act), a rule is defined to include a
2 regulation. That definition applies to the revised
3 law.

4 Revised Law

5 Sec. 82.052. OTHER SANCTIONS. In addition to the
6 cancellation or revocation of an authorization under Section
7 82.051, the commissioner may:

8 (1) suspend the authorization for a specified time not
9 to exceed one year;

10 (2) order the holder of the authorization to cease and
11 desist from:

12 (A) the activity determined to be in violation
13 of this code or a rule of the commissioner; or

14 (B) the failure to comply with this code or a
15 rule of the commissioner;

16 (3) direct the holder of the authorization to pay an
17 administrative penalty under Chapter 84;

18 (4) direct the holder of the authorization to make
19 restitution under Section 82.053; or

20 (5) take any combination of those actions. (V.T.I.C.
21 Art. 1.10, Sec. 7(a) (part).)

22 Source Law

23 (a) . . . The Commissioner may also order one or
24 more of the following sanctions:

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

27 (2) Order the holder or possessor of such
28 authorization to cease and desist from the specified
29 activity determined to be in violation of specific
30 provisions of this Code or rules and regulations of the
31 Commissioner or from failure to comply with such
32 provisions of this Code or such rules and regulations;

33 (3) Direct the holder or possessor of such
34 authorization to pay an administrative penalty in
35 accordance with Article 1.10E of this code; or

36 (4) Direct the holder or possessor of such
37 authorization to make . . . restitution

38 Revisor's Note

39 (1) Section 7(a), V.T.I.C. Article 1.10, refers
40 to a "holder or possessor" of an authorization. The
41 reference to "possessor" is omitted from the revised

1 law for the reason stated in Revisor's Note (2) to
2 Section 82.051.

3 (2) Section 7(a), V.T.I.C. Article 1.10, refers
4 to a violation of "specific provisions" of the code.
5 The revised law omits "specific provisions" for the
6 reason stated in Revisor's Note (3) to Section 82.051.

7 (3) Section 7(a), V.T.I.C. Article 1.10, refers
8 to "rules and regulations." The reference to
9 "regulations" is omitted from the revised law for the
10 reason stated in Revisor's Note (4) to Section 82.051.

11 (4) Section 7(a), V.T.I.C. Article 1.10, refers
12 to Article 1.10E, Insurance Code. That article is
13 revised in this title as Chapter 84, and the revised
14 law is drafted accordingly.

15 Revised Law

16 Sec. 82.053. RESTITUTION. (a) The commissioner may direct
17 the holder of an authorization to make complete restitution to each
18 Texas resident, each Texas insured, and each entity operating in
19 this state that is harmed by a violation of, or failure to comply
20 with, this code or a rule of the commissioner.

21 (b) The holder of the authorization shall make the
22 restitution in the form and amount and within the period determined
23 by the commissioner. (V.T.I.C. Art. 1.10, Secs. 7(a) (part), (b).)

24 Source Law

25 (a) The Commissioner may also order one or more
26 of the following sanctions:

27 . . .
28 (4) Direct the holder or possessor of such
29 authorization to make complete restitution to all Texas
30 residents, Texas insureds, and entities operating in
31 Texas harmed by the violation or failure to comply.

32 (b) Restitution under Subdivision (4) of
33 Subsection (a) must be made in the form and amount and
34 within the period determined by the Commissioner.

35 Revisor's Note

36 Section 7(a), V.T.I.C. Article 1.10, refers to a
37 "holder or possessor" of an authorization. The
38 reference to "possessor" is omitted from the revised

1 law for the reason stated in Revisor's Note (2) to
2 Section 82.051.

3 Revised Law

4 Sec. 82.054. CANCELLATION ON FAILURE TO COMPLY. If it is
5 found after hearing that a holder of an authorization has failed to
6 comply with an order issued under Section 82.052, the commissioner
7 shall cancel each authorization held by the holder. (V.T.I.C.
8 Art. 1.10, Sec. 7(c).)

9 Source Law

10 (c) If it is found after hearing that any holder
11 or possessor has failed to comply with an order issued
12 pursuant to Subsection (a), the Commissioner shall,
13 unless its order is lawfully stayed, cancel all
14 authorizations of such holder or possessor.

15 Revisor's Note

16 (1) Section 7(c), V.T.I.C. Article 1.10, refers
17 to a "holder or possessor" of an authorization. The
18 reference to "possessor" is omitted from the revised
19 law for the reason stated in Revisor's Note (2) to
20 Section 82.051.

21 (2) Section 7(c), V.T.I.C. Article 1.10,
22 provides a remedy for a violation of an order "unless
23 [the] order is lawfully stayed." The revised law omits
24 the quoted phrase because a person cannot violate an
25 order that has been stayed in accordance with law.

26 Revised Law

27 Sec. 82.055. INFORMAL DISPOSITION. (a) The commissioner
28 may informally dispose of a matter under this subchapter by consent
29 order, agreed settlement, stipulation, or default.

30 (b) An informal disposition may include a provision under
31 which the holder of the authorization agrees to a sanction under
32 this subchapter with the express reservation that:

33 (1) the holder does not admit a violation of this code
34 or of a rule; and

35 (2) the existence of a violation is in dispute.
36 (V.T.I.C. Art. 1.10, Sec. 7(d).)

1 Source Law

2 (d) The Commissioner may informally dispose of
3 any matter specified in this section by consent order,
4 agreed settlement, stipulations, or default. An
5 informal disposition or consent order may include a
6 provision under which the holder or possessor agrees to
7 a sanction under this section with the express
8 reservation that:

- 9 (1) the holder or possessor is not
10 admitting any violation of this code or of a rule or
11 regulation; and
12 (2) the existence of a violation is in
13 dispute.

14 Revisor's Note

15 (1) Section 7(d), V.T.I.C. Article 1.10, refers
16 to "[a]n informal disposition or consent order." The
17 revised law omits the reference to "or consent order"
18 because, under the portion of Section 7(d) revised in
19 this section as Subsection (a), a consent order is a
20 type of informal disposition of a matter.

21 (2) Section 7(d), V.T.I.C. Article 1.10, refers
22 to a "holder or possessor." The reference to
23 "possessor" is omitted from the revised law for the
24 reason stated in Revisor's Note (2) to Section 82.051.

25 (3) Section 7(d), V.T.I.C. Article 1.10, refers
26 to a "rule or regulation." The reference to
27 "regulation" is omitted from the revised law for the
28 reason stated in Revisor's Note (4) to Section 82.051.

29 Revised Law

30 Sec. 82.056. NOTICE TO OTHER STATES. The commissioner shall
31 give notice of an action taken under this subchapter to the
32 insurance commissioner or other similar officer of each state.
33 (V.T.I.C. Art. 1.10, Sec. 7(e).)

34 Source Law

35 (e) The Commissioner shall give notice of any
36 action taken pursuant to this section to the Insurance
37 Commissioner or other similar officer of every state.

38 CHAPTER 83. EMERGENCY CEASE AND DESIST ORDERS

39 SUBCHAPTER A. GENERAL PROVISIONS

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26	CHAPTER 83. EMERGENCY CEASE AND DESIST ORDERS		
27	SUBCHAPTER A. GENERAL PROVISIONS		
28	<u>Revised Law</u>		
29	Sec. 83.001.	DEFINITIONS. In this chapter:	
30		(1) "Authorized person" means an individual or entity	
31		described by Section 83.002.	
32		(2) "Emergency" means a sudden, urgent occurrence that	
33		requires immediate action.	
34		(3) "Unauthorized person" means a person who directly	

1 or indirectly does an act of insurance business that is:

2 (A) described by Section 101.051 or 101.052; and

3 (B) not done in accordance with specific
4 authorization of law.

5 (4) "Unfair act" means an unfair method of
6 competition, an unfair or deceptive act or practice, or an unfair
7 claim settlement practice as defined under Article 21.21 or 21.21-2
8 or a rule adopted under either article. (V.T.I.C. Art. 1.10A, Secs.
9 1(1) (part), (2), (5), 2 (part); New.)

10 Source Law

11 Art. 1.10A

12 Sec. 1. In this article:

13 (1) "Authorized person" means

14 (2) "Unauthorized person" means an
15 individual, corporation, association, partnership, or
16 other natural or artificial person that directly or
17 indirectly does any of the acts of an insurance
18 business provided by Article 1.14-1 of this code,
19 except as provided by and in accordance with specific
20 authorization of law.

21 (5) "Emergency" means a sudden, urgent
22 occurrence requiring immediate action.

23 Sec. 2. . . .

24 (1)

25 (A) an unfair method of
26 competition or an unfair or deceptive act or practice
27 in violation of Article 21.21 or Article 21.21-2 of
28 this code or in violation of a rule or regulation
29 promulgated under Article 21.21 or Article 21.21-2 of
30 this code

31 Revisor's Note

32 (1) Section 1(2), V.T.I.C. Article 1.10A, refers
33 to "an individual, corporation, association,
34 partnership, or other natural or artificial person."
35 The revised law substitutes the term "person" for the
36 quoted phrase because the quoted phrase is
37 substantively identical to the definition of "person"
38 provided by Section 311.005(2), Government Code (Code
39 Construction Act), applicable to the revised law.

40 (2) The revised law omits Sections 1(3) and (4),
41 V.T.I.C. Article 1.10A, which define "board" and
42 "commissioner," respectively. Chapter 685, Acts of the

1 73rd Legislature, Regular Session, 1993, abolished the
2 State Board of Insurance and transferred its functions
3 to the commissioner of insurance and the Texas
4 Department of Insurance as appropriate. V.T.I.C.
5 Article 1.01A, revised in Chapter 31, defines
6 "commissioner" for purposes of this code and the other
7 insurance laws of this state to mean the commissioner
8 of insurance. The omitted law reads:

9 (3) "Board" means the State
10 Board of Insurance.

11 (4) "Commissioner" means the
12 commissioner of insurance.

13 (3) The definition of "unfair act" is derived
14 from Section 2(1)(A), V.T.I.C. Article 1.10A, and is
15 added to the revised law for drafting convenience.
16 That section refers to "an unfair or deceptive act or
17 practice in violation of Article 21.21-2." V.T.I.C.
18 Article 21.21-2 prohibits unfair claim settlement
19 practices, and a reference to these practices is added
20 to the revised law to aid the reader.

21 (4) Section 2(1)(A), V.T.I.C. Article 1.10A,
22 refers to "a rule or regulation." The reference to a
23 regulation is omitted from the revised law because
24 under Section 311.005(5), Government Code (Code
25 Construction Act), a rule is defined to include a
26 regulation. That definition applies to the revised
27 law.

28 Revised Law

29 Sec. 83.002. APPLICATION OF CHAPTER. (a) This chapter
30 applies to each company regulated by the commissioner, including:

31 (1) a domestic or foreign, stock or mutual, life,
32 health, or accident insurance company;

33 (2) a domestic or foreign, stock or mutual, fire or
34 casualty insurance company;

35 (3) a Mexican casualty company;

- 1 (4) a domestic or foreign Lloyd's plan insurer;
- 2 (5) a domestic or foreign reciprocal or interinsurance
- 3 exchange;
- 4 (6) a domestic or foreign fraternal benefit society;
- 5 (7) a domestic or foreign title insurance company;
- 6 (8) an attorney's title insurance company;
- 7 (9) a stipulated premium insurance company;
- 8 (10) a nonprofit legal service corporation;
- 9 (11) a statewide mutual assessment company;
- 10 (12) a local mutual aid association;
- 11 (13) a local mutual burial association;
- 12 (14) an association exempt under Article 14.17;
- 13 (15) a nonprofit hospital, medical, or dental service
- 14 corporation, including a company subject to Chapter 20;
- 15 (16) a county mutual insurance company; and
- 16 (17) a farm mutual insurance company.

17 (b) This chapter also applies to:

- 18 (1) an agent of an entity described by Subsection (a);
- 19 and
- 20 (2) a person who:
 - 21 (A) is engaged in the business of insurance;
 - 22 (B) holds a permit, certificate, registration,
 - 23 license, or other authority under this code; or
 - 24 (C) is regulated by the commissioner. (V.T.I.C.
 - 25 Art. 1.10A, Sec. 1(1) (part).)

26 Source Law

27 (1) ["Authorized person" means] a company
28 regulated by the State Board of Insurance, including
29 any domestic and foreign, stock and mutual life,
30 health, and accident insurance companies; domestic and
31 foreign, stock and mutual, fire and casualty insurance
32 companies; Mexican casualty companies; domestic and
33 foreign Lloyd's plan insurers; domestic and foreign
34 reciprocal or interinsurance exchanges; domestic and
35 foreign fraternal benefit societies; domestic and
36 foreign title insurance companies; attorney's title
37 insurance companies; stipulated premium insurance
38 companies; nonprofit legal service corporations;
39 statewide mutual assessment companies; local mutual aid
40 associations; local mutual burial associations; exempt
41 associations under Article 14.17 of this code;
42 nonprofit hospital, medical, or dental service

1 corporations including companies subject to Chapter 20
2 of this code; county mutual insurance companies; and
3 farm mutual insurance companies. The term also
4 includes all agents of those companies and all
5 individuals, corporations, associations, partnerships,
6 and other natural or artificial persons that are
7 engaged in the business of insurance, that hold a
8 permit, certificate, registration, license, or other
9 authority under this code, or that are regulated by the
10 board.

11 Revisor's Note

12 (1) V.T.I.C. Article 1.10A, revised as this
13 chapter, permits the commissioner of insurance to issue
14 a cease and desist order that relates to the conduct of
15 specified authorized persons. As a result, the
16 definition of "authorized person," contained in Section
17 1(1), V.T.I.C. Article 1.10A, acts to substantively
18 limit the application of this chapter. The revised law
19 is drafted accordingly.

20 (2) Section 1(1), V.T.I.C. Article 1.10A, refers
21 to the State Board of Insurance. As explained in
22 Revisor's Note (2) to Section 83.001, the board has
23 been abolished. Throughout this chapter, references to
24 the board have been changed as appropriate.

25 (3) Section 1(1), V.T.I.C. Article 1.10A, refers
26 to "individuals, corporations, associations,
27 partnerships, and other natural or artificial persons."
28 The revised law substitutes the term "person" for the
29 quoted phrase for the reason stated in Revisor's Note
30 (1) to Section 83.001.

31 Revised Law

32 Sec. 83.003. RULES. The commissioner may adopt reasonable
33 rules to implement this chapter, including rules that provide, to
34 the extent possible, uniformity of procedures between this state
35 and other states, the United States, or the National Association of
36 Insurance Commissioners. (V.T.I.C. Art. 1.10A, Sec. 6.)

37 Source Law

38 Sec. 6. The State Board of Insurance may
39 promulgate reasonable rules and regulations to carry
40 out this article, including rules and regulations that

1 will provide to the extent possible uniformity of
2 procedures between this state and other states, the
3 United States, or the National Association of Insurance
4 Commissioners.

5 Revisor's Note

6 (1) Section 6, V.T.I.C. Article 1.10A, refers to
7 rules "promulgated" by the State Board of Insurance.
8 The revised law substitutes "adopt" for "promulgate"
9 throughout this chapter because the terms are
10 synonymous in context and the former is more commonly
11 used.

12 (2) Section 6, V.T.I.C. Article 1.10A, refers to
13 "rules and regulations." The reference to
14 "regulations" is omitted from the revised law for the
15 reason stated in Revisor's Note (4) to Section 83.001.

16 Revised Law

17 Sec. 83.004. PROCEEDINGS UNDER OTHER LAW. The commissioner
18 may proceed solely under this chapter or under this chapter in
19 conjunction with other applicable law. (V.T.I.C. Art. 1.10A, Sec.
20 7.)

21 Source Law

22 Sec. 7. The commissioner may proceed solely
23 under this article or under this article in conjunction
24 with other applicable law.

25 [Sections 83.005-83.050 reserved for expansion]

26 SUBCHAPTER B. ISSUANCE OF ORDERS

27 Revised Law

28 Sec. 83.051. AUTHORITY OF COMMISSIONER TO ISSUE ORDER.

29 (a) The commissioner ex parte may issue an emergency cease and
30 desist order if:

31 (1) the commissioner believes that:

32 (A) an authorized person engaging in the
33 business of insurance is:

34 (i) committing an unfair act; or

35 (ii) in a hazardous condition or a
36 hazardous financial condition under Section 19, Texas Health

1 Maintenance Organization Act (Article 20A.19, Vernon's Texas
2 Insurance Code), or Article 1.32, as determined by the
3 commissioner; or

4 (B) an unauthorized person:

5 (i) is engaging in the business of
6 insurance in violation of Chapter 101 or in violation of a rule
7 adopted under that chapter; or

8 (ii) is engaged in the business of
9 insurance in violation of Chapter 101 and is committing an unfair
10 act; and

11 (2) it appears to the commissioner that the alleged
12 conduct:

13 (A) is fraudulent;

14 (B) is hazardous or creates an immediate danger
15 to the public safety; or

16 (C) is causing or can be reasonably expected to
17 cause public injury that:

18 (i) is likely to occur at any moment;

19 (ii) is incapable of being repaired or
20 rectified; and

21 (iii) has or is likely to have influence
22 or effect.

23 (b) An order is final on the 31st day after the date it is
24 received, unless the affected person requests a hearing under
25 Section 83.053. (V.T.I.C. Art. 1.10A, Secs. 1(6), (7), (8), 2
26 (part), 3(j).)

27 Source Law

28 [Sec. 1]

29 (6) "Imminent" means likely to occur at
30 any moment.

31 (7) "Significant" means having or likely
32 to have influence or effect.

33 (8) "Irreparable" means incapable of being
34 repaired or rectified.

35 Sec. 2. The commissioner may issue an emergency
36 cease and desist order, ex parte, if:

37 (1) the commissioner believes:

38 (A) an authorized person engaging in
39 the business of insurance is committing [an unfair
40 method of competition or an unfair or deceptive act or
41 practice in violation of Article 21.21 or Article

1 21.21-2 of this code or in violation of a rule or
2 regulation promulgated under Article 21.21 or Article
3 21.21-2 of this code];

4 (B) an unauthorized person is
5 engaging in the business of insurance in violation of
6 Article 1.14-1 of this code or in violation of a rule
7 or regulation promulgated under Article 1.14-1 of this
8 code;

9 (C) an unauthorized person engaged
10 in the business of insurance acting in violation of
11 Article 1.14-1 of this code is committing an unfair
12 method of competition or an unfair or deceptive act or
13 practice in violation of Article 21.21 or Article
14 21.21-2 of this code or in violation of any rule or
15 regulation promulgated under Article 21.21 or Article
16 21.21-2 of this code; or

17 (D) an authorized person engaging in
18 the business of insurance is determined by the
19 commissioner to be in a hazardous condition or a
20 hazardous financial condition under Article 1.32 or
21 Article 20A.19 of this code; and

22 (2) it appears to the commissioner that
23 the alleged conduct is fraudulent or hazardous or
24 creates an immediate danger to the public safety or is
25 causing or can be reasonably expected to cause
26 significant, imminent, and irreparable public injury.

27 [Sec. 3]

28 (j) A cease and desist order is final 31 days
29 after the date it is received if the person affected by
30 the order does not request a hearing as provided by
31 Subsection (b) of this section.

32 Revisor's Note

33 (1) Sections 1(6), (7), and (8), V.T.I.C.
34 Article 1.10A, define "imminent," "significant," and
35 "irreparable." These terms are used only in Section 2
36 of the article, revised in this section. The revised
37 law omits the definitions and substitutes the short
38 defining phrases for the defined terms for clarity and
39 conciseness.

40 (2) Section 2, V.T.I.C. Article 1.10A, refers to
41 "an unfair method of competition or an unfair or
42 deceptive act or practice in violation of Article 21.21
43 or Article 21.21-2 of this code or in violation of a
44 rule or regulation promulgated under Article 21.21 or
45 Article 21.21-2 of this code." The revised law
46 substitutes "unfair act" for the quoted phrase because
47 that is the term defined by Section 83.001.

