

Source Law

(c) Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions:

. . .

Revised Law

Sec. 941.352. ADOPTION OF CONVERSION PLAN. The underwriters by a two-thirds vote may adopt a plan to convert the Lloyd's plan to a capital stock insurance company. (V.T.I.C. Art. 18.23A, Sec. (c) (part).)

Source Law

(c) [Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions:]

(1) By two-thirds vote, the underwriters may adopt a plan to convert the Lloyd's to a capital stock company.

. . .

Revised Law

Sec. 941.353. REQUIREMENTS OF CONVERSION PLAN. The conversion plan must provide that a capital stock insurance company will be formed in accordance with Chapter 822, except that:

(1) the company's required minimum capital and surplus must equal the required minimum guaranty fund and surplus of the Lloyd's plan;

(2) the company's assets may be in cash or in the form of an investment lawfully held by the Lloyd's plan; and

(3) an original examination under Section 822.058(b) is not required unless directed by the commissioner. (V.T.I.C. Art. 18.23A, Sec. (c) (part).)

Source Law

(c) [Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions: . . .]

(2) The plan of conversion shall

provide that a capital stock company be formed in accordance with Chapter 2 of this code, except that:

(A) the required minimum capital and surplus of the capital stock company shall equal the required minimum guaranty fund and surplus of the Lloyd's;

(B) the assets of the capital stock company may be in cash or in the form of investment lawfully held by the Lloyd's under this code; and

(C) an original examination under Article 2.04 of this code is not required unless directed by the department.

. . .

Revised Law

Sec. 941.354. COMMISSIONER APPROVAL OF CONVERSION PLAN. On the commissioner's approval of the conversion plan and the formation of the capital stock insurance company, all assets, interests, obligations, and liabilities of the Lloyd's plan, including all outstanding policies and insurance obligations, are transferred to the capital stock insurance company, except as otherwise provided by this subchapter. (V.T.I.C. Art. 18.23A, Sec. (c) (part).)

Source Law

(c) [Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions: . . .]

(3) On the department's approval of the plan of conversion and the formation of the capital stock company, all assets, interests, obligations, and liabilities of the Lloyd's, including all outstanding policies and insurance obligations of the Lloyd's, shall be converted to the capital stock company governed by the provisions of Chapter 2 of this code, except as otherwise herein provided.

. . .

Revised Law

Sec. 941.355. CONVERSION OF MEMBER OF HOLDING COMPANY SYSTEM. If the Lloyd's plan is a member of a holding company

system identified in registration information that the Lloyd's plan filed with the department in accordance with Chapter 823, the rights and interests of the underwriters in the capital stock insurance company may be assigned at the time of conversion to any affiliated person in that holding company system. An assignment under this subsection is not:

(1) a change in control for the purposes of Section 822.212; or

(2) an acquisition of control for the purposes of Chapter 823. (V.T.I.C. Art. 18.23A, Sec. (c) (part).)

Source Law

(c) [Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions: . . .]

(4) If the Lloyd's is a member of a holding company system identified in registration information filed by the Lloyd's with the department pursuant to Section 3, Article 21.49-1, of this code, the underwriters' rights and interests in the capital stock company may be assigned at the time of conversion to any affiliated person in such system. The result of such assignment shall not be considered a change in control for purposes of Article 2.20 of this code nor an acquisition of control for purposes of Section 5, Article 21.49-1, of this code.

[Sections 941.356-941.700 reserved for expansion]

SUBCHAPTER O. PENALTIES

Revised Law

Sec. 941.701. REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner shall revoke a certificate of authority issued to an attorney in fact if the attorney in fact or an underwriter violates this chapter or any other law of this state. (V.T.I.C. Art. 18.22.)

Source Law

Art. 18.22. If any attorney in fact or underwriters at Lloyd's shall violate any of the provisions of this chapter or any of the other laws of the State of Texas, which are

applicable to them, the license of such attorney shall be revoked and the right to do business in Texas shall be cancelled.

Revisor's Note

(1) V.T.I.C. Article 18.22 refers to a violation by an attorney in fact or underwriter of a law "applicable to them." The revised law omits the quoted phrase as unnecessary. If a law is not applicable to an attorney in fact or underwriter, then the attorney in fact or underwriter cannot violate that law.

(2) V.T.I.C. Article 18.22 states that on violation of a law, the license (certificate of authority) of an attorney in fact shall be revoked and the "right to do business in Texas shall be cancelled." The revised law omits the quoted phrase as unnecessary. The revocation of the certificate of authority has the effect of terminating the authority of the attorney in fact to engage in business for the Lloyd's plan in this state.

Revised Law

Sec. 941.702. CRIMINAL PENALTY. (a) A person commits an offense if the person, as a principal, attorney in fact, agent, broker, or other representative, engages in the business of writing insurance on the Lloyd's plan in violation of this chapter.

(b) An offense under this section is punishable by a fine of not more than \$500. (V.T.I.C. Art. 18.22-1.)

Source Law

Art. 18.22-1. Any person, who, as principal, attorney, agent, broker, or other representative, shall engage in the business of making insurance on the Lloyds plan, as defined in this chapter and by the Revised Statutes of this State, without complying with the requirements of such law governing such business, or who shall violate any provision of the four preceding articles, shall be fined not exceeding five hundred dollars.

Revisor's Note

(1) V.T.I.C. Article 18.22-1 was

formerly a part of the Penal Code of Texas, 1925, and by the authority of Section 5, Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, was transferred to Chapter 18, Insurance Code, revised as this chapter. At the time the article was transferred, references to other statutes within the article were not changed to reflect the transfer. As a result, the reference to "this chapter" is a reference to the statutes relating to Lloyd's plans that were transferred from the Penal Code of 1925 to Chapter 18, Insurance Code. The reference to "the Revised Statutes" is a reference to Chapter 18, Insurance Code, as it existed before its codification by the Insurance Code of 1951, and the reference to "the four preceding articles" is again a reference to the four statutes that preceded the substance of the article in the former Penal Code of 1925 and that were transferred to Chapter 18, Insurance Code, in 1973. The revised law is drafted accordingly.

(2) V.T.I.C. Article 18.22-1 provides that a person who engages in certain prohibited conduct "shall be fined not exceeding five hundred dollars." The revised law provides that a person who engages in the prohibited conduct "commits an offense" to be consistent with the terminology used in the Penal Code.

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CHAPTER 942. RECIPROCAL AND INTERINSURANCE EXCHANGES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 942.001. DEFINITIONS. In this chapter:

(1) "Attorney in fact" means an individual, firm, or corporation who, under a power of attorney or other appropriate authorization of the attorney in fact, acts for subscribers of an exchange by issuing reciprocal or interinsurance contracts.

(2) "Exchange" means a reciprocal or interinsurance exchange and includes the office through which a reciprocal or interinsurance contract is exchanged.

(3) "Reciprocal or interinsurance contract" means an insurance policy or other contract that provides indemnity among a group of subscribers for certain losses.

(4) "Subscriber" means an individual, partnership, or corporation who, through an attorney in fact, enters into a reciprocal or interinsurance contract. (V.T.I.C. Arts. 19.01 (part), 19.02 (part), 19.03 (part), 19.10 (part); New.)

Source Law

Art. 19.01. Individuals, partnerships
and corporations . . . hereby designated

subscribers . . . to exchange reciprocal or interinsurance contracts . . . providing indemnity among themselves from any loss which may be insured against

Art. 19.02. [Such contracts may be executed by] a duly appointed attorney in fact duly authorized and acting for such subscribers. . . .

Art. 19.03. . . .

1. . . . The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or interinsurance exchanges;

. . . .

3. . . . power of attorney or other authority of such attorney in fact under which such insurance is to be effected or exchanged

Art. 19.10. . . . attorney-in-fact by whom or through whom are issued any policies of or contracts of indemnity of the character referred to herein [A Certificate of Authority issued as provided in this Article, shall fully authorize the named person, firm or corporation to exercise all of the powers and perform all of the duties of such attorney-in-fact;]

Revisor's Note

(1) V.T.I.C. Article 19.01 provides that "[i]ndividuals, partnerships and corporations . . . hereby designated subscribers" may exchange "reciprocal or interinsurance contracts . . . providing indemnity" for certain losses. The definitions of "subscriber" and "reciprocal or interinsurance contract" are added to the revised law to incorporate those concepts and to eliminate the frequent, unnecessary repetition of the substance of the definitions.

(2) V.T.I.C. Articles 19.02, 19.03, and 19.10 provide that an attorney in fact acts for the subscribers of an exchange under a power of attorney or other authority. The definition of "attorney in fact" is added to

the revised law to incorporate that concept and to eliminate the frequent, unnecessary repetition of the substance of the definition.

(3) V.T.I.C. Article 19.03 provides that "offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or interinsurance exchanges." The definition of "exchange" is added to the revised law to incorporate that concept and to eliminate the frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 942.002. SUBSCRIBER INSURANCE COVERAGE THROUGH EXCHANGE AUTHORIZED; LIFE INSURANCE PROHIBITED. (a) Except as provided by Subsection (c), subscribers of this state may exchange reciprocal or interinsurance contracts with other subscribers of this state or of another state or country to provide indemnity among those subscribers for a loss for which insurance coverage may be obtained under other law.

(b) A public, private, or municipal corporation organized under the laws of this state may act as a subscriber, and the right to exchange a reciprocal or interinsurance contract is:

(1) incidental to the purpose for which the corporation is organized; and

(2) in addition to the corporate rights and powers expressly conferred in the corporation's articles of incorporation.

(c) An exchange may not engage in the business of life insurance. (V.T.I.C. Arts. 19.01 (part), 19.09.)

Source Law

Art. 19.01. [Individuals, partnerships and corporations] of this State [hereby designated subscribers] are hereby authorized to exchange reciprocal or interinsurance contracts with each other, or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance.

Art. 19.09. Any corporation, public, private or municipal, now or hereafter organized under the laws of this State,

shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purpose for which such corporations are organized and as such granted as the rights and powers expressly conferred.

Revisor's Note

V.T.I.C. Article 19.09 refers to a corporation's "rights, powers and franchises." The revised law omits the reference to "franchises" as unnecessary because, in context, "franchises" is included in the meaning of "rights and powers." The power to grant a franchise is included in the powers granted through the articles of incorporation. Those specified powers are sufficient authority for the exercise of those powers, and it is unnecessary to refer to that authority in the revised law.

Revised Law

Sec. 942.003. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) An exchange is exempt from the operation of all insurance laws of this state except as specifically provided in this chapter or unless exchanges are specifically mentioned in the other law.

(b) An exchange is subject to:

- (1) Section 5, Article 1.10;
- (2) Articles 1.15, 1.15A, and 1.16;
- (3) Subchapter A, Chapter 5;
- (4) Articles 5.35, 5.37, 5.38, 5.39, and 5.40;
- (5) Articles 21.21 and 21.49-8; and
- (6) Sections 822.203, 822.205, 822.210, 822.212, 861.254(a)-(f), 861.255, 862.001(b), and 862.003.

(c) Subchapter M, Chapter 5, applies to the rates for motor vehicle insurance written by an exchange.

(d) The provisions of the Texas Business Corporation Act that relate to the indemnification of officers and directors apply to an exchange.

(e) Subscribers and their attorney in fact are subject to Sections 822.051, 822.057-822.060, and 822.201, except that:

- (1) the declaration of the subscribers prescribed by Section 942.053 replaces the articles of incorporation; and
- (2) the unencumbered surplus of the exchange

constitutes capital structure for purposes of Section 822.060. (V.T.I.C. Art. 5.01-2, Secs. (a) (part), (b) (part); Arts. 19.03 (part), 19.12, 19.13.)

Source Law

Art. 5.01-2. (a) . . . reciprocal and interinsurance exchanges are subject to this subchapter.

(b) . . . rates for motor vehicle insurance written by . . . a reciprocal or interinsurance exchange are determined as provided by the flexible rating program adopted under Subchapter M of this chapter.

Art. 19.03. . . .

5. . . . Such subscribers and their attorney in fact shall be subject to the provisions of Article 2.01 and of Article 2.04 of this Code, except that:

(a) The declaration of subscribers shall be in lieu of Articles of Incorporation; and

(b) Free surplus shall constitute capital structure within the meaning of Article 2.01.

Art. 19.12. (a) Reciprocal or inter-insurance exchanges shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless reciprocal or inter-insurance exchanges are specifically mentioned in such other laws.

(b) In addition to such Articles as may be made to apply by other Articles of this Code, reciprocal or inter-insurance exchanges shall not be exempt from and shall be subject to:

(1) Section 5, Article 1.10 of this Code; and

(2) Articles 1.15, 1.15A, 1.16, 2.20, 5.35, 5.37, 5.38, 5.39, 5.40, 6.12, 8.07, 21.21, and 21.49-8 of this Code.

Art. 19.13. The provisions of the Texas Business Corporation Act relating to the indemnification of officers and directors apply to and govern reciprocal or

interinsurance exchanges organized under this chapter.

[Sections 942.004-942.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF EXCHANGE

Revised Law

Sec. 942.051. APPOINTMENT OF ATTORNEY IN FACT; APPROVAL BY DEPARTMENT OF POWER OF ATTORNEY OR OTHER AUTHORIZATION REQUIRED.

(a) A reciprocal or interinsurance contract may be executed by an attorney in fact appointed by the subscribers of an exchange.

(b) A corporation may be organized in this state to act as attorney in fact for an exchange. The general laws regarding incorporation supplement this chapter to the extent consistent with this chapter. A corporation organized in this state to act as attorney in fact for an exchange may be organized under the Texas Business Corporation Act, notwithstanding any conflicting provision of that Act.

(c) The form of the power of attorney or other document granting authority to the attorney in fact and under which the insurance is to be exchanged is subject to approval by the department. This subsection may not be construed to permit the department to require the filing or use of uniform forms of those documents except as otherwise provided by this chapter.

(V.T.I.C. Arts. 19.02 (part), 19.02A, 19.03 (part), 19.10-1 (part).)

Source Law

Art. 19.02. Such contracts may be executed by a duly appointed attorney in fact

A corporation may be organized in Texas to act as attorney-in-fact for a reciprocal or inter-insurance exchange. The general laws for incorporation shall supplement the provisions of this Act to the extent that they are not inconsistent with the provisions hereof.

Art. 19.02A. Notwithstanding any provision of the Texas Business Corporation Act, a corporation organized in Texas to act as attorney-in-fact for a reciprocal or inter-insurance exchange may be organized under the Texas Business Corporation Act.

Art. 19.03. . . .

3. . . . the form of power of attorney or other authority of such attorney in fact under which such insurance is to

be . . . exchanged, which form shall be subject to approval by the Board of Insurance Commissioners of Texas; provided, however, that except as to matters concerning which specific provision is made in this Chapter, nothing herein contained shall be so construed as to permit the said Board to require the filing or use of uniform forms of such instruments. . . .

Art. 19.10-1. Any attorney in fact duly appointed as such by the subscribers to execute contracts to exchange reciprocal or inter-insurance contracts according to the law governing such contracts

Revisor's Note

V.T.I.C. Article 19.03 refers to the "Board of Insurance Commissioners of Texas." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the "Board of Insurance Commissioners" and the "State Board of Insurance" have been changed appropriately.

Revised Law

Sec. 942.052. SECURITY REQUIREMENTS. (a) Except as provided by Subsection (d), to act as an attorney in fact, an individual, firm, or corporation must execute a good and sufficient fidelity bond that obligates the principal and surety to pay a pecuniary loss of money or property, not exceeding the amount of the bond, that is sustained by the exchange through fraud, dishonesty, forgery, theft, embezzlement, wrongful

abstraction, or wilful misapplication on the part of the attorney in fact, directly or through connivance with others.

- (b) The bond must:
 - (1) be acceptable to the department;
 - (2) be payable to the subscribers or the department;

and

- (3) be in the amount of:
 - (A) \$25,000 for an individual or firm; or
 - (B) \$50,000 for a corporation.

(c) If the conditions of the bond are violated, the insurance supervisory authority of any state in which the attorney in fact is authorized to engage in the business of the exchange may bring an action to enforce the bond on behalf of the subscribers.

(d) Instead of a bond, an attorney in fact may deposit with the appropriate official of the exchange's state of domicile cash or securities of the kind in which a general casualty company is authorized to invest its funds. The deposit must be made in the same amount, and must be conditioned, approved, and payable in the same manner, as a bond required under this section. (V.T.I.C. Art. 19.02 (part).)

Source Law

Art. 19.02. . . . Any person, firm or corporation may act as such attorney in fact, provided such attorney in fact shall make a good and sufficient fidelity bond acceptable to the Board of Insurance Commissioners of Texas and payable to the subscribers at the exchange, or, in lieu thereof, payable to the said Board of Insurance Commissioners, such bond to be in the sum of Twenty-five Thousand (\$25,000.00) Dollars in the case of an individual or firm, and Fifty Thousand (\$50,000.00) Dollars in the case of a corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss, not exceeding the penalty of the bond, as the exchange shall sustain of money or property by an act or acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or wilful misapplication on the part of the said attorney in fact directly or through connivance with others, and in the event of any violation of the conditions of said bond, the insurance supervisory authority of any state in which the attorney in fact is authorized to

transact the business of the exchange may bring suit to enforce the penalty of the bond on behalf of the subscribers; provided, that a deposit with the proper lawful authority of the home state of such exchange of cash or securities of the kind in which general casualty companies may invest their funds, in like amount, conditioned, approved and payable in like manner, may be used in lieu of such bond.

. . .

Revised Law

Sec. 942.053. SUBSCRIBER DECLARATION. (a) On entering into a reciprocal or interinsurance contract, the subscribers, through the attorney in fact, shall file with the department a declaration verified by the oath of the attorney in fact.

(b) The declaration must include:

- (1) the name of the proposed exchange;
- (2) the kinds of insurance to be provided under the reciprocal or interinsurance contract;
- (3) a copy of the form of the power of attorney or other authorization of the attorney in fact under which the insurance is to be provided;
- (4) the location of each office from which the reciprocal or interinsurance contracts are to be issued; and
- (5) any other information prescribed by the department, including an affidavit comparable to the affidavit prescribed by Section 822.057(a)(3). (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. Such subscribers, so contracting among themselves, shall, through their attorney in fact file with the Board of Insurance Commissioners a declaration verified by the oath of such attorney in fact setting forth:

1. The name or title of the office at which subscribers propose to exchange such indemnity contracts. . . . ;
2. The kind or kinds of insurance to be effected or exchanged . . . ;
3. A copy of the form of power of attorney or other authority of such attorney in fact under which such insurance is to be effected or exchanged . . . ;
4. The location of the office or

offices from which such contracts or agreements are to be issued;

5. Such other information as may be prescribed by the Board, including the affidavit or affidavits provided by Article 2.05.

. . .

Revisor's Note

(1) V.T.I.C. Article 19.03 refers to the "name or title of the office." The revised law omits "title" because, in context, "title" is included within the meaning of "name."

(2) V.T.I.C. Article 19.03 refers to the kind or kinds of insurance to be exchanged, "provided that same shall not include life insurance." The revised law omits the quoted language as unnecessary. Under V.T.I.C. Article 19.01, revised in relevant part as Section 942.002, an exchange is prohibited from engaging in the business of life insurance, and it is unnecessary to repeat that prohibition in this section.

(3) V.T.I.C. Article 19.03 requires the subscriber declaration to include "the affidavit or affidavits provided by Article 2.05." V.T.I.C. Article 2.05, revised as Section 822.057, requires the persons incorporating an insurance company to certify that the articles of incorporation are accurate and that the capital and surplus of the company belong to the company. The revised law refers to an "affidavit comparable to the affidavit prescribed by" Article 2.05 because an exchange may operate without incorporating.

Revised Law

Sec. 942.054. NAME OF EXCHANGE. (a) The name of an exchange must contain the term "reciprocal," "inter-insurance exchange," "underwriters," "association," "exchange," "underwriting," "inter-insurers," or "inter-insurors."

(b) The name selected for an exchange may not be so similar to the name of a similar organization or an insurer that, in the opinion of the department, the name is calculated to confuse or deceive. (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. . . .

1. . . . Said name or title shall contain the word "reciprocal," "inter-insurance exchange," "underwriters," "association," "exchange," "underwriting," "inter-insurers," or "inter-insurors," and shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of said Board of Insurance Commissioners is calculated to confuse or deceive. . . .

Revisor's Note

Section 1, V.T.I.C. Article 19.03, refers to the "name or title" of an exchange. The revised law omits "title" for the reason stated in Revisor's Note (1) to Section 942.053.

Revised Law

Sec. 942.055. OFFICE LOCATIONS. The attorney in fact shall maintain the offices of the exchange at the places designated by the subscribers in the power of attorney or other authorization. (V.T.I.C. Art. 19.02 (part).)

Source Law

Art. 19.02. . . . The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney.

. . . .

Revisor's Note

V.T.I.C. Article 19.02 refers to "places as may be designated by the subscribers in the power of attorney." The revised law substitutes "power of attorney or other authorization" for "power of attorney" for consistency with the law revised in Section 942.051.

[Sections 942.056-942.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 942.101. CERTIFICATE OF AUTHORITY REQUIRED; EFFECT ON FOREIGN CORPORATIONS. (a) An attorney in fact must hold a certificate of authority issued by the department under Sections

801.001, 801.002, 801.051-801.055, 801.057, 801.101, and 801.102. A certificate of authority obtained in accordance with this section authorizes the attorney in fact named in the certificate to exercise all powers and perform all duties of an attorney in fact.

(b) A corporation required to obtain a certificate of authority from the department under this section is not considered to be engaging in business in this state within the meaning of any law applying to foreign corporations. (V.T.I.C. Art. 19.10 (part).)

Source Law

Art. 19.10. Such attorney-in-fact . . . shall procure from the State Board of Insurance of Texas a Certificate of Authority as provided in Article 1.14, and

A Certificate of Authority issued as provided in this Article, shall fully authorize the named person, firm or corporation to exercise all of the powers and perform all of the duties of such attorney-in-fact; provided, that any corporation acting as the attorney-in-fact for a reciprocal or inter-insurance exchange which is required to procure a Certificate of Authority from the State Board of Insurance of Texas shall not be deemed to be doing business in this state within the meaning of any laws applying to foreign corporations.

Revisor's Note

V.T.I.C. Article 19.10 refers to requirements for "renewal Certificates of Authority." That reference was added by Section 2, Chapter 172, Acts of the 56th Legislature, Regular Session, 1959. However, during the same session, in Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, the legislature also amended V.T.I.C. Article 1.14 and eliminated the requirement that certificates of authority be periodically renewed. Chapter 194 further provided that "all laws and parts of laws in conflict herewith [that chapter] are hereby expressly repealed . . . to the extent that they require periodic renewal of certificates of authority." Under basic rules of statutory construction, codified in Sections

311.025 and 312.014, Government Code, if it is impossible to read two acts of the same legislative session together so that effect may be given to both, the latest enactment is read as an implied repeal of the earlier act to the extent of the conflict. The last legislative action on Chapter 172 occurred on April 29, 1959. The last legislative action on Chapter 194 occurred on May 7, 1959. Under Sections 311.025 and 312.014, Government Code, the provision adopted under Chapter 194 that eliminates periodic renewal of certificates of authority impliedly repealed the provision regarding renewal requirements adopted under Chapter 172. The revised law accordingly omits the Chapter 172 provision. The omitted law reads:

Art. 19.10. . . . the provisions of Article 2.20 shall be applicable as well as to renewal Certificates of Authority.

[Sections 942.102-942.150 reserved for expansion]

SUBCHAPTER D. OPERATION, POWERS, AND DUTIES OF EXCHANGE

Revised Law

Sec. 942.151. SUBSCRIBER LIABILITY FOR CERTAIN CONTINGENT PREMIUMS. (a) Except as provided by Section 942.152 and Subsection (b), if a certificate of authority is issued as provided by Subchapter C, the power of attorney or other authorization executed by the subscribers must provide that, in addition to the premium or premium deposit specified in the reciprocal or interinsurance contract, the subscribers are liable for a contingent premium equal to one additional annual premium or premium deposit.

(b) If the subscribers and their attorney in fact are authorized to issue reciprocal or interinsurance contracts for cash premiums only, the power of attorney or other authorization may waive all contingent premiums. (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. . . .

3. . . . If a Certificate of Authority is issued as provided by Article 19.10 and Article 2.20, the power of attorney or other authority executed by the subscribers at any such exchange shall provide that such subscribers at such exchange shall be liable, in addition to the

premium or premium deposit specified in the policy contract, to a contingent liability equal in amount to one (1) additional annual premium or premium deposit. . . . When any such subscribers and their attorney in fact shall be authorized to issue policies for cash premiums only, in pursuance of the authority of this Article, it may waive all contingent premiums.

. . .

Revisor's Note

(1) V.T.I.C. Article 19.03 refers to a certificate of authority "issued as provided by Article 19.10 and Article 2.20." Article 19.10, revised in part as Section 942.101, provides the certificate of authority requirements for an exchange. Article 2.20, as enacted by Section 11, Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, contained renewal requirements for certificates of authority. The reference to Article 2.20 is omitted from the revised law because that article, which has been amended to relate to the increase of certain capital and surplus requirements, no longer contains certificate of authority requirements.

(2) The part of V.T.I.C. Article 19.03 revised in this section refers to "a contingent liability" equal to an additional annual premium or premium deposit payment. The last sentence of that part of the article refers to "contingent premiums." The revised law substitutes "contingent premium" for the reference to "contingent liability" for consistency.

Revised Law

Sec. 942.152. SUBSCRIBER LIMITED LIABILITY BASED ON CERTAIN MINIMUM CAPITAL AND SURPLUS. If the unencumbered surplus of an exchange is at least equal to the minimum capital stock and minimum surplus required of a stock insurance company engaged in the same kinds of business, the subscribers of the exchange may provide by agreement that the premium or premium deposit specified in the reciprocal or interinsurance contract constitutes the entire liability of the subscribers through the exchange. (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. . . .

3. . . . Such subscribers at such exchange may provide by agreement that the premium or premium deposit specified in the policy contract on all forms of insurance except life shall constitute their entire liability through the exchange if the free surplus of such exchange is equal to the minimum capital stock and minimum surplus required of a stock company transacting the same kinds of business. . . . Such last mentioned provision may be eliminated if the free surplus of such exchange is equal to the minimum capital stock and minimum surplus required of a stock company transacting the same kinds of business. . . .

Revisor's Note

(1) V.T.I.C. Article 19.03 refers to the premium or premium deposit specified in the policy contract "on all forms of insurance except life." The revised law omits the quoted language as unnecessary for the reason stated in Revisor's Note (2) to Section 942.053.

(2) V.T.I.C. Article 19.03 refers to the "free surplus" of an exchange. Throughout this chapter, the revised law substitutes "unencumbered surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

Revised Law

Sec. 942.153. PRIOR AUTHORITY NOT AFFECTED. This chapter does not affect any authority that existed before September 6, 1955, that allowed the subscribers of an exchange and their attorney in fact to write non-assessable policies in this state, subject to any prerequisite imposed by law on that authority. (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. . . .

If up to the time of the effectiveness of this Act such subscribers and their attorney in fact were authorized to write

non-assessable policies in Texas under the provisions of this Code, such subscribers and their attorney in fact shall not be denied such authority by reason of provisions which are contained herein that were not contained in this Insurance Code immediately prior to the effective date of this Act, so long as such company is complying with Article 2.20 of this Code as added by this Act;

. . .

Revisor's Note

Section 3, V.T.I.C. Article 19.03, provides in relevant part that subscribers who were authorized to write non-assessable policies "up to the time of effectiveness of this Act" are not denied that authority "by reason of provisions which are contained herein" that were not part of the Insurance Code "immediately prior to the effective date of this Act" if the subscribers are in compliance with Article 2.20 "as added by this Act."

The "Act" to which Section 3 refers is Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, effective September 6, 1955. The reference to provisions "contained herein" refers to the requirements adopted under Section 3, as added by Chapter 117. Therefore, the subscribers are authorized to continue to write non-assessable policies, notwithstanding any conflicting requirements under Section 3, if the subscribers are in compliance with Article 2.20, as added by Chapter 117.