48 (3) Section 2, V.T.I.C. Article 1.10A, refers to

1 a "rule or regulation." The reference to "regulation"
2 is omitted from the revised law for the reason stated
3 in Revisor's Note (4) to Section 83.001.

4 Revised Law

5 Sec. 83.052. NOTICE. (a) On issuance of an order under
6 Section 83.051, the commissioner shall serve on the affected person
7 an order that:

8 (1) contains a statement of the charges; and

9 (2) requires the person immediately to cease and
10 desist from the acts, methods, or practices stated in the order.

11 (b) The commissioner shall serve the order by registered or
12 certified mail, return receipt requested, to the affected person's
13 last known address. (V.T.I.C. Art. 1.10A, Sec. 3(a).)

14 Source Law

15 Sec. 3. (a) On issuance of an emergency cease
16 and desist order under Section 2 of this article, the
17 commissioner shall serve on the person affected by the
18 order, by registered or certified mail, return receipt
19 requested, to the person's last known address, an order
20 that contains a statement of the charges and requires
21 the person immediately to cease and desist from the
22 acts, methods, or practices stated.

23 Revised Law

24 Sec. 83.053. REQUEST FOR HEARING. (a) A person affected by
25 an order is entitled to request a hearing to contest the order.

26 (b) The affected person must request the hearing not later
27 than the 30th day after the date on which the person receives the
28 order required by Section 83.052.

29 (c) A request to contest an order must:

30 (1) be in writing;

31 (2) be directed to the commissioner; and

32 (3) state the grounds for the request to set aside or
33 modify the order. (V.T.I.C. Art. 1.10A, Sec. 3(b).)

34 Source Law

35 (b) If a person affected by an emergency cease
36 and desist order seeks to contest that order, the
37 person may request a hearing before the commissioner.
38 The person affected must request the hearing not later
39 than the 30th day after the date on which the person
40 receives the order. A request to contest an order must
41 be in writing and directed to the commissioner and must

1 state the grounds for the request to set aside or
2 modify the order.

3 Revisor's Note

4 Section 3(b), V.T.I.C. Article 1.10A, refers to a
5 hearing "before the commissioner." The revised law
6 omits the reference to "before the commissioner"
7 because under V.T.I.C. Article 1.33B, revised in this
8 title as Chapter 40, the described hearing is held
9 before an administrative law judge of the State Office
10 of Administrative Hearings.

11 Revised Law

12 Sec. 83.054. HEARING. (a) On receiving a request for a
13 hearing under Section 83.053, the commissioner shall serve notice
14 of the time and place of the hearing.

15 (b) The hearing is subject to the procedures for contested
16 cases under Chapter 2001, Government Code. The hearing must be
17 held not later than the 10th day after the date the commissioner
18 receives the request for a hearing unless the parties mutually
19 agree to a later hearing date.

20 (c) At the hearing, the person requesting the hearing is
21 entitled to show cause why the order should not be affirmed.

22 (d) Following receipt of the proposal for decision from the
23 State Office of Administrative Hearings regarding the hearing, the
24 commissioner shall affirm, modify, or set aside in whole or in part
25 the order. (V.T.I.C. Art. 1.10A, Secs. 3(c), (e), (f).)

26 Source Law

27 (c) On receiving the request for a hearing, the
28 commissioner shall serve notice of the time and place
29 of the hearing at which the person requesting the
30 hearing shall have the opportunity to show cause why
31 the order should not be affirmed. The hearing is to be
32 held not later than the 10th day after the date the
33 commissioner receives the request for a hearing unless
34 the parties mutually agree to a later hearing date.

35 (e) The hearing on the order shall be conducted
36 according to the procedures for contested cases under
37 the Administrative Procedure and Texas Register Act
38 (Article 6252-13a, Vernon's Texas Civil Statutes).

39 (f) At the hearing, the commissioner shall
40 affirm, modify, or set aside in whole or in part the
41 emergency cease and desist order.

1 Revisor's Note

2 (1) Section 3(e), V.T.I.C. Article 1.10A, refers
3 to the Administrative Procedure and Texas Register Act
4 (Article 6252-13a, Vernon's Texas Civil Statutes).
5 The relevant portion of that article was codified in
6 1993 as Chapter 2001, Government Code, and the revised
7 law is drafted accordingly.

8 (2) Section 3(f), V.T.I.C. Article 1.10A, states
9 that the commissioner must take certain action at the
10 hearing. Under V.T.I.C. Article 1.33B(e), revised in
11 this title as Section 40.003, the commissioner is
12 required to take the action after receipt of a proposal
13 for decision from the State Office of Administrative
14 Hearings, and the revised law is drafted accordingly.

15 Revised Law

16 Sec. 83.055. EFFECT OF ORDER PENDING HEARING. Pending a
17 hearing under this subchapter, an order continues in effect unless
18 the order is stayed by the commissioner. (V.T.I.C. Art. 1.10A,
19 Sec. 3(d).)

20 Source Law

21 (d) Pending the hearing, an emergency cease and
22 desist order continues in full force and effect unless
23 the order is stayed by the commissioner.

24 Revisor's Note

25 Section 3(d), V.T.I.C. Article 1.10A, refers to
26 an order continuing "in full force and effect." The
27 revised law omits the reference to "full force" because
28 "in full force" is contained within the meaning of "in
29 effect."

30 [Sections 83.056-83.100 reserved for expansion]

31 SUBCHAPTER C. ENFORCEMENT

32 Revised Law

33 Sec. 83.101. AUTHORITY OF COMMISSIONER. If the commissioner
34 reasonably believes that a person has violated an order issued
35 under this chapter, the commissioner may:

1 (1) initiate proceedings under this subchapter to
2 impose an administrative penalty or direct restitution;

3 (2) refer the matter to the attorney general for
4 enforcement;

5 (3) initiate a proceeding to revoke the person's
6 certificate of authority; or

7 (4) pursue another action the commissioner considers
8 appropriate under applicable law. (V.T.I.C. Art. 1.10A, Sec.
9 4(a).)

10 Source Law

11 Sec. 4. (a) If the commissioner reasonably
12 believes that a person has violated a cease and desist
13 order issued under this article, the commissioner may:

14 (1) initiate administrative penalty
15 proceedings under this section;

16 (2) refer the matter to the attorney
17 general for enforcement;

18 (3) initiate proceedings to revoke the
19 certificate of authority of the person affected by a
20 ruling or action issued under this article; or

21 (4) pursue any other action the
22 commissioner deems appropriate under applicable law.

23 Revisor's Note

24 Section 4(d), V.T.I.C. Article 1.10A, permits the
25 commissioner to order restitution, as well as an
26 administrative penalty, for violation of an emergency
27 cease and desist order. The revised law adds a
28 reference to the commissioner's authority to order
29 restitution for the convenience of the reader.

30 Revised Law

31 Sec. 83.102. DETERMINATION OF VIOLATION. In determining
32 whether an order has been violated, the commissioner shall consider
33 the maintenance of procedures reasonably adopted to ensure
34 compliance with the order. (V.T.I.C. Art. 1.10A, Sec. 4(c)
35 (part).)

36 Source Law

37 (c) In determining whether a cease and desist
38 order has been violated, the commissioner shall
39 consider the maintenance of procedures reasonably
40 adopted to ensure compliance with the order. . . .

1 Revised Law

2 Sec. 83.103. HEARING ON ADMINISTRATIVE PENALTY. (a) If the
3 commissioner pursues action to impose an administrative penalty
4 under Section 83.101(1), the commissioner shall serve on the person
5 notice of the time and place of a hearing to be held not earlier
6 than the 21st day after the date the notice is received.

7 (b) The notice must contain a statement of the facts or
8 conduct alleged to violate the order.

9 (c) The commissioner shall serve the notice by registered or
10 certified mail, return receipt requested, to the person's last
11 known address.

12 (d) The hearing is subject to the procedures for contested
13 cases under Chapter 2001, Government Code. (V.T.I.C. Art. 1.10A,
14 Secs. 4(b), (c) (part).)

15 Source Law

16 (b) If the commissioner pursues action under
17 Subdivision (1) of Subsection (a) of this section, the
18 commissioner shall serve on the person, by registered
19 or certified mail, return receipt requested, to the
20 person's last known address, notice of the time and
21 place of a hearing to be held not earlier than the 21st
22 day after the date the notice is received. The notice
23 must contain a statement of the facts or conduct
24 alleged to be in violation of the cease and desist
25 order.

26 (c) . . . The hearing shall be conducted
27 according to the procedures for contested cases under
28 the Administrative Procedure and Texas Register Act
29 (Article 6252-13a, Vernon's Texas Civil Statutes).

30 Revisor's Note

31 Section 4(c), V.T.I.C. Article 1.10A, refers to
32 the Administrative Procedure and Texas Register Act
33 (Article 6252-13a, Vernon's Texas Civil Statutes). The
34 relevant portion of that article was codified in 1993
35 as Chapter 2001, Government Code, and the revised law
36 is drafted accordingly.

37 Revised Law

38 Sec. 83.104. IMPOSITION OF ADMINISTRATIVE PENALTY;
39 RESTITUTION. (a) After a hearing, if the commissioner determines
40 that an order has been violated, the commissioner may:

1 (1) impose an administrative penalty of \$25,000 for
2 each act of violation;

3 (2) direct the person against whom the order was
4 issued to make complete restitution to each Texas resident, Texas
5 insured, and entity operating in this state that is harmed by the
6 violation; or

7 (3) impose the penalty and direct restitution.

8 (b) A person directed to make restitution shall make the
9 restitution in the form and amount and within the period determined
10 by the commissioner. (V.T.I.C. Art. 1.10A, Sec. 4(d).)

11 Source Law

12 (d) After a hearing, if the commissioner
13 determines that a cease and desist order has been
14 violated, the commissioner may:

15 (1) impose a civil penalty of \$25,000 for
16 each act of violation;

17 (2) direct the person against whom the
18 order was issued to make complete restitution, in the
19 form and amount and within the period determined by the
20 commissioner, to all Texas residents, Texas insureds,
21 and entities operating in Texas damaged by the
22 violation or failure to comply; or

23 (3) both impose the penalty and direct
24 restitution.

25 Revisor's Note

26 Section 4(d), V.T.I.C. Article 1.10A, refers to a
27 "civil penalty." The revised law substitutes the term
28 "administrative penalty" for "civil penalty" to conform
29 to usage in other codes and for consistency of terms
30 within this subchapter.

31 Revised Law

32 Sec. 83.105. FAILURE TO PAY PENALTY. If a person fails to
33 pay a penalty assessed under this subchapter, the commissioner may:

34 (1) refer the matter to the attorney general for
35 enforcement; or

36 (2) cancel or revoke any permit, license, certificate
37 of authority, certificate of registration, or other authorization
38 issued under this code as provided by Chapter 82. (V.T.I.C.
39 Art. 1.10A, Sec. 5.)

1 Source Law

2 Sec. 5. If a person fails to pay a penalty
3 assessed under Section 4 of this article, the
4 commissioner may:

5 (1) refer the matter to the attorney
6 general for enforcement; or

7 (2) cancel or revoke any permit, license,
8 certificate of authority, certificate of registration,
9 or other authorization issued under this code as
10 provided by Subsection (a) of Section 7 of Article
11 1.10 of this code.

12 [Sections 83.106-83.150 reserved for expansion]

13 SUBCHAPTER D. JUDICIAL REVIEW; JUDICIAL ACTION

14 Revised Law

15 Sec. 83.151. APPEAL. A person affected by an order of the
16 commissioner under Section 83.051 or 83.104 may appeal the order by
17 filing suit in a district court in Travis County not later than the
18 20th day after the date of the order. (V.T.I.C. Art. 1.10A, Secs.
19 3(h) (part), 4(f) (part).)

20 Source Law

21 [Sec. 3]

22 (h) Persons affected by the board's order may
23 appeal that order by filing suit in a district court in
24 Travis County not later than the 20th day after the
25 date of the board's order. . . .

26 [Sec. 4]

27 (f) A person affected by the board's order may
28 appeal that order by filing suit in a district court in
29 Travis County not later than the 20th day after the
30 date of the board's order. . . .

31 Revised Law

32 Sec. 83.152. EFFECT OF PETITION ON ORDER OR RELATED
33 DECISION. A petition for appeal filed under Section 83.151 does
34 not stay or vacate an order or a decision made under Subchapter B
35 unless the court, after hearing, issues an order that specifically
36 stays or vacates the order or decision. (V.T.I.C. Art. 1.10A, Sec.
37 3(h) (part).)

38 Source Law

39 (h) . . . A petition for appeal filed in the
40 district court does not operate to stay or to vacate an
41 order or decision unless the court, after hearing,
42 issues an order that specifically stays or vacates the
43 order or decision.

1 Revised Law

2 Sec. 83.153. JUDICIAL ACTION FOR ENFORCEMENT OF ORDER;
3 ATTORNEY'S FEES. The department may recover reasonable attorney's
4 fees if judicial action is necessary to enforce an order issued
5 under Section 83.051 or 83.104. (V.T.I.C. Art. 1.10A, Secs. 3(i),
6 4(f) (part).)

7 Source Law

8 [Sec. 3]

9 (i) The board may recover reasonable attorney's
10 fees if judicial action is necessary for enforcement of
11 the order.

12 [Sec. 4]

13 (f) . . . The board may recover reasonable
14 attorney's fees if judicial action is necessary for
15 enforcement of the board's order.

16 CHAPTER 84. ADMINISTRATIVE PENALTIES

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 84.001. DEFINITION 128
19 Sec. 84.002. APPLICATION OF CHAPTER TO ADMINISTRATIVE
20 PENALTY 128
21 Sec. 84.003. APPLICATION OF ADMINISTRATIVE PROCEDURE
22 ACT 128

23 [Sections 84.004-84.020 reserved for expansion]

24 SUBCHAPTER B. IMPOSITION OF ADMINISTRATIVE PENALTY

25 Sec. 84.021. IMPOSITION OF PENALTY 129
26 Sec. 84.022. PENALTY AMOUNT 129

27 [Sections 84.023-84.040 reserved for expansion]

28 SUBCHAPTER C. PROCEDURAL REQUIREMENTS

29 Sec. 84.041. REPORT AND NOTICE OF VIOLATION AND
30 PENALTY 130
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5 CHAPTER 84. ADMINISTRATIVE PENALTIES

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Revised Law

8 Sec. 84.001. DEFINITION. In this chapter, "person" means an
9 individual, corporation, trust, partnership, association, or any
10 other legal entity. (V.T.I.C. Art. 1.10E, Sec. 1(1).)

11 Source Law

12 Art. 1.10E
13 Sec. 1. In this article:
14 (1) "Person" means an individual,
15 corporation, trust, partnership, association, or
16 any other legal entity.

17 Revised Law

18 Sec. 84.002. APPLICATION OF CHAPTER TO ADMINISTRATIVE
19 PENALTY. (a) This chapter applies to each monetary penalty the
20 department or commissioner imposes under this code or another
21 insurance law of this state.

22 (b) For purposes of this chapter, each of the monetary
23 penalties is an administrative penalty. (V.T.I.C. Art. 1.10E,
24 Secs. 1(2), 8.)

25 Source Law

26 Sec. 1. In this article:
27 . . .
28 (2) "Administrative penalty" means any
29 monetary penalty which may be imposed under this
30 article by the commissioner.

31 Sec. 8. This article applies to any monetary
32 penalty imposed by the department or commissioner under
33 this code or another insurance law of this state.

34 Revised Law

35 Sec. 84.003. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. A
36 proceeding under this chapter is subject to Chapter 2001,
37 Government Code. (V.T.I.C. Art. 1.10E, Sec. 7.)

38 Source Law

39 Sec. 7. All proceedings under this section are
40 subject to the Administrative Procedure and Texas

1 Register Act (Article 6252-13a, Vernon's Texas Civil
2 Statutes) and its subsequent amendments.

3 Revisor's Note

4 Section 7, V.T.I.C. Article 1.10E, refers to the
5 Administrative Procedure and Texas Register Act
6 (Article 6252-13a, Vernon's Texas Civil Statutes) and
7 its subsequent amendments. The pertinent parts of that
8 statute were codified in 1993 as Chapter 2001,
9 Government Code. The revised law is drafted
10 accordingly. The revised law omits the reference to
11 "subsequent amendments" because under Section 311.027,
12 Government Code (Code Construction Act), unless
13 expressly provided otherwise, a reference to a statute
14 applies to all reenactments, revisions, or amendments
15 of the statute.

16 [Sections 84.004-84.020 reserved for expansion]

17 SUBCHAPTER B. IMPOSITION OF ADMINISTRATIVE PENALTY

18 Revised Law

19 Sec. 84.021. IMPOSITION OF PENALTY. The commissioner may
20 impose an administrative penalty on a person licensed or regulated
21 under this code or another insurance law of this state who
22 violates:

- 23 (1) this code;
24 (2) another insurance law of this state; or
25 (3) a rule or order adopted under this code or another
26 insurance law of this state. (V.T.I.C. Art. 1.10E, Sec. 2 (part).)

27 Source Law

28 Sec. 2. . . . the commissioner may impose an
29 administrative penalty against a person licensed or
30 regulated under this code or another insurance law of
31 this state who violates this code, another insurance
32 law of this state, or a rule or order adopted under
33 this code or another insurance law of this state.

34 Revised Law

35 Sec. 84.022. PENALTY AMOUNT. (a) The penalty for a
36 violation may not exceed \$25,000, unless a greater or lesser
37 penalty is specified by this code or another insurance law of this

1 state.

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

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

4 (A) the nature, circumstances, extent, and
5 gravity of the violation; and

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

8 (2) the economic harm to the public interest or public
9 confidence caused by the violation;

10 (3) the history of previous violations;

11 (4) the amount necessary to deter a future violation;

12 (5) efforts to correct the violation;

13 (6) whether the violation was intentional; and

14 (7) any other matter that justice may require.

15 (V.T.I.C. Art. 1.10E, Sec. 3.)

16 Source Law

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

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

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

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

29 (3) the history of previous violations;

30 (4) the amount necessary to deter future
31 violations;

32 (5) efforts to correct the violation;

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

35 (7) any other matter that justice may
36 require.

37 [Sections 84.023-84.040 reserved for expansion]

38 SUBCHAPTER C. PROCEDURAL REQUIREMENTS

39 Revised Law

40 Sec. 84.041. REPORT AND NOTICE OF VIOLATION AND PENALTY.

41 (a) If the department determines that a violation has occurred,
42 the department may issue to the commissioner a report that states
43 the facts on which the determination is based and the department's

1 recommendation on the imposition of an administrative penalty,
2 including a recommendation on the amount of the penalty.

3 (b) Not later than the 14th day after the date the report is
4 issued, the department shall give written notice of the report to
5 the affected person. The notice may be given by certified mail.
6 The notice must:

7 (1) include:

8 (A) a brief summary of the alleged violation;
9 and

10 (B) a statement of the amount of the recommended
11 penalty; and

12 (2) inform the person that the person has a right to a
13 hearing on the occurrence of the violation, the amount of the
14 penalty, or both the occurrence of the violation and the amount of
15 the penalty. (V.T.I.C. Art. 1.10E, Secs. 2 (part), 4(a), (b).)

16 Source Law

17 Sec. 2. On written notification of a specific
18 violation

19 Sec. 4. (a) If the department determines that a
20 violation has occurred, the department may issue to the
21 commissioner a report that states the facts on which
22 the determination is based and the department's
23 recommendation on the imposition of a penalty,
24 including a recommendation on the amount of the
25 penalty.

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

36 Revised Law

37 Sec. 84.042. PENALTY TO BE PAID OR HEARING REQUESTED.

38 (a) Not later than the 20th day after the date the person receives
39 the notice, the person, in writing, may:

40 (1) accept the department's determination and
41 recommended administrative penalty; or

42 (2) request a hearing on the occurrence of the

1 violation, the amount of the penalty, or both the occurrence of the
2 violation and the amount of the penalty.