V.T.I.C. Article 2.20, as added by Chapter 117, imposed renewal requirements for a certificate of authority, based in part on compliance with certain minimum capital and surplus requirements. The requirement that a certificate of authority be renewed was repealed by Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959. The minimum capital and surplus requirements imposed under Article 2.20 have been amended significantly several times since 1955.

It is unclear whether any insurer that was writing non-assessable policies in 1955

still exists. To the extent that Section 3, V.T.I.C. Article 19.03, authorizes the continued writing of non-assessable policies by those insurers, the revised law preserves that authority.

Revised Law

Sec. 942.154. STATEMENTS RELATING TO INDEMNITY AMOUNTS. (a) The attorney in fact for an exchange shall file with the department a sworn statement that shows the maximum amount of indemnity on any single risk.

(b) The attorney in fact for an exchange shall, as required by the department, file with the department a sworn statement that:

(1) the attorney has examined the commercial rating of each subscriber, as established by the reference book of a commercial agency with at least 100,000 subscribers; and

(2) based on the examination or other information in the attorney's possession, it appears that no subscriber has assumed on any single risk an amount greater than 10 percent of that subscriber's net worth. (V.T.I.C. Art. 19.05.)

Source Law

Art. 19.05. Such attorney shall file with the Board of Insurance Commissioners a statement under the oath of such attorney showing the maximum amount of indemnity upon any single risk, and such attorney shall, whenever and as often as the same shall be required, file with such Board a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand (100,000) subscribers, and that from such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than ten (10%) per cent of the net worth of such subscriber.

Revised Law

Sec. 942.155. FINANCIAL REQUIREMENTS. (a) An exchange shall maintain at all times an unencumbered surplus over and above all liabilities that is at least equal to the minimum capital stock and surplus required of a stock insurance company engaged in the same kinds of business.

(b) An exchange shall maintain at all times the reserves required by the laws of this state or by rules adopted by the

commissioner to be maintained by stock insurance companies engaged in the same kinds of business.

(c) An exchange shall maintain the required assets as to:

(1) minimum surplus requirements, as provided by Section 822.204; and

(2) other funds, as provided by Article 2.10.

(V.T.I.C. Art. 19.06 (part).)

Source Law

Art. 19.06. There shall be maintained at all times a surplus over and above all liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business.

There shall be maintained at all times such reserves as are required, or which, by the laws of this State or by the lawful rules and regulations of the Board of Insurance Commissioners, hereafter may be required, to be maintained by stock insurance companies transacting the same kind or kinds of insurance business.

The required assets of such exchanges shall be maintained as to minimum surplus requirements as provided in Article 2.08 of this Code, and as to other funds, as provided in Article 2.10 of this Code.

. . .

Revisor's Note

V.T.I.C. Article 19.06 refers to the "rules and regulations of the Board of Insurance Commissioners." The reference to "regulations" is omitted from the revised law because under Section 311.005, Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 942.156. ISSUANCE OF FIDELITY AND SURETY BOND INSURANCE; DEPOSIT REQUIRED. (a) If a domestic exchange writes fidelity or surety bond insurance in this state, the exchange shall keep on deposit with the comptroller money, bonds, or other securities in an amount of not less than \$50,000. The department shall approve for the deposit securities described by Article 2.10, and the exchange shall maintain the approved securities intact at all times.

(b) A foreign exchange that writes fidelity or surety bond insurance in this state shall file with the department evidence satisfactory to the department that the exchange has, for the protection of its subscribers, at least \$100,000 in money, bonds, or other securities as described by Article 2.10 on deposit with the comptroller or other appropriate official of its state of domicile or in escrow under that official's supervision and control in a reliable bank or trust company. If those bonds or other securities are not acceptable to and approved by the department, the department may deny the attorney in fact for the exchange a certificate of authority. (V.T.I.C. Art. 19.06 (part).)

Source Law

Art. 19.06. . . . If fidelity and surety bond insurance is exchanged in this State by any reciprocal exchange, there shall be kept on deposit with the comptroller, money, bonds, or other securities in an amount not less than \$50,000.00. Such securities as described in Article 2.10 of this Code shall be approved by the Board of Insurance Commissioners, and this amount shall be kept intact at all times. Any foreign exchange writing fidelity and surety bonds in this State shall file with the Board of Insurance Commissioners evidence, satisfactory to the Board of Insurance Commissioners, that it has on deposit with the comptroller or other proper officials of its home state, or in escrow under his supervision and control in some reliable bank or trust company, \$100,000.00 or more, in money, bonds or other securities as described in Article 2.10 of this Code for the protection of its policyholders; provided further, that if said bonds and securities herein referred to are not acceptable to and approved by the Board of Insurance Commissioners of Texas, said Board shall have the right and authority to deny the attorney in fact a Certificate of Authority.

Revisor's Note

V.T.I.C. Article 19.06 refers to certain requirements for "fidelity and surety bond insurance . . . exchanged in this State by any reciprocal exchange." The article then

refers to different requirements for a "foreign exchange writing fidelity and surety bonds in this State." To clarify the first reference, revised as Subsection (a), the revised law refers to a "domestic" exchange. In the reference to a foreign exchange, revised as Subsection (b), the revised law refers to "fidelity or surety bond insurance" for consistency with the terminology used in Subsection (a).

Revised Law

Sec. 942.157. TRANSACTIONS BETWEEN CERTAIN INSURERS AND AFFILIATED EXCHANGES. (a) In this section, "affiliate" has the meaning assigned by Section 823.003.

(b) An insurer subject to Article 5.26 may not directly or indirectly assume all or a substantial part of any risk covered by a reciprocal or interinsurance contract written by an exchange that is an affiliate of that insurer if the risk is written at a rate less than the rate that may be lawfully charged by the insurer or any affiliate of the insurer that is subject to Article 5.26. (V.T.I.C. Art. 19.12A.)

Source Law

Art. 19.12A. (a) An insurer subject to Article 5.26 of this code may not directly or indirectly assume all or a substantial part of any risk covered by a policy written by a reciprocal exchange that is an affiliate of that insurer if the risk is written at a rate less than the rate that may be lawfully charged by the insurer subject to Article 5.26 of this code or any affiliate of the insurer that is subject to Article 5.26 of this code.

(b) For purposes of this article, "affiliate" has the meaning assigned by Section 2, Article 21.49-1 of this code.

Revised Law

Sec. 942.158. ADVANCES OF MONEY BY ATTORNEY IN FACT. (a) The attorney in fact for an exchange may advance to the exchange any amount of money necessary to conduct the business of the exchange, including any amount necessary to enable the exchange to comply with a legal requirement.

(b) Subject to the approval of the department, the advanced amount and any agreed interest on that amount, not exceeding 10 percent a year:

(1) is payable only from the surplus of the exchange

remaining after providing for all reserves, other liabilities, and required surplus; and

(2) may not otherwise be a liability or claim against the exchange or any of the exchange's assets.

(c) A commission, promotion expense, or other bonus may not be paid in connection with the advance of money to the exchange.

(d) The amount of each advance must be reported in the exchange's annual report.

(e) The department may not arbitrarily refuse approval under Subsection (b). (V.T.I.C. Art. 19.07.)

Source Law

Art. 19.07. Any attorney in fact of such exchange may advance to such exchange any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirement of law, and such moneys and interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum, shall be payable, subject to the approval of the Board of Insurance Commissioners (which approval shall not be arbitrarily refused), only out of the surplus remaining, after providing for all reserves, other liabilities and required surplus, and shall not otherwise be a liability or claim against the exchange or any of its assets. No commission or promotion expenses, or other bonus, shall be paid in connection with the advance of any such money to the exchange, and the amount of all such advances shall be reported in each annual statement.

Revised Law

Sec. 942.159. VIOLATION BY ATTORNEY IN FACT OF REQUIREMENTS REGARDING INDEMNITY CONTRACTS; CRIMINAL PENALTY. (a) An attorney in fact commits an offense if the attorney in fact:

(1) exchanges a reciprocal or interinsurance contract without first complying with the law governing the contract; or

(2) directly or indirectly solicits or negotiates an application for the contract without first complying with the law governing the contract.

(b) Subsection (a) does not apply to an action taken by an attorney in fact for the purpose of applying for a certificate of authority from the commissioner as provided by this chapter.

(c) An offense under this section is punishable by a fine of not less than \$100 or more than \$1,000. (V.T.I.C. Art. 19.10-1 (part).)

Source Law

Art. 19.10-1. Any attorney in fact [duly appointed as such by the subscribers to execute contracts to exchange reciprocal or inter-insurance contracts according to the law governing such contracts,] who shall, except for the purpose of applying for certificate of authority from the Commissioner of Insurance as provided for by such law, exchange any contract of indemnity of the kind and character specified in such law, or shall directly or indirectly solicit or negotiate any application for same without first complying with the law governing such contracts, shall be fined not less than one hundred nor more than one thousand dollars.

Revisor's Note

V.T.I.C. Article 19.10-1 provides that an attorney in fact who engages in certain prohibited conduct "shall be fined not less than one hundred nor more than one thousand dollars." The revised law provides that an attorney in fact who engages in the prohibited conduct "commits an offense" to be consistent with the terminology used in the Penal Code.

[Sections 942.160-942.200 reserved for expansion]

SUBCHAPTER E. REGULATION OF EXCHANGES

Revised Law

Sec. 942.201. ANNUAL REPORT. (a) Not later than March 1 of each year, the attorney in fact for an exchange shall submit to the department a report covering the previous year ending December 31.

(b) The report must:

(1) demonstrate that the financial condition of affairs at the exchange is in accordance with the financial requirements of this chapter under Section 942.155; and

(2) provide any additional information and reports as required to show:

(A) the total amount of premiums or deposits collected;

(B) the total amount of losses paid;

(C) the total amounts returned to subscribers;

and

(D) the amounts retained for expenses.

(c) The attorney in fact is not required to provide in the

report the name and address of any subscriber. (V.T.I.C. Art. 19.08 (part).)

Source Law

Art. 19.08. Such attorney shall make an annual report to the Board of Insurance Commissioners for each calendar year, which report shall be made on or before March 1st, for the previous calendar year ending December 31, showing the financial condition of affairs at the office where such contracts are issued is in accordance with the standard of solvency provided for herein, and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses. Such attorney shall not be required to furnish the name and address of any subscriber. . . .

Revised Law

Sec. 942.202. EXAMINATION BY DEPARTMENT. The business affairs and assets of an exchange, as shown at the office of the attorney in fact, are subject to examination by the department. (V.T.I.C. Art. 19.08 (part).)

Source Law

Art. 19.08. . . . The business affairs and assets of said reciprocal or interinsurance exchanges, as shown at the office of the attorney thereof, shall be subject to examination by such Board.

Revised Law

Sec. 942.203. FEES; TAXES; FILING FEE. (a) To the extent applicable, the schedule of fees established under Article 4.07 applies to an exchange and the exchange's attorney in fact.

(b) An exchange is subject to Articles 4.04, 4.10, 4.11, 5.12, 5.24, 5.49, and 5.68.

(c) The comptroller shall collect the taxes and the filing fee for the annual report. (V.T.I.C. Art. 19.11.)

Source Law

Art. 19.11. The schedule of fees set out in Article 4.07 of this Code, so far as pertinent, shall apply to reciprocal

exchanges and their attorneys in fact. Said exchanges shall be subject to the provisions of Articles 4.02, 4.04, 4.10, 4.11, 5.12, 5.24, 5.49, and 5.68 of this Code. The comptroller shall collect the taxes and the annual statement filing fee.

Revisor's Note

V.T.I.C. Article 19.11 provides that an exchange is subject to certain articles of the Insurance Code, including Article 4.02. V.T.I.C. Article 4.02 provides only that "[e]ach such insurance organization," meaning an insurance company organized under the laws of this state, "shall be subject to the provisions of Articles 4.13, 4.14, and 4.15 of this code." The revised law omits the reference to Article 4.02 because Articles 4.13, 4.14, and 4.15 were repealed by Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, and the reference to Article 4.02 thus has no substantive meaning.

[Chapters 943-960 reserved for expansion]

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CHAPTER 961. NONPROFIT LEGAL SERVICES CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 961.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person applying for a contract for legal services to be performed through a nonprofit legal services corporation.

(2) "Benefit certificate" means a document issued to a participant that states the benefits and other required matters under a group contract for legal services or an individual contract for legal services issued to a participant.

(3) "Contracting attorney" means an attorney who has entered into a contract under Section 961.301.

(4) "Nonprofit legal services corporation" means a corporation created for the sole purpose of establishing, maintaining, and operating a nonprofit legal services plan under which the corporation contracts for and obtains legal services for participants through contracting attorneys in consideration of each participant's payment of a definite amount to fund the payment of the contracting attorneys' fees.

(5) "Participant" means a person entitled to performance of legal services under contract with a nonprofit legal services corporation. (V.T.I.C. Art. 23.01, Secs. (a) (part), (b)(2), (3), (4), (5); Art. 23.10 (part).)

Source Law

Art. 23.01. (a) . . . a corporation may be incorporated for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided.

(b) As used in this chapter, the following words, unless the context of their use clearly indicates otherwise, shall have the following meanings:

. . .

(2) "Applicant" means a person applying for a legal services contract for performance of legal services through a corporation qualified under this chapter.

(3) "Benefit certificate" means a

writing setting forth the benefits and other required matters issued to a participant under a group contract for legal services and also an individual contract for legal services issued to a participant.

(4) "Contracting attorney" means an attorney who has entered into the contract provided by Article 23.11 of this code.

(5) "Participant" means the person entitled to performance of legal services under contract with a corporation qualified under this chapter.

Art. 23.10. [The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit organizations] for the purpose of contracting for and obtaining legal services for their participants through contracting attorneys, in consideration of the payment by the participants of a definite sum to fund the payment of attorneys fees for the legal services to be furnished by the contracting attorneys. . . .

Revisor's Note

(1) Section (b), V.T.I.C. Article 23.01, provides that the defined terms have the meanings provided "unless the context of their use clearly indicates otherwise." The revised law omits the quoted language as unnecessary because the defined terms are used consistently in this revision.

(2) Section (b)(6), V.T.I.C. Article 23.01, defines "State Board of Insurance" and includes a substantive provision allowing that board to delegate its duties to the "proper insurance regulatory official." The revised law omits the definition because Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of

Insurance, respectively. Throughout this chapter, references to the State Board of Insurance have been changed appropriately. The revised law omits the provision relating to delegation of duties to the "proper insurance regulatory official" because the duties to which the provision applies are now assigned to the commissioner of insurance, who is the only insurance regulatory official in the state. The omitted law reads:

(6) "State Board of Insurance" means all of the insurance regulatory officials whose duties and functions are designated by the Insurance Code of Texas as such now exists or may be amended in the future. Any duty stated by this chapter to be performed by or to be placed on the State Board of Insurance is placed upon and is to be performed by the insurance regulatory official or group of officials on whom similar duties are placed or to be performed for insurers or the business of insurance by the Insurance Code. The multimember insurance regulatory body designated by the Insurance Code as the uniform insurance rule-making authority is authorized to enact rules designating the proper insurance regulatory official to perform any duty placed by this chapter on the insurance regulatory officials where such duty is not similar to duties otherwise performed by a specific official or group of such officials.

(3) The definition of "nonprofit legal services corporation" is derived from V.T.I.C. Articles 23.01(a) and 23.10 and is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 961.002. APPLICABILITY OF OTHER LAWS. (a) The Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes) and the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) apply to a nonprofit legal services corporation to the extent not in conflict with this chapter.

(b) The following provisions of this code apply to a

nonprofit legal services corporation in the same manner that they apply to an insurer or a person engaged in the business of insurance, to the extent the provisions do not conflict with this chapter:

(1) Articles 1.01, 1.09-1, 1.11, 1.12, 1.13, 1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 21.21, 21.21-2, 21.28, 21.28-A, 21.47, and 21.49-8;

(2) Sections 2, 6, and 17, Article 1.10;

(3) Sections 31.002, 31.004, 31.007, 31.021, 31.022, 31.023, 31.025, 31.026, 31.027, 32.001, 32.002, 32.003, 32.021, 32.022(a), 32.023, 32.041, 33.002, 33.006, 38.001, 81.004, 801.001, 801.002, 801.051-801.055, 801.057, 801.101, 801.102, 802.003, 841.251, and 841.252;

(4) Subchapter B, Chapter 31;

(5) Subchapter D, Chapter 36;

(6) Subchapter A, Chapter 805; and

(7) Chapter 824. (V.T.I.C. Art. 23.26.)

Source Law

Art. 23.26. (a) Corporations complying with this chapter shall be subject to and are required to comply with the provisions of the Texas Miscellaneous Corporation Laws Act and the Texas Non-Profit Corporation Act as those laws now exist or may be amended in the future to the extent the provisions of this chapter are not in conflict therewith.

(b) The following provisions of the Insurance Code as they now exist or shall hereafter be amended shall, where not in conflict with this chapter, apply to corporations complying with the provisions of this chapter to the same extent as they apply to insurers and to those doing the business of insurance: Articles 1.01, 1.02, 1.04, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.29, 3.12, 3.13, 21.21, 21.21-2, 21.25, 21.28, 21.28-A, 21.47, 21.49-8 and Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of this code.

Revisor's Note

(1) V.T.I.C. Article 23.26 refers to certain corporation laws "as those laws now exist or may be amended in the future" and to certain provisions of the Insurance Code "as

they now exist or shall hereafter be amended." The revised law omits the quoted language because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(2) V.T.I.C. Article 23.26 and numerous other provisions of the law revised by this chapter refer to "corporations complying with the provisions of this chapter." Throughout this chapter, the revised law substitutes "nonprofit legal services corporation" for the quoted language. From the context of the repeated use of the quoted language, it is clear that the phrase was meant merely to refer to a corporation created under and subject to the law revised by this chapter rather than to repeatedly establish a requirement that such a corporation comply with that law. Moreover, it is implicit in the nature of any statute that an entity subject to the statute must comply with the statute, and an express statement to that effect is unnecessary.

(3) V.T.I.C. Article 23.26 provides that Article 1.23, Insurance Code, applies to nonprofit legal services corporations. The revised law omits the reference to Article 1.23 because that article was repealed by Section 5, Chapter 101, Acts of the 76th Legislature, Regular Session, 1999, and was omitted from Title 2 of this code as unnecessary, as stated in the revisor's note to the end of Subchapter A, Chapter 32.

Revised Law

Sec. 961.003. CORPORATION SUBJECT TO DEPARTMENT REGULATION. Each nonprofit legal services corporation is subject to this chapter and to direct supervision by the department. (V.T.I.C. Arts. 23.02 (part), 23.09 (part).)

Source Law

Art. 23.02. All corporations organized under the provisions of this chapter shall be under the direct supervision of the State Board of Insurance, and

Art. 23.09. . . . Such corporation

shall be governed by this chapter and

Revised Law

Sec. 961.004. CORPORATION NOT ENGAGED IN BUSINESS OF INSURANCE. A nonprofit legal services corporation that complies with this chapter is not engaged in the business of insurance and, except as provided by Section 961.002(b), is not subject to laws relating to insurers. (V.T.I.C. Art. 23.09 (part).)

Source Law

Art. 23.09. . . . Such corporation . . . shall not be construed as being engaged in the business of insurance nor subject to laws respecting insurers so long as it complies with the provisions of this chapter. . . .

Revisor's Note

(1) V.T.I.C. Article 23.09 provides that a nonprofit legal services corporation "shall not be . . . subject to laws respecting insurers." Section (b), V.T.I.C. Article 23.26, revised as Section 961.002(b), lists a number of provisions of the Insurance Code that apply to a nonprofit legal services corporation. Accordingly, the revised law includes a reference to Section 961.002(b).

(2) V.T.I.C. Article 23.09 provides that the article does not declare the issuance of contracts for prepaid legal services by entities other than nonprofit legal services corporations not to be the business of insurance. The revised law omits that provision as self-evident and unnecessary. Nothing in the law revised by this chapter or in this revision makes such a declaration. The omitted law reads:

Art. 23.09. . . . The provisions of this article shall not be deemed to declare the issuance of contracts for prepaid legal services when done by those entities other than corporations complying with this chapter not to be the business of insurance. . . .

[Sections 961.005-961.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF NONPROFIT
LEGAL SERVICES CORPORATIONS

Revised Law

Sec. 961.051. APPLICATION FOR CORPORATE CHARTER; NONPROFIT STATUS REQUIRED. (a) Seven or more persons may apply to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) for a nonprofit legal services corporation.

(b) A nonprofit legal services corporation must be governed and operated as a nonprofit organization. (V.T.I.C. Art. 23.01, Sec. (a) (part); Art. 23.10 (part).)

Source Law

Art. 23.01. (a) On application of any seven or more persons to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act a corporation may be incorporated [for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided].

Art. 23.10. The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit organizations

Revised Law

Sec. 961.052. MINIMUM PARTICIPATION REQUIREMENTS. (a) After incorporation and before engaging in business other than seeking applicants and obtaining contracting attorneys, a nonprofit legal services corporation must collect in advance an application fee and at least one month's payment for services from the lesser of:

- (1) 200 applicants; or
- (2) the number of applicants that the department determines is necessary for a workable legal services plan.

(b) The nonprofit legal services corporation shall keep the money collected under Subsection (a) in a trust account in a bank in this state until the corporation is issued a certificate of authority under this chapter. The corporation shall refund the money in full if the corporation is not issued a certificate of authority.

(c) As a condition of continued operation, a nonprofit legal services corporation must maintain at least the lesser of:

- (1) 200 participants; or
- (2) the necessary number of applicants determined by the department under Subsection (a)(2). (V.T.I.C. Art. 23.02 (part).)

Source Law

Art. 23.02. [All corporations organized under the provisions of this chapter] . . . shall be subject to the following requirements:

- (1) After incorporation, but as a condition of doing business other than seeking applicants and obtaining contracting attorneys, they shall have collected in advance from at least 200 applicants (unless a lesser number of applicants is found by the State Board of Insurance to be a large enough number of applicants to constitute a workable prepaid legal service plan) the application fee and at least one month's payment for services. Such funds shall, at all times prior to issuance by the State Board of Insurance of its certificate of authority as below provided, be maintained in a trust account in a bank in Texas and shall be refunded in full should such certificate of authority not be issued. It shall hereinafter be a condition of continued operation that a minimum number of 200 participants or lesser number previously approved by the State Board of Insurance be maintained.

Revisor's Note

V.T.I.C. Chapter 23, in connection with services and plans governed by that chapter, refers interchangeably to "prepaid legal services" and "legal services." The context in which the terms are used makes it clear that all references to legal services mean prepaid legal services. For consistency, throughout this chapter the revised law omits "prepaid" from references to legal services.

[Sections 961.053-961.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 961.101. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a)
The department shall issue a certificate of authority to a

nonprofit legal services corporation to engage in business if the corporation:

(1) files a statement acceptable to the department showing that the corporation is solvent; and

(2) complies with this chapter.

(b) A certificate of authority is valid until revoked for noncompliance with law, by operation of law, or as provided by this chapter. (V.T.I.C. Art. 23.02 (part).)

Source Law

Art. 23.02. [All corporations organized under the provisions of this chapter] . . . shall be subject to the following requirements:

. . .

(4) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the State Board of Insurance shall issue it a certificate of authority authorizing it to transact business until such certificate shall be revoked for noncompliance with law, by operation of law or as provided by this chapter.

Revised Law

Sec. 961.102. REVOCATION OF CERTIFICATE OF AUTHORITY.

(a) After a hearing, the commissioner shall revoke the certificate of authority of a nonprofit legal services corporation if:

(1) the commissioner determines the corporation is:

(A) operating fraudulently; or

(B) not complying with this chapter; or

(2) the corporation does not pay valid claims in accordance with this chapter.

(b) A hearing under Subsection (a) may be held only on the basis of written specifications and not earlier than the 21st day after the date notice of the hearing is given. (V.T.I.C. Art. 23.05 (part).)

Source Law

Art. 23.05. . . . The State Board of Insurance after public hearing on written specifications after 20 days notice shall cancel the certificate of authority of any such corporation found to be not in compliance with this chapter, operating fraudulently, or which fails to pay its valid

claims in accordance with the provisions of this article.

Revisor's Note

V.T.I.C. Article 23.05 requires the commissioner to "cancel" a certificate of authority. The revised law substitutes "revoke" for "cancel" for consistency with the term used in V.T.I.C. Article 23.02, revised in pertinent part as Section 961.101 of this code.

[Sections 961.103-961.150 reserved for expansion]

SUBCHAPTER D. BOARD OF DIRECTORS; PERSONNEL

Revised Law

Sec. 961.151. COMPENSATION OF DIRECTORS. A director of a nonprofit legal services corporation may not receive salary or other compensation for the director's services but may receive reimbursement for reasonable and necessary expenses incurred in attending a meeting called to manage or direct the affairs of the corporation. (V.T.I.C. Art. 23.20.)

Source Law

Art. 23.20. No director of any corporation created under this chapter shall receive any salary, wages, or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of the corporation.

Revisor's Note

V.T.I.C. Article 23.20 refers to the "salary, wages, or compensation" of a director. The revised law omits "wages" because, in context, that term is included in the meaning of "salary or other compensation."

Revised Law

Sec. 961.152. FINANCIAL OFFICER; BOND. (a) A nonprofit legal services corporation, by resolution entered in its minutes, shall designate one or more officers to be responsible for handling the corporation's funds. The president, secretary, or general manager of the corporation must certify a copy of the resolution, and the corporation shall file the copy with the department.

(b) Except as provided by Subsection (c), the corporation shall make and file a separate or blanket surety bond covering

each officer designated under Subsection (a). The bond must:

(1) be issued by a corporate surety company authorized to issue surety bonds in this state;

(2) be satisfactory to the department and payable to the department for the use and benefit of the corporation;

(3) obligate the principal and surety to pay any monetary loss to the corporation through an act of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by a covered officer, whether acting alone or with other persons, while employed as or exercising the powers of an officer designated under Subsection (a); and

(4) be in an amount of at least \$25,000 for each officer covered.

(c) Instead of the bond required by Subsection (b), an officer designated under Subsection (a) may deposit with the department cash or securities approved by the department in the amount and subject to the conditions applicable to the bond.

(d) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted. (V.T.I.C. Art. 23.04 (part).)

Source Law

Art. 23.04. Each corporation complying with the requirements of this chapter shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the State Board of Insurance, designate some officer or officers who shall be responsible in the handling of the funds of the corporation. Said corporation shall make and file for each such officer a surety bond or blanket bond covering all such officers with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than \$25,000 for each officer for the use and benefit of said corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of each such officer, either directly and alone or in connivance with others, while employed as such an officer or exercising

powers of such office. In lieu of such bond any such officer may deposit with the State Board of Insurance cash (or securities approved by the State Board of Insurance) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond. . . . Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

Revisor's Note

V.T.I.C. Article 23.04 refers to "dishonesty," "theft," "embezzlement," and "wrongful abstraction." The revised law omits "wrongful abstraction" because that term is included in the meaning of "dishonesty," "theft," and "embezzlement."

Revised Law

Sec. 961.153. BOND REQUIREMENTS FOR CERTAIN PERSONS. (a) In addition to the bond required by Section 961.152, a nonprofit legal services corporation shall obtain a separate or blanket surety bond covering each other person who may have access to the corporation's funds. The bond must:

(1) be issued by a surety authorized by the department to do business in this state;

(2) be satisfactory to the department and payable to the department for the use and benefit of the corporation;

(3) obligate the principal and surety to pay any monetary loss to the corporation through an act of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by a covered person, whether acting alone or with other persons; and

(4) be in an amount determined by the department of at least \$1,000 but not more than \$10,000 for each person covered.

(b) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted. (V.T.I.C. Art. 23.04 (part).)

Source Law

Art. 23.04. . . .

In addition to the bond required in the preceding paragraph, each corporation shall procure for all other office employees, or other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an

amount or amounts fixed by the State Board of Insurance with a minimum of \$1,000 and a maximum of \$10,000 for each employee, satisfactory and payable to the State Board of Insurance for the use and benefit of the corporation obligating the principal and surety to pay each pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

Revisor's Note

(1) V.T.I.C. Article 23.04 refers to "dishonesty," "theft," "embezzlement," and "wrongful abstraction." The revised law omits "wrongful abstraction" for the reason stated in the revisor's note to Section 961.152.

(2) V.T.I.C. Article 23.04 refers to a "licensed" surety. The revised law substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

[Sections 961.154-961.200 reserved for expansion]

SUBCHAPTER E. REGULATION OF NONPROFIT
LEGAL SERVICES CORPORATIONS

Revised Law

Sec. 961.201. PLAN OF OPERATION; EXPENSE FUND BALANCE. (a) Before accepting applications for participation in a legal services plan, a nonprofit legal services corporation must:

(1) have sufficient money in its expense fund described by Section 961.203 to cover initial operations; and

(2) submit to the department:

(A) a plan of operation;

(B) a rate schedule of its charges to participants; and

(C) a schedule and projections of costs of legal services to be contracted for on behalf of participants.

(b) Before the corporation may engage in business, the department must approve as adequate, fair, and reasonable:

(1) the plan of operation; and

(2) the sufficiency of the money in the expense fund.

(c) The department has continuing control over the corporation's plan of operation. A change in the plan must be filed with and approved by the department before the change takes effect.

(d) The department may not set maximum rates or premiums that may be charged under a legal services plan under this chapter. (V.T.I.C. Art. 23.14.)

Source Law

Art. 23.14. (a) Every corporation complying with the requirements of this chapter shall, before accepting applications for participation in said non-profit legal service plan, have sufficient money in its expense fund to cover initial operations and shall submit to the State Board of Insurance a plan of operation together with a rate schedule of its charges to participants and a schedule and projections of costs of legal services to be contracted for on behalf of the participants; which plan and the sufficiency of expense fund shall first be approved by the State Board of Insurance as adequate, fair, and reasonable before such corporation shall engage in business. The State Board of Insurance shall have continuing control over the plan of operation of such corporation. No change in such plan shall be effectuated without its first being filed and approved by the State Board of Insurance.

(b) The State Board of Insurance may not determine, fix, prescribe, set, or promulgate maximum rates or maximum amounts of premium to be charged for a non-profit legal services plan under this chapter.

Revisor's Note

V.T.I.C. Article 23.14 provides that state insurance regulatory officials may not "determine, fix, prescribe, set, or promulgate" certain rates or amounts. The revised law omits "determine," "fix," "prescribe," and "promulgate" because those terms are included in the meaning of "set."

Revised Law

Sec. 961.202. ANNUAL STATEMENT. (a) Not later than March 1 of each year, each nonprofit legal services corporation shall

file with the department an annual statement that covers the corporation's operations for the preceding calendar year.

(b) The statement must be in the form prescribed by and provide the information required by the department. (V.T.I.C. Art. 23.02 (part).)

Source Law

Art. 23.02. [All corporations organized under the provisions of this chapter] . . . shall be subject to the following requirements:

. . .

(2) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the State Board of Insurance not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the State Board of Insurance.

Revised Law

Sec. 961.203. CLAIM FUND; EXPENSE FUND. (a) A nonprofit legal services corporation shall maintain a claim fund and an expense fund.

(b) The claim fund is composed of:

(1) application fees; and

(2) at least 70 percent of the regular payments by participants, except the department may adjust this percentage on a showing that the adjustment:

(A) is in the best interest of the persons receiving legal services under the contract at the time of the adjustment; or

(B) is necessary for the corporation's development during its first year of existence.

(c) Money in the claim fund must be maintained as cash or in demand deposits or invested in:

(1) certificates of deposit, share accounts, and time deposits in a public bank or savings and loan association the deposits of which are insured by a federal government agency; or

(2) obligations of a state or the federal government.

(d) Money in the expense fund may be invested only in legal investments for the capital, surplus, and contingency funds of a stock life insurance company.

(e) Net income from an investment of money in a fund accrues to that fund.

(f) Money in the claim fund may be disbursed only to pay:

(1) a valid claim;

- (2) the cost of settling a contested claim;
- (3) tax on the fund's income;
- (4) a refund of a fee deposited in the fund;
- (5) an expense directly incurred on or for preservation of an investment of the fund, including the cost of transferring a security; or
- (6) an amount as provided by a contract under Section 961.207. (V.T.I.C. Art. 23.10 (part).)

Source Law

Art. 23.10. . . . Provided further, that each such corporation shall have two funds, namely: the claim fund and the expense fund. The claim fund shall be composed of at least 70 percent of the regular payments by participants, and the application fees. The percentage amounts above stated may be modified by the State Board of Insurance upon showing that such is in the best interest of the then existing persons receiving legal services under contract or that such is necessary for the development of the corporation during its first year of existence. . . . Claim fund investments may include, besides lawful money and demand deposits, only certificates of deposits, share accounts, and time deposits in public banks and savings and loan institutions whose deposits are insured by a federal governmental agency, and obligations of a state or the federal government; and the expense fund investments may include only such as are legal investments for the capital, surplus, and contingency funds of capital stock life insurance companies. The net income from the investments shall accrue to the funds, respectively, from which the investments were made. The claim fund shall be disbursed only for the payment of valid claims, taxes on income of such fund, security transfer costs, refunds of fees paid into such fund, cost of settling contested claims, expenses directly incurred on or for preservation of investments of the claim fund, and contracts authorized under Article 23.19 of this code.

Revisor's Note

V.T.I.C. Article 23.10 refers to "capital stock life insurance companies." The revised law omits "capital" for consistency with the terminology used in this code.

Revised Law

Sec. 961.204. DEPOSIT REQUIREMENTS. A nonprofit legal services corporation shall deposit money collected from applicants or participants in an account of the corporation in a public bank. The bank must be a state depository, and its deposits must be protected by the Federal Deposit Insurance Corporation. (V.T.I.C. Art. 23.17.)

Source Law

Art. 23.17. All funds collected from applicants and participants of a corporation complying with this chapter shall be deposited to the account of the corporation in a public bank, which is a state depository having Federal Deposit Insurance Corporation protection of its deposits.

Revised Law

Sec. 961.205. SOLVENCY OF FUNDS. As a condition of holding a certificate of authority under this chapter, a nonprofit legal services corporation shall maintain the solvency of each fund so that the admitted assets of the fund exceed the fund's liabilities, other than claim liabilities guaranteed under Section 961.302. (V.T.I.C. Art. 23.02 (part).)

Source Law

Art. 23.02. [All corporations organized under the provisions of this chapter] . . . shall be subject to the following requirements:

. . .

(3) They shall maintain solvency in each of its funds, i. e., the admitted assets of each such fund shall exceed its liabilities (except for claim liability covered by attorney guarantees provided by Article 23.15 of this code), and it shall be a continuing condition of licensing by the State Board of Insurance that such solvency be maintained.

Revised Law

Sec. 961.206. ADVANCE TO CORPORATION. Any person may

advance to a nonprofit legal services corporation, on a contingent liability basis, money necessary for the purposes of the corporation's business or to comply with this chapter, except that the advance may be repaid only on prior approval of the department. The advance may be made in an amount and at a rate of interest agreed to by the person and the corporation.

(V.T.I.C. Art. 23.13.)

Source Law

Art. 23.13. Any person may advance to the corporation on contingent liability basis such funds as are necessary for the purposes of its business or to enable it to comply with any requirements of this chapter and such money and interest thereon as may have been agreed upon shall be repayable and shall be repaid only on prior approval of the State Board of Insurance.

Revised Law

Sec. 961.207. PARTICIPATION AGREEMENTS. (a) Subject to Subsection (b), a nonprofit legal services corporation may:

(1) contract with another nonprofit legal services corporation or an insurer authorized to engage in business in this state for joint participation through:

- (A) a mutualization contract agreement; or
- (B) a guaranty treaty; and

(2) cede or accept a legal services obligation from such a corporation or insurer on all or part of a legal services obligation.

(b) Each document used for a purpose described by Subsection (a) must be filed with the department and approved by the department to be in accordance with the corporation's plan of operation before the document takes effect.

(c) To carry out the purposes of this section, the commissioner may adopt rules governing an agreement with an insurer under Subsection (a). (V.T.I.C. Art. 23.19.)

Source Law

Art. 23.19. Corporations complying with the requirements of this chapter shall be authorized to contract with other organizations complying with this chapter and insurers licensed to do business in Texas for joint participation through mutualization contract agreements or guaranty treaties or otherwise cede or accept legal services obligations from such companies on the whole

or any part of such legal service obligations, provided that such contract forms, documents, treaties, or agreement forms are filed with and approved by the State Board of Insurance to be in accordance with the plan of operation of the corporation prior to their effectiveness.

The State Board of Insurance shall be authorized to issue rules and regulations concerning such participation contracts and agreements with insurers as provided by this article in accordance with and in carrying out its purposes.

Revisor's Note

(1) V.T.I.C. Article 23.19 refers to insurers "licensed to do business in" this state. The revised law substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(2) V.T.I.C. Article 23.19 refers to "contract forms, documents, treaties, or agreement forms." The revised law omits "contract forms," "treaties," and "agreement forms" because, in context, those terms are included in the meaning of "document."

(3) V.T.I.C. Article 23.19 refers to "rules and regulations." Throughout this chapter, references to "regulations" are omitted from the revised law because under Section 311.005, Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 961.208. EXCLUSIVE AGENCY CONTRACT OR MANAGEMENT CONTRACT. (a) A nonprofit legal services corporation may not enter into an exclusive agency contract or management contract unless the contract has been approved by the department.

(b) Before entering into a contract governed by Subsection (a), the corporation shall file the proposed contract with the department. The department shall approve or disapprove the proposed contract not later than the 30th day after the filing date, except that the department may extend that period by a reasonable time by giving notice not later than the 30th day after the filing date.

(c) The department shall disapprove the proposed contract if the department determines that:

(1) the contract:

(A) subjects the corporation to excessive charges;

(B) lasts for an unreasonable period;

(C) does not contain fair and adequate standards of performance; or

(D) impairs the interests of the public in this state or the corporation's participants or creditors; or

(2) the persons given the power under the contract to manage the corporation are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the corporation, with due regard for the interest of the public and the corporation's participants and creditors.

(V.T.I.C. Art. 23.25.)

Source Law

Art. 23.25. (a) No corporation complying with the requirements of this chapter may enter into an exclusive agency contract or management contract, unless the contract is first filed with the State Board of Insurance and approved under this article within 30 days after filing or such reasonable extended period as the State Board of Insurance may specify by notice given within the 30 days.

(b) The State Board of Insurance shall disapprove a contract submitted under Section (a) of this article if it finds that:

(1) it subjects the corporation to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the corporation are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the corporation with due regard for the interest of its participants, creditors, or the public; or

(5) the contract contains provisions which impair the interests of the corporation's participants, creditors, or the public in this state.

Revised Law

Sec. 961.209. REMEDIES FOR CORPORATION IN HAZARDOUS FINANCIAL CONDITION. (a) If the commissioner determines that a nonprofit legal services corporation's financial condition is such that the continued operation of the corporation may be hazardous to the public or the corporation's participants or creditors, the commissioner, after notice and hearing, may order the corporation to take any action reasonably necessary to correct the condition, including:

(1) reducing:

(A) the amount of present and potential liability for benefits through agreements under Section 961.207;

(B) the volume of new business that the corporation accepts; or

(C) expenses through specified methods; or

(2) suspending or limiting the writing of new business for a period.

(b) If no remedy under Subsection (a) is effective and the commissioner determines that the hazardous condition is a shortage of money in the corporation's expense fund, the commissioner, after further notice and hearing, may order the corporation to deposit in the expense fund an additional amount of money sufficient to cure the hazardous condition. The commissioner may not require a corporation to maintain money in the expense fund in excess of the amount required by Section 961.205. (V.T.I.C. Art. 23.24, Sec. (a).)

Source Law

Art. 23.24. (a) Whenever the financial condition of any corporation complying with the requirements of this chapter indicates a condition such that the continued operation of such corporation might be hazardous to its participants, creditors, or the general public, then the State Board of Insurance may, after notice and hearing, order such corporation to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by use of Article 23.19 of this code;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods; or

(4) to suspend or limit the writing of new business for a period of time.

Where none of the foregoing remedies is effective and the hazardous condition is determined to be a shortage of money in the expense fund the State Board of Insurance may after further notice and hearing order funds sufficient to cure the hazardous condition to be placed in the expense fund. The State Board of Insurance shall not have authority hereby to require the maintenance of money in the expense fund except as provided by Article 23.02(3) of this code.

Revisor's Note

Section (a), V.T.I.C. Article 23.24, provides remedies for curing a hazardous financial condition, including "but not necessarily limited to" certain listed remedies. The revised law omits the quoted language because Section 311.005, Government Code (Code Construction Act), applicable to the revised law, provides that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

Revised Law

Sec. 961.210. RULES RELATING TO HAZARDOUS FINANCIAL CONDITION. (a) The commissioner by rule may establish:

(1) uniform standards and criteria for early warning that the continued operation of a nonprofit legal services corporation may be hazardous to the public or the corporation's participants or creditors; and

(2) standards for evaluating the financial condition of a nonprofit legal services corporation.

(b) A standard established under this section must be consistent with the purposes of this section and Section 961.209. (V.T.I.C. Art. 23.24, Sec. (b).)

Source Law

(b) The State Board of Insurance is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of any company might be hazardous to its participants, creditors, or the general public, and to fix standards for evaluating the financial condition of any corporation

complying with the requirement of this chapter, which standards shall be consistent with the purposes expressed in this article.

Revised Law

Sec. 961.211. BOOKS AND RECORDS. (a) A nonprofit legal services corporation shall keep complete books and records of all money collected and disbursed.

(b) The department may examine books and records under this section at the corporation's expense. (V.T.I.C. Art. 23.21.)

Source Law

Art. 23.21. Every corporation complying with this chapter shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the State Board of Insurance, the expense of such examination to be borne by said corporation.

Revised Law

Sec. 961.212. FEES. (a) The commissioner shall charge each of the following fees in an amount prescribed by the commissioner not to exceed:

- (1) \$400 for filing an annual operating statement;
- (2) \$3,000 for filing an application for a certificate of authority, including the fee for issuance of the certificate of authority; and
- (3) \$100 for issuance of each additional certificate of authority and amendment of a certificate of authority.

(b) The comptroller shall collect the annual operating statement filing fee. (V.T.I.C. Art. 23.08.)

Source Law

Art. 23.08. The commissioner shall charge a fee determined by the commissioner in an amount not to exceed \$400 for filing the annual statement of each corporation operating under this chapter; an application fee determined by the commissioner in an amount not to exceed \$3,000 for each corporation applying under this chapter which includes the fee for the issuance of a certificate of authority; and a fee determined by the commissioner in an amount not to exceed \$100 for the issuance of each additional certificate of authority and amendment of a certificate of authority to

the corporation. The commissioner shall, within the limits fixed by this article, prescribe the fees to be charged under this article. The comptroller shall collect the annual statement filing fee.

[Sections 961.213-961.250 reserved for expansion]

SUBCHAPTER F. BENEFITS PROVIDED BY NONPROFIT LEGAL SERVICES CORPORATIONS

Revised Law

Sec. 961.251. APPLICANTS; BENEFIT CERTIFICATE. (a) A nonprofit legal services corporation may accept applicants and shall issue a benefit certificate to each applicant that becomes a participant under a legal services contract. Before issuance of the certificate, the applicant must pay the application fee, which does not apply as part of the cost of receiving benefits under the certificate.

(b) On issuance of the benefit certificate, the participant is entitled to the legal services stated in the certificate for the period provided by the certificate. (V.T.I.C. Arts. 23.09 (part), 23.10 (part), 23.16 (part).)

Source Law

Art. 23.09. Any corporation complying with the requirements of this chapter shall be authorized to accept applicants, who upon issuance of a benefit certificate shall be entitled to legal services for such period of time as is provided therein. . . .

Art. 23.10. . . . The application fees shall be paid by applicants prior to issuance of a benefit certificate, and shall not apply as a part of the cost of receiving benefits under the benefit certificate issued. . . .

Art. 23.16. Every corporation shall issue to its applicants that are covered by a contract for prepaid legal services benefit certificates setting forth the benefits to which they are or may become entitled. . . .

Revisor's Note

V.T.I.C. Article 23.16 provides that a legal services corporation shall issue benefit certificates to applicants "setting forth the benefits to which they are or may become entitled." The revised law omits the

quoted language because the substance of that language is included in the definition of "benefit certificate" provided by Section 961.001.

Revised Law

Sec. 961.252. APPROVAL OF FORMS. A benefit certificate, application form, or contract between a nonprofit legal services corporation and a participant's employer or group representative must be in a form approved by the department before issuance. The department may adopt rules relating to those forms to provide that they properly describe applicable benefits and are not unjust, misleading, or deceptive. (V.T.I.C. Art. 23.16 (part).)

Source Law

Art. 23.16. . . . Such certificates, application forms, and contracts made between the corporation and the participants' employer or group representative shall be in form approved by the State Board of Insurance prior to issuance. The State Board of Insurance shall be authorized to issue rules and regulations concerning such forms to provide that they shall properly describe their benefits and not be unjust, misleading, or deceptive.

Revised Law

Sec. 961.253. TYPES OF LEGAL SERVICES CONTRACTS. A nonprofit legal services corporation may issue legal services contracts on an individual, group, or franchise basis. (V.T.I.C. Art. 23.09 (part).)

Source Law

Art. 23.09. . . . The right of corporations complying with the requirements of this chapter to issue prepaid legal services contracts on individual, group, and franchise bases is recognized.

Revised Law

Sec. 961.254. INDEMNITY CONTRACTS. (a) A nonprofit legal services corporation may issue a contract for legal services, as provided by rules adopted by the commissioner, providing for indemnity for costs of services of an attorney who is not a contracting attorney if the department is satisfied that the corporation's plan of operation, experience, and financial standing, including a proper amount of unencumbered surplus, are adequate to ensure performance of the contract.

(b) A contract under Subsection (a) may be issued without the guarantee provided by Section 961.302(1). (V.T.I.C. Art. 23.15 (part).)

Source Law

Art. 23.15. . . . Such corporations may issue prepaid legal service contracts without such guarantees and providing for indemnity for costs of attorney services where the attorney is not a contracting attorney under such rules and regulations as may be approved by the State Board of Insurance provided that the State Board of Insurance be satisfied that the plan of operation, financial standing and experience of the corporation (including but not limited to a proper amount of free surplus) is adequate to assure the performance of such contracts.

Revisor's Note

V.T.I.C. Article 23.15 provides that the commissioner of insurance must be satisfied with a legal services corporation's financial standing, including "but not limited to" a proper amount of "free surplus." The revised law omits "but not limited to" for the reason stated in the revisor's note to Section 961.209. The revised law substitutes "unencumbered surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

Revised Law

Sec. 961.255. LIMITATIONS ON BENEFITS. A contract for legal services and a benefit certificate issued by a nonprofit legal services corporation may limit:

- (1) the types and extent of benefits; and
- (2) the circumstances under which legal services are provided. (V.T.I.C. Art. 23.11 (part).)

Source Law

Art. 23.11. . . . with the right to the corporation to limit in the prepaid legal service contract and benefit certificate the types and extent of benefits and the circumstances for which such legal services shall be furnished.

Revised Law

Sec. 961.256. CLAIMS. (a) A nonprofit legal services corporation shall pay a lawful claim for payment under a benefit certificate not later than the 120th day after the date of receipt of due proof of claim.

(b) Written notice of a claim given to the corporation is considered due proof of claim under this section if the corporation does not provide to the claimant before the 16th day after the date notice is received the forms usually provided by the corporation for filing a claim. (V.T.I.C. Art. 23.05 (part).)

Source Law

Art. 23.05. All lawful claims for payment based upon certificates issued to participants shall be paid within 120 days after receipt of due proof of claim. Written notice of claim given to a corporation complying with the requirements of this chapter shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the participant making claim within 15 days such forms as are usually furnished by it for filing such claims. . . .

[Sections 961.257-961.300 reserved for expansion]

SUBCHAPTER G. CONTRACTS WITH ATTORNEYS

Revised Law

Sec. 961.301. CONTRACTS WITH ATTORNEYS. (a) A nonprofit legal services corporation may contract with attorneys as provided by this chapter to ensure to each participant legal services performed by the attorneys under the contract for legal services between the corporation and the participant. A contracting attorney must be licensed to practice law in the jurisdiction in which legal services are to be provided.

(b) Before issuing a contract for legal services and while the corporation continues to issue those contracts, the corporation must maintain the number of contracting attorneys that the department determines is necessary to service the participant contracts contemplated by the corporation's plan of operation. (V.T.I.C. Art. 23.01, Sec. (b)(1); Art. 23.03; Art. 23.11 (part).)

Source Law

[Art. 23.01]

(b) [As used in this chapter, the following words . . . shall have the following meanings:]

(1) "Attorney" means a person licensed to practice law in the jurisdiction in which the legal services are to be provided.

Art. 23.03. Each corporation complying with the requirements of this chapter before issuing any contract for prepaid legal services shall have and so long as it issues such contracts maintain such number of contracting attorneys as is sufficient in the determination of the State Board of Insurance to service the participant contracts contemplated by the corporation's plan of operation.

Art. 23.11. Corporations complying with the requirements of this chapter shall have authority to contract in accordance with this chapter with attorneys in such manner as to assure to each participant holding a benefit certificate of the corporation the furnishing of such legal services by attorney under contract, or who shall agree to contract, to the extent agreed upon in prepaid legal service contract between the corporation and the participant

Revised Law

Sec. 961.302. AGREEMENT OF CONTRACTING ATTORNEYS. The contracting attorneys shall:

(1) guarantee to the participants the services stated under the participants' benefit certificates, except as provided by Section 961.254; and

(2) agree to perform without cost to the participants, other than the money of the nonprofit legal services corporation held for the participants' benefit under the corporation's plan of operation, services described by the benefit certificates.

(V.T.I.C. Art. 23.15 (part).)

Source Law

Art. 23.15. The contracting attorneys shall guarantee to the participants the services stated under the benefit certificates and shall agree to perform such services which they agree to render to the participants under the benefit certificates without there being any liability for the

cost thereof to the participants beyond the funds of such corporation held for their benefit in accordance with the plan of operation of the corporation. . . .

Revised Law

Sec. 961.303. LIMITATIONS ON CORPORATION'S RELATIONSHIP WITH ATTORNEYS AND PARTICIPANTS. (a) A nonprofit legal services corporation may not:

- (1) contract to practice law; or
- (2) control or attempt to control the relationship existing between a participant and the participant's attorney.

(b) The corporation may act only as an agent on behalf of its participants for legal services and, except as provided by Section 961.254, those services may be provided only by and through contracting attorneys. A contracting attorney must be an independent contractor maintaining a direct lawyer and client relationship with a participant and may not be an employee of the corporation. (V.T.I.C. Art. 23.12 (part).)

Source Law

Art. 23.12. The corporation complying with the requirements of this chapter shall not contract itself to practice law in any manner, nor shall the corporation control or attempt to control the relations existing between a participant and his or her attorney, but the corporation shall confine its activities to contracting as an agent on behalf of its participants for legal services to be rendered only by and through contracting attorneys, who shall never be employees of the corporation but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the participants. . . .

Revisor's Note

V.T.I.C. Article 23.12 refers to legal services "to be rendered only by and through contracting attorneys." Under V.T.I.C. Article 23.15, revised in pertinent part as Section 961.254, a nonprofit legal services corporation may also issue indemnity contracts. Accordingly, the revised law adds a reference to Section 961.254.

Revised Law

Sec. 961.304. CONTRACT WITH ANY ATTORNEY REQUIRED. A

nonprofit legal services corporation must agree to contract under Section 961.301 with any attorney licensed to practice law in this state. (V.T.I.C. Art. 23.12 (part).)

Source Law

Art. 23.12. . . . Such corporation must agree to contract under Article 23.11 of this code with any attorney licensed by the Supreme Court to practice law in Texas. . . .

Revisor's Note

V.T.I.C. Article 23.12 refers to an attorney "licensed by the Supreme Court to practice law in Texas." The revised law omits the reference to the supreme court as unnecessary. All attorneys licensed to practice law in Texas are licensed by the supreme court. See Section 82.021, Government Code.

Revised Law

Sec. 961.305. ATTORNEY INSURANCE REQUIRED. (a) Each contracting attorney shall maintain professional liability and errors and omissions insurance as required by the nonprofit legal services corporation with which the attorney contracts.

(b) The commissioner by rule may establish minimum amounts for coverage under Subsection (a). (V.T.I.C. Art. 23.12 (part).)

Source Law

Art. 23.12. . . . Contracting attorneys shall maintain such professional liability, and errors and omissions insurance as the corporation shall deem proper and the State Board of Insurance may by uniform rule declare a minimum amount of each such coverage to be maintained.

Revisor's Note

V.T.I.C. Article 23.12 permits the State Board of Insurance (now the commissioner of insurance) to adopt a "uniform" rule. The revised law omits the term "uniform" as unnecessary because under Section 36.001 all rules that the commissioner adopts must have general and uniform application.

Revised Law

Sec. 961.306. PAYMENT ONLY FOR SERVICES PROVIDED. A nonprofit legal services corporation may not pay any of the claim funds collected from participants to an attorney except for legal

services that the attorney provided to participants. (V.T.I.C. Art. 23.18.)

Source Law

Art. 23.18. A corporation complying with the requirements of this chapter shall not pay any of the claim funds collected from participants to any attorney except for legal services rendered by such attorney to the participants.

Revised Law

Sec. 961.307. COMPLAINT REGARDING ATTORNEY. If the department receives a complaint concerning the performance of an attorney connected with a nonprofit legal services corporation, the department shall refer the complaint to:

(1) the supreme court of this state or a person that the supreme court designates to receive attorney grievances from the public, if the attorney is licensed by this state; or

(2) the appropriate licensing agency of another jurisdiction where the attorney is licensed, if the attorney is not licensed by this state. (V.T.I.C. Art. 23.22.)

Source Law

Art. 23.22. The State Board of Insurance shall refer a complaint received by it concerning the performance of an attorney licensed in this state who is connected with a corporation complying with this chapter to the Supreme Court of the State of Texas or to any person designated by the Supreme Court to receive attorney grievances from the public. The board shall refer a complaint regarding an attorney licensed in another jurisdiction who is connected with a corporation complying with this chapter to the appropriate licensing agency of the other jurisdiction.

[Sections 961.308-961.350 reserved for expansion]

SUBCHAPTER H. AGENTS

Revised Law

Sec. 961.351. DEFINITION. In this subchapter, "agent" means an individual who solicits contracts for legal services or enrolls applicants. (V.T.I.C. Art. 23.23, Sec. (a) (part).)

Source Law

Art. 23.23. (a) . . . An agent means a natural person who solicits legal services

contracts or enrolls applicants.

Revised Law

Sec. 961.352. RULES TO LICENSE AND REGULATE AGENTS. The commissioner after notice and hearing may adopt reasonable rules necessary to license and regulate agents. (V.T.I.C. Art. 23.23, Sec. (a) (part).)

Source Law

Art. 23.23. (a) The State Board of Insurance may after notice and hearing promulgate such reasonable rules and regulations as are necessary to license and control agents of corporations complying with this chapter. . . .

Revised Law

Sec. 961.353. LICENSE AND EXAMINATION FEES. (a) Before issuing a license under this subchapter, the commissioner must receive from the person applying for the license:

(1) a nonrefundable license fee in an amount not to exceed \$50; and

(2) unless the department accepts under Article 21.01-1 a qualifying examination administered by a testing service, an examination fee in an amount not to exceed \$20.

(b) The commissioner shall set the amount of the fees.

(c) A new examination fee must be paid for each examination.

(d) An examination fee may not be refunded unless the person:

(1) not later than 24 hours before the time the examination begins, notifies the commissioner that an emergency situation exists;

(2) receives the commissioner's permission to not take the examination; and

(3) does not appear to take the examination. (V.T.I.C. Art. 23.23, Sec. (b).)