3 (b) If the person accepts the department's determination and
4 recommended penalty, the commissioner by order shall approve the
5 determination and require the person to pay the recommended
6 penalty. (V.T.I.C. Art. 1.10E, Secs. 4(c), (d).)

7 Source Law

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

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

19 Revised Law

20 Sec. 84.043. HEARING AND DECISION. (a) If the person
21 requests a hearing or fails to respond in a timely manner to the
22 notice, the department shall set a hearing and give notice of the
23 hearing to the person.

24 (b) An administrative law judge of the State Office of
25 Administrative Hearings shall conduct the hearing.

26 (c) The administrative law judge shall make findings of fact
27 and conclusions of law and promptly issue to the commissioner a
28 proposal for a decision about the occurrence of the violation and
29 the amount of a proposed administrative penalty. (V.T.I.C.
30 Art. 1.10E, Sec. 4(e) (part).)

31 Source Law

32 (e) If the person requests a hearing or fails to
33 respond timely to the notice, the department shall set
34 a hearing and give notice of the hearing to the person.
35 The hearing shall be held by an administrative law
36 judge of the State Office of Administrative Hearings.
37 The administrative law judge shall make findings of
38 fact and conclusions of law and promptly issue to the
39 commissioner a proposal for a decision about the
40 occurrence of the violation and the amount of a
41 proposed penalty. . . .

42 Revised Law

43 Sec. 84.044. DECISION BY COMMISSIONER. (a) Based on the

1 findings of fact, conclusions of law, and proposal for decision,
2 the commissioner by order may:

3 (1) find that a violation occurred and impose an
4 administrative penalty; or

5 (2) find that a violation did not occur.

6 (b) The notice of the commissioner's order must include a
7 statement of the right of the person to judicial review of the
8 order. (V.T.I.C. Art. 1.10E, Secs. 4(e) (part), (f).)

9 Source Law

10 (e) . . . Based on the findings of fact,
11 conclusions of law, and proposal for decision, the
12 commissioner by order may find that a violation has
13 occurred and impose a penalty or may find that no
14 violation occurred.

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

21 Revisor's Note

22 Section 4(f), V.T.I.C. Article 1.10E, provides
23 that notice of the commissioner's order is given under
24 the Administrative Procedure and Texas Register Act
25 (Article 6252-13a, Vernon's Texas Civil Statutes) and
26 its subsequent amendments. The revised law omits that
27 provision as unnecessary. The pertinent parts of that
28 statute were codified in 1993 as Chapter 2001,
29 Government Code. Section 84.003 of this chapter
30 provides that a proceeding under this chapter is
31 subject to Chapter 2001, Government Code. As a result,
32 the notice of the commissioner's order is required to
33 be given under Chapter 2001 without a statement in the
34 revised law to that effect.

35 Revised Law

36 Sec. 84.045. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
37 Not later than the 30th day after the date the commissioner's order
38 becomes final, the person shall:

39 (1) pay the administrative penalty; or

1 (2) file a petition for judicial review contesting the
2 occurrence of the violation or the amount of the penalty, or both,
3 and either pay or not pay the penalty. (V.T.I.C. Art. 1.10E, Sec.
4 4(g).)

5 Source Law

6 (g) Within 30 days after the date the
7 commissioner's order is final as provided by Section
8 16(c), Administrative Procedure and Texas Register Act
9 (Article 6252-13a, Vernon's Texas Civil Statutes), and
10 its subsequent amendments, the person shall:

- 11 (1) pay the amount of the penalty;
12 (2) pay the amount of the penalty and file
13 a petition for judicial review contesting the
14 occurrence of the violation, the amount of the penalty,
15 or both; or
16 (3) without paying the amount of the
17 penalty, file a petition for judicial review contesting
18 the occurrence of the violation, the amount of the
19 penalty, or both the occurrence of the violation and
20 the amount of the penalty.

21 Revisor's Note

22 Section 4(g), V.T.I.C. Article 1.10E, refers to
23 the time at which the commissioner's order becomes
24 final under Section 16(c), Administrative Procedure and
25 Texas Register Act (Article 6252-13a, Vernon's Texas
26 Civil Statutes), and its subsequent amendments. The
27 revised law omits that reference as unnecessary. The
28 pertinent parts of the Administrative Procedure and
29 Texas Register Act were codified in 1993 as Chapter
30 2001, Government Code. Section 84.003 of this chapter
31 provides that a proceeding under this chapter is
32 subject to Chapter 2001, Government Code. As a result,
33 the commissioner's order becomes final at the time
34 provided by Chapter 2001 without a statement in the
35 revised law to that effect.

36 Revised Law

37 Sec. 84.046. STAY OF ENFORCEMENT OF PENALTY. (a) A person
38 who files a petition for judicial review without paying the
39 administrative penalty may, within the 30-day period prescribed by
40 Section 84.045:

- 41 (1) stay enforcement of the penalty by:

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

3 (B) giving the court a supersedeas bond approved
4 by the court that:

5 (i) is for the amount of the penalty; and

6 (ii) is effective until all judicial
7 review of the board's order is final; or

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

10 (A) filing with the court an affidavit stating
11 that the person is financially unable to pay the penalty and is
12 financially unable to give the supersedeas bond; and

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

15 (b) If the commissioner receives a copy of an affidavit
16 under Subsection (a)(2), the commissioner may file with the court,
17 not later than the fifth day after the date the copy is received, a
18 contest to the affidavit. The court shall hold a hearing on the
19 facts alleged in the affidavit as soon as practicable and shall
20 stay the enforcement of the penalty on finding that the alleged
21 facts are true. The person who files an affidavit has the burden
22 of proving that the person is financially unable to pay the penalty
23 and to give a supersedeas bond. (V.T.I.C. Art. 1.10E, Secs. 4(h),
24 (i).)

25 Source Law

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

28 (1) stay enforcement of the penalty by:

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

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

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

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

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

43 (i) If the commissioner receives a copy of an

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

11 Revised Law

12 Sec. 84.047. COLLECTION OF PENALTY. If the person does not
13 pay the administrative penalty and the enforcement of the penalty
14 is not stayed, the commissioner may refer the matter to the
15 attorney general for collection of the penalty. (V.T.I.C.
16 Art. 1.10E, Sec. 4(j).)

17 Source Law

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

23 Revised Law

24 Sec. 84.048. STANDARD OF JUDICIAL REVIEW. The order of the
25 commissioner is subject to judicial review under the substantial
26 evidence rule. (V.T.I.C. Art. 1.10E, Sec. 5(a).)

27 Source Law

28 Sec. 5. (a) Judicial review of the order of
29 the commissioner:

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

34 (2) is under the substantial evidence
35 rule.

36 Revisor's Note

37 Section 5(a), V.T.I.C. Article 1.10E, provides
38 that judicial review is instituted as provided by
39 Section 19, Administrative Procedure and Texas Register
40 Act (Article 6252-13a, Vernon's Texas Civil Statutes).
41 The revised law omits that provision as unnecessary.
42 The pertinent parts of the Administrative Procedure and
43 Texas Register Act were codified in 1993 as Chapter
44 2001, Government Code. Section 84.003 of this chapter

1 provides that a proceeding under this chapter is
2 subject to Chapter 2001, Government Code. As a result,
3 judicial review must be instituted as provided by
4 Chapter 2001 without a statement in the revised law to
5 that effect.

6 Revised Law

7 Sec. 84.049. DECISION BY COURT. (a) If the court sustains
8 the finding that a violation occurred, the court may uphold or
9 reduce the amount of the administrative penalty and order the
10 person to pay the full or reduced amount of the penalty.

11 (b) If the court does not sustain the finding that a
12 violation occurred, the court shall order that a penalty is not
13 owed. (V.T.I.C. Art. 1.10E, Sec. 5(b).)

14 Source Law

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

21 Revised Law

22 Sec. 84.050. REMITTANCE OF PENALTY AND INTEREST. (a) If
23 the person paid the administrative penalty and if the amount of the
24 penalty is reduced or the penalty is not upheld by the court, the
25 court shall order, when the judgment becomes final, that the
26 appropriate amount plus accrued interest be remitted to the person.

27 (b) The interest accrues at the rate charged on loans to
28 depository institutions by the New York Federal Reserve Bank.

29 (c) The interest shall be paid for the period beginning on
30 the date the penalty is paid and ending on the date the penalty is
31 remitted. (V.T.I.C. Art. 1.10E, Sec. 5(c) (part).)

32 Source Law

33 (c) When the judgment of the court becomes
34 final, the court shall proceed under this subsection.
35 If the person paid the amount of the penalty and if
36 that amount is reduced or is not upheld by the court,
37 the court shall order that the appropriate amount plus
38 accrued interest be remitted to the person. The rate
39 of the interest is the rate charged on loans to
40 depository institutions by the New York Federal Reserve
41 Bank, and the interest shall be paid for the period

1 beginning on the date the penalty was paid and ending
2 on the date the penalty is remitted. . . .

3 Revised Law

4 Sec. 84.051. RELEASE OF BOND. (a) If the person gave a
5 supersedeas bond and if the administrative penalty is not upheld by
6 the court, the court shall order, when the judgment becomes final,
7 the release of the bond.

8 (b) If the person gave a supersedeas bond and if the amount
9 of the penalty is reduced, the court shall order the release of the
10 bond after the person pays the reduced amount. (V.T.I.C.
11 Art. 1.10E, Sec. 5(c) (part).)

12 Source Law

13 (c) . . . If the person gave a supersedeas bond
14 and if the amount of the penalty is not upheld by the
15 court, the court shall order the release of the bond.
16 If the person gave a supersedeas bond and if the amount
17 of the penalty is reduced, the court shall order the
18 release of the bond after the person pays the amount.

19 Revisor's Note
20 (End of Chapter)

21 The revised law omits Section 6, V.T.I.C. Article
22 1.10E, as unnecessary. That section requires an
23 administrative penalty to be deposited in the general
24 revenue fund. Section 404.094, Government Code (State
25 Funds Reform Act), requires all money, including the
26 referenced penalty, collected or received by a state
27 agency to be deposited to the credit of the general
28 revenue fund. It is unnecessary to repeat that
29 requirement in this chapter. The omitted law reads:

30 Sec. 6. A penalty collected under
31 this section shall be remitted to the
32 comptroller for deposit in the general
33 revenue fund.

34 CHAPTER 85. GENERAL CRIMINAL ENFORCEMENT

35 SUBCHAPTER A. GENERAL PROVISIONS

36 Sec. 85.001. VIOLATION OF CERTAIN LAWS FOR WHICH PUNISHMENT

37 IS NOT PROVIDED; OFFENSE 139

38 [Sections 85.002-85.050 reserved for expansion]

39 SUBCHAPTER B. PROSECUTION OF OFFENSES

1 Sec. 85.051. VENUE FOR PROSECUTION 139
2 Sec. 85.052. ELECTION OF PROSECUTION 140

3 CHAPTER 85. GENERAL CRIMINAL ENFORCEMENT

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Revised Law

6 Sec. 85.001. VIOLATION OF CERTAIN LAWS FOR WHICH PUNISHMENT
7 IS NOT PROVIDED; OFFENSE. (a) A person commits an offense if the
8 person violates a law of this state regulating the business of
9 life, fire, or marine insurance.

10 (b) Unless another penalty is provided by law, an offense
11 under this section is a misdemeanor punishable by a fine of not
12 less than \$500 or more than \$1,000. (V.T.I.C. Art. 21.51.)

13 Source Law

14 Art. 21.51. Whoever violates any provision of
15 the laws of this State regulating the business of life,
16 fire, or marine insurance, shall, where the punishment
17 is not otherwise provided for, be fined not less than
18 five hundred not [nor] more than one thousand dollars.

19 Revisor's Note

20 V.T.I.C. Article 21.51 provides a fine for
21 violation of specified law. The revised law speaks in
22 terms of an offense punishable by a fine to conform to
23 the Penal Code and other criminal statutes of this
24 state.

25 [Sections 85.002-85.050 reserved for expansion]

26 SUBCHAPTER B. PROSECUTION OF OFFENSES

27 Revised Law

28 Sec. 85.051. VENUE FOR PROSECUTION. (a) A person who
29 violates the Penal Code or a penal provision of this code while
30 engaged in the business of insurance may be prosecuted in:

31 (1) Travis County; or

32 (2) a county in which prosecution is authorized under
33 the Code of Criminal Procedure.

34 (b) A law limiting regulation by the department under this
35 code or another insurance law of this state does not restrict the
36 application of this section.

1 (c) This section controls if there is a conflict or
2 ambiguity between this section and another provision of this code
3 or another insurance law of this state. (V.T.I.C. Art. 21.79B.)

4 Source Law

5 Art. 21.79B. (a) A person who violates a penal
6 provision of this code or a provision of the Penal Code
7 while engaged in the business of insurance may be
8 prosecuted in a court of competent jurisdiction in
9 Travis County or in a county in which prosecution is
10 authorized under the Code of Criminal Procedure.

11 (b) A person is "engaged in the business of
12 insurance" for purposes of this article if the person
13 performs any act subject to regulation by the
14 department.

15 (c) This article applies to each person engaged
16 in the business of insurance. An exemption, provision
17 of inapplicability or applicability, or other provision
18 limiting regulation by the board under this code or the
19 other insurance laws of this state does not restrict
20 the application of this article. In the event of a
21 conflict or ambiguity between this article and any
22 other article of this code or the other insurance laws
23 of this state, this article controls.

24 Revisor's Note

25 Subsection (a), V.T.I.C. Article 21.79B, refers
26 to prosecution "in a court of competent jurisdiction."
27 The revised law omits the quoted language as
28 unnecessary because a person may only be prosecuted in
29 a court, and the Texas Constitution and the general
30 laws of criminal jurisdiction determine which courts
31 have jurisdiction over the matter.

32 Revised Law

33 Sec. 85.052. ELECTION OF PROSECUTION. A person who commits
34 an offense under this code may be prosecuted under this code or any
35 other law of this state under which the person may be prosecuted.
36 (V.T.I.C. Art. 21.79C.)

37 Source Law

38 Art. 21.79C. A person who commits an offense
39 under this code may be prosecuted under this code or
40 any other law of this state under which he may be
41 prosecuted.

42 [Chapters 86-100 reserved for expansion]

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14 CHAPTER 101. UNAUTHORIZED INSURANCE

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Revised Law

17 Sec. 101.001. STATE POLICY AND PURPOSE. (a) It is a state
18 concern that many residents of this state hold insurance policies
19 issued by persons or insurers who are not authorized to do
20 insurance business in this state and who are not qualified as
21 eligible surplus lines insurers under Article 1.14-2. These
22 residents face often insurmountable obstacles in asserting legal
23 rights under the policies in foreign forums under unfamiliar laws
24 and rules of practice.

25 (b) It is the policy of this state to protect residents
26 against acts by a person or insurer who is not authorized to do
27 insurance business in this state by:

- 28 (1) maintaining fair and honest insurance markets;
29 (2) protecting the premium tax revenues of this state;
30 (3) protecting authorized persons and insurers, who
31 are subject to strict regulation, from unfair competition by
32 unauthorized persons and insurers; and
33 (4) protecting against evasion of the insurance
34 regulatory laws of this state.

1 (c) The purpose of this chapter is to subject certain
2 insurers and other persons to the jurisdiction of:

3 (1) the commissioner and proceedings before the
4 commissioner; and

5 (2) the courts of this state in suits by or on behalf
6 of the state or an insured or beneficiary under an insurance
7 contract. (V.T.I.C. Art. 1.14-1, Sec. 1 (part).)

8 Source Law

9 Art. 1.14-1

10 Sec. 1. The purpose of this Article is to
11 subject certain persons and insurers to the
12 jurisdiction of the State Board of Insurance, of
13 proceedings before the Board, and of the courts of this
14 state in suits by or on behalf of the state and
15 insureds or beneficiaries under insurance contracts.
16 The Legislature declares that it is a subject of
17 concern that many residents of this state hold policies
18 of insurance issued by persons and insurers neither
19 authorized to do insurance business in this state nor
20 qualified as eligible surplus lines insurers as defined
21 in Article 1.14-2, thus presenting to such residents
22 the often insuperable obstacle of asserting their legal
23 rights under such policies in forums foreign to them
24 under laws and rules of practice with which they are
25 not familiar. The Legislature declares that it is also
26 concerned with the protection of residents of this
27 state against acts by persons and insurers not
28 authorized to do an insurance business in this state by
29 the maintenance of fair and honest insurance markets,
30 by protecting the premium tax revenues of this state,
31 by protecting authorized persons and insurers, which
32 are subject to strict regulation, from unfair
33 competition by unauthorized persons and insurers and by
34 protecting against the evasion of the insurance
35 regulatory laws of this state. . . .

36 Revisor's Note

37 (1) Section 1, V.T.I.C. Article 1.14-1, refers
38 to the State Board of Insurance. Chapter 685, Acts of
39 the 73rd Legislature, Regular Session, 1993, abolished
40 the board and transferred its functions to the
41 commissioner of insurance and the Texas Department of
42 Insurance. Throughout this chapter, references to the
43 board have been changed as appropriate.

44 (2) Section 1, V.T.I.C. Article 1.14-1, refers
45 to methods of substituted service of process formerly
46 contained in Sections 4, 5, and 6 of that article.
47 Substituted service is now governed by V.T.I.C. Article

1 1.36. Former Sections 4, 5, and 6, V.T.I.C. Article
2 1.14-1, were repealed by Chapter 46, Acts of the 70th
3 Legislature, Regular Session, 1987, the law under which
4 Article 1.36 was enacted. Accordingly, the reference
5 to substituted service is omitted from the revised law.
6 Section 1, V.T.I.C. Article 1.14-1, also generally
7 describes several provisions of the article that
8 follow. This language is omitted as unnecessary.
9 Finally, Section 1, V.T.I.C. Article 1.14-1, references
10 the power granted by federal law under which the
11 article was enacted. This reference is omitted as
12 executed. The omitted law reads:

13 Sec. 1. . . . In furtherance of
14 such state interest, the Legislature herein
15 provides methods for substituted service of
16 process upon such persons or insurers in
17 any proceeding, suit or action in any court
18 and substitute service of any notice,
19 order, pleading or process upon such
20 persons or insurers in any proceeding
21 before the State Board of Insurance to
22 enforce or effect full compliance with the
23 insurance and tax statutes of this state,
24 and declares in so doing it exercises its
25 power to protect residents of this state
26 and to define what constitutes doing an
27 insurance business in this state, and also
28 exercises powers and privileges available
29 to this state by virtue of P.L. 79-15
30 (1945), (Chapter 20, 1st Sess., S. 340), 59
31 Stats. 33, as amended, which declares that
32 the business of insurance and every person
33 engaged therein shall be subject to the
34 laws of the several states.

35 Revised Law

36 Sec. 101.002. DEFINITIONS. In this chapter:

37 (1) "Insurer" includes:

38 (A) a corporation, association, partnership, or
39 individual engaged as a principal in the business of insurance;

40 (B) an interinsurance exchange or mutual benefit
41 society; or

42 (C) an insurance exchange or syndicate.

43 (2) "Unfair act" means an unfair method of competition
44 or an unfair or deceptive act or practice as defined under Article

1 21.21 or a rule adopted under that article. (V.T.I.C. Art. 1.14-1,
2 Secs. 2(a) (part), 3(e) (part), 3A(a) (part).)