Source Law

(b) The Commissioner of Insurance shall collect in advance from agents of corporations complying with this chapter a nonrefundable license fee in an amount not to exceed \$50 as determined by the State Board of Insurance. Unless the State Board of Insurance accepts a qualifying examination administered by a testing service as provided under Article 21.01-1, Insurance Code, as

amended, the Commissioner of Insurance shall also collect in advance from such agents an examination fee in an amount not to exceed \$20 as determined by the State Board of Insurance. A new examination fee shall be paid for each and every examination. The examination fee shall not be returned under any circumstances other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval.

Revisor's Note

Section (b), V.T.I.C. Article 23.23, refers to Article 21.01-1, Insurance Code, "as amended." The revised law omits "as amended" for the reason stated in Revisor's Note (1) to Section 961.002.

Revised Law

Sec. 961.354. EXPIRATION. Unless the commissioner adopts a staggered renewal system under Article 21.01-2, a license issued to an agent expires on the earlier of:

- (1) the second anniversary of the date the license is issued; or
- (2) the date the agent's authority to act for a nonprofit legal services corporation is terminated. (V.T.I.C. Art. 23.23, Sec. (c).)

Source Law

(c) Except as may be provided by a staggered renewal system adopted under Section 2(f), Article 21.01-2 of this code, each license issued to agents of corporations complying with this chapter shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance or the authority of the agent to act for the corporation complying with this chapter is terminated.

Revisor's Note

Section (c), V.T.I.C. Article 23.23, provides that an agent's license expires on a certain date "unless prior thereto it is suspended or revoked by the Commissioner of

Insurance." The revised law omits the quoted language as unnecessary because suspension or revocation of the license would cause the license to no longer be valid, and thus the expiration date would be rendered meaningless because of the nature of suspension or revocation and not because of the omitted statutory provision.

Revised Law

Sec. 961.355. RENEWAL; FEE. (a) A person may renew a license issued under this subchapter by filing with the department on or before the date the license expires a completed renewal application and paying the nonrefundable renewal fee.

(b) The department shall set the renewal fee in an amount not to exceed \$50.

(c) A person may not renew a license that has expired or been suspended or revoked. (V.T.I.C. Art. 23.23, Sec. (d).)

Source Law

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed by filing with the Board on or before the expiration date of the license a completed renewal application and paying a nonrefundable fee in an amount not to exceed \$50 as determined by the State Board of Insurance.

Revised Law

Sec. 961.356. SUSPENSION. The department shall suspend a license issued to an agent if the agent is not operating under an appointment from a nonprofit legal services corporation. The department shall terminate the suspension when the department receives acceptable notice that an appointment exists. (V.T.I.C. Art. 23.23, Sec. (e) (part).)

Source Law

(e) . . . The State Board of Insurance shall suspend the license of an agent during any period in which the agent does not have an outstanding valid appointment. The suspension shall be lifted on receipt by the State Board of Insurance of acceptable notice of a valid appointment.

Revisor's Note

Section (e), V.T.I.C. Article 23.23, refers to an "outstanding valid appointment."

The revised law omits "outstanding" and "valid" as unnecessary because, in this context, the meaning of those terms is included in the meaning of an appointment. If an appointment is not "outstanding," then no appointment exists, and if an appointment is invalid, then no appointment was made.

Revised Law

Sec. 961.357. MULTIPLE REPRESENTATION; APPLICATION; FEES.

(a) An agent licensed under this subchapter may apply to act as an agent for more than one nonprofit legal services corporation.

(b) The agent and the corporation must give notice to the department of any additional appointment authorizing the agent to act as an agent for that corporation. The notice must be accompanied by:

- (1) a certificate from the corporation that the corporation desires to appoint the applicant as its agent;
- (2) a nonrefundable fee; and
- (3) any other information that the department requires.

(c) The commissioner shall set the fee in an amount not to exceed \$16.

(d) The agent may act for the corporation if:

- (1) the department approves the application for an additional appointment; or
- (2) notice of disapproval is not received before the eighth day after the date the department receives the completed application and fee. (V.T.I.C. Art. 23.23, Sec. (e) (part).)

Source Law

(e) Any agent licensed under this article may represent and act as an agent for more than one corporation complying with this chapter at any time while the agent's license is in force, if the agent so desires. Any such agent and the corporation complying with this chapter must give notice to the State Board of Insurance of any additional appointment or appointments authorizing the agent to act for an additional corporation complying with this chapter. Such notice must be accompanied by a certificate from each corporation complying with this chapter to be named in each additional appointment that said corporation desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The

agent shall be required to pay a nonrefundable fee in an amount not to exceed \$16 as determined by the State Board of Insurance for each additional appointment applied for, which fee shall accompany the notice. If approval of an additional appointment is not received from the State Board of Insurance before the eighth day after the date on which the completed application and fee were received by the Board, the agent and the corporation, in the absence of notice of disapproval, may assume that the State Board of Insurance approves the application, and the agent may act for the corporation. . . .

Revised Law

Sec. 961.358. DISPOSITION OF FEES. (a) The department shall deposit a fee collected under this subchapter to the credit of the Texas Department of Insurance operating account, to be used to administer this chapter and other state law governing agents of nonprofit legal services corporations. The fees may be used to pay salaries, travel expenses, office expenses, and other incidental expenses incurred in administering this chapter.

(b) Article 1.31A applies to a fee collected under this subchapter. (V.T.I.C. Art. 23.23, Sec. (f).)

Source Law

(f) All fees collected pursuant to this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be used by the State Board of Insurance to administer the provisions of Chapter 23 and all laws of this state governing and regulating agents for such corporations. The fees may be used to pay salaries, traveling expenses, office expenses, and other incidental expenses incurred in the administration of this chapter. Article 1.31A of this code applies to fees collected under this section.

Revisor's Note

Section (f), V.T.I.C. Article 23.23, requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature,

1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

[Sections 961.359-961.400 reserved for expansion]

SUBCHAPTER I. DISSOLUTION AND LIQUIDATION OF CORPORATION

Revised Law

Sec. 961.401. SUPERVISION BY DEPARTMENT. The department shall supervise any dissolution or liquidation of a nonprofit legal services corporation. (V.T.I.C. Art. 23.06 (part).)

Source Law

Art. 23.06. Any dissolution or liquidation of any corporation subject to the provisions of this chapter shall be under the supervision of the State Board of Insurance. . . .

Revised Law

Sec. 961.402. VOLUNTARY DISSOLUTION. (a) The board of directors of a nonprofit legal services corporation may vote to dissolve the corporation at any time, but the corporation may not be dissolved without the department's approval.

(b) In a dissolution under this section, the officers of the corporation shall settle all outstanding obligations to participants and otherwise dispose of the corporation's affairs. After the officers have completed the corporation's liquidation and a final settlement has been filed with and approved by the department, the corporation shall be dissolved as provided by the provisions relating to voluntary dissolution under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). (V.T.I.C. Art. 23.07 (part).)

Source Law

Art. 23.07. Any corporation operating under this chapter may be dissolved at any time by a vote of its board of directors, and after such action has been approved by the State Board of Insurance. In the case of voluntary dissolution, the disposition of the affairs of the corporation shall be made by the officers (including the settlement of all outstanding obligations to participants), and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved by the State Board of

Insurance, the provisions for voluntary dissolution under the Texas Non-Profit Corporation Act shall be followed to dissolve the corporation. . . .

Revised Law

Sec. 961.403. INVOLUNTARY DISSOLUTION. If the commissioner after notice and hearing determines that a nonprofit legal services corporation is insolvent or has violated this chapter, the corporation's affairs shall be disposed of:

- (1) by a liquidator appointed by and under the supervision of the commissioner; or
- (2) in an appropriate case, under the direction of a court in Travis County. (V.T.I.C. Art. 23.07 (part).)

Source Law

Art. 23.07. . . . In all other cases where a corporation operating under this chapter is found to be insolvent, or to have violated the provisions of this chapter, on a determination of this condition, and after due notice and hearing, the affairs of the corporation shall be disposed of by a liquidator appointed by and under the supervision of the State Board of Insurance, or, in appropriate cases, under the direction of a court of competent jurisdiction in Travis County.

Revisor's Note

V.T.I.C. Article 23.07 refers to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary because the general laws of civil jurisdiction determine which courts have jurisdiction. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 961.404. PRIORITY OF CLAIMS. In a dissolution of a nonprofit legal services corporation, participants' claims have priority over all other claims except costs of liquidation. (V.T.I.C. Art. 23.06 (part).)

Source Law

Art. 23.06. . . . In case of dissolution of any group formed under the provisions of this chapter, participants'

claims shall be given priority over all other claims except cost of liquidation.

Revisor's Note

V.T.I.C. Article 23.06 refers to dissolution of a "group formed under the provisions of this chapter." The revised law substitutes "nonprofit legal services corporation" for the quoted language for consistency with the other provisions of this chapter that refer to the entities formed under this chapter. In addition, under Subdivision (1), V.T.I.C. Article 23.02, revised as Section 961.052, an entity seeking to provide legal services under this chapter may enroll participants only "[a]fter incorporation."

[Chapters 962-980 reserved for expansion]

SUBTITLE I. COMPANIES THAT ARE NOT ORGANIZED IN TEXAS

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CHAPTER 981. SURPLUS LINES INSURANCE
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 981.001. PURPOSE. (a) An insurance transaction that is entered into by a resident of this state with an eligible surplus lines insurer through a surplus lines agent because of difficulty in obtaining coverage from an authorized insurer is a matter of public interest.

(b) The transaction of surplus lines insurance is a subject of concern and it is necessary to provide for the regulation, taxation, supervision, and control of these transactions and the practices and matters related to these transactions by:

- (1) requiring appropriate standards and reports concerning the placement of surplus lines insurance;
- (2) imposing requirements necessary to make regulation and control of surplus lines insurance reasonably complete and effective;
- (3) providing orderly access to eligible surplus lines insurers;
- (4) ensuring the maintenance of fair and honest markets;
- (5) protecting the revenues of this state; and
- (6) protecting authorized insurers, which under the laws of this state must meet strict standards relating to the regulation and taxation of the business of insurance, from unfair competition by unauthorized insurers.

(c) To regulate and tax surplus lines insurance placed in accordance with this chapter within the meaning and intent of 15 U.S.C. Section 1011, this chapter provides an orderly method for the residents of this state to effect insurance with eligible surplus lines insurers through qualified, licensed, and supervised surplus lines agents in this state, if coverage is not available from authorized and regulated insurers engaged in

business in this state, under reasonable and practical safeguards. (V.T.I.C. Art. 1.14-2, Sec. 1.)

Source Law

Art. 1.14-2

Sec. 1. Insurance transactions which are entered into by citizens of this state with eligible surplus lines insurers through a surplus lines agent as a result of difficulty in obtaining coverage from licensed insurers are a matter of public interest. The Legislature declares that such transaction of surplus lines insurance is a subject of concern and that it is necessary to provide for the regulation, taxation, supervision and control of such transactions and the practices and matters related thereto by requiring appropriate standards and reports concerning the placement of such insurance; by imposing requirements necessary to make such regulation and control reasonably complete and effective; by providing orderly access to eligible surplus lines insurers; by insuring the maintenance of fair and honest markets; by protecting the revenues of this state; and by protecting licensed insurers, which under the laws of this state must meet strict standards as to the regulation of the business of insurance and the taxation thereof, from unfair competition by unauthorized insurers. In order to properly regulate and tax such insurance placed in accordance with this Article within the meaning and intent of P.L. 79-15 (1945), (Chap. 20, 1st Sess., S. 340), 59 Stat. 33, the Legislature herein provides an orderly method for the public of this state to effect insurance with eligible surplus lines insurers through qualified, licensed and supervised surplus line agents in this state if coverage is not available from duly licensed, regulated insurers conducting business in this state and under reasonable and practical safeguards so that such insurance coverage may be obtained by residents of this state.

Revisor's Note

Section 1, V.T.I.C. Article 1.14-2, refers to P.L. 79-15 (1945), (Chap. 20, 1st Sess., S. 340), 59 Stat. 33. The commonly used citation for this provision is 15 U.S.C. Section 1011. The revised law is drafted accordingly.

Revised Law

Sec. 981.002. DEFINITIONS. In this chapter:

(1) "Eligible surplus lines insurer" means an insurer that is not an authorized insurer, but that is eligible under Subchapter B, in which surplus lines insurance is placed or may be placed under this chapter.

(2) "Stamping office" means the Surplus Lines Stamping Office of Texas.

(3) "Surplus lines agent" means an agent licensed under Subchapter E to procure an insurance contract from a surplus lines insurer.

(4) "Surplus lines insurance" means insurance coverage:

(A) for a subject that is resident, located, or to be performed in this state; and

(B) that may be placed, in accordance with this chapter, with an eligible surplus lines insurer. (V.T.I.C. Art. 1.14-2, Secs. 2(a)(1) (part), (b), 3(a) (part), 6A(a) (part); New.)

Source Law

Sec. 2. (a)(1) "Surplus lines agent"
(i) is an agent . . . who is granted a surplus lines license in accordance with this Article, (ii) is a . . . agent . . . who is granted a surplus lines license in accordance with this Article and . . . (iii) is a . . . agent . . . who is granted a surplus lines license

(b) "Surplus lines insurer" means an unlicensed insurer deemed eligible pursuant to Section 8 of this Article in which an insurance coverage is placed or may be placed under this Article.

Sec. 3. (a) If insurance coverages of subjects resident, located or to be performed in this state cannot be procured from licensed insurers . . . , such coverages, hereinafter designated as surplus line insurance

Sec. 6A. (a) [There is hereby created a nonprofit association to be known as] the Surplus Lines Stamping Office of Texas. . . .

Revisor's Note

(1) Section 2(b), V.T.I.C. Article 1.14-2, defines a "surplus lines insurer" as certain unlicensed insurers "deemed eligible" under Section 8 of the article, revised as Subchapter B. For clarity and consistency, the revised law defines "eligible surplus lines insurer." Appropriate changes are made throughout this chapter.

(2) Section 3(a), V.T.I.C. Article 1.14-2, refers to insurance that cannot be obtained from "licensed" insurers. The revised law substitutes "authorized" for "licensed" throughout this chapter because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(3) The definition of "stamping office" is derived from Section 6A(a), V.T.I.C. Article 1.14-2, and is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 981.003. APPLICABILITY OF CHAPTER. This chapter applies to insurance:

- (1) of a subject that is resident, located, or to be performed in this state; and
- (2) that is obtained, continued, or renewed through:
 - (A) negotiations or an application wholly or partly occurring or made within or from within this state; or
 - (B) premiums wholly or partly remitted directly or indirectly from within this state. (V.T.I.C. Art. 1.14-2, Sec. 3(b).)

Source Law

(b) Any insurance of subjects resident, located or to be performed in this state, procured through negotiations or an application, in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance

procured, or continued or renewed in this state within the intent of Paragraph (a).

Revised Law

Sec. 981.004. SURPLUS LINES INSURANCE AUTHORIZED. (a) An eligible surplus lines insurer may provide surplus lines insurance only if:

(1) the full amount of required insurance cannot be obtained, after a diligent effort, from an insurer authorized to write and actually writing that kind and class of insurance in this state;

(2) the insurance is placed through a surplus lines agent; and

(3) the insurer meets the eligibility requirements of Subchapter B as of the inception date and annual anniversary date of each insurance contract, cover note, or other confirmation of insurance.

(b) An eligible surplus lines insurer may provide surplus lines insurance only in the amount that exceeds the amount of insurance obtainable from authorized insurers. (V.T.I.C. Art. 1.14-2, Secs. 3(a) (part), 5(a), 7(c).)

Source Law

Sec. 3. (a) If insurance coverages . . . cannot be procured from licensed insurers after diligent effort, such coverages . . . may be procured from eligible surplus lines insurers subject to the following conditions:

1. The insurance must be eligible for surplus lines under Section 5.

2. The insurer must be an eligible surplus lines insurer under Section 8.

3. The insurance must be placed through a licensed . . . surplus lines agent

4. The other applicable provisions of this section must be complied with.

Sec. 5. (a) No insurance coverage shall be eligible for surplus lines unless the full amount of insurance required is not procurable, after a diligent effort has been made to do so, from among the insurers licensed to transact and actually writing that kind and class of insurance in this state, and the amount of insurance eligible for surplus lines shall be only the amount in

excess of the amount so procurable from licensed insurers.

[Sec. 7]

(c) The insurer must be an eligible surplus lines insurer as of the inception date and annual anniversary date of every insurance contract, cover note, or other confirmation of insurance.

Revisor's Note

Section 3(a), V.T.I.C. Article 1.14-2, authorizes the issuance of surplus lines insurance if certain requirements are met, including a requirement that "[t]he other applicable provisions of this section must be complied with." The revised law omits the quoted language as unnecessary. If another law applies, that law provides sufficient authority to require compliance.

Revised Law

Sec. 981.005. VALIDITY OF CONTRACTS. (a) Unless a material and intentional violation of this chapter or Section 12, Article 1.14-2, exists, an insurance contract obtained from an eligible surplus lines insurer is:

- (1) valid and enforceable as to all parties; and
- (2) recognized in the same manner as a comparable contract issued by an authorized insurer.

(b) A material and intentional violation of this chapter or Section 12, Article 1.14-2, does not preclude the insured from enforcing the insured's rights under the contract. (V.T.I.C. Art. 1.14-2, Sec. 9.)

Source Law

Sec. 9. (a) Insurance contracts procured from an eligible surplus lines insurer shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect and extent as like contracts issued by licensed insurers unless there was a material and intentional violation of this Article.

(b) In the event of a material and intentional violation of this Article, the insured shall not be precluded from enforcing his rights in accordance with the terms and provisions of such contract.

Revised Law

Sec. 981.006. SANCTIONS. Chapter 82 applies to a surplus lines agent or an eligible surplus lines insurer that violates:

- (1) this chapter;
- (2) Section 12, Article 1.14-2; or
- (3) a rule or order adopted under Subchapter B or Section 981.005. (V.T.I.C. Art. 1.14-2, Secs. 17, 17A.)

Source Law

Sec. 17. Any violation of this Article shall subject the surplus lines agent or eligible surplus lines insurer to all of the provisions and sanctions contained in Section 7, Article 1.10, of this Code.

Sec. 17A. If a surplus lines agent or eligible surplus lines insurer violates Section 8 or 9 of this article or a rule, regulation, or order adopted under that provision, the State Board of Insurance may assess a penalty against that agent or insurer as provided by Section 7, Article 1.10, of this code.

Revisor's Note

Section 17A, V.T.I.C. Article 1.14-2, refers to a "rule, regulation, or order." Throughout this chapter, the revised law omits "regulation" as unnecessary. Under Section 311.005, Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 981.007. LIABILITY OF SURPLUS LINES INSURER FOR LOSSES AND UNEARNED PREMIUMS. (a) This section applies if:

- (1) an eligible surplus lines insurer has assumed a risk under this chapter; and
- (2) the surplus lines agent who placed the insurance has received the premium for that risk.

(b) If a coverage question between the eligible surplus lines insurer and the insured arises regarding the assumed risk, the insurer is considered to have received the premium due for that coverage.

(c) The eligible surplus lines insurer is liable to the insured for any:

- (1) loss covered by the insurance; and
- (2) unearned premium payable to the insured on cancellation of the insurance.

(d) This section applies without regard to whether the surplus lines agent is indebted to the insurer regarding the insurance or for any other cause.

(e) An eligible surplus lines insurer that assumes a risk under this chapter subjects itself to this section. (V.T.I.C. Art. 1.14-2, Sec. 10.)

Source Law

Sec. 10. If the surplus lines insurer has assumed the risk in accordance with this Article and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the insurer with respect to such insurance or for any other cause. Each surplus lines insurer assuming a surplus lines risk under this Article shall be deemed thereby to have subjected itself to the terms of this subsection.

Revised Law

Sec. 981.008. SURPLUS LINES INSURANCE PREMIUM TAX. The premiums charged for surplus lines insurance are subject to the premium tax imposed under Section 12, Article 1.14-2. (New.)

Revisor's Note

Section 12, Article 1.14-2, is not revised as a part of this chapter. For the convenience of the reader, the revised law adds a reference to that section.

Revised Law

Sec. 981.009. RULES. The commissioner may adopt rules to enforce this chapter. (V.T.I.C. Art. 1.14-2, Sec. 3A (part).)

Source Law

Sec. 3A. The State Board of Insurance may promulgate rules to enforce this article. . . .

Revisor's Note

Section 3A, V.T.I.C. Article 1.14-2, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the State Board of Insurance have been changed appropriately.

[Sections 981.010-981.050 reserved for expansion]

SUBCHAPTER B. ELIGIBILITY REQUIREMENTS FOR SURPLUS
LINES INSURERS

Revised Law

Sec. 981.051. AUTHORIZATION REQUIRED. (a) Before an insurer may issue surplus lines insurance, the insurer must hold an authorization to engage in the business of insurance from its domiciliary state or country.

(b) The authorization from the domiciliary state or country must be for the same kind or class of insurance to be written in this state as surplus lines insurance.

(c) The surplus lines insurer must provide to the commissioner satisfactory evidence that the insurer holds the authorization. (V.T.I.C. Art. 1.14-2, Secs. 8(g), (m).)

Source Law

(g) Every insurer proposing to transact surplus lines insurance within this state shall hold a current license or authority from its domiciliary state or country to conduct the business of insurance. The license or authority from the domiciliary state or country must be for the kind or class of insurance to be written in this state as surplus lines insurance, and satisfactory evidence that the insurer holds the required license or authorization must be provided to the Commissioner of Insurance.

(m) An insurer is not an eligible surplus lines insurer unless it is authorized to write the same coverage in the

jurisdiction in which the insurer is licensed or certificated to do business.

Revisor's Note

Sections 8(g) and (m), V.T.I.C. Article 1.14-2, refer to an insurer that holds a "current license or authority" or that is "licensed or certificated." The revised law omits "current license," "authority," and "certificated" as unnecessary because those terms are included in an "authorization" to engage in the business of insurance. For example, if an insurer possessed an expired license, that insurer would not be authorized to engage in the business of insurance in the insurer's domiciliary state.

Revised Law

Sec. 981.052. GOOD REPUTATION AND PROMPT SERVICE REQUIRED. To issue surplus lines insurance, an insurer must have a good reputation and provide reasonably prompt service to its policyholders in the payment of just losses and claims. (V.T.I.C. Art. 1.14-2, Sec. 8(h).)

Source Law

(h) The insurer must be of good repute and provide reasonably prompt service to its policyholders in the payment of just losses and claims.

Revised Law

Sec. 981.053. COMPETENCE, TRUSTWORTHINESS, AND EXPERIENCE REQUIRED. An insurer may not issue surplus lines insurance if:

- (1) the insurer's management is:
 - (A) incompetent or untrustworthy; or
 - (B) so lacking in insurance company managerial experience as to make the insurer's proposed operation hazardous to the insurance-buying public; or
- (2) the commissioner has good reason to believe that the insurer is affiliated directly or indirectly, through ownership, control, reinsurance transactions, or other insurance or business relations, with a person whose business operations are or have been detrimental to policyholders, shareholders, investors, creditors, or the public. (V.T.I.C. Art. 1.14-2, Sec. 8(i).)

Source Law

(i) No insurer shall be eligible if the management is incompetent or untrustworthy,

or so lacking in insurance company managerial experience as to make its proposed operation hazardous to the insurance-buying public; or if the State Board of Insurance has good reason to believe that it is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

Revised Law

Sec. 981.054. CERTAIN PRECONDITIONS NOT ALLOWED. An eligible surplus lines insurer may not require as a condition precedent to writing new or renewal surplus lines insurance that the insured or prospective insured place with the insurer other insurance that is not obtainable as surplus lines insurance. (V.T.I.C. Art. 1.14-2, Sec. 8(k).)

Source Law

(k) No new or renewal surplus lines insurance shall be placed with any eligible surplus lines insurer which requires as a condition precedent to writing such new or renewal insurance that the prospective insured or the insured place other insurance not procurable as surplus lines insurance with such eligible surplus lines insurer.

Revised Law

Sec. 981.055. FAILURE TO PAY PENALTY. An insurer may not issue surplus lines insurance if the insurer or its agents have failed to pay a statutory penalty imposed on the insurer or its agents. (V.T.I.C. Art. 1.14-2, Sec. 8(j) (part).)

Source Law

(j) No insurer shall be eligible if the insurer or its agents have failed to submit to any fine or penalty levied pursuant to statute. . . .

Revisor's Note

Section 8(j), V.T.I.C. Article 1.14-2, refers to a "fine or penalty." The revised law omits "fine" as unnecessary because it is included in the meaning of "penalty."

Revised Law

Sec. 981.056. FAILURE TO PAY PREMIUM TAXES. An insurer may not issue surplus lines insurance if the insurer is obligated to pay a premium tax in this state and has not paid the tax. (V.T.I.C. Art. 1.14-2, Sec. 8(j) (part).)

Source Law

(j) . . . No insurer shall be eligible if the insurer is obligated to pay and has failed to pay premium taxes in the state. . . .

Revised Law

Sec. 981.057. MINIMUM CAPITAL AND SURPLUS REQUIREMENTS. (a) Except as provided by Subsection (b), an eligible surplus lines insurer must maintain capital and surplus in an amount of at least \$15 million.

(b) If an eligible surplus lines insurer is an insurance exchange created by the laws of another state:

(1) the syndicates of the exchange must maintain under terms acceptable to the commissioner capital and surplus, or the equivalent under the laws of the exchange's domiciliary jurisdiction, in an amount of at least \$75 million in the aggregate;

(2) the exchange must maintain under terms acceptable to the commissioner at least 50 percent of the policyholder surplus of each individual syndicate in a custodial account accessible to the exchange or the exchange's domiciliary commissioner in the event of insolvency or impairment of the individual syndicate; and

(3) an individual syndicate, to be eligible to accept surplus lines insurance placements from this state as an exchange member, must maintain under terms acceptable to the commissioner capital and surplus, or the equivalent under the laws of the exchange's domiciliary jurisdiction, in the amount of at least:

(A) \$5 million, if the syndicate is a member of an insurance exchange that maintains at least \$15 million for the protection of all exchange policyholders; or

(B) the greater of:

(i) the minimum capital and surplus of the exchange's domiciliary jurisdiction; or

(ii) \$15 million. (V.T.I.C. Art. 1.14-2, Sec. 8(b) (part).)

Source Law

(b) . . . An insurer shall not be an eligible surplus lines insurer unless:

(1) the insurer has a minimum

capital and surplus of \$15 million; or

(2) in the case of an insurance exchange created by the laws of another state:

(A) the syndicates of the exchange must maintain under terms acceptable to the commissioner capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than \$75 million in the aggregate;

(B) the exchange must maintain under terms acceptable to the commissioner at least 50 percent of the policyholder surplus of each syndicate in a custodial account accessible to the exchange or its domiciliary commissioner in the event of insolvency or impairment of the individual syndicate; and

(C) each individual syndicate, to be eligible to accept surplus lines insurance placements from this state as a member of the exchange must meet either of the following requirements:

(i) in the case of an insurance exchange that maintains funds in an amount of at least \$15 million for the protection of all exchange policyholders, the syndicate must maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of at least \$5 million; or

(ii) in the case of an insurance exchange that does not maintain funds in an amount of at least \$15 million for the protection of all exchange policyholders, the syndicate must maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of at least the greater of:

(a) the minimum capital and surplus of its domiciliary jurisdiction; or

(b) \$15 million.

Revised Law

addition to meeting the minimum capital and surplus requirements prescribed by Section 981.057, an alien surplus lines insurer must provide evidence that:

(1) the insurer maintains in the United States an irrevocable trust fund in a Federal Reserve System member bank in an amount of at least \$5.4 million for the protection of all its policyholders in the United States; and

(2) the trust fund consists of:

(A) cash;

(B) securities;

(C) letters of credit; or

(D) investments of substantially the same

character and quality as those that are eligible investments for the capital and statutory reserves of an insurer authorized to write similar kinds and classes of insurance in this state.

(V.T.I.C. Art. 1.14-2, Sec. 8(d).)