3 Source Law

4 Sec. 2. (a) . . . Unless otherwise indicated,
5 the term insurer as used in this Article includes all
6 corporations, associations, partnerships and
7 individuals engaged as principals in the business of
8 insurance and also includes interinsurance exchanges,
9 mutual benefit societies, and insurance exchanges and
10 syndicates

11 [Sec. 3]

12 (e) . . . any unfair method of competition or
13 any unfair or deceptive act or practice as defined by
14 Article 21.21 of this code or any rule or regulation
15 promulgated under Article 21.21 of this code

16 Sec. 3A. (a) . . . an unfair method of
17 competition or an unfair or deceptive act or practice
18 as defined by Article 21.21 of this code or a rule or
19 regulation promulgated under Article 21.21 of this
20 code

21 Revisor's Note

22 (1) Section 2(a), V.T.I.C. Article 1.14-1,
23 refers to rules "promulgated" by the State Board of
24 Insurance. The revised law substitutes "adopted" for
25 "promulgated" because the terms are synonymous in
26 context and the former is more commonly used. The
27 revised law also makes comparable substitutions
28 throughout this chapter as appropriate.

29 (2) The definition of "unfair act" is derived
30 from Sections 3(e) and 3A(a), V.T.I.C. Article 1.14-1.
31 That law has been revised as a definition for drafting
32 convenience and to eliminate frequent, unnecessary
33 repetition of the substance of the definition.
34 Sections 3(e) and 3A(a) refer to a "rule or
35 regulation." The reference to "regulation" is omitted
36 from the definition because under Section 311.005(5),
37 Government Code (Code Construction Act), a rule is
38 defined to include a regulation. That definition
39 applies to the revised law.

40 Revised Law

41 Sec. 101.003. INSURANCE EXCHANGES AND SYNDICATES; RULES.

1 The commissioner shall adopt rules defining insurance exchanges and
2 syndicates that are insurers for purposes of Section 101.002.
3 (V.T.I.C. Art. 1.14-1, Secs. 2(a) (part), (c).)

4 Source Law

5 Sec. 2. (a) . . . Unless otherwise indicated,
6 the term insurer as used in this Article includes . . .
7 insurance exchanges and syndicates as defined by rules
8 promulgated by the State Board of Insurance.

9 (c) The State Board of Insurance shall
10 promulgate rules defining insurance exchanges and
11 syndicates covered by Subsection (a) of this section.

12 Revised Law

13 Sec. 101.004. UNCONSTITUTIONAL APPLICATION PROHIBITED;
14 NOTICE TO COMMISSIONER. (a) Subject to Subsection (b), this
15 chapter does not apply to an insurer or other person to whom, under
16 the constitution or statutes of the United States or the
17 constitution of this state, it may not apply.

18 (b) Before commencing operations, an insurer or other person
19 claiming an exemption described by Subsection (a) must file with
20 the commissioner:

21 (1) notice of the claim; and

22 (2) documents supporting the claim. (V.T.I.C.

23 Art. 1.14-1, Sec. 14.)

24 Source Law

25 Sec. 14. This Article and law does not apply to
26 any insurer or other person to whom, under the
27 Constitution or statutes of the United States or the
28 Constitution of the State of Texas, it cannot validly
29 apply; provided, such insurer or other person claiming
30 such exemption files notice with the Commissioner of
31 the claim and documents supporting it before commencing
32 operations.

33 Revisor's Note

34 Section 14, V.T.I.C. Article 1.14-1, states that
35 the article does not apply to a person to whom it may
36 not "validly" apply under the constitution or statutes
37 of the United States or the Texas Constitution. The
38 revised law omits "validly" as unnecessary because the
39 word does not add to the clear meaning of the law.

40 [Sections 101.005-101.050 reserved for expansion]

1 SUBCHAPTER B. BUSINESS OF INSURANCE; EXCEPTIONS

2 Revised Law

3 Sec. 101.051. CONDUCT THAT CONSTITUTES THE BUSINESS OF
4 INSURANCE. (a) In this section, "medical expense" includes
5 surgical, chiropractic, physical therapy, speech pathology,
6 audiology, professional mental health, dental, hospital, or
7 optometric expenses.

8 (b) The following acts in this state constitute the business
9 of insurance in this state:

10 (1) making or proposing to make, as an insurer, an
11 insurance contract;

12 (2) making or proposing to make, as guarantor or
13 surety, a guaranty or suretyship contract as a vocation and not
14 merely incidental to another legitimate business or activity of
15 the guarantor or surety;

16 (3) taking or receiving an insurance application;

17 (4) receiving or collecting any consideration for
18 insurance, including:

19 (A) a premium;

20 (B) a commission;

21 (C) a membership fee;

22 (D) an assessment; or

23 (E) dues;

24 (5) issuing or delivering an insurance contract to:

25 (A) a resident of this state; or

26 (B) a person authorized to do business in this
27 state;

28 (6) directly or indirectly acting as an agent for or
29 otherwise representing or assisting an insurer or other person in:

30 (A) soliciting, negotiating, procuring, or
31 effectuating insurance or a renewal of insurance;

32 (B) disseminating information relating to
33 coverage or rates;

34 (C) forwarding an insurance application;

1 (D) delivering an insurance policy or contract;
2 (E) inspecting a risk;
3 (F) setting a rate;
4 (G) investigating or adjusting a claim or loss;
5 (H) transacting a matter after the effectuation
6 of the contract that arises out of the contract; or

7 (I) representing or assisting an insurer or
8 other person in any other manner in the transaction of insurance
9 with respect to a subject of insurance that is resident, located,
10 or to be performed in this state;

11 (7) contracting to provide in this state
12 indemnification or expense reimbursement for a medical expense by
13 direct payment, reimbursement, or otherwise to a person domiciled
14 in this state or for a risk located in this state, whether as an
15 insurer, agent, administrator, trust, or funding mechanism or by
16 another method;

17 (8) doing any kind of insurance business specifically
18 recognized as constituting insurance business within the meaning of
19 statutes relating to insurance;

20 (9) doing or proposing to do any insurance business
21 that is in substance equivalent to conduct described by
22 Subdivisions (1)-(8) in a manner designed to evade statutes
23 relating to insurance; or

24 (10) any other transaction of business in this state
25 by an insurer. (V.T.I.C. Art. 1.14-1, Sec. 2(a) (part).)

26 Source Law

27 Sec. 2. (a) Any of the following acts in this
28 state . . . is defined to be doing an insurance
29 business in this state. . . .

30 1. The making of or proposing to make, as
31 an insurer, an insurance contract.

32 2. The making of or proposing to make, as
33 guarantor or surety, any contract of guaranty or
34 suretyship as a vocation and not merely incidental to
35 any other legitimate business or activity of the
36 guarantor or surety.

37 3. The taking or receiving of any
38 application for insurance.

39 4. The receiving or collection of any
40 premium, commission, membership fees, assessments, dues
41 or other consideration for any insurance or any part
42 thereof.

1 5. The issuance or delivery of contracts
2 of insurance to residents of this state or to persons
3 authorized to do business in this state.

4 6. Directly or indirectly acting as an
5 agent for or otherwise representing or aiding on behalf
6 of another any person or insurer in the solicitation,
7 negotiation, procurement or effectuation of insurance
8 or renewals thereof or in the dissemination of
9 information as to coverage or rates, or forwarding of
10 applications, or delivery of policies or contracts, or
11 inspection of risks, a fixing of rates or investigation
12 or adjustment of claims or losses or in the transaction
13 of matters subsequent to effectuation of the contract
14 and arising out of it, or in any other manner
15 representing or assisting a person or insurer in the
16 transaction of insurance with respect to subjects of
17 insurance resident, located or to be performed in this
18 state. . . .

19 7. Contracting to provide indemnification
20 or expense reimbursement in this state to persons
21 domiciled in this state or for risks located in this
22 state, whether as an insurer, agent, administrator,
23 trust, funding mechanism, or by any other method, for
24 any type of medical expenses including, but not limited
25 to surgical, chiropractic, physical therapy, speech
26 pathology, audiology, professional mental health,
27 dental, hospital, or optometric expenses, whether this
28 coverage is by direct payment, reimbursement, or
29 otherwise. . . .

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

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

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

40 . . .

41 Revisor's Note

42 Subdivision 7, Section 2(a), V.T.I.C. Article
43 1.14-1, refers to expenses "including, but not limited
44 to" certain expenses. "[B]ut not limited to" is
45 omitted as unnecessary because Section 311.005(13),
46 Government Code (Code Construction Act), and Section
47 312.011(19), Government Code, provide that "includes"
48 and "including" are terms of enlargement and not of
49 limitation and do not create a presumption that
50 components not expressed are excluded.

51 Revised Law

52 Sec. 101.052. ADVERTISING RELATING TO MEDICARE SUPPLEMENT
53 POLICIES. With respect to a medicare supplement policy authorized

1 under Article 3.74, the business of insurance in this state
2 includes using, creating, publishing, mailing, or disseminating in
3 this state an advertisement relating to an act that constitutes the
4 business of insurance under Section 101.051 unless the
5 advertisement is used, created, published, mailed, or disseminated
6 on behalf of an insurer or other person who:

7 (1) is authorized under this code to engage in the
8 business of insurance in this state;

9 (2) has actual knowledge of the content of the
10 advertisement;

11 (3) has authorized the advertisement to be used,
12 created, published, mailed, or disseminated on that insurer's or
13 other person's behalf; and

14 (4) is clearly identified by name in the advertisement
15 as the sponsor of the advertisement. (V.T.I.C. Art. 1.14-1, Sec.
16 2(a) (part).)

17 Source Law

18 Sec. 2. (a) Any of the following acts in this
19 state . . . is defined to be doing an insurance
20 business in this state. . . .

21 . . .
22 11. With respect to policies authorized
23 under Article 3.74 of this code, the use, creation,
24 publication, mailing, or dissemination of an
25 advertisement relating to any of the acts defined in
26 this subsection to be doing an insurance business
27 unless:

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

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

41 Revisor's Note

42 (1) Subdivision 11, Section 2(a), V.T.I.C.
43 Article 1.14-1, refers to "policies authorized under
44 Article 3.74 of this code." Article 3.74, Insurance
45 Code, establishes minimum standards for medicare

1 supplement policies, and the revised law adds a
2 reference to medicare supplement policies for the
3 convenience of the reader.

4 (2) Subdivision 11, Section 2(a), V.T.I.C.
5 Article 1.14-1, refers to a person "authorized under
6 this title to engage in the business of insurance."
7 The Insurance Code of 1955 is not part of any title of
8 law and, as it exists before this revision, is not
9 divided into titles. Provisions under which a person
10 may become authorized to engage in the business of
11 insurance are included throughout the Insurance Code.
12 As a result, the reference to "this title" is revised
13 as "this code."

14 Revised Law

15 Sec. 101.053. APPLICATION OF SUBCHAPTER. (a) Sections
16 101.051 and 101.052 apply to an act whether performed by mail or
17 otherwise. Venue for an act performed by mail is at the place
18 where the matter transmitted by mail is delivered and takes effect.

19 (b) Sections 101.051 and 101.052 do not apply to:

20 (1) the lawful transaction of surplus lines insurance
21 under Article 1.14-2;

22 (2) the lawful transaction of reinsurance by insurers;

23 (3) a transaction in this state that:

24 (A) involves a policy that:

25 (i) is lawfully solicited, written, and
26 delivered outside this state; and

27 (ii) covers, at the time the policy is
28 issued, only subjects of insurance that are not resident, located,
29 or expressly to be performed in this state; and

30 (B) takes place after the policy is issued;

31 (4) a transaction:

32 (A) that involves an insurance contract
33 independently procured through negotiations occurring entirely
34 outside this state;

1 (B) that is reported; and
2 (C) on which premium tax is paid in accordance
3 with this chapter;

4 (5) a transaction in this state that:

5 (A) involves group life, health, or accident
6 insurance, other than credit insurance, and group annuities in
7 which the master policy for the group was lawfully issued and
8 delivered in a state in which the insurer or other person was
9 authorized to do insurance business; and

10 (B) is authorized by a statute of this state;

11 (6) a management or accounting activity in this state
12 on behalf of a nonadmitted captive insurance company that insures
13 solely directors' and officers' liability insurance for:

14 (A) the directors and officers of the company's
15 parent and affiliated companies;

16 (B) the risks of the company's parent and
17 affiliated companies; or

18 (C) both the individuals and entities described
19 by Paragraphs (A) and (B);

20 (7) the issuance of a qualified charitable gift
21 annuity under Chapter 102; or

22 (8) a lawful transaction by a servicing company of the
23 Texas workers' compensation employers' rejected risk fund under
24 Section 4.08, Article 5.76-2, as that article existed before its
25 repeal.

26 (c) Subsection (b)(6) does not exempt an insured or insurer
27 from the payment of an applicable tax on premium or from another
28 applicable provision of this code. (V.T.I.C. Art. 1.14-1, Secs.
29 2(a) (part), (b).)

30 Source Law

31 Sec. 2. (a) Any of the following acts in this
32 state effected by mail or otherwise is defined to be
33 doing an insurance business in this state. The venue
34 of an act committed by mail is at the point where the
35 matter transmitted by mail is delivered and takes
36 effect. . . .

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

1 (1) the lawful transaction of surplus
2 lines insurance pursuant to Article 1.14-2;

3 (2) the lawful transaction of reinsurance
4 by insurers;

5 (3) transactions in this state involving a
6 policy lawfully solicited, written, and delivered
7 outside of this state covering only subjects of
8 insurance not resident, located, or expressly to be
9 performed in this state at the time of issuance, and
10 which transactions are subsequent to the issuance of
11 such policy;

12 (4) transactions involving contracts of
13 insurance independently procured through negotiations
14 occurring entirely outside of this state which are
15 reported and on which premium tax is paid in accordance
16 with this Article;

17 (5) transactions in this state involving
18 group life, health or accident insurance (other than
19 credit insurance) and group annuities where the master
20 policy of such groups was lawfully issued and delivered
21 in a state in which the company was authorized to do an
22 insurance business and such transactions are authorized
23 by other statutes of this state;

24 (6) lawful transactions by servicing
25 companies of the Texas workers' compensation employers'
26 rejected risk fund pursuant to Section 4.08, Article
27 5.76-2;

28 (7) management and accounting activities
29 in this state on behalf of a non-admitted captive
30 insurance company that insures solely directors' and
31 officers' liability insurance for the directors and
32 officers of its parent and affiliated companies and/or
33 the risks of its parent and affiliated companies;
34 provided, that this provision does not exempt any
35 insured or insurer from the payment of any applicable
36 tax on premiums or any other applicable provision in
37 this code; or

38 (8) the issuance of qualified charitable
39 gift annuities under Article 1.14-1A of this code.

40 Revisor's Note

41 (1) Section 2(b)(5), V.T.I.C. Article 1.14-1,
42 refers to a "company" authorized to do insurance
43 business. The revised law substitutes "insurer or
44 other person" for "company" for consistency with usage
45 of terms throughout this subchapter.

46 (2) Section 2(b)(6), V.T.I.C. Article 1.14-1,
47 refers to servicing companies of the Texas workers'
48 compensation employers' rejected risk fund under
49 Section 4.08, V.T.I.C. Article 5.76-2. That article
50 was repealed by Chapter 594, Acts of the 75th
51 Legislature, Regular Session, 1997. The revised law
52 adds a reference to the repeal of the article but
53 continues the reference to servicing companies because

1 transactions by those companies still occur.

2 Revised Law

3 Sec. 101.054. EXCEPTION; FULL-TIME SALARIED EMPLOYEE.

4 Section 101.051(b)(6) does not prohibit a full-time salaried
5 employee of a corporate insured from acting as an insurance manager
6 or buyer in placing insurance on behalf of:

7 (1) the employee's employer; or

8 (2) a parent or affiliated company of the employer.

9 (V.T.I.C. Art. 1.14-1, Sec. 2(a) (part).)

10 Source Law

11 Sec. 2. (a) . . .

12 . . .
13 6. . . . The provisions of this
14 subdivision shall not operate to prohibit full-time
15 salaried employees of a corporate insured from acting
16 in the capacity of an insurance manager or buyer in
17 placing insurance in behalf of such employer, its
18 parent or affiliated companies.

19 . . .

20 Revised Law

21 Sec. 101.055. EXCEPTION; CERTAIN ENTITIES THAT REIMBURSE
22 MEDICAL EXPENSES. (a) Section 101.051(b)(7) does not apply to:

23 (1) a program otherwise authorized by law that is
24 established:

25 (A) by a political subdivision of this state;

26 (B) by a state agency; or

27 (C) under Chapter 791, Government Code; or

28 (2) a multiple employer welfare arrangement that is
29 fully insured as defined by 29 U.S.C. Section 1144(b)(6).

30 (b) Notwithstanding Subsection (a)(2), the commissioner may
31 apply a law regulating the business of insurance to a multiple
32 employer welfare arrangement described by that subdivision to the
33 extent that the law provides:

34 (1) standards requiring the maintenance of specified
35 levels of contributions that the plan, or a trust established under
36 the plan, must meet to be considered able to pay benefits in full
37 when due; and

38 (2) provisions to enforce the standards described by

1 Subdivision (1). (V.T.I.C. Art. 1.14-1, Sec. 2(a) (part).)

2 Source Law

3 Sec. 2. (a) . . .

4 . . .
5 7. . . . This provision shall not apply
6 to:

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

12 (ii) a multiple employer welfare
13 arrangement which is fully insured as defined in 29
14 U.S.C.A. Section 1144(b)(6) except that the
15 Commissioner may apply any laws that regulate the
16 business of insurance in this state to the extent that
17 such laws provide (1) standards requiring the
18 maintenance of specified levels of contributions, which
19 any such plan, or any trust established under such a
20 plan, must meet in order to be considered under such
21 law able to pay benefits in full when due, and (2)
22 provisions to enforce such standards.
23 . . .

24 Revisor's Note

25 Subdivision 7, Section 2(a), V.T.I.C. Article
26 1.14-1, refers to The Interlocal Cooperation Act
27 (Article 4413(32c), Vernon's Texas Civil Statutes).
28 That act was codified in 1991 as Chapter 791,
29 Government Code, and the revised law is drafted
30 accordingly.

31 [Sections 101.056-101.100 reserved for expansion]

32 SUBCHAPTER C. PROHIBITION; ENFORCEMENT

33 Revised Law

34 Sec. 101.101. DEFINITION. In this subchapter, "person"
35 means an individual or entity that is a person for purposes of
36 Section 2(a), Article 21.21. (V.T.I.C. Art. 1.14-1, Sec. 3(a).)

37 Source Law

38 Sec. 3. (a) For purposes of this section,
39 "person" shall mean that which is defined in Section
40 2(a), Article 21.21, of this code.

41 Revised Law

42 Sec. 101.102. UNAUTHORIZED INSURANCE PROHIBITED. (a) A
43 person, including an insurer, may not directly or indirectly do an
44 act that constitutes the business of insurance under this chapter
45 except as authorized by statute.

1 (b) With respect to insurance of a subject that is resident,
2 located, or to be performed in this state, this section does not
3 prohibit an act performed outside this state, including the
4 collection of premiums, by a person, including an insurer,
5 authorized to do business in this state if the transaction and
6 insurance contract otherwise comply with statute. (V.T.I.C.
7 Art. 1.14-1, Sec. 3(b).)

8 Source Law

9 (b) No person or insurer shall directly or
10 indirectly do any of the acts of an insurance business
11 set forth in this Article except as provided by and in
12 accordance with the specific authorization of statute.
13 In respect to the insurance of subjects resident,
14 located or to be performed within this state this
15 section shall not prohibit the collection of premium or
16 other acts performed outside of this state by persons
17 or insurers authorized to do business in this state
18 provided such transactions and insurance contracts
19 otherwise comply with statute.

20 Revised Law

21 Sec. 101.103. POWERS OF COMMISSIONER; REMEDIES FOR CERTAIN
22 CONDUCT. (a) If the commissioner has reason to believe a person,
23 including an insurer, has violated or is threatening to violate
24 this chapter or a rule adopted under this chapter, or that a
25 person, including an insurer, violating this chapter has engaged in
26 or is threatening to engage in an unfair act, the commissioner may:

- 27 (1) issue a cease and desist order under Subchapter D;
28 (2) seek injunctive relief under Section 101.105;
29 (3) request the attorney general to recover a civil
30 penalty under Section 101.105; or
31 (4) take any combination of those actions.