Source Law

(d) In addition to meeting the minimum capital and surplus requirements provided by this section, an alien insurer must provide evidence that it maintains in the United States an irrevocable trust fund in a Federal Reserve System member bank in an amount not less than \$5.4 million for the protection of all its policyholders in the United States and that the trust fund consists of cash, securities, letters of credit, or investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of authorized insurers licensed to write like kinds and classes of insurance in this state.

Revised Law

Sec. 981.059. ALTERNATIVE FOR CERTAIN INSURER GROUPS. (a) This section applies only to an insurer group that includes unincorporated individual insurers.

(b) Instead of the minimum capital and surplus requirements prescribed by Section 981.057, an insurer group may maintain a trust fund in an amount of at least \$50 million as security to the full amount of the trust fund for all policyholders and creditors in the United States of each group member.

(c) Except as provided by this section, the trust fund must comply with the terms specified by Section 981.058 for the trust fund required by that section. (V.T.I.C. Art. 1.14-2, Sec. 8(f).)

Source Law

(f) Instead of the minimum capital and surplus requirements provided by this section, a group of insurers, which group includes unincorporated individual insurers, may maintain a trust fund in an amount not less than \$50 million as security to the full amount of the trust fund for all policyholders and creditors in the United States of each member of the group. Except as specifically otherwise provided by this subsection, the trust fund must comply with the terms and conditions provided by Subsection (d) of this section for the trust fund required by that subsection.

Revisor's Note

Section 8(f), V.T.I.C. Article 1.14-2, refers to "terms and conditions." The revised law omits "conditions" because "conditions" is included in the meaning of "terms."

Revised Law

Sec. 981.060. EXEMPTION DUE TO MINIMUM PREMIUM LEVEL. (a) The commissioner by rule shall exempt an eligible surplus lines insurer from the minimum capital and surplus requirements prescribed by Section 981.057 if the insurer writes less than a minimum level of insurance premium in this state.

(b) The rules must specify the minimum level of insurance premium. (V.T.I.C. Art. 1.14-2, Sec. 8(c) (part).)

Source Law

(c) . . . The commissioner, by rule, shall exempt an insurer from the minimum capital and surplus requirements of Subsection (b) of this section if the insurer writes less than a minimum level of insurance premium in this state. The rules must specify the minimum level of insurance premium.

Revised Law

Sec. 981.061. EXEMPTION DUE TO CERTAIN INSURER CHARACTERISTICS. The commissioner may exempt an eligible surplus lines insurer from the minimum capital and surplus requirements prescribed by Section 981.057 if the commissioner determines, after a hearing, that the exemption is warranted based on factors such as:

- (1) the insurer's quality of management;
- (2) the capital and surplus of a parent company;
- (3) the insurer's underwriting profit and investment income trends;
- (4) the insurer's reinsurance contracts;
- (5) the insurer's record and reputation in the industry; and
- (6) any other information the commissioner requires to make a determination. (V.T.I.C. Art. 1.14-2, Sec. 8(c) (part).)

Source Law

(c) An insurer may be exempt from the minimum capital and surplus requirements provided by Subsection (b) of this section if the Commissioner of Insurance finds, after public hearing, that the exemption is warranted based on factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, reinsurance contracts, company record and reputation within the industry, and other information the commissioner requires to make a determination. . . .

Revised Law

Sec. 981.062. EXEMPTION DUE TO SIZE OF INSURER AND OTHER FACTORS. (a) The commissioner may exempt an eligible surplus lines insurer from the minimum capital and surplus requirements prescribed by Section 981.057 if the commissioner determines, after a hearing, that the insurer complies with the following requirements:

- (1) the insurer has capital and surplus in an amount of at least \$6 million;
- (2) the amount of net risk retained by the insurer after ceding to a reinsurer is reasonable and does not exceed 10 percent of the insurer's capital and surplus;
- (3) the annual ratio of net written premiums to surplus of the insurer does not exceed 2.5 to 1;
- (4) the insurer's reinsurance company is rated at least "B+" by the A. M. Best Company;
- (5) the ownership interest in the insurer of an agent who places insurance with the insurer does not exceed 10 percent;
- (6) the insurer's managing head, officers, or directors have sufficient insurance ability, standing, and good record to make probable the continued success of the insurer;
- (7) the composition, quality, duration, and liquidity of the insurer's investment portfolio are prudent;

(8) the insurer is audited annually by an independent certified public accountant who is in good standing with the American Institute of Certified Public Accountants and is licensed to practice by the Texas State Board of Public Accountancy, and a copy of the audit is filed with the commissioner;

(9) the number and type of complaints against the insurer are not excessive in relation to the number of insurance policies written by the insurer; and

(10) the insurer is acting in good faith in requesting an exemption.

(b) The commissioner may waive any of the requirements applicable to an insurer under Subsection (a) if, in the commissioner's judgment, a waiver would not adversely affect the insurer's policyholders.

(c) The commissioner may annually renew the exemption if the eligible surplus lines insurer certifies each year that the insurer continues to comply with the requirements under Subsection (a).

(d) The commissioner may hold a hearing at any time to determine if the continued exemption is warranted. (V.T.I.C. Art. 1.14-2, Sec. 8(e).)

Source Law

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

1. the insurer has at least \$6 million in capital and surplus;

2. the amount of net risk retained after ceding to a reinsurer is reasonable and does not exceed 10 percent of the capital and surplus of the insurer;

3. the annual ratio of net written premiums to surplus of the insurer does not exceed 2.5 to 1;

4. the reinsurance company of the insurer is rated at least "B+" by the A.M. Best Company;

5. the ownership interest in the insurer of an agent who places insurance with it does not exceed 10 percent;

6. the officers, directors, or managing head have sufficient insurance ability, standing, and good record to render

continued success of the company probable;

7. the composition, quality, duration, and liquidity of the insurer's investment portfolio are prudent;

8. the insurer is audited annually by an independent certified public accountant who is in good standing with the American Institute of Certified Public Accountants and is licensed to practice by the Texas State Board of Public Accountancy, and a copy of such audit is filed with the commissioner;

9. the number and type of complaints are not excessive relative to the number of insurance policies written; and

10. the insurer is acting in good faith in applying for an exemption.

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

Revisor's Note

Section 8(e), V.T.I.C. Article 1.14-2, refers to a "public hearing." Throughout this chapter, the revised law omits "public" as unnecessary. In context, "hearing" means a hearing open to the public.

Revised Law

Sec. 981.063. COMMISSIONER OR DEPARTMENT NOT RESPONSIBLE FOR DETERMINING UNAUTHORIZED INSURER'S FINANCIAL CONDITION OR CLAIMS PRACTICES. This subchapter does not impose on the commissioner or department a responsibility to determine the actual financial condition or claims practices of an unauthorized insurer as described by Chapter 101. (V.T.I.C. Art. 1.14-2, Sec. 8(1).)

Source Law

(1) This section shall not be deemed to cast upon the State Board of Insurance any duty or responsibility to determine the actual financial condition or claims practice

of any unlicensed insurer or any unauthorized insurer as defined in Article 1.14-1 of this code.

Revisor's Note

(1) Section 8(1), V.T.I.C. Article 1.14-2, refers to a "duty or responsibility." The revised law omits "duty" as unnecessary because it is included in the meaning of "responsibility."

(2) Section 8(1), V.T.I.C. Article 1.14-2, refers to "any unlicensed insurer or any unauthorized insurer as defined in Article 1.14-1 of this code." The revised law omits "unlicensed insurer" as unnecessary because it is included in the meaning of "unauthorized insurer."

Revised Law

Sec. 981.064. COMMISSIONER MAY ORDER REVOCATION OF CONTRACTS. The commissioner may order the revocation of an insurance contract issued by an eligible surplus lines insurer that does not meet the eligibility requirements of this subchapter. (V.T.I.C. Art. 1.14-2, Sec. 8(j) (part).)

Source Law

(j) . . . The State Board of Insurance may order revocation of insurance contracts issued by insurers that do not conform with the eligibility requirements of this section.

Revised Law

Sec. 981.065. APPLICABILITY TO CONTRACT EXTENSION. This subchapter and Sections 981.101(b), 981.210, and 981.211 apply to an extension of an insurance contract beyond its original expiration date. (V.T.I.C. Art. 1.14-2, Sec. 7(d).)

Source Law

(d) An extension of a contract beyond its original expiration date shall be subject to Section 7(a) and Section 8 of this Article.

[Sections 981.066-981.100 reserved for expansion]

SUBCHAPTER C. REQUIREMENTS AND PROCEDURES FOR ISSUANCE OF SURPLUS LINES DOCUMENTS

Revised Law

Sec. 981.101. REQUIREMENTS FOR SURPLUS LINES DOCUMENTS. (a)

In this section, "surplus lines document" means each new or renewal insurance contract, certificate, cover note, or other confirmation of insurance obtained and delivered as surplus line coverage under this chapter.

(b) A surplus lines document must state, in 11-point type, the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Article 21.28-C, Insurance Code. Section 12, Article 1.14-2, Insurance Code, requires payment of a _____ (insert appropriate tax rate) percent tax on gross premium.

(c) A surplus lines document must show:

(1) the description and location of the subject of the insurance;

(2) the coverage, conditions, and term of the insurance;

(3) the premium and rate charged, and premium taxes to be collected from the insured;

(4) the name and address of:

(A) the insured;

(B) the insurer; and

(C) the insurance agent who obtained the surplus line coverage; and

(5) if the direct risk is assumed by more than one insurer:

(A) the name and address of each insurer; and

(B) the proportion of the entire direct risk assumed by each insurer. (V.T.I.C. Art. 1.14-2, Secs. 7(a), (b).)

Source Law

Sec. 7. (a) Every new or renewal insurance contract, certificate, cover note or other confirmation of insurance procured and delivered as a surplus line coverage pursuant to this Article shall bear the name and address of the insurance agent who procured it and shall have stamped or affixed upon it in 11-point type the following: "This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Texas insurance statutes. The State Board of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and this insurer is not a member of the property and casualty insurance guaranty association created under Article 21.28-C, Insurance Code.

Article 1.14-2, Insurance Code, requires payment of _____
(insert appropriate tax rate) percent tax on gross premium."

(b) Such document shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and premium taxes to be collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

Revised Law

Sec. 981.102. LIMIT ON USE OF SURPLUS LINES POLICY OR CONTRACT FORMS. A surplus lines insurance policy or contract form may not be used unless use of the form is:

(1) reasonably necessary for the principal purposes of the insurance coverage; or

(2) not contrary to the purposes of this chapter regarding the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers. (V.T.I.C. Art. 1.14-2, Sec. 5(b).)

Source Law

(b) Policy or contract forms shall not be eligible unless the use is reasonably necessary for the principal purposes of the coverage or unless the use would not be contrary to the purposes of this Article with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

Revised Law

Sec. 981.103. DELIVERY TO INSURED OF SURPLUS LINES DOCUMENTS. (a) On placing new or renewal surplus lines coverage, a surplus lines agent shall promptly issue and deliver to the insured or to the insured's agent the following evidence of insurance:

(1) the policy issued by the insurer; or

(2) if the policy is not available, a certificate, cover note, or other confirmation of insurance.

(b) If the policy is not available at the time of placement of the insurance, the surplus lines agent shall, on the insured's request and as soon as reasonably possible:

(1) obtain the policy from the insurer; and

(2) deliver the policy to the insured to replace the certificate, cover note, or other confirmation of insurance previously issued.

(c) A surplus lines agent may not deliver the evidence of insurance described by Subsection (a), or purport to insure or represent that insurance will be or has been granted by an

eligible surplus lines insurer, unless the agent:

(1) has prior written authority from the insurer for the insurance; or

(2) has received information from the insurer in the regular course of business that:

(A) the insurance has been granted; or

(B) an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured. (V.T.I.C. Art. 1.14-2, Secs. 6(a), (c), (e).)

Source Law

Sec. 6. (a) Upon placing a new or renewal surplus line coverage, the surplus lines agent shall promptly issue and deliver to the insured or his agent, as the case may be, evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate, cover note or other confirmation of insurance.

(c) No surplus lines agent shall deliver any such document, or purport to insure or represent that insurance will be or has been granted by any eligible surplus lines insurer unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(e) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines agent has delivered a certificate, cover note or confirmation, as hereinabove provided, upon request therefor by the insured the surplus lines agent shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the certificate, cover note or confirmation theretofore issued.

Revised Law

Sec. 981.104. DELIVERY TO INSURED OF REVISED SURPLUS LINES DOCUMENTS. (a) A surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note, confirmation, or endorsement for the original document showing the current status of the coverage and the insurers responsible for that coverage if, after the delivery of the original document, a change is made:

(1) to the identity of the insurers;

(2) to the proportion of the direct risk assumed by the insurer as stated in the original document; or

(3) in any other material respect as to the insurance

coverage evidenced by the document.

(b) A change made under Subsection (a) may not result in coverage or an insurance contract that would violate this chapter or Section 12, Article 1.14-2, if originally issued on that basis. (V.T.I.C. Art. 1.14-2, Sec. 6(d).)

Source Law

(d) If after the delivery of any such document there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, cover note or confirmation, or in any other material respect as to the insurance coverage evidenced by such a document, the surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note, confirmation or endorsement for the original such document, accurately showing the current status of the coverage and the insurers responsible thereunder. No such change shall result in a coverage or insurance contract which would be in violation of this Article if originally issued on such basis.

Revisor's Note

Section 6(d), V.T.I.C. Article 1.14-2, requires that a substitute document "accurately" show the current status of the coverage. The revised law omits "accurately" as unnecessary and as not adding to the clear meaning of the law. In the context of the section, "accurately" is included in the meaning of "showing." The absence of "accurately" does not imply that the document may "inaccurately" show coverage.

Revised Law

Sec. 981.105. FILING WITH STAMPING OFFICE. (a) Not later than the 60th day after the later of the effective date or the issue date of new or renewal surplus lines insurance, a surplus lines agent shall file with the stamping office:

- (1) a copy of the policy issued; or
- (2) if the policy has not been issued, a copy of the certificate, cover note, or other confirmation of insurance delivered to the insured.

(b) A surplus lines agent shall also promptly file with the stamping office:

- (1) a copy of each substitute certificate, cover note, or other confirmation of insurance delivered to an insured;
- (2) a copy of each endorsement of an original policy, certificate, cover note, or other confirmation of insurance delivered to an insured; and
- (3) a memorandum from the agent informing the stamping office of the substance of any change represented by a document described by Subdivision (1) or (2), as compared with the original coverage. (V.T.I.C. Art. 1.14-2, Sec. 6(b).)

Source Law

(b) Within 60 days after the effective date or issue date, whichever is later, of any new or renewal surplus lines insurance contract, the surplus lines agent shall file with the Surplus Lines Stamping Office of Texas a true and correct copy of the contract issued. If a contract has not been issued, the surplus lines agent shall so file a true and correct copy of his certificate, cover note or other confirmation of insurance as delivered to the insured. The surplus lines agent shall likewise promptly file with the Surplus Lines Stamping Office of Texas a true and correct copy of any substitute certificate, cover note or other confirmation of insurance, and of every endorsement of an original policy, certificate, cover note or other confirmation of insurance, delivered to an insured, together with such surplus lines agent's memorandum informing the Surplus Lines Stamping Office of Texas as to the substance of any change represented by such substitute certificate, cover note or other confirmation, or of any such endorsement, as compared with the coverage as originally placed or issued.

Revisor's Note

Section 6(b), V.T.I.C. Article 1.14-2, refers to "true and correct" copies. The revised law omits the quoted language as unnecessary because "true and correct" is included in the meaning of "copy." For example, the absence of "true and correct" before "copy" does not imply that one can make a fraudulent copy of a document required by a statute.

[Sections 981.106-981.150 reserved for expansion]

SUBCHAPTER D. SURPLUS LINES STAMPING OFFICE

Revised Law

Sec. 981.151. STATUS AS NONPROFIT ASSOCIATION. The Surplus Lines Stamping Office of Texas is a nonprofit association. (V.T.I.C. Art. 1.14-2, Sec. 6A(a) (part).)

Source Law

Sec. 6A. (a) There is hereby created a nonprofit association to be known as the Surplus Lines Stamping Office of Texas. . . .

Revisor's Note

Section 6A(a), V.T.I.C. Article 1.14-2, creates the Surplus Lines Stamping Office of Texas. The revised law omits "[t]here is hereby created" as unnecessary because the law creating the office is executed.

Revised Law

Sec. 981.152. BOARD OF DIRECTORS. (a) The board of directors of the stamping office exercises the powers of the

office.

(b) The board consists of nine members appointed by the commissioner. Four members must represent the public and have a minimum of three years of experience in purchasing commercial insurance. A public representative may not:

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

(2) be a person required to register under Chapter 305, Government Code; or

(3) be related to a person described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.

(c) A board member serves a term as established in the plan of operation. (V.T.I.C. Art. 1.14-2, Secs. 6A(b) (part), (c).)

Source Law

(b) . . . It shall exercise its powers through a board of directors established under Subsection (c) of this section. . . .

(c) The stamping office shall function through a board of directors appointed by the State Board of Insurance. The board of directors of the stamping office shall consist of 9 members, who serve terms as established in the plan of operation. Four of the members of the board of directors must represent the general public and shall have a minimum of three years of experience in the purchase of commercial insurance. A public representative may not be:

(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;

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

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

Revisor's Note

Section 6A(c)(2), V.T.I.C. Article 1.14-2, refers to a person "required to register with the secretary of state under Chapter 305, Government Code." The revised law omits the reference to the secretary of state because under Chapter 304, Acts of the 72nd Legislature, Regular Session, 1991, a person formerly required to register with the secretary of state must now register with the Texas Ethics Commission under Chapter 305, Government Code. A reference to the Texas Ethics Commission is unnecessary because Chapter 305, Government Code, provides for registration only with that agency.

Revised Law

Sec. 981.153. PLAN OF OPERATION. (a) The procedures to administer the stamping office are established by a plan of operation approved by the commissioner. The plan of operation establishes the terms of the members of the board of directors of the office.

(b) The stamping office shall submit any amendment to the plan of operation to the commissioner. An amendment to the plan of operation is effective on approval by commissioner order.

(c) If the stamping office fails to submit a suitable amendment to the plan of operation, the commissioner may, after notice and hearing, adopt:

- (1) an amendment to the plan of operation; and
- (2) any rules necessary or advisable to implement this subchapter.

(d) A rule adopted under Subsection (c) continues until:
(1) modified by the commissioner; or
(2) superseded by an amendment to the plan of operation submitted by the stamping office and approved by the commissioner. (V.T.I.C. Art. 1.14-2, Secs. 6A(c) (part), (d) (part).)

Source Law

(c) . . . The board of directors of the stamping office shall . . . serve terms as established in the plan of operation. . . .

(d) The stamping office shall submit to the State Board of Insurance a plan of operation and any amendments thereto to provide operating procedures for the administration of the stamping office. The plan of operation and any amendments thereto shall become effective upon approval by order of the State Board of Insurance. If the stamping office fails to submit a suitable plan of operation within 180 days following the effective date of this Act or if at any time thereafter the stamping office fails to submit suitable amendments to the plan of operation, the State Board of Insurance shall, after notice and hearing, adopt a plan of operation or amendments to a plan of operation and promulgate such rules as are necessary or advisable to effectuate the provisions of this section. Such rules shall continue in force until modified by the State Board of Insurance or superseded by a plan of operation submitted by the stamping office and approved by the State Board of Insurance. . . .

Revisor's Note

Section 6A(d), V.T.I.C. Article 1.14-2, requires the stamping office to "submit to the State Board of Insurance a plan of operation" and states that "[i]f the stamping office fails to submit a suitable plan of operation within 180 days following the

effective date of this Act," the department shall adopt a plan. Section 6A, Article 1.14-2, was added by Section 1, Chapter 561, Acts of the 70th Legislature, Regular Session, 1987, effective August 31, 1987. The revised law omits the quoted language and any additional language in Section 6A(d) relating to the submission or approval of the original plan of operation as unnecessary because it is executed. The revised law retains all language in Section 6A(d) that applies to amendments to the original plan of operation.

Revised Law

Sec. 981.154. POWERS AND DUTIES. (a) The stamping office shall perform its functions under the plan of operation.

(b) The stamping office shall conduct the following activities as provided in the plan of operation:

(1) receive, record, and review each surplus lines insurance contract that a surplus lines agent is required to file with the office;

(2) provide to the commissioner an evaluation of the eligibility of each surplus lines insurance contract and surplus lines insurer;

(3) prepare monthly reports for the commissioner relating to surplus lines insurance obtained during the preceding month in a form prescribed by the commissioner;

(4) prepare reports for the commissioner relating to surplus lines business;

(5) collect from each surplus lines agent a stamping fee for the costs of operations to be paid by the insured and determined by the department in an amount not to exceed three-fourths of one percent of gross premium resulting from surplus lines insurance contracts;

(6) employ persons;

(7) borrow money;

(8) enter into contracts;

(9) perform any other acts to facilitate or encourage compliance with this chapter and rules adopted under this chapter; and

(10) provide any other service incidental or related to an office purpose. (V.T.I.C. Art. 1.14-2, Sec. 6A(b) (part).)

Source Law

(b) The stamping office shall perform its functions under the plan of operation established and approved under Subsection (d) of this section. . . . The stamping office shall conduct the following activities provided in the plan of operation adopted under Subsection (d) of this section: (1) receive, record, and review all surplus lines insurance contracts which surplus lines agents are required to file with the stamping office; (2) provide to the commissioner an evaluation of the eligibility of all

surplus lines insurance contracts and surplus lines insurers; (3) prepare monthly reports for the commissioner on surplus lines insurance procured during the preceding month in such form the commissioner may prescribe; prepare and deliver to the commissioner reports of surplus lines business; (4) collect from each surplus lines agent a stamping fee for the costs of operations to be paid by the insured and determined by the State Board of Insurance in an amount not to exceed three-quarters of one percent of gross premium resulting from surplus lines contracts; (5) employ and retain such persons as are necessary to carry out the duties of the stamping office; (6) borrow money as necessary to effect the purposes of the stamping office; (7) enter contracts as necessary to effect the purposes of the stamping office; perform such other acts as will facilitate and encourage compliance with the surplus lines law of this state and rules promulgated thereunder; and (8) provide such other services as are incidental or related to the purposes of the stamping office. . . .

Revisor's Note

Sections 6A(b)(5), (6), and (7), V.T.I.C. Article 1.14-2, refer to duties regarding employing staff, borrowing money, and entering into contracts "necessary" to "carry out" or "effect" the "purposes" or "duties" of the stamping office. The revised law omits the quoted references as unnecessary. By referring to those duties without the qualifying language, the law does not imply that the stamping office may perform unnecessary duties or that it may perform those duties for purposes other than stamping office purposes.

Revised Law

Sec. 981.155. SUPERVISION BY COMMISSIONER. The commissioner shall supervise the stamping office. The stamping office is subject to the applicable provisions of this code and rules of the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 6A(b) (part).)

Source Law

(b) . . . The stamping office shall be supervised by the commissioner and is subject to the applicable provisions of this code and the rules of the State Board of Insurance. . . .

Revised Law

Sec. 981.156. EXAMINATION BY COMMISSIONER. (a) The commissioner shall examine the stamping office at any time the commissioner considers an examination necessary.

(b) The stamping office shall pay the cost of the examination.

(c) During an examination, a stamping office board member, officer, agent, or employee:

(1) may be examined under oath regarding the operation of the office; and

(2) shall make available any book, record, account, document, or agreement relating to the operation of the office. (V.T.I.C. Art. 1.14-2, Sec. 6A(e).)

Source Law

(e) The commissioner shall, at such times as he deems necessary, make or cause to be made an examination of the stamping office. The cost of any such examination shall be paid by the stamping office. During the course of such examination, the directors, officers, agents, and employees of the stamping office may be examined under oath regarding the operation of the stamping office and shall make available all books, records, accounts, documents, and agreements pertaining thereto.

Revised Law

Sec. 981.157. IMMUNITY FROM LIABILITY. A person or entity is not liable for, and a cause of action does not arise out of, an act or omission in performing a power or duty under this subchapter if the person or entity is:

(1) the stamping office or a board member, officer, agent, or employee of the stamping office; or

(2) the department or an employee or representative of the department, including the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 6A(f).)

Source Law

(f) There shall be no liability on the part of and no cause of action of any nature shall arise against the stamping office, its directors, officers, agents, or employees, or the State Board of Insurance, the commissioner of insurance, or employees or representatives of the State Board of Insurance for any action taken or omitted by them in the performance of their powers and duties under this section.

Revised Law

Sec. 981.158. EXEMPTION FROM PUBLIC INFORMATION LAW. (a) An individual surplus lines insurance contract filed with the stamping office is:

(1) confidential; and

(2) not public information under Chapter 552, Government Code.

(b) This section does not prevent access by a state agency to an individual surplus lines insurance contract filed with the stamping office. (V.T.I.C. Art. 1.14-2, Sec. 6A(h).)

Source Law

(h) An individual surplus lines insurance contract filed with the stamping office is confidential and is not a public record under Chapter 552, Government Code. Nothing in this subsection shall prevent access by a state agency to an individual surplus lines insurance contract filed with the stamping office.

Revisor's Note

Section 6A(h), V.T.I.C. Article 1.14-2, refers to a "public record" under Chapter 552, Government Code. Section 1, Chapter 1035, Acts of the 74th Legislature, Regular Session, 1995, changed the heading of Chapter 552, Government Code, from "Open Records" to "Public Information." In addition, Section 2, Chapter 1035, Acts of the 74th Legislature, Regular Session, 1995, deleted references to "public records" and instead referred to "information" throughout Chapter 552. For consistency with those changes, the revised law substitutes "information" for "record."

Revised Law

Sec. 981.159. EXEMPTION FROM LIBRARY AND ARCHIVES LAW. Chapter 441, Government Code, does not apply to the stamping office or its records. (V.T.I.C. Art. 1.14-2, Sec. 6A(g).)

Source Law

(g) The stamping office and the records of the stamping office are not subject to Chapter 441, Government Code.

Revised Law

Sec. 981.160. NO ENFORCEMENT AUTHORITY. This subchapter does not give the stamping office authority to enforce this chapter or Section 12, Article 1.14-2. (V.T.I.C. Art. 1.14-2, Sec. 6A(b) (part).)

Source Law

(b) . . . Nothing in this section shall be construed as giving the stamping office any authority to enforce this article.

[Sections 981.161-981.200 reserved for expansion]

SUBCHAPTER E. SURPLUS LINES AGENTS

Revised Law

Sec. 981.201. DEFINITION. In this subchapter, "managing general agent" means an agent licensed under the Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code). (V.T.I.C. Art. 1.14-2, Sec. 2(a)(1) (part); New.)

Source Law

(1) . . . (ii) is a managing general agent (authorized to be licensed and licensed under the Managing General Agents' Licensing Act, Acts, 1967, 60th Legislature, Chapter 727, codified by Vernon as Article 21.07-3)

Revisor's Note

(1) Section 2(a)(1)(ii), V.T.I.C. Article 1.14-2, refers to a managing general agent "authorized to be licensed and licensed under the Managing General Agents' Licensing Act." The revised law omits "authorized to be licensed" as unnecessary because if the agent is licensed under that act, the agent must also be "authorized to be licensed" under that same act.

(2) The definition of "managing general agent" is derived from Section 2(a)(1), V.T.I.C. Article 1.14-2, and is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 981.202. SURPLUS LINES LICENSE REQUIRED. An agent licensed by this state may not issue or cause to be issued an insurance contract with an eligible surplus lines insurer unless the agent possesses a surplus lines license issued by the department. (V.T.I.C. Art. 1.14-2, Sec. 4(a).)

Source Law

Sec. 4. (a) An agent licensed by the state may not issue or cause to be issued an insurance contract with an eligible surplus lines insurer, unless the agent possesses a current surplus lines license issued by the State Board of Insurance.

Revisor's Note

Section 4(a), V.T.I.C. Article 1.14-2, refers to a "current" surplus lines license. The revised law omits "current" as unnecessary. If a license is not current, no license exists.

Revised Law

Sec. 981.203. QUALIFICATIONS FOR SURPLUS LINES LICENSE; LICENSE TERM. (a) The department may issue a surplus lines license to:

- (1) an agent resident in this state who:
 - (A) is authorized under Article 21.14; or
 - (B) is a managing general agent; or
- (2) a nonresident insurance agent authorized under Article 21.11 who is granted a surplus lines license for the limited purpose of acting on behalf of a purchasing group operating in this state in the placement of liability insurance for a risk located in this state.

(b) The agent must:

- (1) pay an application fee set by the commissioner in an amount not to exceed \$50;
- (2) submit a completed license application on a form approved by the commissioner;
- (3) pass an examination under Section 981.205; and
- (4) provide proof of financial responsibility under Section 981.206.

(c) Unless the commissioner adopts a system for staggered renewal of licenses under Article 21.01-2:

- (1) a surplus lines license, other than an initial license, is valid for a two-year term that expires on December 31; and
- (2) the term of an initial license expires on December 31 of the year following the year in which the license is issued. (V.T.I.C. Art. 1.14-2, Secs. 2(a)(1) (part), (2) (part), 3(a) (part), 4(b) (part), (c) (part).)

Source Law

Sec. 2. (a)(1) "Surplus lines agent" (i) is an agent authorized under Article 21.14 . . . , (ii) . . . a managing general agent . . . who complies with the provisions of this Article, . . . or (iii) is a nonresident insurance agent authorized under Article 21.11 and who is granted a surplus lines license for the limited purpose of acting on behalf of a purchasing group operating in this state in the placement of liability insurance for risks located in this state.

(2) Each "surplus lines agent," as a condition of being licensed as a surplus lines agent and as a condition of continuing to be licensed as a surplus lines agent, shall offer proof of financial [solvency and demonstrate capacity in respect of] responsibility [to insureds under policies of surplus lines insurance, or in the alternative show proof of adequate bond and surety in respect of his transactions with insureds under policies of surplus lines insurance]

Sec. 3. (a) . . .

3. The insurance must be placed through a licensed Texas surplus lines agent resident in this state.

[Sec. 4]

(b) The Texas Department of Insurance may issue a surplus lines license to an agent as defined by Subdivision (1) of Subsection (a) of Section 2 of this article after the agent has:

- (1) remitted the application fee set by the Texas Department of Insurance in an amount not to exceed \$50;
- (2) submitted a completed license application on a form approved by the Texas Department of Insurance; and

(3) passed a qualifying examination

(c) Unless the State Board of Insurance adopts a system for staggered renewal of licenses, as provided by Article 21.01-2 of this code, each license issued under this section is for a two-year term that expires on December 31; however, the term of the initial licensing period shall expire on December 31 of the year following the year in which the license is issued. . . .

Revised Law

Sec. 981.204. CLASSIFICATION OF SURPLUS LINES AGENTS. The department may classify surplus lines agents and issue a surplus lines license to an agent in accordance with:

- (1) a classification created under this section; and
- (2) reasonable rules of the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 2(a)(4).)

Source Law

(4) The State Board of Insurance is authorized to classify surplus lines agents and to issue licenses to surplus lines agents in accordance with such classification and as the reasonable rules and regulations of the Board shall prescribe.

Revised Law

Sec. 981.205. EXAMINATION. (a) A surplus lines agent must pass an examination approved by the department.

(b) If the surplus lines agent is a:

- (1) general partnership or a registered limited liability partnership, each individual acting as a partner must pass the examination;
- (2) corporation, each individual acting as an officer, director, or shareholder of the corporation must pass the examination; or
- (3) limited liability company, each individual acting as an officer, manager, or member of the company must pass the examination.

(c) Unless the department accepts under Article 21.01-1 a qualifying examination administered by a testing service, each individual required to be examined must pay a fee before being examined at the time and place for the examination. The commissioner shall set the fee in an amount not to exceed \$20.

(d) A new examination fee must be paid before each examination.

(e) An examination fee may not be refunded unless the individual:

- (1) not later than 24 hours before the time the examination begins, notifies the commissioner that the individual will not take the examination;
- (2) receives the commissioner's permission to not take

the examination; and

(3) does not appear to take the examination. (V.T.I.C. Art. 1.14-2, Secs. 4(b) (part), (h).)

Source Law

[(b) The Texas Department of Insurance may issue a surplus lines license to an agent as defined by Subdivision (1) of Subsection (a) of Section 2 of this article after the agent has:]

. . .

(3) passed a qualifying examination approved by the Texas Department of Insurance. If the agent is a general partnership or a registered limited liability partnership, this examination must be met by each natural person acting as a partner in that partnership. If the agent is a corporation, this examination requirement must be met by each natural person acting as an officer, director, or shareholder of that corporation. If the agent is a limited liability company, this examination requirement must be met by each natural person acting as an officer, manager, and member of that limited liability company.

(h) Unless the State Board of Insurance accepts a qualifying examination administered by a testing service, as provided by Article 21.01-1, Insurance Code, each person required to be examined shall pay a fee before being examined at the time and place for the examination. The State Board of Insurance shall determine the amount of the fee, but the fee may not be more than \$20. A new fee must be paid before each examination. A fee paid under this subsection may not be refunded unless the applicant:

(1) gives notice to the State Board of Insurance not later than 24 hours before the time for the beginning of the examination that the applicant will not take the examination;

(2) does not appear to take the examination; and

(3) receives the approval of the State Board of Insurance.

Revised Law

Sec. 981.206. FINANCIAL RESPONSIBILITY. A surplus lines agent must provide proof to the department of:

(1) financial solvency and a demonstrated capacity regarding responsibility to insureds under surplus lines insurance policies; or

(2) an adequate bond and surety regarding transactions with insureds under surplus lines insurance policies, as provided by reasonable rules of the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 2(a)(2) (part).)

Source Law

(2) Each "surplus lines agent," . . . shall offer proof of financial solvency and demonstrate capacity in respect of responsibility to insureds under policies of surplus lines insurance, or in the alternative show proof of adequate bond and surety in respect of his transactions with insureds under policies of surplus lines insurance and as the reasonable rules and regulations of the State Board of Insurance shall provide.

Revised Law

Sec. 981.207. DUPLICATE SURPLUS LINES LICENSE. (a) A surplus lines agent may request a duplicate surplus lines license.

(b) The commissioner must collect a duplicate surplus lines license fee from the surplus lines agent before providing the duplicate to the agent.

(c) The commissioner shall set the fee in an amount not to exceed \$20. (V.T.I.C. Art. 1.14-2, Sec. 4(f).)

Source Law

(f) The commissioner of insurance shall collect in advance from an agent who requests a duplicate license a fee not to exceed \$20. The State Board of Insurance shall set the amount of the duplicate license fee.

Revised Law

Sec. 981.208. RENEWAL OF SURPLUS LINES LICENSE. On or before the date a surplus lines license expires, the agent may renew the license for a two-year period. To renew the license, the agent must:

(1) file a completed written application on a form prescribed by the commissioner; and

(2) pay the renewal fee in the amount set by the commissioner, not to exceed \$50. (V.T.I.C. Art. 1.14-2, Secs. 4(c) (part), (d).)

Source Law

(c) . . . A license may be renewed for periods of two years.

(d) By filing a completed written application in the form prescribed by the State Board of Insurance and paying the nonrefundable renewal fee set by the board in an amount not to exceed \$50, an unexpired license may be renewed on or before the expiration date of the license.

Revisor's Note

Section 4(d), V.T.I.C. Article 1.14-2, refers to a

"nonrefundable" renewal fee. The revised law omits "nonrefundable" as unnecessary because it duplicates Section 4(g), V.T.I.C. Article 1.14-2, revised as Section 981.209.

Revised Law

Sec. 981.209. FEES. (a) The department shall deposit a fee collected under this subchapter to the credit of the Texas Department of Insurance operating account.

(b) A fee collected under this subchapter is not refundable, except as provided by Section 981.205. (V.T.I.C. Art. 1.14-2, Sec. 4(g).)

Source Law

(g) The board shall deposit all fees in the State Treasury to the credit of the State Board of Insurance operating fund. Such fees are not refundable except as provided by Subsection (h) of this section.

Revisor's Note

Section 4(g), V.T.I.C. Article 1.14-2, states that the department shall "deposit all fees in the State Treasury to the credit of the State Board of Insurance operating fund." Under Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

Revised Law

Sec. 981.210. PLACEMENT OF COVERAGE. A surplus lines agent may not place surplus lines coverage with an insurer unless:

(1) the insurer meets the eligibility requirements of Subchapter B; and

(2) the stamping office provides evidence to the department that the insurer meets those requirements. (V.T.I.C. Art. 1.14-2, Sec. 8(b) (part).)

Source Law

(b) No surplus lines agent shall place any coverage with an insurer unless the insurer has met the eligibility requirements of this section and the stamping office provides evidence that the insurer has met the requirements to the State Board of Insurance. . . .

Revised Law

Sec. 981.211. FINANCIAL CONDITION OF SURPLUS LINES INSURERS. (a) A surplus lines agent must make a reasonable effort to determine the financial condition of an eligible surplus lines insurer before placing insurance with that insurer.

(b) A surplus lines agent may not knowingly place surplus

lines insurance with a financially unsound insurer. (V.T.I.C. Art. 1.14-2, Sec. 8(a).)

Source Law

Sec. 8. (a) A surplus lines agent shall not knowingly place surplus lines insurance with financially unsound insurers. The surplus lines agent shall make a reasonable effort to ascertain the financial condition of the eligible surplus lines insurer before placing insurance therewith.

Revised Law

Sec. 981.212. ACCEPTING SURPLUS LINES INSURANCE FROM OTHER AGENTS. (a) A surplus lines agent may originate surplus lines insurance or accept surplus lines insurance from another agent who is licensed to handle the kind of insurance being accepted.

(b) A surplus lines agent who accepts surplus lines insurance from an agent may share a commission with that agent. (V.T.I.C. Art. 1.14-2, Sec. 14.)

Source Law

Sec. 14. A surplus lines agent may originate surplus lines insurance or accept surplus lines insurance from another agent who is licensed to handle the kind of insurance being accepted. A surplus lines agent may share commissions with agents from whom he accepts surplus lines insurance.

Revised Law

Sec. 981.213. FILING CONTRACT WITH STAMPING OFFICE. A surplus lines agent shall report to and file with the stamping office a copy of each surplus lines insurance contract as provided in the stamping office's plan of operation. The department may accept that filing instead of the filings required under Section 981.105. (V.T.I.C. Art. 1.14-2, Sec. 6A(a) (part).)

Source Law

(a) . . . All surplus lines agents shall as a condition of their holding a license as a surplus lines agent in this state report to and file with the stamping office a copy of each surplus lines insurance contract as provided in the plan of operation adopted under Subsection (d) of this section. The board may accept such filing in lieu of the filings required under Subsection (b) of Section 6 of this article.

Revised Law

Sec. 981.214. COMPLIANCE WITH STAMPING OFFICE PLAN OF OPERATION. A surplus lines agent shall comply with the stamping office's plan of operation. (V.T.I.C. Art. 1.14-2, Sec. 6A(d))

(part).)

Source Law

(d) . . . All surplus lines agents shall comply with the plan of operation.

Revised Law

Sec. 981.215. SURPLUS LINES AGENT RECORDS. (a) A surplus lines agent shall keep in the agent's office in this state a complete record of each surplus lines contract obtained by the agent, including any of the following, if applicable:

- (1) a copy of the daily report;
- (2) the amount of the insurance and risks insured against;
- (3) a brief general description of the property insured and the location of that property;
- (4) the gross premium charged;
- (5) the return premium paid;
- (6) the rate of premium charged on the different items of property;
- (7) the contract terms, including the effective date;
- (8) the insured's name and post office address;
- (9) the insurer's name and home office address;
- (10) the amount collected from the insured; and
- (11) any other information required by the commissioner.

(b) The surplus lines agent shall keep the record required by this section open for examination by the department without notice at any time until the third anniversary of the date the surplus lines contract expires or is canceled. (V.T.I.C. Art. 1.14-2, Sec. 15.)

Source Law

Sec. 15. (a) Each surplus lines agent shall keep in his office in this state a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

1. Amount of the insurance and perils insured against;
2. Brief general description of property insured and where located;
3. Gross premium charged;
4. Return premium paid, if any;
5. Rate of premium charged upon the several items of property;
6. Effective date of the contract, and the terms thereof;
7. Name and post office address of the insured;

8. Name and home office address of the insurer;
9. Amount collected from the insured; and
10. Other information as may be required by the State Board of Insurance.

(b) The record shall at all times be open to examination by the State Board of Insurance without notice, and shall be so kept available and open to the State Board of Insurance for three years next following expiration or cancellation of the contract.

Revisor's Note

Section 15(a), V.T.I.C. Article 1.14-2, refers to a "full and true" record. The revised law substitutes "complete" for the quoted language because the latter is synonymous in context and more modern and concise. The absence of "true" does not imply that an agent could maintain an untruthful record and still be in compliance with the law.

Revised Law

Sec. 981.216. ANNUAL REPORT. (a) Before March 1 of each year, a surplus lines agent shall submit a report to the department for the preceding calendar year.

(b) The commissioner shall adopt the form for the annual report.

(c) The annual report must:

(1) demonstrate that the amount of insurance obtained from each eligible surplus lines insurer is only the amount that exceeds the amount obtainable from an authorized insurer; and

(2) include any other information required by the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 16.)

Source Law

Sec. 16. Each surplus lines agent shall, before March 1 in each year, make a report to the Texas Department of Insurance for the preceding calendar year, on the form prescribed by it, of such facts as it requires and including a showing that the amount of insurance procured from such eligible surplus lines insurer or insurers is only the amount in excess of the amount procurable from licensed insurers.

Revised Law

Sec. 981.217. NOTICE TO DEPARTMENT REQUIRED. (a) A surplus lines agent shall notify the department not later than the 30th day after the date any of the following occurs:

(1) balances due for more than 90 days to an eligible surplus lines insurer or for more than 60 days to the agent acting on behalf of the surplus lines insurer exceed \$1 million or 10 percent of the insurer's policyholder surplus calculated on December 31 of the preceding year;

(2) balances due for more than 60 days from a managing

general agent or a local recording agent appointed by or reporting to the managing general agent exceed \$500,000;

(3) authority to settle claims for an eligible surplus lines insurer is withdrawn;

(4) funds held for an eligible surplus lines insurer for losses are greater than \$100,000 more than the amount necessary to pay losses and loss adjustment expenses expected to be paid on behalf of the insurer in the next 60-day period; or

(5) the agent's contract to act on behalf of a surplus lines insurer is canceled or terminated.

(b) The commissioner shall adopt the form to be used under Subsection (a).

(c) A surplus lines agent may comply with the notification requirement under Subsections (a)(1), (2), and (4) by submitting a single annual report if:

(1) the agent or applicable eligible surplus lines insurer routinely operates beyond the limits provided by those subdivisions; and

(2) the commissioner verifies that fact under a procedure adopted by the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 15A.)

Source Law

Sec. 15A. (a) Each surplus lines agent licensed under this article shall notify the State Board of Insurance on forms promulgated by the board not later than the 30th day after the day on which any of the following circumstances occurs:

(1) balances due more than 90 days to a surplus lines insurer or more than 60 days to a surplus lines agent acting on behalf of a surplus lines insurer exceed \$1 million or 10 percent of insurer's policyholder surplus calculated on December 31 of the preceding year;

(2) balances due more than 60 days from a local recording agent or managing general agent, appointed by or reporting to the managing general agent exceed \$500,000;

(3) authority to settle claims for a surplus lines insurer is withdrawn;

(4) funds held for a surplus lines insurer for losses are greater than \$100,000 more than the amount necessary to pay losses and loss adjustment expenses expected to be paid on behalf of the insurer within the next 60-day period; or

(5) the surplus lines agent's contract to act on behalf of a surplus lines insurer is cancelled or terminated.

(b) The requirement to file under Subsections (a)(1), (2), and (4) of this section may be met with a single annual report if the reporting person or entity routinely operates beyond the limits provided by those subsections and the commissioner verifies that fact under procedures adopted by the commissioner.

Revised Law

Sec. 981.218. DEPARTMENT MONITORING OF SURPLUS LINES AGENTS. The department shall monitor the activities of surplus lines agents as necessary to protect the public interest. (V.T.I.C. Art. 1.14-2, Sec. 3A (part).)

Source Law

Sec. 3A. . . . The board shall monitor the activities of surplus lines agents to the extent necessary to protect the public interest.

Revised Law

Sec. 981.219. ADVERTISING. A surplus lines agent may advertise regarding the agent's ability to place surplus lines insurance permitted by this chapter. (V.T.I.C. Art. 1.14-2, Sec. 13.)

Source Law

Sec. 13. Any agent who is granted a surplus lines license in accordance with this Article may bring announcements or statements before the public in respect to his ability to place such surplus lines insurance as may be permitted by this Article.

Revised Law

Sec. 981.220. MANAGING GENERAL AGENTS; LIMITED AUTHORITY OF CERTAIN AGENTS. (a) A managing general agent is not required to hold a local recording agent license to be eligible to receive a surplus lines license.

(b) A surplus lines license granted to a managing general agent who is not also licensed under Article 21.14 is limited to the acceptance of business originating through a licensed local recording agent. The license does not authorize the agent to engage in business directly with the insurance applicant. (V.T.I.C. Art. 1.14-2, Secs. 2(a)(1) (part), (3).)

Source Law

(1) . . . (ii) . . . except it is not necessary that the managing general agent be licensed as a recording agent, or

(3) Any surplus lines license granted to an agency authorized under the Managing General Agents' Licensing Act, Acts, 1967, 60th Legislature, Chapter 727, that is not also licensed under Article 21.14 of the Insurance Code shall be limited to the acceptance of business originating through a regularly licensed recording agent and shall not authorize such surplus lines agency to transact business directly with the applicant for insurance.

Revisor's Note

Section 2(a)(3), V.T.I.C. Article 1.14-2, refers to a "regularly" licensed recording agent. The revised law omits "regularly" as unnecessary because it is included in the meaning of "licensed."

Revisor's Note

(End of Chapter)

Section 18, V.T.I.C. Article 1.14-2, states that the article does not apply to a person to whom it cannot apply under the Texas or United States Constitution. The revised law omits that provision as unnecessary. Under general principles of constitutional law, a Texas statute could not apply to a person the Texas or United States Constitution does not allow the law to apply to. The omitted law reads:

Sec. 18. This Article and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

CHAPTER 982. FOREIGN AND ALIEN INSURANCE COMPANIES

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CHAPTER 982. FOREIGN AND ALIEN INSURANCE COMPANIES
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 982.001. DEFINITIONS. In this chapter:

(1) "Accident insurance company," "health insurance company," "life insurance company," and "United States branch" have the meanings assigned by Section 841.001.

(2) "Alien insurance company" means an insurance company organized under the laws of a foreign country. The term includes an unincorporated insurance company (other than an unincorporated life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company) that is organized under the laws of a foreign country in a form recognized by the department.

(3) "Domestic insurance company" has, in the context of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company, the meaning assigned by Section 841.001.

(4) "Foreign insurance company" means an insurance company organized under the laws of another state of the United States.

(5) "Insurance company" means a company engaged as a principal in the business of insurance.

(6) "Policyholder" has, in the context of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company, the meaning assigned by Section 841.001.

(7) "Trusteed asset" means an asset that an authorized alien insurance company is required or permitted by this chapter to deposit with one or more trustees for the security of the company's policyholders in the United States. (V.T.I.C. Art. 3.01, Secs. 1, 2, 3, 4, 5, 6, 7A, 8, 13; Art. 3.27-1, Subsec. (a) (part); Art. 21.43, Secs. 1, 10(a) (part).)

Source Law

Art. 3.01

Sec. 1. A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned on the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of

endowments or annuities.

Sec. 2. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water.

Sec. 3. A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value, conditioned upon loss by reason of disability due to sickness or ill-health.

Sec. 4. When consistent with the context and not obviously used in a different sense, the term "company," or "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident or health insurance.

Sec. 5. The term "domestic" company, as used herein, designates those life, accident or life and accident, health and accident, or life, health and accident insurance companies incorporated and formed in this State.

Sec. 6. The term "foreign company" means any life, accident or health insurance company organized under the laws of any other state or territory of the United States.

Sec. 7A. The term "alien company" means any life, accident, or health insurance company organized under the laws of any foreign country.

Sec. 8. The "insured" or "policyholder" is the person on whose life a policy of insurance is effected.

Sec. 13. The "United States branch" means:

- (a) the business unit through which business is transacted within the United States by an alien insurer;
- (b) the assets and liabilities of the insurer within the United States pertaining to such business;
- (c) the management powers pertaining to such business and to the assets and liabilities; or
- (d) any combination of the foregoing.

Art. 3.27-1. (a) Assets which any authorized alien insurer is required or permitted by this subchapter to deposit with a trustee or trustees for the security of its policyholders in the United States shall be known as "trusteed assets". . . .

Art. 21.43

Sec. 1. In this article:

(a) The term "foreign insurance corporation" means any insurance company other than one subject to provisions of Subchapter B, Chapter 3, of this code organized under the laws of

any other state or territory of the United States.

(b) The term "alien insurance corporation" means an insurance company other than one subject to provisions of Subchapter B, Chapter 3, of this code organized under the laws of any foreign country. For the purposes of this article, the term also includes any nonincorporated insurer organized under the laws of any foreign country in a form recognized by the department.

(c) The term "United States branch" means:

- (1) the business unit through which business is transacted within the United States by an alien insurer;
- (2) the assets and liabilities of the insurer within the United States pertaining to such business;
- (3) the management powers pertaining to such business and to the assets and liabilities; or
- (4) any combination of the foregoing.

Sec. 10. (a) Assets which any authorized alien insurer is required or permitted by this article to deposit with a trustee or trustees for the security of its policyholders in the United States shall be known as "trusteed assets." . . .

Revisor's Note

(1) V.T.I.C. Article 21.43 by its terms applies to insurance corporations [companies], other than those "subject to Subchapter B, Chapter 3, of" the Insurance Code. See Section 2, V.T.I.C. Article 21.43, revised as Section 982.002 of this chapter. Subchapter B, V.T.I.C. Chapter 3, which is limited in its application to life insurance companies, accident insurance companies, life and accident insurance companies, health and accident insurance companies, and life, health, and accident insurance companies, is revised in this chapter. In most cases, the provisions of Article 21.43 and Subchapter B, Chapter 3, are identical, and those identical provisions are revised in an integrated manner in Subchapters A-E of this chapter.

Section 4, V.T.I.C. Article 3.01, defines "insurance company" to include all companies "engaged as principals in the business of life, accident or health insurance." The revised law omits the reference to "life, accident or health" because this chapter applies not only to companies engaged in life, health, or accident insurance but also to companies engaged in other types of insurance.

(2) Sections 6 and 7A, V.T.I.C. Article 3.01, define "foreign company" and "alien company," respectively. Subsection (a), V.T.I.C. Article 3.27-1, refers to an "alien insurer." Subsequent provisions of Article 3.27-1 also use that term. Similarly, Section 1, V.T.I.C. Article 21.43, defines the terms "foreign insurance corporation" and "alien insurance

corporation." For clarity and consistency, the revised law uses the terms "foreign insurance company" and "alien insurance company."

(3) Section 1(a), V.T.I.C. Article 21.43, refers to a foreign insurance corporation organized under the laws of "any other state or territory of the United States." Throughout this chapter, the revised law omits references to "territory" in this context as unnecessary because Section 311.005, Government Code (Code Construction Act), which applies to the revised law, provides that "state," when referring to a part of the United States, includes any state or territory of the United States.

Revised Law

Sec. 982.002. APPLICABILITY OF CHAPTER. This chapter applies to any insurance company that is organized under the laws of another state or country and that wants to engage in or is engaging in the business of insurance in this state. (V.T.I.C. Art. 3.20; Art. 21.43, Sec. 2.)

Source Law

Art. 3.20. This subchapter applies to any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, incorporated under the laws of any other state, territory or country, desiring to transact the business of such insurance in this State.

[Art. 21.43]

Sec. 2. This article applies to any insurance corporation other than one subject to Subchapter B, Chapter 3, of this code incorporated under the laws of any other state, territory, or country desiring to be licensed to transact the business of insurance in this State.

Revisor's Note

V.T.I.C. Article 3.20 and Section 2, V.T.I.C. Article 21.43, refer to insurance companies "incorporated" under the laws of another jurisdiction. V.T.I.C. Articles 3.01 and 21.43, revised in this chapter, use the term "organized" rather than "incorporated," and the law revised in this section uses the term "organized" for the purpose of consistency.

Revised Law

Sec. 982.003. LIFE INSURANCE COMPANIES WANTING TO LOAN MONEY. A life insurance company that wants to loan money in this state but does not want to engage in the business of life insurance in this state may obtain from the secretary of state a permit to loan money by complying with the laws of this state relating to foreign corporations engaged in loaning money in this state without having to obtain a certificate of authority to

engage in the business of life insurance in this state.
(V.T.I.C. Art. 3.27.)

Source Law

Art. 3.27. Any life insurance company not desiring to engage in the business of writing life insurance in this State, but desiring to loan its funds in this State, may obtain a permit to do so from the Secretary of State by complying with the laws of this State relating to foreign corporations engaged in loaning money in this State, without being required to secure a certificate of authority to write life insurance in this State.

Revised Law

Sec. 982.004. FINANCIAL STATEMENTS OF FOREIGN OR ALIEN INSURANCE COMPANIES. (a) Each foreign insurance company shall file with the department a statement in the form required by Section 982.101 or 982.102 not later than March 1 of each year.

(b) Each authorized alien insurance company shall file with the department a financial statement in the form required by Section 982.252 not later than March 1 of each year. (V.T.I.C. Art. 3.20-1, Subsec. (b); Art. 3.27-2, Subsec. (a) (part); Art. 21.43, Secs. 4(b), 11(a) (part).)

Source Law

[Art. 3.20-1]

(b) Each foreign company shall be required to file a similar statement not later than March 1 of each year.

Art. 3.27-2. (a) Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year

[Art. 21.43]

[Sec. 4]

(b) Each foreign insurance corporation shall be required to file a statement similar to that required in Subsection (a) not later than March 1 of each year.

Sec. 11. (a) Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year

[Sections 982.005-982.050 reserved for expansion]

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 982.051. CERTIFICATE OF AUTHORITY REQUIRED FOR LIFE, HEALTH, OR ACCIDENT COMPANIES. A foreign insurance company may

not engage in the business of insurance as a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company in this state, except for the lending of money, without first obtaining from the department a certificate of authority that:

(1) shows that the foreign insurance company has fully complied with the laws of this state; and

(2) authorizes the foreign insurance company to engage in the business of insurance in this state. (V.T.I.C. Art. 3.57 (part).)

Source Law

Art. 3.57. No foreign . . . insurance company shall transact any insurance business in this State, other than the lending of money, unless it shall first procure from the Board of Insurance Commissioners a certificate of authority, stating that the laws of this State have been fully complied with by it, and authorizing it to do business in this State. . . .

Revisor's Note

V.T.I.C. Article 3.57 refers to the expiration and annual renewal of a certificate of authority. The revised law omits the reference as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in relevant part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . including . . . [Article] 3.57 . . . to the extent that they require periodic renewal of certificates of authority." The omitted law reads:

Art. 3.57. . . . Such certificate of authority shall expire on the day fixed by the Board under Articles 3.06 and 3.08 of this code and shall be renewed annually so long as the company shall continue to comply with the laws of the State, such renewals to be granted upon the same terms and considerations as the original certificate.

Revised Law

Sec. 982.052. CERTIFICATE OF AUTHORITY REQUIRED FOR OTHER COMPANIES. Except as provided by Chapter 101 or 981, a foreign or alien insurance company, other than a life insurance company, accident insurance company, life and accident insurance company, or life, health, and accident insurance company, may not engage in this state in the business of insuring others against losses without first obtaining from the department a certificate of

authority that authorizes the company to engage in that business. (V.T.I.C. Art. 21.43, Sec. 3(a).)