32 (b) This section does not limit the department to the
33 remedies specified in this section. The department and this state
34 may choose at any time, without regard to prior proceedings under
35 this section, any available remedy or action to immediately stop or
36 enjoin a person from engaging in the business of insurance without
37 statutory authorization. (V.T.I.C. Art. 1.14-1, Secs. 3(e) (part),
38 (h).)

1 Source Law

2 (e) Whenever the Commissioner has reason to
3 believe or it appears that any person or insurer has
4 violated or is threatening to violate any provision of
5 this Article or any rule or regulation promulgated
6 under this Article, or that any person or insurer
7 acting in violation of this Article has engaged in or
8 is threatening to engage in any unfair method of
9 competition or any unfair or deceptive act or practice
10 . . . the Commissioner may:

11 (1) issue a cease and desist order under
12 the procedures provided by Section 3A of this Article;

13 (2) request . . . injunctive relief
14 . . . ;

15 (3) request the attorney general to
16 recover a civil penalty as provided by Subsection (d)
17 of this section; or

18 (4) exercise any combination of the acts
19 provided by Subdivisions (1)-(3) of this subsection.

20 (h) This section shall not be construed to limit
21 the State Board of Insurance to the remedies specified
22 herein. It is the sense of the Legislature that
23 persons engaging in the business of insurance without
24 statutory authorization constitute an imminent peril to
25 the public welfare and should immediately be stopped
26 and enjoined from doing so, but that the State Board of
27 Insurance and the State of Texas should be able to
28 choose at any time any available remedy or action to
29 bring about such a result without regard to prior
30 proceedings under this section.

31 Revisor's Note

32 (1) Section 3(e), V.T.I.C. Article 1.14-1,
33 permits the commissioner of insurance to act whenever
34 "the Commissioner has reason to believe or it appears"
35 that certain circumstances exist. The revised law
36 omits "or it appears" as unnecessary.

37 (2) Section 3(e), V.T.I.C. Article 1.14-1,
38 refers to a "rule or regulation." The reference to
39 "regulation" is omitted from the revised law for the
40 reason stated in Revisor's Note (2) to Section 101.002.

41 (3) Section 3(e), V.T.I.C. Article 1.14-1,
42 refers to "any unfair method of competition or any
43 unfair or deceptive act or practice." The revised law
44 substitutes "unfair act" for the quoted phrase because
45 that is the term defined in Section 101.002.

46 Revised Law

47 Sec. 101.104. REQUEST FOR INFORMATION. If the commissioner

1 has reason to believe that a person, including an insurer, is
2 performing an act described by Section 101.051 or 101.052, the
3 person shall immediately provide to the commissioner, on written
4 request of the commissioner, information relating to that act.
5 (V.T.I.C. Art. 1.14-1, Sec. 3(c).)

6 Source Law

7 (c) Any person which the Commissioner has reason
8 to believe is doing any of the acts specified in
9 Section 2(a) of this Article, upon written request by
10 the Commissioner, shall immediately provide to the
11 Commissioner such information as requested in relation
12 to such acts.

13 Revisor's Note

14 Section 3(c), V.T.I.C. Article 1.14-1, refers to
15 "[a]ny person." For consistency with other provisions
16 of Section 3, revised in this subchapter, the revised
17 law refers to "a person, including an insurer." Under
18 Section 3(a), V.T.I.C. Article 1.14-1, revised in this
19 subchapter as Section 101.101, "person" has the meaning
20 assigned under the definition contained in Section
21 2(a), Article 21.21, Insurance Code, a definition which
22 includes any legal entity engaged in the business of
23 insurance. However, various provisions of Section 3,
24 V.T.I.C. Article 1.14-1, revised in this subchapter,
25 refer to a "person or insurer," and the revised law
26 continues to refer to "an insurer" for emphasis.

27 Revised Law

28 Sec. 101.105. CIVIL PENALTY; INJUNCTIVE RELIEF. (a) A
29 person or entity, including an insurer, that violates this chapter
30 is subject to a civil penalty of not more than \$10,000 for each act
31 of violation and for each day of violation.

32 (b) The commissioner may request that the attorney general
33 institute a civil suit in a district court in Travis County for
34 injunctive relief to restrain a person or entity, including an
35 insurer, from continuing a violation or threat of violation
36 described by Section 101.103(a). On application for injunctive

1 relief and a finding that a person or entity, including an insurer,
2 is violating or threatening to violate this chapter, the district
3 court shall grant the injunctive relief and issue an injunction
4 without bond.

5 (c) On request by the commissioner, the attorney general
6 shall institute and conduct a civil suit in the name of the state
7 for injunctive relief, to recover a civil penalty, or for both
8 injunctive relief and a civil penalty, as authorized under this
9 subchapter. (V.T.I.C. Art. 1.14-1, Secs. 3(d), (e) (part), (f),
10 (g).)

11 Source Law

12 (d) A person or entity who violates any
13 provision of this Article is subject to a civil penalty
14 of not more than \$10,000 for each act of violation and
15 for each day of violation to be recovered as provided
16 in this section.

17 (e) . . . the Commissioner may:

18 . . .
19 (2) request that a civil suit be
20 instituted by the attorney general in a district court
21 in Travis County for injunctive relief to restrain the
22 person from continuing the violation or threat of
23 violation;

24 . . .
25 (f) On application for injunctive relief and a
26 finding that a person is violating or threatening to
27 violate any provision of this Article, the district
28 court shall grant the injunctive relief and the
29 injunction shall be issued without bond.

30 (g) At the request of the Commissioner, the
31 Attorney General shall institute and conduct a suit in
32 the name of the State of Texas for injunctive relief or
33 to recover civil penalties or for both injunctive
34 relief and penalties as authorized in Subsection (e) of
35 this section.

36 Revisor's Note

37 Sections 3(d), (e), and (f), V.T.I.C. Article
38 1.14-1, refer to "a person or entity" and "a person."
39 The revised law refers to "a person or entity,
40 including an insurer" for the reason stated in the
41 revisor's note to Section 101.104.

42 Revised Law

43 Sec. 101.106. CRIMINAL PENALTY. (a) A person, including an
44 insurer, who violates Section 101.102 commits an offense.

45 (b) An offense under this section is a felony of the third

1 degree.

2 (c) It is a defense to prosecution under this section that
3 Section 101.051 or 101.052, as applicable, by its terms does not
4 apply to the person charged. (V.T.I.C. Art. 1.14-1, Sec. 13.)

5 Source Law

6 Sec. 13. (a) A person who violates Section 3(b)
7 of this article commits an offense.

8 (b) An offense under this section is a felony of
9 the third degree.

10 (c) It is a defense to prosecution under this
11 section that Section 2(a) of this article by its
12 specific terms does not apply to the person charged.

13 Revisor's Note

14 Section 13(a), V.T.I.C. Article 1.14-1, refers to
15 "[a] person." The revised law refers to "a person,
16 including an insurer" for the reason stated in the
17 revisor's note to Section 101.104.

18 [Sections 101.107-101.150 reserved for expansion]

19 SUBCHAPTER D. CEASE AND DESIST ORDERS

20 Revised Law

21 Sec. 101.151. POWERS OF COMMISSIONER; NOTICE OF HEARING.

22 (a) The commissioner may set a hearing on whether to issue a cease
23 and desist order under Section 101.153 if the commissioner has
24 reason to believe that:

25 (1) an insurer or other person has violated or is
26 threatening to violate this chapter or a rule adopted under this
27 chapter; or

28 (2) an insurer or other person acting in violation of
29 this chapter has engaged in or is threatening to engage in an
30 unfair act.

31 (b) The commissioner shall serve on the insurer or other
32 person a statement of charges and a notice of hearing in the form
33 provided by Section 2001.052, Government Code, and applicable rules
34 of the commissioner. (V.T.I.C. Art. 1.14-1, Sec. 3A(a) (part).)

35 Source Law

36 Sec. 3A. (a) If the Commissioner has reason to
37 believe or it appears that a person or insurer has
38 violated or is threatening to violate this Article or a
39 rule or regulation promulgated under this Article, or

1 that a person or insurer acting in violation of this
2 Article has engaged in or is threatening to engage in
3 an unfair method of competition or an unfair or
4 deceptive act or practice . . . the Commissioner may
5 set a hearing and shall serve on that person or insurer
6 a statement of charges and a notice of hearing in the
7 form provided by Section 13(b), Administrative
8 Procedure and Texas Register Act (Article 6252-13a,
9 Vernon's Texas Civil Statutes), and the applicable
10 rules of the State Board of Insurance. . . .

11 Revisor's Note

12 (1) Section 3A(a), V.T.I.C. Article 1.14-1,
13 permits the commissioner of insurance to act if "the
14 Commissioner has reason to believe or it appears" that
15 certain circumstances exist. The revised law omits "or
16 it appears" as unnecessary.

17 (2) Section 3A(a), V.T.I.C. Article 1.14-1,
18 refers to a "rule or regulation." The reference to
19 "regulation" is omitted from the revised law for the
20 reason stated in Revisor's Note (2) to Section 101.002.

21 (3) Section 3A(a), V.T.I.C. Article 1.14-1,
22 refers to "an unfair method of competition or an unfair
23 or deceptive act or practice." The revised law
24 substitutes "unfair act" for the quoted phrase for the
25 reason stated in Revisor's Note (3) to Section 101.103.

26 (4) Section 3A(a), V.T.I.C. Article 1.14-1,
27 refers to Section 13(b), Administrative Procedure and
28 Texas Register Act (Article 6252-13a, Vernon's Texas
29 Civil Statutes). That section was codified in 1993 as
30 Section 2001.052, Government Code, and the revised law
31 is drafted accordingly.

32 (5) Section 3A(a), V.T.I.C. Article 1.14-1,
33 states that process may be served as provided by
34 V.T.I.C. Article 1.36. That article establishes the
35 manner of service of process for proceedings before the
36 commissioner. The revised law omits the cross-reference
37 as unnecessary. The omitted law reads:

38 Sec. 3A. (a) . . . Process may be
39 served as provided by Article 1.36 of this
40 code.

1 Revised Law

2 Sec. 101.152. HEARING. (a) Except as agreed by the parties
3 with prior written approval of the commissioner, a hearing under
4 this subchapter must be held not earlier than the fifth day or
5 later than the 30th day after the date of service of the statement
6 and notice required under Section 101.151.

7 (b) The hearing shall be conducted in the manner provided
8 for a contested case under Chapter 2001, Government Code, and the
9 commissioner's rules. (V.T.I.C. Art. 1.14-1, Secs. 3A(a) (part),
10 (b).)

11 Source Law

12 Sec. 3A. (a) . . . The hearing must be held not
13 earlier than the fifth day or later than the 30th day
14 after the date of service of the statement and notice
15 unless the parties, with prior written approval of the
16 Commissioner, mutually agree to some other
17 arrangements. . . .

18 (b) The hearing shall be conducted in the manner
19 provided for contested cases under the Administrative
20 Procedure and Texas Register Act (Article 6252-13a,
21 Vernon's Texas Civil Statutes) and rules of the State
22 Board of Insurance.

23 Revisor's Note

24 Section 3A(b), V.T.I.C. Article 1.14-1, refers to
25 the Administrative Procedure and Texas Register Act
26 (Article 6252-13a, Vernon's Texas Civil Statutes). The
27 pertinent part of that act was codified in 1993 as
28 Chapter 2001, Government Code, and the revised law is
29 drafted accordingly.

30 Revised Law

31 Sec. 101.153. CEASE AND DESIST ORDER. After a hearing held
32 under this subchapter, the commissioner may issue against the
33 insurer or other person charged with a violation an order that
34 requires that the insurer or other person immediately cease and
35 desist from the violation. (V.T.I.C. Art. 1.14-1, Sec. 3A(c).)

36 Source Law

37 (c) After the hearing, the Commissioner may
38 issue an order against the person or insurer charged
39 with a violation requiring that the person or insurer
40 immediately cease and desist from the violation.

1 Revised Law

2 Sec. 101.154. ENFORCEMENT; REFERRAL TO ATTORNEY GENERAL.

3 The commissioner may refer the matter to the attorney general for
4 enforcement if the commissioner has reason to believe that an
5 insurer or other person has:

6 (1) violated a cease and desist order issued under
7 this subchapter; or

8 (2) failed to pay an assessed penalty. (V.T.I.C.
9 Art. 1.14-1, Sec. 3A(f).)

10 Source Law

11 (f) If the Commissioner has reason to believe or
12 it appears that any person or insurer has violated a
13 cease and desist order issued under this section or
14 fails to pay an assessed penalty, the Commissioner may
15 refer that matter to the Attorney General for
16 enforcement.

17 Revisor's Note

18 Section 3A(f), V.T.I.C. Article 1.14-1, permits
19 the commissioner of insurance to act if "the
20 Commissioner has reason to believe or it appears" that
21 certain circumstances exist. The revised law omits "or
22 it appears" as unnecessary.

23 Revised Law

24 Sec. 101.155. EFFECT OF PRIOR PROCEEDINGS. The commissioner
25 and department may proceed under this chapter or any other
26 applicable law without regard to prior proceedings. (V.T.I.C.
27 Art. 1.14-1, Sec. 3A(h).)

28 Source Law

29 (h) The Commissioner and the State Board of
30 Insurance may proceed under this Article or under any
31 other applicable law without regard to prior
32 proceedings.

33 Revised Law

34 Sec. 101.156. RULES. The commissioner may adopt reasonable
35 rules necessary to implement this subchapter. (V.T.I.C.
36 Art. 1.14-1, Sec. 3A(g).)

37 Source Law

38 (g) The State Board of Insurance may promulgate
39 reasonable rules and regulations necessary to carry out

1 this section.

2 Revisor's Note

3 Section 3A(g), V.T.I.C. Article 1.14-1, refers to
4 "rules and regulations." The reference to
5 "regulations" is omitted from the revised law for the
6 reason stated in Revisor's Note (2) to Section 101.002.

7 Revisor's Note
8 (End of Subchapter)

9 Section 3A(d), V.T.I.C. Article 1.14-1, which
10 permitted review by the State Board of Insurance of a
11 cease and desist order issued by the commissioner of
12 insurance in accordance with V.T.I.C. Article 1.04(d),
13 is omitted from the revised law as obsolete and
14 unnecessary. Chapter 685, Acts of the 73rd
15 Legislature, Regular Session, 1993, abolished the State
16 Board of Insurance and transferred its functions to the
17 commissioner of insurance and the Texas Department of
18 Insurance. In the same act, V.T.I.C. Article 1.04,
19 revised in this title as Subchapter D, Chapter 36, was
20 amended to establish an appropriate process for review
21 of an order of the commissioner and the text of former
22 Article 1.04(d) was deleted and thus effectively
23 repealed.

24 Section 3A(e), V.T.I.C. Article 1.14-1, which
25 permitted review of a State Board of Insurance order or
26 decision in accordance with V.T.I.C. Article 1.04(f),
27 is also omitted as obsolete and unnecessary. To the
28 extent that Subsection (e) would apply to an order or
29 decision of the commissioner, it is substantively
30 identical to Article 1.04. The omitted law reads:

31 (d) A person affected by an order
32 may have the order reviewed by the State
33 Board of Insurance by submitting an
34 application as provided by Article 1.04(d)
35 of this code. An appeal to the State Board
36 of Insurance does not stay the
37 Commissioner's order unless the order is
38 stayed by the State Board of Insurance
39 under this subsection or other law.

1 Pending appeal and final disposition of a
2 matter, the State Board of Insurance for
3 good cause may suspend the effect of the
4 Commissioner's order.

5 (e) A person affected by an order or
6 a decision of the State Board of Insurance
7 pursuant to this Article may appeal as
8 provided by Article 1.04(f) of this code.
9 An appeal petition filed in a district
10 court in Travis County does not stay or
11 vacate an order or decision unless the
12 court after hearing issues an order that
13 specifically stays or vacates the order or
14 decision.

15 [Sections 101.157-101.200 reserved for expansion]

16 SUBCHAPTER E. INSURANCE CONTRACTS WITH UNAUTHORIZED INSURERS

17 Revised Law

18 Sec. 101.201. VALIDITY OF INSURANCE CONTRACTS. (a) An
19 insurance contract effective in this state and entered into by an
20 unauthorized insurer is unenforceable by the insurer. A person who
21 in any manner assisted directly or indirectly in the procurement of
22 the contract is liable to the insured for the full amount of a
23 claim or loss under the terms of the contract if the unauthorized
24 insurer fails to pay the claim or loss.

25 (b) This section does not apply to:

26 (1) insurance procured by a licensed surplus lines
27 agent from an eligible surplus lines insurer as defined by Article
28 1.14-2:

29 (A) that is reported; and

30 (B) on which premium tax is paid in accordance
31 with Article 1.14-2; or

32 (2) an independently procured contract of insurance,
33 as described in Section 101.053(b)(4):

34 (A) that is reported; and

35 (B) on which premium tax is paid in accordance
36 with this chapter. (V.T.I.C. Art. 1.14-1, Sec. 8.)

37 Source Law

38 Sec. 8. Except for insurance procured by a
39 licensed surplus lines agent from an eligible surplus
40 lines insurer as defined in Article 1.14-2 and
41 contracts of insurance independently procured, as
42 defined in Section 2(b)4 of this Article, which are
43 reported and on which premium tax is paid in accordance
44 with this Article or Article 1.14-2, any contract of

1 insurance effective in this state and entered into by
2 an unauthorized insurer is unenforceable by such
3 insurer. In event of failure of any such unauthorized
4 insurer to pay any claim or loss within the provisions
5 of such insurance contract, any person who assisted or
6 in any manner aided directly or indirectly in the
7 procurement of such insurance contract shall be liable
8 to the insured for the full amount thereof pursuant to
9 the provisions of such insurance contract.

10 Revisor's Note

11 Section 8, V.T.I.C. Article 1.14-1, refers to a
12 person "who assisted or in any manner aided directly or
13 indirectly" in the procurement of unauthorized
14 insurance. The revised law omits "aided" as
15 unnecessary; the meaning of the term is included in
16 "assisted."

17 Revised Law

18 Sec. 101.202. ATTORNEY'S FEES. (a) In an action against an
19 unauthorized insurer or other unauthorized person on a contract of
20 insurance issued or delivered in this state to a resident of this
21 state or to a corporation authorized to do business in this state,
22 the court may award to the plaintiff a reasonable attorney's fee
23 if:

24 (1) the insurer or other person failed, for at least
25 30 days after a demand made before the commencement of the action,
26 to make payment under the contract's terms; and

27 (2) the failure to make the payment was vexatious and
28 without reasonable cause.

29 (b) An insurer's or other person's failure to defend an
30 action described by Subsection (a) is prima facie evidence that the
31 failure to make payment was vexatious and without reasonable cause.

32 (V.T.I.C. Art. 1.14-1, Sec. 7.)

33 Source Law

34 Sec. 7. In an action against an unauthorized
35 person or insurer upon a contract of insurance issued
36 or delivered in this state to a resident thereof or to
37 a corporation authorized to do business therein, if the
38 person or insurer has failed for 30 days after demand
39 prior to the commencement of the action to make payment
40 in accordance with the terms of the contract, and it
41 appears to the court that such refusal was vexatious
42 and without reasonable cause, the court may allow to
43 the plaintiff a reasonable attorney's fee and include

1 such fee in any judgment that may be rendered in such
2 action. Failure of the person or insurer to defend any
3 such action shall be deemed prima facie evidence that
4 its failure to make payment was vexatious and without
5 reasonable cause.

6 Revisor's Note

7 Section 7, V.T.I.C. Article 1.14-1, authorizes a
8 court to "allow to the plaintiff a reasonable
9 attorney's fee and include such fee in any judgment
10 that may be rendered in such action." The revised law
11 substitutes "award to the plaintiff a reasonable
12 attorney's fee" for the quoted phrase because the
13 phrases are synonymous and the latter is more concise.

14 Revised Law

15 Sec. 101.203. INVESTIGATION AND DISCLOSURE. (a) If the
16 commissioner has reason to believe that insurance has been
17 effectuated by or for a person in this state with an unauthorized
18 insurer, the commissioner shall in writing order the person to:

19 (1) produce for examination all insurance contracts
20 and other documents evidencing insurance with both authorized and
21 unauthorized insurers; and

22 (2) disclose to the commissioner:

23 (A) the amount of insurance;

24 (B) the name and address of each insurer;

25 (C) the gross amount of premiums paid or to be
26 paid; and

27 (D) the name and address of each person
28 assisting in the solicitation, negotiation, or effectuation of the
29 insurance.

30 (b) A person who fails to comply with a written order under
31 Subsection (a) before the 31st day after the date of the order or
32 who wilfully makes a disclosure that is untrue, deceptive, or
33 misleading shall forfeit:

34 (1) \$50; and

35 (2) an additional \$50 for each day the person
36 continues to fail to comply after expiration of the 30-day period.

1 (c) This section does not apply to:

2 (1) a transaction in this state that:

3 (A) involves a policy that:

4 (i) is lawfully solicited, negotiated,
5 written, and delivered outside this state; and

6 (ii) covers, at the time the policy is
7 issued, only subjects of insurance that are not resident, located,
8 or expressly to be performed in this state; and

9 (B) takes place after the policy is issued; or

10 (2) surplus lines insurance procured through eligible
11 surplus lines carriers as defined by Article 1.14-2. (V.T.I.C.
12 Art. 1.14-1, Sec. 9.)

13 Source Law

14 Sec. 9. (a) Whenever the State Board of
15 Insurance has reason to believe that insurance has been
16 effectuated by or for any person in this state with an
17 unauthorized insurer the State Board of Insurance shall
18 in writing order such person to produce for examination
19 all insurance contracts and other documents evidencing
20 insurance with both authorized and unauthorized
21 insurers and to disclose to the State Board of
22 Insurance the amount of insurance, name and address of
23 each insurer, gross amount of premium paid or to be
24 paid and the name and address of the person or persons
25 assisting or aiding in the solicitation, negotiation or
26 effectuation of such insurance.

27 (b) Every person who, for 30 days after such
28 written order pursuant to Paragraph (a), neglects to
29 comply with the requirements of such order or who
30 wilfully makes a disclosure that is untrue, deceptive
31 or misleading shall forfeit \$50 and an additional \$50
32 for each day of neglect after expiration of said 30
33 days.

34 (c) This section does not apply to transactions
35 in this state involving a policy lawfully solicited,
36 negotiated, written, and delivered outside of this
37 state covering only subjects of insurance not resident,
38 located or expressly to be performed in this state at
39 the time of issuance, and which transactions are
40 subsequent to the issuance of such policy or surplus
41 lines insurance procured through eligible surplus lines
42 carriers as defined in Article 1.14-2.

43 Revisor's Note

44 Section 9(a), V.T.I.C. Article 1.14-1, refers to
45 a person "assisting or aiding" in certain insurance
46 transactions. The revised law omits the reference to
47 "aiding" because "aiding" is included within the
48 meaning of "assisting."

1 [Sections 101.204-101.250 reserved for expansion]

2 SUBCHAPTER F. TAXES

3 Revised Law

4 Sec. 101.251. PREMIUM RECEIPTS TAX. (a) In this section,
5 "premium" includes any consideration for insurance, including:

- 6 (1) a premium;
7 (2) a membership fee;
8 (3) an assessment; or
9 (4) dues.

10 (b) Except as provided by Subsection (j), an unauthorized
11 insurer shall pay to the comptroller, on a form prescribed by the
12 comptroller, a premium receipts tax of 4.85 percent of gross
13 premiums charged for insurance on a subject resident, located, or
14 to be performed in this state.

15 (c) If a policy covers risks or exposures only partially in
16 this state, the tax payable is computed on the portion of the
17 premium that is properly allocated to a risk or exposure located in
18 this state.

19 (d) In determining the amount of taxable premiums under
20 Subsection (c), all premiums, other than premiums properly
21 allocated or apportioned and reported as taxable premiums of
22 another state, that are written, procured, or received in this
23 state or that are for a policy negotiated in this state are
24 considered to be written on property or risks located or resident
25 in this state.

26 (e) Insurance on a subject resident, located, or to be
27 performed in this state is considered to be insurance procured,
28 continued, or renewed in this state regardless of the location from
29 which:

- 30 (1) the application is made;
31 (2) the negotiations are conducted; or
32 (3) the premiums are remitted.

33 (f) Premiums on risks or exposures that are properly
34 allocated to federal waters or international waters or under the

1 jurisdiction of a foreign government are not taxable by this state.

2 (g) The unauthorized insurer shall pay the premium receipts
3 tax required by this section before:

4 (1) March 1 following the calendar year in which the
5 insurance was effectuated, continued, or renewed; or

6 (2) another date specified by the comptroller.

7 (h) The tax imposed by this section is in lieu of all other
8 insurance taxes.

9 (i) On default of an unauthorized insurer in the payment of
10 the tax, the insured shall pay the tax.

11 (j) This section does not apply to premiums on:

12 (1) insurance procured by a licensed surplus lines
13 agent from an eligible surplus lines insurer as defined by Article
14 1.14-2 on which premium tax is paid in accordance with Article
15 1.14-2; or

16 (2) an independently procured contract of insurance on
17 which premium tax is paid in accordance with this chapter.

18 (V.T.I.C. Art. 1.14-1, Secs. 11(a) (part), (b).)

19 Source Law

20 Sec. 11. (a) Except as to premiums on insurance
21 procured by a licensed surplus lines agent from an
22 eligible surplus lines insurer as defined in Article
23 1.14-2 and premiums on independently procured insurance
24 on which a tax has been paid pursuant to this Article
25 or Article 1.14-2, every unauthorized insurer shall pay
26 to the comptroller, on a form prescribed by the
27 comptroller, before March 1 next succeeding the
28 calendar year in which the insurance was so
29 effectuated, continued or renewed or another date as
30 prescribed by the comptroller a premium receipts tax of
31 4.85 percent of gross premiums charged for such
32 insurance on subjects resident, located or to be
33 performed in this state. Such insurance on subjects
34 resident, located or to be performed in this state
35 procured through negotiations or an application, in
36 whole or in part occurring or made within or from
37 within or outside of this state, or for which premiums
38 in whole or in part are remitted directly or indirectly
39 from within or outside of this state, shall be deemed
40 to be insurance procured, or continued or renewed in
41 this state. The term "premium" includes all premiums,
42 membership fees, assessments, dues and any other
43 consideration for insurance. Such tax shall be in lieu
44 of all other insurance taxes. On default of any such
45 unauthorized insurer in the payment of such tax the
46 insured shall pay the tax. . . .

47 (b) If a policy covers risks or exposures only
48 partially in this state, the tax payable shall be
49 computed on the portions of the premiums which are

1 properly allocable to the risks or exposures located in
2 this state. In determining the amount of premiums
3 taxable in this state, all premiums written, procured,
4 or received in this state and all premiums on policies
5 negotiated in this state shall be deemed written on
6 property or risks located or resident in this state,
7 except such premiums as are properly allocated or
8 apportioned and reported as taxable premiums of any
9 other state or states. Premiums on risks or exposures
10 which are properly allocated to federal waters,
11 international waters or under the jurisdiction of a
12 foreign government shall not be considered taxable by
13 this state.

14 Revised Law

15 Sec. 101.252. INDEPENDENTLY PROCURED INSURANCE TAX. (a)

16 Except as provided by Subsection (f), an insured who procures
17 insurance in accordance with Section 101.053(b)(4), or another
18 person designated by the insured, shall:

19 (1) file a report with the comptroller; and

20 (2) pay an independently procured insurance tax of
21 4.85 percent.

22 (b) If a policy covers risks or exposures only partially
23 located in this state, the tax payable is computed on the portion
24 of the premium that is properly allocated to a risk or exposure
25 located in this state.

26 (c) An insured who fails to withhold from the premium the
27 amount of tax imposed under this section is liable for the amount
28 of the tax and shall pay the tax to the comptroller within the time
29 described by Subsection (d).

30 (d) Except as provided by Section 101.253, the report and
31 tax are due on or before:

32 (1) March 1 following the calendar year in which the
33 insurance was procured, continued, or renewed; or

34 (2) another date specified by the comptroller.

35 (e) This section does not abrogate or modify any other
36 provision of this chapter.

37 (f) This section does not apply to premiums for individual
38 life or individual disability insurance. (V.T.I.C. Art. 1.14-1,
39 Secs. 12(a), (b), (c), (d) (part), (e).)

1 Source Law

2 Sec. 12. (a) Every insured who procures
3 insurance in accordance with Section 2(b)4 of this
4 Article must file a report with the comptroller and pay
5 an independently procured insurance tax of 4.85
6 percent.

7 (b) The report shall be filed and any tax due
8 shall be paid by the insured or by any other person
9 designated by the insured. The report and tax are due
10 on or before March 1 of the calendar year after the
11 calendar year in which the insurance was procured,
12 continued, or renewed or on another date prescribed by
13 the comptroller.

14 (c) If a policy covers risks or exposures only
15 partially in this state, the tax payable shall be
16 computed on the portions of the premium which are
17 properly allocated to the risks or exposures located in
18 this state.

19 (d) If the insured fails to withhold from the
20 premium the amount of tax herein levied, the insured
21 shall be liable for the amount thereof and shall pay
22 the same to the comptroller within the time stated in
23 Subsection (b). . . .

24 (e) This section shall not be construed or
25 deemed to abrogate or modify any provision of this
26 Article. This section does not apply as to individual
27 life or individual disability insurance.

28 Revisor's Note

29 The revised law adds a reference to Section
30 101.253, which provides an exception to the general
31 reporting requirement for certain corporations, for the
32 convenience of the reader.

33 Revised Law

34 Sec. 101.253. FILING REQUIREMENTS FOR CORPORATIONS. The
35 amount of tax due and payable under Section 101.252 with respect to
36 a corporation that files a franchise tax return shall be reported
37 directly to the comptroller and is due:

38 (1) at the time the franchise tax report is due; or

39 (2) on another date specified by the comptroller.

40 (V.T.I.C. Art. 1.14-1, Sec. 12A (part).)

41 Source Law

42 Sec. 12A. As respects corporations, the amount of
43 taxes due and payable to the State of Texas under the
44 provisions or under authority of Section 12 of this
45 Article shall be reported directly to the comptroller
46 and shall be due when the Franchise Tax Report is due
47 or on another date prescribed by the comptroller, any
48 other provision of this Article to the contrary
49 notwithstanding. . . . corporations filing franchise
50 tax returns

1 Revisor's Note

2 Section 12A, V.T.I.C. Article 1.14-1, provides a
3 different tax due date for corporations that file a
4 franchise tax return. Other persons or companies
5 report on a date specified by the comptroller,
6 consistent with Section 12(b), V.T.I.C. Article 1.14-1,
7 revised in this chapter as Section 101.252(d). The
8 revised law omits the reference to entities other than
9 corporations that file a franchise tax return, as those
10 entities are governed by Section 101.252(d). The
11 omitted law reads:

12 Sec. 12A. . . . All companies or
13 persons other than [corporations filing
14 franchise tax returns] shall report to the
15 comptroller on or before the date
16 prescribed by the comptroller.

17 Revisor's Note
18 (End of Subchapter)

19 Portions of Sections 11(a) and 12(d), V.T.I.C.
20 Article 1.14-1, make Subtitles A and B, Title 2, Tax
21 Code, applicable if the required taxes are not timely
22 paid. The revised law omits these provisions as
23 unnecessary because they are redundant of Section
24 111.0022, Tax Code. The omitted law reads:

25 Sec. 11. (a) . . . If the tax
26 prescribed by this subsection is not paid
27 within the time stated, Subtitles A and B,
28 Title 2, Tax Code, and their subsequent
29 amendments, apply.

30 [Sec. 12]

31 (d) . . . If the tax prescribed by
32 this subsection is not paid within the time
33 stated in Subsection (b), Subtitles A and
34 B, Title 2, Tax Code, apply.

35 [Sections 101.254-101.300 reserved for expansion]

36 SUBCHAPTER G. REPORTING OF UNAUTHORIZED INSURANCE

37 Revised Law

38 Sec. 101.301. REPORTING REQUIRED. (a) A person
39 investigating or adjusting a loss or claim on a subject of
40 insurance in this state shall immediately report to the department

1 an insurance policy or contract that has been entered into by an
2 insurer who is not authorized to transact the insurance in this
3 state.

4 (b) This section does not apply to:

5 (1) a transaction described by Section 101.053(b)(4);

6 or

7 (2) surplus lines insurance procured through eligible
8 surplus lines carriers as defined by Article 1.14-2. (V.T.I.C.
9 Art. 1.14-1, Sec. 10.)

10 Source Law

11 Sec. 10. (a) Every person investigating or
12 adjusting any loss or claim on a subject of insurance
13 in this state shall immediately report to the State
14 Board of Insurance every insurance policy or contract
15 which has been entered into by any insurer unauthorized
16 to transact such insurance in this state.

17 (b) This section does not apply to transactions
18 in this state involving contracts of insurance
19 independently procured, as defined in Section 2(b)4 of
20 this Article or surplus lines insurance procured by a
21 licensed surplus lines agent from an eligible surplus
22 lines carrier as defined in Article 1.14-2.

23 Revisor's Note

24 Section 10(b), V.T.I.C. Article 1.14-1, exempts
25 from the reporting requirement transactions "involving
26 contracts of insurance independently procured, as
27 defined in Section 2(b)4 of this Article." The revised
28 law omits the reference to "contracts of insurance
29 independently procured" because those are the only
30 types of transactions described by the referenced
31 subdivision, revised in this chapter as Section
32 101.053(b)(4).

33 CHAPTER 102. CHARITABLE GIFT ANNUITIES

34 SUBCHAPTER A. GENERAL PROVISIONS

35 Sec. 102.001. DEFINITIONS 175
36 Sec. 102.002. QUALIFIED CHARITABLE GIFT ANNUITY 176

37 [Sections 102.003-102.050 reserved for expansion]

38 SUBCHAPTER B. ISSUANCE OF CHARITABLE GIFT ANNUITY

39 Sec. 102.051. NOT INSURANCE; EFFECT OF CERTAIN LAWS 177

1 [Sections 102.052-102.100 reserved for expansion]

2 SUBCHAPTER C. NOTICE

3 Sec. 102.101. NOTICE TO DONOR 178

4 Sec. 102.102. NOTICE TO DEPARTMENT 179

5 Sec. 102.103. EFFECT ON ANNUITY OF FAILURE TO PROVIDE

6 NOTICE 180

7 Sec. 102.104. ENFORCEMENT OF NOTICE REQUIREMENTS 180

8 CHAPTER 102. CHARITABLE GIFT ANNUITIES

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Revised Law

11 Sec. 102.001. DEFINITIONS. In this chapter:

12 (1) "Charitable gift annuity" means an annuity:

13 (A) that is payable over the lives of one or two
14 individuals;

15 (B) that is made in return for the transfer of
16 cash or other property to a charitable organization; and

17 (C) the actuarial value of which is less than
18 the value of the cash or other property transferred, with the
19 difference in those values being a charitable deduction for federal
20 tax purposes.

21 (2) "Charitable organization" means an entity
22 described by:

23 (A) Section 501(c)(3), Internal Revenue Code of
24 1986; or

25 (B) Section 170(c), Internal Revenue Code of
26 1986. (V.T.I.C. Art. 1.14-1A, Secs. 1(1), (2).)

27 Source Law

28 Art. 1.14-1A

29 Sec. 1. In this article:

30 (1) "Charitable gift annuity" means a
31 transfer of cash or other property by a donor to a
32 charitable organization in return for an annuity
33 payable over one or two lives, under which the
34 actuarial value of the annuity is less than the value
35 of the cash or other property transferred and the
36 difference in value constitutes a charitable deduction
37 for federal tax purposes.

38 (2) "Charitable organization" means an
39 entity described by:

40 (A) Section 501(c)(3), Internal
41 Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

1 (B) Section 170(c), Internal Revenue
2 Code of 1986 (26 U.S.C. Section 170(c)).

3 Revised Law

4 Sec. 102.002. QUALIFIED CHARITABLE GIFT ANNUITY. A
5 charitable gift annuity is a qualified charitable gift annuity for
6 purposes of this chapter if it was issued before September 1, 1995,
7 or if it is:

8 (1) described by Section 501(m)(5), Internal Revenue
9 Code of 1986; and

10 (2) issued by a charitable organization that on the
11 date of the annuity agreement:

12 (A) has, exclusive of the assets funding the
13 annuity agreement, a minimum of \$100,000 in unrestricted cash, cash
14 equivalents, or publicly traded securities; and

15 (B) has been in continuous operation for at
16 least three years or is a successor or affiliate of a charitable
17 organization that has been in continuous operation for at least
18 three years. (V.T.I.C. Art. 1.14-1A, Secs. 1(3), 2(b) (part).)

19 Source Law

20 Sec. 1. [In this article:]

21 (3) "Qualified charitable gift annuity"
22 means a charitable gift annuity described by Section
23 501(m)(5), Internal Revenue Code of 1986 (26 U.S.C.
24 Section 501(m)(5)), and Section 514(c)(5), Internal
25 Revenue Code of 1986 (26 U.S.C. Section 514(c)(5)),
26 that is issued by a charitable organization that on the
27 date of the annuity agreement:

28 (A) has a minimum of \$100,000 in
29 unrestricted cash, cash equivalents, or publicly traded
30 securities, exclusive of the assets funding the annuity
31 agreement; and

32 (B) has been in continuous operation
33 for at least three years or is a successor or affiliate
34 of a charitable organization that has been in
35 continuous operation for at least three years.

36 [Sec. 2.]

37 (b) A charitable gift annuity issued before
38 September 1, 1995, is a qualified charitable gift
39 annuity for purposes of this article and Article 1.14-1
40 of this code, and

41 Revisor's Note

42 (1) Section 1(3), V.T.I.C. Article 1.14-1A,
43 refers to a charitable gift annuity that is "described
44 by Section 501(m)(5), Internal Revenue Code of

1 1986 . . . and Section 514(c)(5), Internal Revenue Code
2 of 1986. . . ." The reference to Section 514(c)(5),
3 Internal Revenue Code of 1986, is omitted from the
4 revised law as unnecessary because a charitable gift
5 annuity, as defined by Section 501(m)(5), Internal
6 Revenue Code of 1986, must be an annuity described by
7 Section 514(c)(5).

8 (2) Section 2(b), V.T.I.C. Article 1.14-1A,
9 states that certain annuities are qualified charitable
10 gift annuities for purposes of Article 1.14-1A and
11 Article 1.14-1. The revised law omits the reference to
12 Article 1.14-1, revised as Chapter 101 of this code, as
13 unnecessary. Section 2(b) of Article 1.14-1, revised
14 as Section 101.053(b), states that the issuance of
15 qualified charitable gift annuities under Article
16 1.14-1A, revised as this chapter, does not constitute
17 engaging in the business of insurance. The fact that
18 an annuity is a qualified charitable gift annuity under
19 Article 1.14-1A is sufficient to bring the annuity
20 within the scope of the exemption under Article 1.14-1
21 without an additional reference to Article 1.14-1.

22 [Sections 102.003-102.050 reserved for expansion]

23 SUBCHAPTER B. ISSUANCE OF CHARITABLE GIFT ANNUITY

24 Revised Law

25 Sec. 102.051. NOT INSURANCE; EFFECT OF CERTAIN LAWS. The
26 issuance of a qualified charitable gift annuity:

27 (1) does not constitute engaging in the business of
28 insurance in this state;

29 (2) does not violate Section 15.05 or 17.46, Business
30 & Commerce Code; and

31 (3) is not an unconscionable action or course of
32 action for purposes of Section 17.50(a)(3), Business & Commerce
33 Code. (V.T.I.C. Art. 1.14-1A, Secs. 2(a), (b) (part); 6.)