Source Law

[Art. 21.43]

Sec. 3. (a) It shall be unlawful, except as provided in Articles 1.14-1 and 1.14-2 of this code, for any foreign insurance corporation or alien insurance corporation of the type provided for in any chapter of this code to engage in the business of insuring others against losses which may be insured against under the laws of this state without initially procuring a certificate of authority from the commissioner of insurance permitting it to engage in those business activities.

Revisor's Note

(End of Subchapter)

V.T.I.C. Article 3.24-1 in part provides that a certificate of authority continues in full force and effect while the company holding the certificate complies with state law. The revised law omits this provision as unnecessary because V.T.I.C. Article 1.14, revised in part as Chapter 801 of this code, provides that a certificate of authority remains in effect until it is suspended or revoked. The omitted law reads:

Art. 3.24-1. . . . Such certificate shall continue in full force and effect upon the condition that the company shall continue to comply with the laws of this State.

[Sections 982.053-982.100 reserved for expansion]

SUBCHAPTER C. REQUIREMENTS FOR CERTIFICATE OF AUTHORITY

Revised Law

Sec. 982.101. FILING OF FINANCIAL STATEMENT BY LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANY. A foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company that wants to engage in the business of insurance in this state shall provide to the department a written or printed statement, under the oath of the president or vice president or under the oath of the treasurer and secretary of the company, that shows:

- (1) the company's name and location;
- (2) the amount of the company's capital stock;
- (3) the amount of the company's paid up capital stock;
- (4) the company's assets, including in the following

order:

- (A) the amount of cash on hand;

(B) the amount of cash held by other persons and the names and residences of those persons;

(C) unencumbered real estate, its location, and its value;

(D) bonds the company owns, the manner in which the bonds are secured, and the rate of interest on the bonds;

(E) debts due the company that are secured by mortgage, a description of the mortgaged property, and the property's market value;

(F) debts due the company that are secured other than by mortgage and a statement of how they are secured;

(G) debts due the company for premiums; and

(H) all other money and securities;

(5) the amount of the company's liabilities and the name of the person or corporation to whom each liability is owed;

(6) losses adjusted and due;

(7) losses adjusted and not due;

(8) losses adjusted;

(9) losses in suspense and the reason for the suspension;

(10) all other claims against the company and a description of each claim; and

(11) any additional facts required by the department to be shown. (V.T.I.C. Art. 3.20-1, Subsec. (a).)

Source Law

Art. 3.20-1. (a) Any foreign or alien life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated under the laws of any other state, territory or country, desiring to transact the business of such insurance in this State, shall furnish the Texas Department of Insurance with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company which statement shall show:

1. The name and locality of the company.

2. The amount of its capital stock.

3. The amount of its capital stock paid up.

4. The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.

5. Amount of liabilities of the company, stating the

name of the person or corporation to whom liable.

6. Losses adjusted and due.
7. Losses adjusted and not due.
8. Losses adjusted.
9. Losses in suspense and for what cause.
10. All other claims against the company, describing the same.

The Department may require any additional facts to be shown by such annual statement.

Revised Law

Sec. 982.102. FILING OF FINANCIAL STATEMENT BY OTHER INSURANCE COMPANY; EXAMINATION. (a) This section applies only to a foreign or alien insurance company, other than a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company.

(b) A foreign or alien insurance company that wants to engage in the business of insurance in this state shall provide to the department copies of its annual financial statements for the two most recent years. The copies must be certified by the commissioner or other insurance supervising official of the state or country in which the company is organized and incorporated. The department may require that the statement show additional facts as requested by the department.

(c) Before issuing a certificate of authority to engage in the business of insurance in this state to a foreign or alien insurance company, the commissioner shall:

(1) examine the company, at the company's expense, at its principal office in the United States; or

(2) accept a report of an examination made by the insurance department or other insurance supervisory official of another state or government of a foreign country. (V.T.I.C. Art. 21.43, Secs. 4(a), 6.)

Source Law

Sec. 4. (a) Any foreign or alien insurance corporation desiring to transact the business of insurance in this state shall furnish the Texas Department of Insurance with copies of its annual financial statements for the two most recent years, certified by the commissioner or other insurance supervising official of the state or country in which the insurer is organized and incorporated. The Department may require any additional facts to be shown by such annual statement.

Sec. 6. Before issuing a certificate of authority to a foreign or alien insurance corporation to do business in this state, the commissioner shall either make an examination of the

insurer at the expense of such insurer at its principal office within the United States or accept a report of an examination made by the insurance department or other insurance supervisory official of any other state or of any government of a foreign country.

Revised Law

Sec. 982.103. FILING OF FINANCIAL STATEMENT BY ALIEN INSURANCE COMPANY. An alien insurance company that wants to engage in the business of insurance in this state shall file a financial statement as provided by Section 982.252. (V.T.I.C. Art. 3.20-1, Subsec. (c); Art. 21.43, Sec. 4(c).)

Source Law

[Art. 3.20-1]

(c) Each alien company shall be required to file a financial statement as provided in Article 3.27-2 of this subchapter.

[Art. 21.43]

[Sec. 4]

(c) Each alien insurance corporation shall be required to file a financial statement as provided in Section 11 of this article.

Revised Law

Sec. 982.104. FILING OF ARTICLES OF INCORPORATION. (a) A foreign or alien insurance company shall file with the statement required by Section 982.101 or 982.102:

(1) a copy of the company's acts or articles of incorporation and any amendments to those acts or articles; and

(2) a copy of the company's bylaws and a statement of the name and residence of each of the company's officers and directors.

(b) The president or the secretary of the company shall certify the documents filed under Subsection (a). (V.T.I.C. Art. 3.21; Art. 21.43, Sec. 5.)

Source Law

Art. 3.21. Any such foreign or alien insurance company shall accompany the statement required in the foregoing article with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. The same shall be certified under the hand of the president or secretary of such company.

[Art. 21.43]

Sec. 5. Any foreign or alien insurance corporation shall accompany the statement required in Section 4 of this article with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. These documents shall be certified under the hand of the president or secretary of such company.

Revised Law

Sec. 982.105. CAPITAL STOCK AND SURPLUS REQUIREMENTS FOR LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES. (a) A foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company is subject to Sections 841.054, 841.201, 841.204, 841.205, 841.207, 841.301, and 841.302. The department may not issue a certificate of authority to a foreign or alien stock insurance company, and the company may not engage in any business of life, health, or accident insurance in this state, unless the company possesses at least the minimum capital and surplus required for a similar domestic insurance company organized under Chapter 841 in similar circumstances. The minimum capital and surplus must be invested in the same character of investments as required for a domestic insurance company.

(b) The department may not issue a certificate of authority to a foreign or alien mutual insurance company, and the company may not engage in the business of life insurance in this state, unless the company possesses at least the minimum unencumbered surplus required by Chapter 882 for a similar domestic company in similar circumstances. The minimum unencumbered surplus must be invested in the same character of investments as required for a domestic insurance company. (V.T.I.C. Arts. 3.22, 3.27-4 (part).)

Source Law

Art. 3.22. No foreign or alien stock insurance company shall be licensed by the Department or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum capital and surplus required by this chapter of a similar domestic company in similar circumstances, including the same character of investments for its minimum capital and surplus. No such foreign or alien mutual insurance company shall be licensed by the Department or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum free surplus required by Chapter 11 of this Code of a similar domestic company in similar circumstances including the same character of investments for its minimum free surplus.

Art. 3.27-4. Articles 3.02 . . . of this code apply to an insurance company subject to this chapter.

Revisor's Note

(1) V.T.I.C. Article 3.22 refers to an insurance company "licensed by the department." Throughout this chapter, the revised law substitutes "certificate of authority" for "license" and "authorized" for "licensed" because those are the terms used throughout this code in relation to an entity's authority to engage in business.

(2) V.T.I.C. Article 3.22 refers to Chapter 3 of the Insurance Code. The pertinent portions of Chapter 3, relating to organization of similar domestic insurance companies subject to appropriate minimum capital and surplus requirements, are revised in Chapter 841. The revised law is drafted accordingly.

(3) V.T.I.C. Article 3.22 refers to a company's "free surplus." Throughout this chapter, the revised law substitutes "unencumbered surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

(4) V.T.I.C. Article 3.27-4 provides that foreign and alien life, health, and accident insurance companies are subject to V.T.I.C. Article 3.02. Article 3.02, revised in Chapter 841 of this code, establishes requirements for initial formation of a domestic company and for capital and surplus of a domestic insurance company. Because only the capital and surplus requirements of Chapter 841 can have application to a foreign or alien company, the revised law references only those provisions.

Revised Law

Sec. 982.106. CAPITAL STOCK AND SURPLUS REQUIREMENTS FOR OTHER INSURANCE COMPANIES. (a) This section applies only to a foreign or alien insurance company other than a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company.

(b) A foreign or alien insurance company is subject to Sections 822.203, 822.205, 822.210, and 822.212. The department may not authorize a foreign or alien insurance company to engage in the business of insurance in this state unless the company has and maintains the minimum capital and surplus amounts as required by this code for companies organized under this code and engaging in the same kinds of business.

(c) The department may not deny authorization for a foreign or alien insurance company to engage in the business of insurance in this state because all of the company's capital stock has not been fully subscribed and paid for, if:

(1) at least the minimum dollar amount of capital stock of the company required by the laws of this state, which

may be less than all of the company's authorized capital stock, has been subscribed and paid for; and

(2) the company:

(A) has at least the minimum dollar amount of surplus required by the laws of this state for the kinds of business the company seeks to write; and

(B) has fully complied with the laws of the company's domiciliary state or country relating to authorization and issuance of capital stock. (V.T.I.C. Art. 21.43, Sec. 13(a); Art. 21.44, Subsecs. (a), (b) (part).)

Source Law

[Art. 21.43]

Sec. 13. (a) A foreign or alien insurance corporation may not be denied permission to do business in this state on the ground that all of its authorized capital stock has not been fully subscribed and paid for if:

(1) at least the minimum dollar amount of capital stock of the corporation required by the laws of this state (which may be less than all of its authorized capital stock) has been subscribed and paid for;

(2) it has at least the minimum dollar amount of surplus required by the laws of this state for the kinds of business the corporation seeks to write; and

(3) the corporation has fully complied with the laws of its domiciliary state or country relating to authorization and issuance of capital stock.

Art. 21.44. (a) No foreign or alien insurance company subject to the provisions of Article 21.43 of this code shall be permitted to do business within this State unless it shall have and maintain the minimum requirements of this Code as to capital or surplus or both, applicable to companies organized under this Code doing the same kind or kinds of business.

(b) Articles 2.20 . . . of this code apply to an insurance company subject to this article.

Revised Law

Sec. 982.107. APPLICABILITY OF OTHER LAW. Article 21.49-8 applies to a foreign or alien insurance company. (V.T.I.C. Art. 3.27-4 (part); Art. 21.44, Subsec. (b) (part).)

Source Law

Art. 3.27-4. Articles . . . and 21.49-8 of this code apply to an insurance company subject to this subchapter.

[Art. 21.44]

(b) Articles . . . and 21.49-8 of this code apply to an

insurance company subject to this article.

Revised Law

Sec. 982.108. DEPOSIT REQUIREMENTS FOR ALIEN INSURANCE COMPANY. An alien insurance company may not engage in the business of insurance in this state without first depositing with the comptroller, for the benefit of the company's policyholders who are citizens or residents of the United States, bonds or securities of the United States or this state in an amount at least equal to:

(1) the minimum capital required to be maintained by a domestic stock insurer authorized to engage in the same kind of insurance; or

(2) one-half the minimum unencumbered surplus required to be maintained by a domestic mutual insurer authorized to engage in the same kind of insurance. (V.T.I.C. Art. 3.23, Subsec. (a); Art. 21.43, Sec. 7(a).)

Source Law

Art. 3.23. (a) No alien insurance company shall transact business in this State, unless it shall first deposit and keep deposited with the comptroller, for the benefit of the policyholders of such company, citizens or residents of the United States, bonds or securities of the United States or the State of Texas in an amount at least equal to the minimum capital required to be maintained by a domestic stock insurer licensed to transact the same kind of insurance, or at least equal to one-half the minimum free surplus required to be maintained by a domestic mutual insurer licensed to transact the same kind of insurance.

[Art. 21.43]

Sec. 7. (a) No alien insurance corporation shall transact business in this State, unless it shall first deposit and keep deposited with the comptroller, for the benefit of the policyholders of such company, citizens, or residents of the United States, bonds or securities of the United States or the State of Texas in an amount at least equal to the minimum capital required to be maintained by a domestic stock insurer licensed to transact the same kind of insurance, or at least equal to one-half the minimum free surplus required to be maintained by a domestic mutual insurer licensed to transact the same kind of insurance.

Revised Law

Sec. 982.109. DURATION OF DEPOSIT BY LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES. An alien life insurance company, accident insurance company, life and accident insurance company,

health and accident insurance company, or life, health, and accident insurance company shall maintain the deposit required by Section 982.108 for the period that the company has any outstanding liability arising from its insurance transactions in the United States. The deposit is liable to pay the judgments, as decreed by courts, of the company's policyholders in the United States. (V.T.I.C. Art. 3.24.)

Source Law

Art. 3.24. The deposit required by the preceding article shall be held liable to pay the judgments of policyholders of the insurer in the United States, and may be so decreed by the court adjudicating the same. It shall be maintained so long as any liability of the insurer arising out of its insurance transactions in the United States remains outstanding.

Revised Law

Sec. 982.110. DURATION OF DEPOSIT FOR OTHER INSURANCE COMPANIES. An alien insurance company, other than an alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company, shall maintain the deposit required by Section 982.108 for the period that the company has any outstanding liability arising from its insurance transactions in the United States. The deposit is for the exclusive benefit, security, and protection of the company's policyholders in the United States. (V.T.I.C. Art. 21.43, Sec. 8.)

Source Law

Sec. 8. The deposit required by Section 7 of this article shall be for the exclusive benefit, security, and protection of policyholders of the insurer in the United States. It shall be maintained so long as any liability of the insurer arising out of its insurance transactions in the United States remains outstanding.

Revised Law

Sec. 982.111. EXCEPTION TO DEPOSIT REQUIREMENT: TRUSTEED ASSETS. (a) On approval by the commissioner as provided by Subchapter D, instead of making the deposit with the comptroller under Section 982.108, an authorized alien insurance company may deposit bonds or securities of the United States or this state with a trustee or trustees for the security of the company's policyholders in the United States.

(b) An alien insurance company shall maintain the deposit permitted by Subsection (a) as provided by Subchapter D. (V.T.I.C. Art. 3.23, Subsec. (b); Art. 21.43, Sec. 7(b).)

Source Law

[Art. 3.23]

(b) Upon approval of the commissioner in accordance with Article 3.27-1 of this subchapter, a licensed alien insurer may be permitted to deposit assets with a trustee or trustees for the security of its policyholders in the United States in lieu of making the deposit with the comptroller so long as such assets are composed of securities or bonds of the United States or this State and are maintained in accordance with provisions of Article 3.27-1 of this code.

[Art. 21.43]

[Sec. 7]

(b) Upon approval of the commissioner in accordance with Section 10 of this article, a licensed alien insurer may be permitted to deposit assets with a trustee or trustees for the security of its policyholders in the United States in lieu of making the deposit with the comptroller so long as such assets are composed of securities or bonds of the United States or this State and are maintained in accordance with provisions of Section 10 of this article.

Revised Law

Sec. 982.112. EXCEPTION TO DEPOSIT REQUIREMENT: DEPOSIT WITH OFFICER IN ANOTHER STATE. (a) The deposit required under Section 982.108 is not required in this state if the deposit required by that section has been made in any state of the United States, under the laws of that state, in a manner that secures equally the policyholders of the company who are citizens and residents of the United States.

(b) An alien insurance company that desires to meet the requirements of Section 982.108 as provided by Subsection (a) shall file with the department a certificate of the deposit. The certificate must be signed by and under the seal of the officer of the state with whom the deposit was made. (V.T.I.C. Art. 3.26; Art. 21.43, Sec. 7(c).)

Source Law

Art. 3.26. If the deposit required by Article 3.23 of this code has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policyholders of such Company who are citizens and residents of the United States, then no deposit shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Department.

[Art. 21.43]

[Sec. 7]

(c) If the deposit required by Subsection (a) of this section has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policyholders of such Company who are citizens and residents of the United States, then no deposit shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Department.

Revised Law

Sec. 982.113. ISSUANCE OF CERTIFICATE OF AUTHORITY TO LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANY. (a) The commissioner shall file in the commissioner's office the documents delivered to the department under this subchapter and shall issue to a foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company a certificate of authority to engage in this state in the kind of business specified in the documents if:

(1) the company has complied with the requirements of this chapter and any other requirement imposed on the company by law; and

(2) the company's operational history demonstrates that the expanded operation of the company in this state or its operations outside this state will not create a condition that might be hazardous to the company's policyholders or creditors or to the public.

(b) The operational history of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company under Subsection (a)(2) must be reviewed in conjunction with:

(1) the company's loss experience;

(2) the kinds and nature of risks insured by the company;

(3) the company's financial condition and its ownership;

(4) the company's proposed method of operation;

(5) the company's affiliations;

(6) the company's investments;

(7) the company's contracts, if any, leading to contingent liability or agreements in respect to guaranty and surety, other than insurance; and

(8) the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve

increases. (V.T.I.C. Art. 3.24-1 (part).)

Source Law

Art. 3.24-1. When a foreign or alien company has complied with the requirements of this Subchapter and all other requirements imposed on such company by law and has paid any deposit imposed by law, and the operational history of the company when reviewed in conjunction with its loss experience, the kinds and nature of risks insured, the financial condition of the company and its ownership, its proposed method of operation, its affiliations, its investments, any contracts leading to contingent liability or agreements in respect to guaranty and surety, other than insurance, and the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid and required policy reserve increases, indicates a condition such that the expanded operation of the company in this State or its operations outside this State will not create a condition which might be hazardous to its policyholders, creditors or the general public, the Commissioner shall file in the office the documents delivered to him and shall issue to the company a certificate of authority to transact in this State the kind or kinds of business specified therein. . . .

Revisor's Note

V.T.I.C. Article 3.24-1 provides that the commissioner of insurance shall issue a certificate of authority to a foreign or alien company that has complied with the requirements of Subchapter B, V.T.I.C. Chapter 3, revised in this chapter, "and has paid any deposit imposed by law." The revised law omits the quoted language as unnecessary. The only statutory requirement that a foreign or alien company pay a deposit to transact the business of life, health, or accident insurance in this state is contained in V.T.I.C. Article 3.23, revised as Section 982.108, and as such is included in the requirements of this chapter.

[Sections 982.114-982.200 reserved for expansion]

SUBCHAPTER D. TRUSTEED ASSETS OF ALIEN INSURANCE COMPANIES

Revised Law

Sec. 982.201. DEED OF TRUST: GENERAL PROVISIONS. (a) A deed of trust relating to the trusteed assets of an authorized alien insurance company and all amendments to the deed of trust are effective only if approved by the commissioner.

(b) The deed of trust must contain provisions that:

(1) vest legal title to trusteed assets in the trustee or trustees and the trustees' lawfully appointed successors, in trust for the security of the policyholders of the alien insurance company in the United States;

(2) provide for substitution of a new trustee or

trustees, subject to the commissioner's approval, in the event of vacancy by death, resignation, or other incapacity; and

(3) require that the trustee or trustees continuously maintain a record sufficient to identify the trust assets.

(c) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the trust assets may be paid over to the United States manager of the alien insurance company on request.

(d) The deed of trust and all amendments to the deed of trust must be authenticated in the form and manner prescribed by the commissioner. (V.T.I.C. Art. 3.27-1, Subsecs. (b), (f), (g); Art. 21.43, Secs. 10(b), (f), (g).)

Source Law

[Art. 3.27-1]

(b) The deed of trust and all amendments to the deed of trust of such insurer shall be authenticated in such form and manner as prescribed by the commissioner, and shall not be effective unless approved by the commissioner.

(f) The deed of trust shall contain provisions which:

(1) vest legal title to trust assets in the trustee or trustees and successors lawfully appointed, in trust for the security of all policyholders of the alien insurer within the United States;

(2) provide for substitution of a new trustee or trustees in the event of vacancy by death, resignation, or other incapacity, subject to the approval of the commissioner; and

(3) require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of the trust fund.

(g) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the assets of the fund may be paid over to the United States manager of the alien insurer, upon request.

[Art. 21.43]

[Sec. 10]

(b) The deed of trust and all amendments to the deed of trust of such insurer shall be authenticated in such form and manner as prescribed by the commissioner and shall not be effective unless approved by the commissioner.

(f) The deed of trust shall contain provisions which:

(1) vest legal title to trust assets in the trustee or trustees and successors lawfully appointed, in trust for the security of all policyholders of the alien insurer within the United States;

(2) provide for substitution of a new trustee or trustees in the event of vacancy by death, resignation, or other incapacity, subject to the approval of the commissioner; and

(3) require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of the trust fund.

(g) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the assets of the fund may be paid over to the United States manager of the alien insurer, upon request.

Revised Law

Sec. 982.202. DEED OF TRUST: APPROVAL BY COMMISSIONER.

(a) The commissioner shall approve a deed of trust relating to the trusteed assets of an alien insurance company if the commissioner determines:

(1) the deed of trust or its amendments are sufficient in form and conform with applicable law;

(2) the trustee or trustees are eligible to serve in that capacity; and

(3) the deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(b) If, after notice and hearing, the commissioner determines that a requisite for approval of a deed of trust under Subsection (a) does not exist, the commissioner may withdraw approval.

(c) The commissioner may approve a change in any deed of trust that in the commissioner's judgment is in the best interests of the policyholders of the alien insurance company in the United States. (V.T.I.C. Art. 3.27-1, Subsecs. (c), (d), (e); Art. 21.43, Secs. 10(c), (d), (e).)

Source Law

[Art. 3.27-1]

(c) The commissioner shall give approval to a deed of trust if the commissioner finds:

(1) the deed of trust or its amendments are sufficient in form and are in conformity with applicable law;

(2) the trustee or trustees are eligible as such; and

(3) the deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(d) If after notice and hearing the commissioner finds that the requisites for approval of the deed of trust no longer exist, the commissioner may withdraw approval.

(e) The commissioner may from time to time approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are in the best interests of the policyholders of the alien insurer within the United States.

[Art. 21.43]

[Sec. 10]

(c) The commissioner shall give approval to a deed of trust if the commissioner finds:

(1) the deed of trust or its amendments are sufficient in form and are in conformity with applicable law;

(2) the trustee or trustees are eligible as such; and

(3) the deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(d) If after notice and hearing the commissioner finds that the requisites for approval of the deed of trust no longer exist, the commissioner may withdraw approval.

(e) The commissioner may from time to time approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are in the best interests of the policyholders of the alien insurer corporation within the United States.

Revisor's Note

Subsection (e), V.T.I.C. Article 3.27-1, and Section 10(e), V.T.I.C. Article 21.43, provide that the commissioner of insurance may "from time to time" approve modifications of or variations in a deed of trust. The revised law omits "from time to time" as unnecessary in this context. The authority to take an action includes the authority to take that action "from time to time."

Revised Law

Sec. 982.203. LOCATION OF TRUSTEED ASSETS. (a) The trustee assets of an alien insurance company shall be kept continuously in the United States.

(b) The trustee assets of an alien insurance company that enters the United States through this state shall be kept continuously in this state. (V.T.I.C. Art. 3.27-1, Subsec. (a) (part); Art. 21.43, Sec. 10(a) (part).)

Source Law

Art. 3.27-1. (a) . . . All trustee assets shall be continuously kept within the United States, and the trustee assets of an alien insurer entering the United States through this State shall be kept continuously in this State.

[Art. 21.43]

Sec. 10. (a) . . . All trustee assets shall be continuously kept within the United States, and the trustee assets of an alien insurer entering the United States through this State shall be kept continuously in this State.

Revised Law

Sec. 982.204. WITHDRAWAL OF TRUSTEED ASSETS. (a) The deed of trust relating to the trustee assets of an alien insurance company must provide that the trustee or trustees may not make or permit a withdrawal of assets, other than as specified by Section 982.201(c), without the commissioner's prior written approval except to:

(1) make deposits required by law in any state for the security or benefit of the policyholders of the company in the United States;

(2) substitute other assets permitted by law and at least equal in value to those withdrawn, subject to Subsection (b); or

(3) transfer the assets to an official liquidator or rehabilitator in accordance with an order of a court of competent jurisdiction.

(b) A withdrawal under Subsection (a)(2) may be made only on the specific written direction of the United States manager or an assistant United States manager when authorized and acting under general or specific written authority previously given or delegated by the board of directors.

(c) On withdrawal of trustee assets deposited in another state in which the alien insurance company is authorized to engage in the business of insurance:

(1) the deed of trust may require similar written approval of the insurance supervising official of that state instead of the commissioner's approval as provided by Subsection (a); and

(2) if approval under Subdivision (1) is required, the company shall notify the commissioner in writing of the nature and extent of the withdrawal. (V.T.I.C. Art. 3.27-1, Subsecs. (h), (i); Art. 21.43, Secs. 10(h), (i).)

Source Law

[Art. 3.27-1]

(h) The deed of trust shall provide that no withdrawal of assets, other than income as specified in Subsection (g) of this article, shall be made or permitted by the trustee or trustees without prior written approval of the commissioner, except:

(1) to make deposits required by law in any state for the security or benefit of all policyholders of the alien insurer in the United States;

(2) to substitute other assets permitted by law and at least equal in value to those withdrawn upon the specific written direction of the United States manager or an assistant United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or

(3) to transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(i) Upon withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, the deed of trust may require similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner as provided in Subsection (h) of this article. In all such instances, the alien insurer shall notify the commissioner in writing of the nature and extent of the withdrawal.

[Art. 21.43]

[Sec. 10]

(h) The deed of trust shall provide that no withdrawal of assets, other than income as specified in Subsection (g) of this section, shall be made or permitted by the trustee or trustees without prior written approval of the commissioner, except:

(1) to make deposits required by law in any state for the security or benefit of all policyholders of the alien insurer in the United States;

(2) to substitute other assets permitted by law and at least equal in value to those withdrawn, upon the specific written direction of the United States manager or an assistant United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or

(3) to transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(i) Upon withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, the deed of trust may require similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner as provided in Subsection (h) of this section. In all such instances, the alien insurer shall notify the commissioner in writing of the nature and extent of the withdrawal.

[Sections 982.205-982.250 reserved for expansion]

SUBCHAPTER E. TRUSTEED SURPLUS OF ALIEN INSURANCE COMPANIES

Revised Law

Sec. 982.251. TRUSTEED SURPLUS OF ALIEN INSURANCE COMPANY. The total value of an alien insurance company's general state deposits and trusteed assets less the total net amount of all the company's liabilities and reserves in the United States, as determined in accordance with Section 982.252, is the company's

trusteed surplus in the United States. (V.T.I.C. Art. 3.27-2, Subsec. (e) (part); Art. 21.43, Sec. 11(e) (part).)

Source Law

[Art. 3.27-2]

(e) The aggregate value of the insurer's general state deposits and trusteed assets less the aggregate net amount of all its liabilities and reserves in the United States as determined in accordance with this section shall be known as its "trusteed" surplus in the United States. . . .

[Art. 21.43]

[Sec. 11]

(e) The aggregate value of the insurer's general state deposits and trusteed assets less the aggregate net amount of all its liabilities and reserves in the United States as determined in accordance with this section shall be known as its "trusteed" surplus in the United States. . . .

Revised Law

Sec. 982.252. FORM AND CONTENTS OF FINANCIAL STATEMENT OF ALIEN INSURANCE COMPANY. (a) A financial statement required to be filed by an alien insurance company under Section 982.004 must be on a form prescribed by the commissioner and must show, as of the preceding December 31:

(1) the company's general deposits of assets in the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of the company's policyholders in the United States;

(2) the company's special deposits of assets in the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of the company's policyholders in a particular state;

(3) the company's trusteed assets in the United States held for the exclusive benefit, security, and protection of the company's policyholders in the United States;

(4) the company's reserves and other liabilities arising out of policies or obligations issued, assumed, or incurred in the United States; and

(5) any further information as determined necessary to implement this section.