1 department.

2 (b) The notice provisions required by this
3 section must be in a separate paragraph in a print size
4 no smaller than that employed in the annuity agreement
5 generally.

6 Revised Law

7 Sec. 102.102. NOTICE TO DEPARTMENT. (a) A charitable
8 organization that issues qualified charitable gift annuities shall
9 notify the department's annuities division in writing not later
10 than the date on which the organization enters into the
11 organization's first qualified charitable gift annuity agreement.

12 (b) The notice required by this section must:

13 (1) be signed by an officer or director of the
14 organization;

15 (2) identify the organization; and

16 (3) certify that:

17 (A) the organization is a charitable
18 organization; and

19 (B) the annuities issued by the organization are
20 qualified charitable gift annuities.

21 (c) The charitable organization may not be required to
22 submit additional information except to determine appropriate
23 penalties under Section 102.104. (V.T.I.C. Art. 1.14-1A, Sec. 4.)

24 Source Law

25 Sec. 4. (a) A charitable organization that
26 issues qualified charitable gift annuities shall notify
27 the department's annuities division in writing by the
28 later of 90 days after the effective date of this Act
29 or the date on which it enters into the organization's
30 first qualified charitable gift annuity agreement. The
31 notice must:

32 (1) be signed by an officer or director of
33 the organization;

34 (2) identify the organization; and

35 (3) certify that:

36 (A) the organization is a charitable
37 organization; and

38 (B) the annuities issued by the
39 organization are qualified charitable gift annuities.

40 (b) The organization shall not be required to
41 submit additional information except to determine
42 appropriate penalties that may be applicable under
43 Section 5 of this article.

1 Revisor's Note

2 Section 4(a), V.T.I.C. Article 1.14-1A, which
3 took effect May 23, 1995, requires certain charitable
4 organizations to give notice to the department not
5 later than 90 days after the effective date of the
6 article. The revised law omits this requirement as
7 executed.

8 Revised Law

9 Sec. 102.103. EFFECT ON ANNUITY OF FAILURE TO PROVIDE
10 NOTICE. A charitable gift annuity that otherwise meets the
11 requirements of Section 102.002 is a qualified charitable gift
12 annuity without regard to whether the charitable organization that
13 issues the annuity complies with the notice requirements of this
14 subchapter. (V.T.I.C. Art. 1.14-1A, Sec. 5 (part).)

15 Source Law

16 Sec. 5. The failure of a charitable organization
17 to comply with the notice requirements imposed under
18 Section 3 or 4 of this article does not prevent a
19 charitable gift annuity that otherwise meets the
20 requirements of this article from constituting a
21 qualified charitable gift annuity. . . .

22 Revised Law

23 Sec. 102.104. ENFORCEMENT OF NOTICE REQUIREMENTS. (a) The
24 commissioner may enforce the notice requirements of this subchapter
25 by sending by certified mail, return receipt requested, a letter
26 demanding that the charitable organization comply with the notice
27 requirements.

28 (b) The department may fine the charitable organization in
29 an amount not to exceed \$1,000 for each qualified charitable gift
30 annuity agreement issued by the organization until the time the
31 organization complies with this subchapter. (V.T.I.C.
32 Art. 1.14-1A, Sec. 5 (part).)

33 Source Law

34 Sec. 5. . . . However, the commissioner may
35 enforce performance of the requirements of Sections 3
36 and 4 of this article by sending a letter by certified
37 mail, return receipt requested, demanding that the
38 charitable organization comply with the requirements of
39 Sections 3 and 4 of this article. The department may
40 fine the charitable organization in an amount not to

1 exceed \$1,000 per qualified charitable gift annuity
2 agreement issued until such time as the charitable
3 organization complies with Sections 3 and 4 of this
4 article.

5 APPENDIX A

6 SECTION 2. CONFORMING AMENDMENT. Chapters 1-27, Insurance
7 Code, are designated as Title 1, Insurance Code, and a title
8 heading is added to read as follows:

9 TITLE 1. THE INSURANCE CODE OF 1951

10 SECTION 3. CONFORMING AMENDMENT. Article 1.04D(a),
11 Insurance Code, is amended to read as follows:

12 (a) Except as otherwise expressly provided for in this code
13 or another insurance law of this state, the comptroller shall
14 administer, enforce, and carry out the provisions of this code and
15 other insurance laws of this state that relate [~~duties-of-the~~
16 ~~department-and-commissioner-relative~~] to the collection, reporting,
17 and administration of taxes and certain fees and assessments
18 imposed under this code or another insurance law of this state [~~are~~
19 ~~transferred--to--the--comptroller--effective-September-17-1993~~], as
20 specifically provided in this code.

21 SECTION 4. CONFORMING AMENDMENT. Article 1.10, Insurance
22 Code, is amended to read as follows:

23 Art. 1.10. CERTAIN DUTIES OF THE DEPARTMENT. In addition to
24 the other duties required of the Department, the Department shall
25 perform duties as follows:

26 [~~1.--Shall--Execute--the--Laws.--See--that--all--laws~~
27 ~~respecting--insurance--and--insurance--companies--are--faithfully~~
28 ~~executed.~~]

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

35 3. Shall Calculate Reserve. For every company

1 transacting any kind of insurance business in this State, for which
2 no basis is prescribed by law, the Department shall calculate the
3 reinsurance reserve upon the same basis prescribed in Article 6.01
4 of this code as to companies transacting fire insurance business.

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

14 5. When a Company's Surplus is Impaired. No
15 impairment of the capital stock of a stock company shall be
16 permitted. No impairment of the surplus of a stock company, or of
17 the minimum required aggregate surplus of a mutual, Lloyd's, or
18 reciprocal insurer, shall be permitted in excess of that provided
19 by this section. Having charged against a company other than a
20 life insurance company, the reinsurance reserve, as prescribed by
21 the laws of this State, and adding thereto all other debts and
22 claims against the company, the Commissioner shall, (i) if it is
23 determined that the surplus required by Article 2.02 or 2.20 of
24 this code of a stock company doing the kind or kinds of insurance
25 business set out in its Certificate of Authority is impaired to the
26 extent of more than fifty (50%) per cent of the required surplus
27 for a capital stock insurance company, or is less than the minimum
28 level of surplus required by Commissioner promulgated risk-based
29 capital and surplus regulations, or (ii) if it is determined that
30 the required aggregate surplus of a reciprocal or mutual company,
31 or the required aggregate of guaranty fund and surplus of a Lloyd's
32 company, other than a life insurance company, doing the kind or
33 kinds of insurance business set out in its Certificate of Authority
34 is impaired to the extent of more than twenty-five per cent (25%)

1 of the required aggregate surplus, or is less than the minimum
2 level of surplus required by Commissioner promulgated risk-based
3 capital and surplus regulations, the Commissioner shall order the
4 company to remedy the impairment of surplus to acceptable levels
5 specified by the Commissioner or to cease to do business within
6 this State. The Commissioner shall thereupon immediately institute
7 such proceedings as may be necessary to determine what further
8 actions shall be taken in the case.

9 6. Shall Publish Results of Investigation. The
10 Department shall publish the result of an examination of the
11 affairs of any company whenever the Commissioner deems it for the
12 interest of the public.

13 ~~[7. May Order Sanctions. (a) After notice and~~
14 ~~opportunity for a hearing, the Commissioner may cancel or revoke~~
15 ~~any permit, license, certificate of authority, certificate of~~
16 ~~registration, or other authorization issued or existing under the~~
17 ~~Commissioner's authority or the authorization of this Code if the~~
18 ~~holder or possessor of same is found to be in violation of, or to~~
19 ~~have failed to comply with, a specific provision of the Code or any~~
20 ~~duly promulgated rule or regulation of the Commissioner. The~~
21 ~~Commissioner may also order one or more of the following sanctions:~~

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

24 ~~[(2) Order the holder or possessor of such~~
25 ~~authorization to cease and desist from the specified activity~~
26 ~~determined to be in violation of specific provisions of this Code~~
27 ~~or rules and regulations of the Commissioner or from failure to~~
28 ~~comply with such provisions of this Code or such rules and~~
29 ~~regulations;~~

30 ~~[(3) Direct the holder or possessor of such~~
31 ~~authorization to pay an administrative penalty in accordance with~~
32 ~~Article 1.10E of this code; or~~

33 ~~[(4) Direct the holder or possessor of such~~
34 ~~authorization to make complete restitution to all Texas residents;~~

1 Texas--insureds,--and--entities--operating--in--Texas--harmed--by--the
2 violation--or--failure--to--comply.

3 [(b)--Restitution--under--Subdivision--(4)--of--Subsection
4 (a)---must--be--made--in--the--form--and--amount--and--within--the--period
5 determined--by--the--Commissioner.

6 [(c)--If--it--is--found--after--hearing--that--any--holder--or
7 possessor--has--failed--to--comply--with--an--order--issued--pursuant--to
8 Subsection--(a),--the--Commissioner--shall,--unless--its--order--is
9 lawfully--stayed,--cancel--all--authorizations--of--such--holder--or
10 possessor.

11 [(d)--The--Commissioner--may--informally--dispose--of--any
12 matter--specified--in--this--section--by--consent---order,---agreed
13 settlement,--stipulations,--or--default.--An--informal--disposition--or
14 consent--order--may--include--a--provision--under--which--the--holder--or
15 possessor--agrees--to--a--sanction--under--this--section--with--the--express
16 reservation--that:

17 [(1)--the--holder--or--possessor--is--not--admitting
18 any--violation--of--this--code--or--of--a--rule--or--regulation,--and

19 [(2)--the--existence--of--a--violation--is--in--dispute.

20 [(e)--The--Commissioner--shall--give--notice--of--any--action
21 taken--pursuant--to--this--section--to--the--Insurance--Commissioner--or
22 other--similar--officer--of--every--state.

23 [(f)--The--authority--vested--in--the--Commissioner--in--this
24 Article--shall--be--in--addition--to--and--not--in--lieu--of--any--other
25 authority--to--enforce--or--cause--to--be--enforced--any--sanctions,
26 penalties,--fines,--forfeitures,--denials,--suspensions,--or--revocations
27 otherwise--authorized--by--law,--and--shall--be--applicable--to--every--form
28 of--authorization--to--any--person--or--entity--holding--or--possessing--the
29 same.

30 [(g)--This--section--applies--to--all--companies--regulated
31 by--the--Commissioner,--including--but--not--limited--to--domestic--and
32 foreign,--stock--and--mutual--life,--health,--and--accident--insurance
33 companies,---domestic--and--foreign,--stock--and--mutual,--fire--and
34 casualty--insurance---companies,---Mexican---casualty---companies,

1 domestic--and--foreign-loyd's-plan-insurers;--domestic-and-foreign
2 reciprocal--or--interinsurance--exchanges;---domestic--and--foreign
3 fraternal-benefit-societies;--domestic-and-foreign-title--insurance
4 companies;----attorney's--title--insurance--companies;---stipulated
5 premium-insurance-companies;--nonprofit-legal-service-corporations;
6 health--maintenance--organizations;---statewide--mutual--assessment
7 companies;----local--mutual--aid-associations;--local-mutual-burial
8 associations;--exempt-associations--under--Article--14.17--of--this
9 Code;---nonprofit-hospital;--medical;--or-dental--service-corporations
10 including-but-not-limited-to-companies-subject--to--Chapter--20--of
11 this--Code;---county--mutual--insurance--companies;--and-farm-mutual
12 insurance-companies;--Also;--this-section-applies-to-all--agents--of
13 those---companies---and---generally---to---all--other--individuals;
14 corporations;--associations;--partnerships;--and--other--natural--or
15 artificial--persons--engaged--in--the-business-of-insurance-or-that
16 hold--a--permit;--certificate;--registration;--license;--or---other
17 authority---under---this---Code---or--that--are--regulated--by--the
18 Commissioner.

19 [8.--Report-to-Attorney-General;--The-Department--shall
20 report-promptly-and-in-detail-to-the-Attorney-General-any-violation
21 of--law--relative--to--insurance--companies--or--the--business--of
22 insurance.

23 [9.--Shall--Furnish--Blanks;---The---Department---shall
24 furnish--to--the-companies-required-to-report-to-the-Department-the
25 necessary-blank-forms-for-the-statements-required.

26 [10.--Shall--Keep--Records;---The---Department---shall
27 preserve--in--a--permanent--form--a-full-record-of-the-Department's
28 proceedings-and-a--concise--statement--of--the--condition--of--each
29 company-or-agency-visited-or-examined.

30 [11.--Give--Certified--Copies;---At--the-request-of-any
31 person;--and-on-the-payment-of-the-legal-fee;--the--Department--shall
32 give--certified--copies-of-any-record-or-papers-in-its-office;--when
33 the-Commissioner-deems-it-not-prejudicial-to--public--interest--and
34 shall-give-such-other-certificates-as-are-provided-for-by-law;--The

1 fees--collected--by--the--Department--under--this--section--shall--be
2 deposited--in--the--State--Treasury--to--the--credit--of--the--Texas
3 Department--of--Insurance--operating--fund.

4 [12.--Report---to---Governor---and---Legislature,---The
5 Department--shall--file--annually--with--the--Governor--and--the--presiding
6 officer--of--each--house--of--the--Legislature--a--complete--and--detailed
7 written--report--accounting--for--all--funds--received--and--disbursed--by
8 the--Department--during--the--preceding--fiscal--year,---The--annual--report
9 must--be--in--the--form--and--reported--in--the--time--provided--by--the
10 General--Appropriations--Act,---The--report--shall--also--contain--the
11 Commissioner's--official--acts,---the--condition--of--companies--doing
12 business--in--this--State,---and--such--other--information--as--will--exhibit
13 the--affairs--of--the--Department.

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

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

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

32 16. Admit Mutual Companies. The Commissioner shall
33 admit into this State mutual insurance companies engaged in
34 cyclone, tornado, hail and storm insurance which are organized

1 under the laws of other states and which have Two Million
2 (\$2,000,000.00) Dollars assets in excess of liabilities.

3 17. Voluntary Deposits. (a) In the event any
4 insurance company organized and doing business under the provisions
5 of this Code shall be required by any other state, country or
6 province as a requirement for permission to do an insurance
7 business therein to make or maintain a deposit with an officer of
8 any state, country, or province, such company, at its discretion,
9 may voluntarily deposit with the Comptroller such securities as may
10 be approved by the Commissioner of Insurance to be of the type and
11 character authorized by law to be legal investments for such
12 company, or cash, in any amount sufficient to enable it to meet
13 such requirements. The Comptroller is hereby authorized and
14 directed to receive such deposit and hold it exclusively for the
15 protection of all policyholders or creditors of the company
16 wherever they may be located, or for the protection of the
17 policyholders or creditors of a particular state, country or
18 province, as may be designated by such company at the time of
19 making such deposit. The company may, at its option, withdraw such
20 deposit or any part thereof, first having deposited with the
21 Comptroller, in lieu thereof, other securities of like class and of
22 equal amount and value to those withdrawn, which withdrawal and
23 substitution must be approved by the Commissioner of Insurance.
24 The proper officer of each insurance company making such deposit
25 shall be permitted at all reasonable times to examine such
26 securities and to detach coupons therefrom, and to collect interest
27 thereon, under such reasonable rules and regulations as may be
28 prescribed by the Comptroller and the Commissioner of Insurance.
29 Any deposit so made for the protection of policyholders or
30 creditors of a particular state, country or province shall not be
31 withdrawn, except by substitution as provided above, by the
32 company, except upon filing with the Commissioner of Insurance
33 evidence satisfactory to him that the company has withdrawn from
34 business, and has no unsecured liabilities outstanding or potential

1 policyholder liabilities or obligations in such other state,
2 country or province requiring such deposit, and upon the filing of
3 such evidence the company may withdraw such deposit at any time
4 upon the approval of the Commissioner of Insurance. Any deposit so
5 made for the protection of all policyholders or creditors wherever
6 they may be located shall not be withdrawn, except by substitution
7 as provided above, by the company except upon filing with the
8 Commissioner of Insurance evidence satisfactory to him that the
9 company does not have any unsecured liabilities outstanding or
10 potential policy liabilities or obligations anywhere, and upon
11 filing such evidence the company may withdraw such deposit upon the
12 approval of the Commissioner of Insurance. For the purpose of
13 state, county and municipal taxation, the situs of any securities
14 deposited with the Comptroller hereunder shall be in the city and
15 county where the principal business office of such company is fixed
16 by its charter.

17 (b) Any voluntary deposit held by the Comptroller or
18 the Department heretofore made by any insurance company in this
19 State, and which deposit was made for the purpose of gaining
20 admission to another state, may be considered, at the option of
21 such company, to be hereinafter held under the provisions of this
22 Act.

23 (c) When two or more companies merge or consolidate or
24 enter a total reinsurance contract by which the ceding company is
25 dissolved and its assets acquired and liabilities assumed by the
26 surviving company, and the companies have on deposit with the
27 Comptroller two or more deposits made for identical purposes under
28 this section or Article 4739, Revised Statutes, as amended, and now
29 repealed, all such deposits, except the deposit of greatest amount
30 and value, may be withdrawn by the new surviving or reinsuring
31 company, upon proper showing of duplication of such deposits and
32 that the company is the owner thereof.

33 (d) Any company which has made a deposit or deposits
34 under this section or Article 4739, Revised Statutes, as amended

1 and now repealed, shall be entitled to a return of such deposits
2 upon proper application therefor and a showing before the
3 Commissioner that such deposit or deposits are no longer required
4 under the laws of any state, country or province in which such
5 company sought or gained admission to do business upon the strength
6 of a certificate of such deposit.

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

11 18. Complaint File. The Department shall keep an
12 information file about each complaint filed with the Department
13 concerning an activity that is regulated by the Department or
14 Commissioner.

15 19. Notice of Complaint Status. If a written
16 complaint is filed with the Department, the Department, at least
17 quarterly and until final disposition of the complaint, shall
18 notify the parties to the complaint of the status of the complaint
19 unless the notice would jeopardize an undercover investigation.

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

27 SECTION 5. REPEALER. Articles 1.01A, 1.02, 1.03A, 1.03B,
28 1.04, 1.04C, 1.06, 1.06A, 1.06AA, 1.06B, 1.06C, 1.07, 1.09, 1.09-2,
29 1.09-3, 1.09-5, 1.10A, 1.10B, 1.10E, 1.11A, 1.14-1, 1.14-1A,
30 1.19-1, 1.23, 1.24, 1.24B, 1.24C, 1.24D, 1.25, 1.25A, 1.27, 1.30,
31 1.33, 1.33A, 1.33B, 1.33C, 1.35C, 1.40, 1.41, 3.90, 5.121, 21.20-1,
32 21.30, 21.51, 21.69, 21.79B, and 21.79C, Insurance Code, are
33 repealed.

34 SECTION 6. LEGISLATIVE INTENT. This Act is enacted under

1 Section 43, Article III, Texas Constitution. This Act is intended
2 as a recodification only, and no substantive change in law is
3 intended by this Act.

4 SECTION 7. EFFECTIVE DATE. This Act takes effect September
5 1, 1999.

6 SECTION 8. EMERGENCY. The importance of this legislation
7 and the crowded condition of the calendars in both houses create an
8 emergency and an imperative public necessity that the
9 constitutional rule requiring bills to be read on three several
10 days in each house be suspended, and this rule is hereby suspended.

11 APPENDIX B

12 CHAPTER 311. CODE CONSTRUCTION ACT

13 (current as of end of 76th Legislature, Regular Session, 1999)

14 SUBCHAPTER A. GENERAL PROVISIONS

15 Sec. 311.001. SHORT TITLE. This chapter may be cited as the
16 Code Construction Act.

17 Sec. 311.002. APPLICATION. This chapter applies to:

18 (1) each code enacted by the 60th or a subsequent
19 legislature as part of the state's continuing statutory revision
20 program;

21 (2) each amendment, repeal, revision, and reenactment
22 of a code or code provision by the 60th or a subsequent
23 legislature;

24 (3) each repeal of a statute by a code; and

25 (4) each rule adopted under a code.

26 Sec. 311.003. RULES NOT EXCLUSIVE. The rules provided in
27 this chapter are not exclusive but are meant to describe and
28 clarify common situations in order to guide the preparation and
29 construction of codes.

30 Sec. 311.004. CITATION OF CODES. A code may be cited by its
31 name preceded by the specific part concerned. Examples of
32 citations are:

33 (1) Title 1, Business & Commerce Code;

34 (2) Chapter 5, Business & Commerce Code;

1 (3) Section 9.304, Business & Commerce Code;
2 (4) Section 15.06(a), Business & Commerce Code; and
3 (5) Section 17.18(b)(1)(B)(ii), Business & Commerce
4 Code.

5 Sec. 311.005. GENERAL DEFINITIONS. The following
6 definitions apply unless the statute or context in which the word
7 or phrase is used requires a different definition:

8 (1) "Oath" includes affirmation.

9 (2) "Person" includes corporation, organization,
10 government or governmental subdivision or agency, business trust,
11 estate, trust, partnership, association, and any other legal
12 entity.

13 (3) "Population" means the population shown by the
14 most recent federal decennial census.

15 (4) "Property" means real and personal property.

16 (5) "Rule" includes regulation.

17 (6) "Signed" includes any symbol executed or adopted
18 by a person with present intention to authenticate a writing.

19 (7) "State," when referring to a part of the United
20 States, includes any state, district, commonwealth, territory, and
21 insular possession of the United States and any area subject to the
22 legislative authority of the United States of America.

23 (8) "Swear" includes affirm.

24 (9) "United States" includes a department, bureau, or
25 other agency of the United States of America.

26 (10) "Week" means seven consecutive days.

27 (11) "Written" includes any representation of words,
28 letters, symbols, or figures.

29 (12) "Year" means 12 consecutive months.

30 (13) "Includes" and "including" are terms of
31 enlargement and not of limitation or exclusive enumeration, and use
32 of the terms does not create a presumption that components not
33 expressed are excluded.

34 Sec. 311.006. INTERNAL REFERENCES. In a code:

1 (1) a reference to a title, chapter, or section
2 without further identification is a reference to a title, chapter,
3 or section of the code; and

4 (2) a reference to a subtitle, subchapter, subsection,
5 subdivision, paragraph, or other numbered or lettered unit without
6 further identification is a reference to a unit of the next larger
7 unit of the code in which the reference appears.

8 SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

9 Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS.

10 (a) Words and phrases shall be read in context and construed
11 according to the rules of grammar and common usage.

12 (b) Words and phrases that have acquired a technical or
13 particular meaning, whether by legislative definition or otherwise,
14 shall be construed accordingly.

15 Sec. 311.012. TENSE, NUMBER, AND GENDER. (a) Words in the
16 present tense include the future tense.

17 (b) The singular includes the plural and the plural includes
18 the singular.

19 (c) Words of one gender include the other genders.

20 Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A
21 grant of authority to three or more persons as a public body
22 confers the authority on a majority of the number of members fixed
23 by statute.

24 (b) A quorum of a public body is a majority of the number of
25 members fixed by statute.

26 Sec. 311.014. COMPUTATION OF TIME. (a) In computing a
27 period of days, the first day is excluded and the last day is
28 included.

29 (b) If the last day of any period is a Saturday, Sunday, or
30 legal holiday, the period is extended to include the next day that
31 is not a Saturday, Sunday, or legal holiday.

32 (c) If a number of months is to be computed by counting the
33 months from a particular day, the period ends on the same numerical
34 day in the concluding month as the day of the month from which the

1 computation is begun, unless there are not that many days in the
2 concluding month, in which case the period ends on the last day of
3 that month.

4 Sec. 311.015. REFERENCE TO A SERIES. If a statute refers to
5 a series of numbers or letters, the first and last numbers or
6 letters are included.

7 Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following
8 constructions apply unless the context in which the word or phrase
9 appears necessarily requires a different construction or unless a
10 different construction is expressly provided by statute:

11 (1) "May" creates discretionary authority or grants
12 permission or a power.

13 (2) "Shall" imposes a duty.

14 (3) "Must" creates or recognizes a condition
15 precedent.

16 (4) "Is entitled to" creates or recognizes a right.

17 (5) "May not" imposes a prohibition and is synonymous
18 with "shall not."

19 (6) "Is not entitled to" negates a right.

20 (7) "Is not required to" negates a duty or condition
21 precedent.

22 SUBCHAPTER C. CONSTRUCTION OF STATUTES

23 Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In
24 enacting a statute, it is presumed that:

25 (1) compliance with the constitutions of this state
26 and the United States is intended;

27 (2) the entire statute is intended to be effective;

28 (3) a just and reasonable result is intended;

29 (4) a result feasible of execution is intended; and

30 (5) public interest is favored over any private
31 interest.

32 Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A statute
33 is presumed to be prospective in its operation unless expressly
34 made retrospective.

1 Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a
2 statute, whether or not the statute is considered ambiguous on its
3 face, a court may consider among other matters the:

- 4 (1) object sought to be attained;
- 5 (2) circumstances under which the statute was enacted;
- 6 (3) legislative history;
- 7 (4) common law or former statutory provisions,
8 including laws on the same or similar subjects;
- 9 (5) consequences of a particular construction;
- 10 (6) administrative construction of the statute; and
- 11 (7) title (caption), preamble, and emergency
12 provision.

13 Sec. 311.024. HEADINGS. The heading of a title, subtitle,
14 chapter, subchapter, or section does not limit or expand the
15 meaning of a statute.

16 Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS.

17 (a) Except as provided by Section 311.031(d), if statutes enacted
18 at the same or different sessions of the legislature are
19 irreconcilable, the statute latest in date of enactment prevails.

20 (b) Except as provided by Section 311.031(d), if amendments
21 to the same statute are enacted at the same session of the
22 legislature, one amendment without reference to another, the
23 amendments shall be harmonized, if possible, so that effect may be
24 given to each. If the amendments are irreconcilable, the latest in
25 date of enactment prevails.

26 (c) In determining whether amendments are irreconcilable,
27 text that is reenacted because of the requirement of Article III,
28 Section 36, of the Texas Constitution is not considered to be
29 irreconcilable with additions or omissions in the same text made by
30 another amendment. Unless clearly indicated to the contrary, an
31 amendment that reenacts text in compliance with that constitutional
32 requirement does not indicate legislative intent that the reenacted
33 text prevail over changes in the same text made by another
34 amendment, regardless of the relative dates of enactment.

1 (d) In this section, the date of enactment is the date on
2 which the last legislative vote is taken on the bill enacting the
3 statute.

4 (e) If the journals or other legislative records fail to
5 disclose which of two or more bills in conflict is latest in date
6 of enactment, the date of enactment of the respective bills is
7 considered to be, in order of priority:

8 (1) the date on which the last presiding officer
9 signed the bill;

10 (2) the date on which the governor signed the bill; or

11 (3) the date on which the bill became law by operation
12 of law.

13 Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER
14 GENERAL. (a) If a general provision conflicts with a special or
15 local provision, the provisions shall be construed, if possible, so
16 that effect is given to both.

17 (b) If the conflict between the general provision and the
18 special or local provision is irreconcilable, the special or local
19 provision prevails as an exception to the general provision, unless
20 the general provision is the later enactment and the manifest
21 intent is that the general provision prevail.

22 Sec. 311.027. STATUTORY REFERENCES. Unless expressly
23 provided otherwise, a reference to any portion of a statute or rule
24 applies to all reenactments, revisions, or amendments of the
25 statute or rule.

26 Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A
27 uniform act included in a code shall be construed to effect its
28 general purpose to make uniform the law of those states that enact
29 it.

30 Sec. 311.029. ENROLLED BILL CONTROLS. If the language of
31 the enrolled bill version of a statute conflicts with the language
32 of any subsequent printing or reprinting of the statute, the
33 language of the enrolled bill version controls.

34 Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a

1 repealing statute does not revive the statute originally repealed
2 nor impair the effect of any saving provision in it.

3 Sec. 311.031. SAVING PROVISIONS. (a) Except as provided by
4 Subsection (b), the reenactment, revision, amendment, or repeal of
5 a statute does not affect:

6 (1) the prior operation of the statute or any prior
7 action taken under it;

8 (2) any validation, cure, right, privilege,
9 obligation, or liability previously acquired, accrued, accorded, or
10 incurred under it;

11 (3) any violation of the statute or any penalty,
12 forfeiture, or punishment incurred under the statute before its
13 amendment or repeal; or

14 (4) any investigation, proceeding, or remedy
15 concerning any privilege, obligation, liability, penalty,
16 forfeiture, or punishment; and the investigation, proceeding, or
17 remedy may be instituted, continued, or enforced, and the penalty,
18 forfeiture, or punishment imposed, as if the statute had not been
19 repealed or amended.

20 (b) If the penalty, forfeiture, or punishment for any
21 offense is reduced by a reenactment, revision, or amendment of a
22 statute, the penalty, forfeiture, or punishment, if not already
23 imposed, shall be imposed according to the statute as amended.

24 (c) The repeal of a statute by a code does not affect an
25 amendment, revision, or reenactment of the statute by the same
26 legislature that enacted the code. The amendment, revision, or
27 reenactment is preserved and given effect as part of the code
28 provision that revised the statute so amended, revised, or
29 reenacted.

30 (d) If any provision of a code conflicts with a statute
31 enacted by the same legislature that enacted the code, the statute
32 controls.

33 Sec. 311.032. SEVERABILITY OF STATUTES. (a) If any statute
34 contains a provision for severability, that provision prevails in

1 interpreting that statute.

2 (b) If any statute contains a provision for nonseverability,
3 that provision prevails in interpreting that statute.

4 (c) In a statute that does not contain a provision for
5 severability or nonseverability, if any provision of the statute or
6 its application to any person or circumstance is held invalid, the
7 invalidity does not affect other provisions or applications of the
8 statute that can be given effect without the invalid provision or
9 application, and to this end the provisions of the statute are
10 severable.

11 APPENDIX C

12 DISPOSITION TABLE

13 VTIC ARTICLE	INSURANCE CODE SECTION
14 1.01A, Subsec. (a)	31.001
15 Subsec. (b) (part)	31.002
16 (part)	31.003
17 (c)	31.007
18 1.02, Subsec. (a) (part)	31.007
19 (part)	RN 31.007
20 Subsec. (b) (part)	31.021
21 (part)	RN 31.021
22 Subsec. (c)	31.004
23 Subsec. (d)	31.043
24 Subsec. (e)	31.043
25 Subsec. (f)	31.043
26 Subsec. (g)	31.042
27 Subsec. (h)	31.044
28 1.03A	36.001
29 1.03B	36.002
30 1.04, Subsec. (a) (part)	36.201
31 (part)	36.202
32 (part)	36.203
33 (part)	36.204
34 (part)	36.205

1	(b)	36.205
2	1.04C, Subsec. (a)	39.001
3	Subsec. (b)	39.002
4	1.06, Subsec. (a)	33.002
5	Subsec. (b)	33.003
6	1.06A	33.004
7	1.06AA	33.003
8	1.06B	33.005
9	1.06C	33.007
10	1.07	31.006
11	1.09, Subsec. (a) (part)	31.021
12	Subsec. (b) (part)	31.022
13	(part)	31.023
14	(part)	33.002
15	(part)	33.006
16	Subsec. (c)	31.025
17	Subsec. (d)	31.026
18	Subsec. (f)	31.041
19	Subsec. (g)	31.045
20	Subsec. (h)	31.045
21	Subsec. (i)	31.027
22	Subsec. (j)	31.027
23	1.09-2	31.024
24	1.09-3	33.001
25	1.09-5	37.052
26	1.10, Sec. 1	31.002
27	Sec. 6	32.023
28	Sec. 7(a) (part)	82.001
29	(part)	82.051
30	(part)	82.052
31	(part)	82.053
32	(b)	82.053
33	(c)	82.054
34	(d)	82.055

1	(e)	82.056
2	(f) (part)	82.002
3	(part)	82.003
4	(g)	82.002
5	Sec. 8	81.004
6	Sec. 9	32.041
7	Sec. 10 (part)	32.002
8	(part)	32.003
9	Sec. 11	32.001
10	Sec. 12	32.021
11	Sec. 13	32.021
12	Sec. 14	32.024
13	1.10A, Sec. 1(1) (part)	83.001
14	(part)	83.002
15	(2)	83.001
16	(3)	RN 83.001
17	(4)	RN 83.001
18	(5)	83.001
19	(6)	83.051
20	(7)	83.051
21	(8)	83.051
22	Sec. 2 (part)	83.001
23	(part)	83.051
24	Sec. 3(a)	83.052
25	(b)	83.053
26	(c)	83.054
27	(d)	83.055
28	(e)	83.054
29	(f)	83.054
30	(h) (part)	83.151
31	(part)	83.152
32	(i)	83.153
33	(j)	83.051
34	Sec. 4(a)	83.101

1	(b)	83.103
2	(c) (part)	83.102
3	(part)	83.103
4	(d)	83.104
5	(f) (part)	83.151
6	(part)	83.153
7	Sec. 5	83.105
8	Sec. 6	83.003
9	Sec. 7	83.004
10	1.10B	81.002
11	1.10E, Sec. 1(1)	84.001
12	(2)	84.002
13	Sec. 2 (part)	84.021
14	(part)	84.041
15	Sec. 3	84.022
16	Sec. 4(a)	84.041
17	(b)	84.041
18	(c)	84.042
19	(d)	84.042
20	(e) (part)	84.043
21	(part)	84.044
22	(f)	84.044
23	(g)	84.045
24	(h)	84.046
25	(i)	84.046
26	(j)	84.047
27	Sec. 5(a)	84.048
28	(b)	84.049
29	(c) (part)	84.050
30	(part)	84.051
31	Sec. 6	RN 84.051
32	Sec. 7	84.003
33	Sec. 8	84.002
34	1.11A	36.107

1	1.14-1, Sec. 1 (part)	101.001
2	(part)	RN 101.001
3	Sec. 2(a) (part)	101.002
4	(part)	101.003
5	(part)	101.051
6	(part)	101.052
7	(part)	101.053
8	(part)	101.054
9	(part)	101.055
10	(b)	101.053
11	(c)	101.003
12	Sec. 3(a)	101.101
13	(b)	101.102
14	(c)	101.104
15	(d)	101.105
16	(e) (part)	101.002
17	(part)	101.103
18	(part)	101.105
19	(f)	101.105
20	(g)	101.105
21	(h)	101.103
22	Sec. 3A(a) (part)	101.002
23	(part)	101.151
24	(part)	RN 101.151
25	(part)	101.152
26	(b)	101.152
27	(c)	101.153
28	(d)	RN 101.156
29	(e)	RN 101.156
30	(f)	101.154
31	(g)	101.156
32	(h)	101.155
33	Sec. 7	101.202
34	Sec. 8	101.201

1	Sec. 9	101.203
2	Sec. 10	101.301
3	Sec. 11(a) (part)	101.251
4	(part)	RN 101.253
5	(b)	101.251
6	Sec. 12(a)	101.252
7	(b)	101.252
8	(c)	101.252
9	(d) (part)	101.252
10	(part)	RN 101.253
11	(e)	101.252
12	Sec. 12A (part)	101.253
13	(part)	RN 101.253
14	Sec. 13	101.106
15	Sec. 14	101.004
16	1.14-1A, Sec. 1(1)	102.001
17	(2)	102.001
18	(3)	102.002
19	Sec. 2(a)	102.051
20	(b) (part)	102.002
21	(part)	102.051
22	Sec. 3	102.101
23	Sec. 4	102.102
24	Sec. 5 (part)	102.103
25	(part)	102.104
26	Sec. 6	102.051
27	1.19-1, Sec. 1(a) (part)	36.151
28	(part)	36.152
29	(b)	36.156
30	(c)	36.161
31	(d)	36.158
32	(e) (part)	36.151
33	(part)	36.160
34	(f)	RN 36.162

1	(g)	36.162
2	Sec. 2 (part)	36.151
3	(part)	36.157
4	Sec. 3 (part)	36.151
5	(part)	36.154
6	Sec. 4(a)	36.155
7	(b)	36.153
8	Sec. 5(a) (part)	36.151
9	(part)	36.159
10	(b)	36.159
11	1.23	RN 32.003
12	1.24	38.001
13	1.24B, Sec. 1(1)	38.151
14	(2) (part)	38.151
15	(part)	38.152
16	Sec. 2(a)	38.153
17	(b)	38.154
18	(c)	38.155
19	(d)	38.157
20	Sec. 3	38.154
21	Sec. 4	38.156
22	Sec. 5(a) (part)	38.153
23	(part)	38.155
24	(part)	38.163
25	(b)	38.158
26	Sec. 6(a)	38.159
27	(b) (part)	38.159
28	(part)	38.161
29	(c)	38.161
30	(d)	38.160
31	Sec. 7	38.162
32	1.24C, Subsec. (a)	38.102
33	Subsec. (b)(1)	38.101
34	(2)	38.101

1	(3)	RN 38.101
2	Subsec. (c)	38.103
3	Subsec. (d)	38.103
4	Subsec. (e)	38.104
5	Subsec. (f)	38.105
6	Subsec. (g)	38.105
7	Subsec. (h)	38.106
8	Subsec. (i)	38.106
9	1.24D	38.002
10	1.25, Subsec. (a)	32.022
11	Subsec. (b)	32.021
12	1.25A	32.022
13	1.27	36.004
14	1.30, Sec. 1(a) (part)	81.003
15	(part)	RN 81.003
16	(b)	RN 81.003
17	(c)	RN 81.003
18	Sec. 2	81.003
19	Sec. 3	81.003
20	1.33, Subsec. (a)	36.102
21	Subsec. (b)	36.102
22	Subsec. (c)	36.102
23	Subsec. (d)	36.103
24	Subsec. (e) (part)	36.104
25	(part)	36.106
26	1.33A (part)	36.101
27	(part)	RN 36.205
28	1.33B, Subsec. (a)	40.003
29	Subsec. (b) (part)	40.001
30	(part)	40.002
31	(part)	40.003
32	Subsec. (c)(1) (part)	40.051
33	(part)	40.052
34	(2) (part)	40.053

1	(part)	40.054
2	(part)	40.055
3	(part)	40.056
4	(3)	40.057
5	(4) (part)	40.058
6	(part)	40.059
7	(5) (part)	40.059
8	(part)	40.060
9	Subsec. (d)	40.004
10	Subsec. (e)	40.003
11	Subsec. (f)	40.005
12	1.33C, Subsec. (a)	37.001
13	Subsec. (b)	37.001
14	Subsec. (c)	37.051
15	1.35C	39.003
16	1.40, Subsec. (a) (part)	31.005
17	(part)	34.001
18	Subsec. (b)	34.002
19	Subsec. (c)	34.002
20	Subsec. (d)	34.002
21	Subsec. (e)	34.004
22	Subsec. (f)	34.003
23	Subsec. (g)	34.005
24	1.41	81.001
25	3.90, Subsec. (a)	38.051
26	Subsec. (b)	38.052
27	Subsec. (c)	38.052
28	5.121	37.051
29	21.20-1	36.003
30	21.30	36.105
31	21.51	85.001
32	21.69, Subsec. (a)	38.202
33	Subsec. (b)	38.203
34	Subsec. (c)	38.206

1	Subsec. (d)	38.204
2	Subsec. (e)	38.205
3	Subsec. (f)	38.204
4	Subsec. (g)	38.207
5	21.79B	85.051
6	21.79C	85.052