(b) In addition to the requirements under Subsection (a), a financial statement filed by an alien life insurance company must show the amount of the company's policy loans to policyholders in the United States, not exceeding the amount of the legal reserve required on each policy.

(c) In determining the net amount of an alien insurance company's liabilities in the United States, the company may

deduct:

(1) reinsurance on losses with insurers qualifying for credit, less unpaid reinsurance premiums, with a schedule showing by company the amount deducted; and

(2) unearned premiums on agents' balances or uncollected premiums not more than 90 days past due.

(d) Any liability on an asset not considered in the statement may be applied against that asset.

(e) A special state deposit held for the exclusive benefit of policyholders of a particular state may be allowed as an offset against the alien insurance company's liabilities in that state only.

(f) The statement may include accrued interest at the date of the statement on assets deposited with states and trustees if the interest is collected by the states or trustees.

(g) The United States manager, attorney-in-fact, or authorized assistant United States manager of the alien insurance company shall sign and verify the statement. The United States trustee or trustees shall certify the items of securities and other property held under deeds of trust.

(h) The commissioner may at any time and for any period determined necessary require additional statements of the kind required by this section. (V.T.I.C. Art. 3.27-2, Subsecs. (a) (part), (b), (c), (d), (f); Art. 21.43, Secs. 11(a) (part), (b), (c), (d), (f).)

Source Law

Art. 3.27-2. (a) [Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year] on a form prescribed by the commissioner showing at last year end the following:

(1) all its general deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within the United States;

(2) all its special deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within a particular state;

(3) all its trusteed assets within the United States held by a trustee or trustees for the exclusive benefit, security, and protection of all its policyholders within the United States;

(4) the amount of its policy loans to policyholders within the United States, not exceeding the amount of the legal reserve required on each such policy;

(5) all its reserves and other liabilities arising out of policies or obligations issued, assumed or incurred in the

United States; and

(6) such further information as determined necessary to implement provisions of this article.

(b) In determining the net amount of an alien insurer's liabilities in the United States, a deduction may be made for the following:

(1) reinsurance on losses with insurers qualifying for credit, less unpaid reinsurance premiums, with a schedule showing by company the amount deducted; and

(2) unearned premiums on agents' balances or uncollected premiums not more than 90 days past due. Any liability on an asset not considered in the statement may be applied against such asset.

(c) No credit shall be allowed in the statement for any special state deposit held for the exclusive benefit of policyholders of any particular state except as an offset against the liabilities of the alien insurer in that state.

(d) The accrued interest at the date of the statement on assets deposited with states and trustees shall be allowed in the statement where the interest is collected by the states or trustees.

(f) The trusted surplus statement shall be signed and verified by the United States manager, attorney-in-fact, or a duly empowered assistant United States manager of the alien insurer. The items of securities and other property held under trust deeds shall be certified to by the United States trustee or trustees. The commissioner may at any time and for any time period determined necessary require further statements of the same kind.

[Art. 21.43]

Sec. 11. (a) [Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year] on a form prescribed by the commissioner showing at last year end the following:

(1) all its general deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within the United States;

(2) all its special deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within a particular state;

(3) all its trusted assets within the United States held by a trustee or trustees for the exclusive benefit, security, and protection of all its policyholders within the United States;

(4) all its reserves and other liabilities arising out of policies or obligations issued, assumed, or incurred in the United States; and

(5) such further information as determined necessary to implement provisions of this section.

(b) In determining the net amount of an alien insurer's liabilities in the United States, a deduction may be made for the following:

(1) reinsurance on losses with insurers qualifying for credit, less unpaid reinsurance premiums, with a schedule showing by company the amount deducted; and

(2) unearned premiums on agents' balances or uncollected premiums not more than 90 days past due. Any liability on an asset not considered in the statement may be applied against such asset.

(c) No credit shall be allowed in the statement for any special state deposit held for the exclusive benefit of policyholders of any particular state except as an offset against the liabilities of the alien insurer in that state.

(d) The accrued interest at the date of the statement on assets deposited with states and trustees shall be allowed in the statement where the interest is collected by the states or trustees.

(f) The trusted surplus statement shall be signed and verified by the United States manager, attorney-in-fact, or a duly empowered assistant United States manager of the alien insurer. The items of securities and other property held under trust deeds shall be certified to by the United States trustee or trustees. The commissioner may at any time and for any time period determined necessary require further statements of the same kind.

Revisor's Note

Subsection (a)(3), V.T.I.C. Article 3.27-2, and Section 11(a)(3), V.T.I.C. Article 21.43, refer to "trusted assets . . . held by a trustee or trustees." The revised law omits "held by a trustee or trustees" as unnecessary because that concept is included within the definition of "trusted asset" under Subsection (a), V.T.I.C. Article 3.27-1, and Section 10(a), V.T.I.C. Article 21.43, revised as Section 982.001(7).

Revised Law

Sec. 982.253. IMPAIRMENT OF TRUSTEED SURPLUS. (a) If the commissioner determines from a statement filed under Section 982.252 or any report that an alien insurance company's trusted surplus is less than the greater of the minimum capital required of, or the minimum surplus required to be maintained by, a domestic insurance company authorized to engage in the same kinds

of insurance, the commissioner shall:

- (1) determine the amount of the impairment; and
- (2) order the company, through its United States manager or attorney, to eliminate the impairment within the period designated by the commissioner.

(b) The period for eliminating an impairment under Subsection (a) must end not later than the 90th day after the date the order is served.

(c) The commissioner may also by order revoke or suspend an alien insurance company's certificate of authority or prohibit the company from issuing new policies in the United States while an impairment under Subsection (a) exists. (V.T.I.C. Art. 3.27-2, Subsec. (e) (part); Art. 21.43, Sec. 11(e) (part).)

Source Law

[Art. 3.27-2]

(e) . . . Whenever it appears to the commissioner from any such statement or any report that an alien insurer's trusteed surplus is reduced below the greater of minimum capital required of, or the minimum surplus required to be maintained by, a domestic insurer licensed to transact the same kinds of insurance, the commissioner shall determine the amount of the impairment and order the insurer, through its United States manager or attorney, to eliminate the impairment within such period as the commissioner designates, not more than 90 days from service of the order. The commissioner may also by order revoke or suspend the insurer's license or prohibit it from issuing new policies in the United States while the impairment exists. . . .

[Art. 21.43]

[Sec. 11]

(e) . . . Whenever it appears to the commissioner from any such statement or any report that an alien insurer's trusteed surplus is reduced below the greater of minimum capital required of, or the minimum surplus required to be maintained by, a domestic insurer licensed to transact the same kinds of insurance, the commissioner shall determine the amount of the impairment and order the insurer, through its United States manager or attorney, to eliminate the impairment within such period as the commissioner designates, not more than 90 days from service of the order. The commissioner may also by order revoke or suspend the insurer's license or prohibit it from issuing new policies in the United States while the impairment exists. . . .

Revised Law

Sec. 982.254. FAILURE TO ELIMINATE IMPAIRMENT OF TRUSTEED SURPLUS. If an alien insurance company has not satisfied the commissioner at the end of the designated period under Section

982.253(a) that the impairment has been eliminated, the commissioner may proceed against the company as provided by Article 21.28-A as an insurance company whose further transaction of the business of insurance in the United States will be hazardous to its policyholders in the United States. (V.T.I.C. Art. 3.27-2, Subsec. (e) (part); Art. 21.43, Sec. 11(e) (part).)

Source Law

[Art. 3.27-2]

(e) . . . If at the expiration of the designated period has not satisfied the commissioner that the impairment has been eliminated, the commissioner may proceed against such insurer pursuant to the provisions of Article 21.28-A of this code as an insurer whose further transaction of the business of insurance in the United States will be hazardous to its policyholders in the United States.

[Art. 21.43]

Sec. 11. . . .

(e) . . . If at the expiration of the designated period has not satisfied the commissioner that the impairment has been eliminated, the commissioner may proceed against such insurer pursuant to the provisions of Article 21.28-A of this code as an insurer whose further transaction of the business of insurance in the United States will be hazardous to its policyholders in the United States.

Revised Law

Sec. 982.255. EXAMINATION OF ALIEN INSURANCE COMPANY.

(a) The books, records, accounting, and verification relating to an authorized alien insurance company's trusteed assets are subject to examination by the department or the department's appointed representative at the United States branch office of the company, in the same manner and to the same extent that applies under Articles 1.15 and 1.16 to domestic and foreign insurance companies authorized to engage in the same kind of insurance.

(b) The books, records, and accounting for trusteed assets of an alien insurance company that enters the United States through this state shall be maintained in English in the company's branch office in this state. (V.T.I.C. Art. 3.27-3; Art. 21.43, Sec. 12.)

Source Law

Art. 3.27-3. (a) The books, records, accounting, and verification pertaining to the trusteed assets of any authorized alien insurer are subject to examination by the Department or its duly appointed representative at the United States branch office

of such insurer, in the same manner and to the same extent that applies under Articles 1.15 and 1.16 of this code to domestic and foreign insurers licensed to transact the same kind of insurance.

(b) The books, records, and accounting for trusteed assets shall be kept and maintained, in English, in the Texas branch office of any alien insurer entering the United States through this State.

[Art. 21.43]

Sec. 12. (a) The books, records, accounting, and verification pertaining to the trusteed assets of any authorized alien insurer are subject to examination by the Department or its duly appointed representative at the United States branch office of such insurer in the same manner and to the same extent that applies under Articles 1.15 and 1.16 of this code to domestic and foreign insurers licensed to transact the same kind of insurance.

(b) The books, records, and accounting for trusteed assets shall be kept and maintained, in English, in the Texas branch office of any alien insurer entering the United States through this State.

[Sections 982.256-982.300 reserved for expansion]

SUBCHAPTER F. PROVISIONS APPLICABLE TO CERTAIN COMPANIES

Revised Law

Sec. 982.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a foreign or alien insurance company that is not a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company. (New.)

Revisor's Note

As noted in Revisor's Note (1) to Section 982.001, Subchapters A-E integrate identical provisions of V.T.I.C. Article 21.43 and Subchapter B, V.T.I.C. Chapter 3. Article 21.43 does contain several provisions that are not contained in Subchapter B, Chapter 3, and those provisions are revised in this subchapter. This section is added to clarify that the provisions of this subchapter apply only to a foreign or alien insurance company that is not a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company.

Revised Law

Sec. 982.302. REINSURANCE NOT PROHIBITED. This chapter does not prohibit a foreign insurance company from:

- (1) reinsuring a domestic insurance company; or
- (2) locating in this state, if the company does not directly insure persons domiciled in this state or insure against

risks located in this state. (V.T.I.C. Art. 21.43, Sec. 3(b).)

Source Law

(b) This article does not prohibit a foreign insurer from reinsuring a domestic insurer or prohibit the location in Texas of a company that does not directly insure either persons domiciled or other risks located in this state.

Revised Law

Sec. 982.303. TEXAS LAW ACCEPTED. A foreign or alien insurance company that issues a contract or policy in this state is considered to have agreed to comply with this code as a prerequisite to engaging in the business of insurance in this state. (V.T.I.C. Art. 21.43, Sec. 9.)

Source Law

Sec. 9. The provisions of this code are conditions on which foreign or alien insurance corporations are permitted to do the business of insurance in this state, and any of the foreign or alien corporations engaged in issuing contracts or policies in this state are deemed to have agreed to fully comply with these provisions as a prerequisite to the right to engage in business in this state.

Revised Law

Sec. 982.304. SAME OR DECEPTIVELY SIMILAR NAME. A foreign or alien insurance company may not be denied permission to engage in the business of insurance in this state because the name of the company is the same as or deceptively similar to the name of a domestic corporation existing under the laws of this state or of another foreign or alien insurance company authorized to engage in the business of insurance in this state if the company desiring to engage in the business of insurance in this state:

(1) files with the department and with any county clerk as provided by Section 36.10 or 36.11, Business & Commerce Code, an assumed name certificate stating a name permitted under the laws of this state; and

(2) does not engage in any business in this state except under the assumed name. (V.T.I.C. Art. 21.43, Sec. 13(c).)

Source Law

(c) A foreign or alien insurance corporation subject to this code may not be denied permission to do business in this state because the name of the corporation is the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign or alien corporation authorized to transact business in this state if the foreign or alien insurance corporation:

(1) files an assumed name certificate setting forth a name permitted under the laws of this state with the Texas Department of Insurance and with any county clerks as provided by Section 36.10 or 36.11, Business & Commerce Code; and

(2) does not transact or conduct any business in this state except under the assumed name.

Revised Law

Sec. 982.305. LIMITATION ON ACTIONS IN OTHER STATE COURTS. An action involving a contract entered into in this state between a foreign or alien insurance company and a resident of this state may not be brought in or transferred to a court in another state without the consent of the resident of this state. (V.T.I.C. Art. 21.43, Sec. 13(d).)

Source Law

(d) No action on or involving any contract entered into in this state between an insurance corporation and a resident of this state shall be commenced in or transferred to a court in another state without the consent of the resident of this state.

Revised Law

Sec. 982.306. DEPOSIT FOR FOREIGN CASUALTY COMPANY NOT REQUIRED. (a) The department may not require a foreign casualty insurance company to make or maintain the deposit required of a domestic casualty insurance company by Section 861.252 if a similar deposit has been made in any state of the United States, under the laws of that state, in a manner that secures equally all policyholders of the company who are citizens and residents of the United States.

(b) A certificate of the deposit under the signature and seal of the officer of the other state with whom the deposit is made must be filed with the department. (V.T.I.C. Art. 21.43, Sec. 13(b).)

Source Law

(b) A foreign casualty insurer may not be required to make or maintain the deposit required of domestic casualty insurers by Article 8.05 of this code if a similar deposit has been made in any state of the United States, under the laws of that state, in a manner that secures equally all the policyholders of the company who are citizens and residents of the United States. A certificate of the deposit under the signature and seal of the officer of the other state with whom the deposit is made must be filed with the department.

Revisor's Note
(End of Subchapter)

Section 16, V.T.I.C. Article 1.10, requires the commissioner of insurance to "admit into this State [foreign] mutual insurance companies engaged in cyclone, tornado, hail and storm insurance . . . and which have Two Million (\$2,000,000.00) Dollars assets in excess of liabilities." The revised law omits this section as duplicative of V.T.I.C. Article 2.02, revised in pertinent part as Section 822.054 of this code, which requires a company engaged in the business of insurance, other than life, health, or accident insurance, to have not "less than \$1 million capital and \$1 million surplus." That requirement applies to a foreign mutual insurance company by virtue of V.T.I.C. Article 21.44(a), revised as Section 982.106 of this chapter. The omitted law reads:

Art. 1.10. [In addition to the other duties required of the department, the department shall perform duties as follows:]

. . .

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

CHAPTER 983. REDOMESTICATION OF
INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS
SUBCHAPTER A. GENERAL PROVISIONS

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SUBCHAPTER B. REDOMESTICATION PROCESS

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CHAPTER 983. REDOMESTICATION OF
INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 983.001. DEFINITION. In this chapter, "redomestication" means a change in domicile of an insurer or health maintenance organization by merger, consolidation, or another legal method. (V.T.I.C. Art. 1.38, Secs. (c) (part), (d) (part).)

Source Law

(c) [Any foreign insurer or health maintenance organization . . . may] . . . change its domicile by merger, consolidation, redomestication, or other lawful method

(d) . . . [any insurer or health maintenance organization] redomesticates its corporate domicile . . . by merger, consolidation, redomestication, or other lawful method

Revisor's Note

(1) Section (c), V.T.I.C. Article 1.38, refers to a change in domicile "by . . . redomestication." Section (d), V.T.I.C. Article 1.38, refers to an insurer or health maintenance organization that redomesticates its domicile "by . . . redomestication." The revised law omits the quoted language as duplicative because it is clear from the context of V.T.I.C. Article 1.38 that a legal change in domicile of an insurer or health maintenance organization is necessarily a redomestication.

(2) The definition of "redomestication" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 983.002. RULES. The commissioner may adopt rules as necessary to implement this chapter. (V.T.I.C. Art. 1.38, Sec. (g).)

Source Law

(g) The Board may promulgate and adopt such rules and regulations as it deems necessary to carry out the stated purposes of this article.

Revisor's Note

(1) Section (g), V.T.I.C. Article 1.38, refers to "the Board," meaning the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of

insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the State Board of Insurance have been changed appropriately.

(2) Section (g), V.T.I.C. Article 1.38, refers to "rules and regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

[Sections 983.003-983.050 reserved for expansion]

SUBCHAPTER B. REDOMESTICATION PROCESS

Revised Law

Sec. 983.051. REDOMESTICATION: FOREIGN TO DOMESTIC. (a) An insurer or health maintenance organization that is organized under the laws of another state and authorized to write insurance or provide a health care plan in this state may redomesticate to this state if:

(1) the entity amends or restates its articles of incorporation to comply with each requirement of this code relating to the organization and authorization of a domestic entity of the same type; and

(2) the commissioner approves the redomestication.

(b) An insurer or health maintenance organization that redomesticates under this section is:

(1) considered to be domiciled in this state; and

(2) entitled to a certificate of authority to engage in the business of insurance or the business of a health maintenance organization in this state as a domestic insurer or health maintenance organization, as applicable, without interruption of its authority to engage in business in this state. (V.T.I.C. Art. 1.38, Sec. (a).)

Source Law

Art. 1.38. (a) Any insurer or health maintenance organization which is organized under the laws of any other state and which is authorized to do business in this state for the purpose of writing insurance or providing a health care plan may become a domestic insurer or health maintenance organization, respectively, domiciled in this state on the approval of the commissioner of insurance by amending or restating its articles of incorporation to comply with all of the requirements of this code relative to the organization and licensing of a domestic insurer or health maintenance organization, respectively, of the same type. The redomesticated insurer or health maintenance organization shall be deemed to be domiciled in this state and shall be entitled to like certificates and licenses to transact

business in this state, without interruption of its licenses in this state, as a domestic insurer or health maintenance organization, respectively, and shall be subject to the authority and jurisdiction of this state.

Revisor's Note

(1) Section (a), V.T.I.C. Article 1.38, authorizes a foreign insurer or health maintenance organization to "become a domestic insurer or health maintenance organization . . . domiciled in this state." The revised law substitutes "redomesticate to this state" for the quoted language for consistency of terminology within this chapter. Similar changes using "redomesticate" and "redomestication" are made throughout this chapter.

(2) Section (a), V.T.I.C. Article 1.38, states that a redomesticated insurer or health maintenance organization is entitled to "like certificates and licenses to transact business in this state." In this section, the revised law omits "licenses" and throughout the revision, where appropriate, the revised law substitutes "certificate of authority" or "authorization" for "license," "licensing," or "certificates" because a certificate of authority is the document that authorizes an insurer or health maintenance organization to engage in the business of insurance or the business of a health maintenance organization in Texas.

(3) Section (a), V.T.I.C. Article 1.38, states that an insurer or health maintenance organization that redomesticates to become a domestic insurer or health maintenance organization is "subject to the authority and jurisdiction of this state." The revised law omits the quoted language as unnecessary because a domestic insurer or health maintenance organization is subject to state authority and jurisdiction without an express statement in law to that effect.

Revised Law

Sec. 983.052. REDOMESTICATION: DOMESTIC TO FOREIGN. (a) An insurer or health maintenance organization that is organized under the laws of this state and authorized to write insurance or provide a health care plan in another state may redomesticate to that other state if the commissioner and the supervising regulatory official of the proposed state of domicile approve the redomestication.

(b) On the effective date of redomestication, the entity:

- (1) ceases to be a domestic insurer or health maintenance organization, as applicable; and
- (2) is a qualified foreign insurer or health maintenance organization, as applicable, in this state without interruption of its authority to engage in the business of insurance or the business of a health maintenance organization in

this state.

(c) The commissioner may approve a proposed redomestication under this section unless the commissioner determines that:

(1) the proposed redomestication would not be in the interest of this state's policyholders or enrollees; or

(2) the entity cannot qualify for a certificate of authority in this state as a foreign insurer or health maintenance organization, as applicable. (V.T.I.C. Art. 1.38, Sec. (b).)

Source Law

(b) Any domestic insurer or health maintenance organization organized under the laws of this state may change its domicile to any other state in which it is authorized to transact the business of insurance or provide a health care plan on the approval of the commissioner of insurance and the supervising regulatory official of the new domiciliary state and, on such approval, shall cease to be a domestic insurer or health maintenance organization, respectively, but shall be admitted to this state as a qualified foreign insurer or health maintenance organization, respectively, without interruption of its licenses in this state, at the effective date of the redomestication. The commissioner of insurance may approve any such proposed redomestication unless it is determined that such change is not in the interest of the policyholders or enrollees of this state or that such domestic insurer or health maintenance organization cannot qualify for license in this state as a foreign insurer or health maintenance organization, respectively.

Revisor's Note

Section (b), V.T.I.C. Article 1.38, refers to a "domestic insurer or health maintenance organization organized under the laws of this state." The revised law omits the reference to "domestic" as duplicative because an insurer or health maintenance organization that is "organized under the laws of this state" is necessarily "domestic."

Revised Law

Sec. 983.053. REDOMESTICATION: FOREIGN TO FOREIGN. (a) An insurer or health maintenance organization that is organized under the laws of another state and authorized to engage in the business of insurance or the business of a health maintenance organization in this state may redomesticate to another foreign state without interruption of its authority to engage in business in this state as a foreign insurer or health maintenance organization, as applicable, if:

(1) the entity:

(A) amends or restates its articles of incorporation as required by law; and

(B) provides proper notice to the commissioner;
and

(2) the commissioner:

(A) determines that:

(i) the proposed redomestication would not, on the effective date of redomestication, result in a reduction in the amount of the entity's capital or surplus below the amount required for authorization as a foreign insurer or health maintenance organization, as applicable;

(ii) there would not be a material change in the lines of insurance to be written or health care plan provided by the entity;

(iii) the proposed redomestication has been approved by the supervising regulatory officials of both the current and proposed state of domicile;

(iv) the proposed redomestication would not be detrimental to the interest of the insurer's policyholders or the health maintenance organization's enrollees in this state;
and

(v) the proposed redomestication is not related to a change in the control of the entity, unless the commissioner has given prior approval to the change in control;
and

(B) approves the redomestication.

(b) Subsection (a)(2)(A)(v) does not apply if the redomesticating insurer or health maintenance organization is to become a parent, subsidiary, or affiliate of a qualified insurer or health maintenance organization, as applicable, that has held a certificate of authority in this state for at least seven years before the date of the redomestication. (V.T.I.C. Art. 1.38, Sec. (c) (part).)

Source Law

(c) Any foreign insurer or health maintenance organization organized under the laws of any other state and admitted to transact business in this state may, on proper notice to and approval by the commissioner of insurance, change its domicile . . . to another foreign state without interruption of its licenses in this state as a foreign insurer or health maintenance organization, respectively, by amendment or restatement of its articles of incorporation as required by law and if the commissioner of insurance determines that:

(1) the change in domicile does not result in a reduction of either the capital or surplus of the insurer or the health maintenance organization below the requirements for admission as a foreign insurer or health maintenance organization, respectively, at the effective date of redomestication;

(2) there is no material change in the lines of insurance to be written or health care plan provided by the insurer or health maintenance organization, respectively;

(3) the change in domicile of the insurer or health maintenance organization has been approved by the supervising regulatory officials of both the former and new state of domicile;

(4) the change of domicile is not detrimental to the interest of the insurer's policyholders or the health maintenance organization's enrollees in this state; and

(5) the redomestication is not related to a change in the control of the insurer or health maintenance organization, unless the commissioner of insurance has given prior approval to such change in control; provided, however, that this provision shall not apply if the redomesticating insurer or health maintenance organization is to become a parent, subsidiary, or affiliate of a qualified insurer or health maintenance organization that has held a certificate of authority in this state for at least seven years prior thereto.

Revisor's Note

Section (c), V.T.I.C. Article 1.38, refers to a "foreign insurer or health maintenance organization organized under the laws of any other state." The revised law omits the reference to "foreign" as duplicative because an insurer or health maintenance organization that is "organized under the laws of any other state" is necessarily "foreign."

Revised Law

Sec. 983.054. NOTICE AND FILING REQUIRED. An insurer or health maintenance organization shall:

(1) notify the commissioner of the details of a proposed redomestication; and

(2) promptly file with the commissioner any amendments to its corporate documents filed or required to be filed with the commissioner. (V.T.I.C. Art. 1.38, Sec. (f) (part).)

Source Law

(f) Every such redomesticating insurer or health maintenance organization shall notify the commissioner of insurance of the details of the proposed change and redomestication and shall file promptly with the commissioner of insurance any amendments to its corporate documents as are filed or required to be filed with the commissioner of insurance. . . .

Revisor's Note

Section (f), V.T.I.C. Article 1.38, refers to notification of a proposed "change and redomestication." The reference to "change" is omitted from the revised law as unnecessary because,

in context, "change" is included within the meaning of "redomestication."

Revised Law

Sec. 983.055. FORMS OF INSURANCE POLICY OR EVIDENCE OF COVERAGE. (a) A redomesticated insurer or health maintenance organization shall file with the commissioner a new insurance policy or evidence of coverage form, or an endorsement to an approved policy or evidence of coverage form, that implements the redomestication.

(b) The insurer or health maintenance organization, under conditions approved by the commissioner and with an appropriate endorsement, may continue to use an insurance policy or evidence of coverage form that was approved before the redomestication. (V.T.I.C. Art. 1.38, Sec. (d) (part).)

Source Law

(d) . . . Every such redomesticated insurer or health maintenance organization shall file either an endorsement or new policy or evidence of coverage forms with the commissioner of insurance giving effect to the change of domicile. Such redomesticated insurer or health maintenance organization may use the existing approved policy or evidence of coverage forms of the redomesticating insurer or health maintenance organization with appropriate endorsements under such conditions as approved by the commissioner of insurance.

Revised Law

Sec. 983.056. OUTSTANDING INSURANCE POLICY OR EVIDENCE OF COVERAGE: CHANGE OF NAME. A redomesticating insurer or health maintenance organization that changes its name shall endorse each outstanding insurance policy or evidence of coverage with the new name. (V.T.I.C. Art. 1.38, Sec. (d) (part).)

Source Law

(d) . . . In the event of a change in such insurer's or health maintenance organization's name, all outstanding policies of insurance or evidence of coverage shall be endorsed with the new name. . . .

Revised Law

Sec. 983.057. ISSUANCE OF AMENDED CERTIFICATE OF AUTHORITY. The commissioner shall issue an amended certificate of authority on approval of a redomestication. (V.T.I.C. Art. 1.38, Sec. (f) (part).)

Source Law

(f) . . . On approval of the redomestication the commissioner of insurance will issue an amended certificate of

authority.

[Sections 983.058-983.100 reserved for expansion]

SUBCHAPTER C. EFFECT OF REDOMESTICATION

Revised Law

Sec. 983.101. CONTINUATION OF BUSINESS. (a) If a redomesticating insurer or health maintenance organization remains qualified to engage in the business of insurance or the business of a health maintenance organization in this state, the following continue in effect after redomestication:

- (1) the approved agents' appointments and licenses;
- (2) the approved insurance policy forms and provider contracts;
- (3) the authorized premium rates;
- (4) the quality of care certificates; and
- (5) any other relevant item that exists on the effective date of the redomestication.

(b) Each outstanding insurance policy, evidence of coverage, provider contract, or quality of care certificate of a redomesticating insurer or health maintenance organization continues in effect after redomestication. (V.T.I.C. Art. 1.38, Sec. (d) (part).)

Source Law

(d) The approved agents' appointments and licenses, the approved policy forms and provider contracts, the current authorized premium rates, the quality of care certificates, and other relevant items which are in existence at the effective date any insurer or health maintenance organization redomesticates its corporate domicile to this or any other state . . . shall continue in full force and effect on such redomestication if such insurer or health maintenance organization remains duly qualified to transact the business of insurance or the business of a health maintenance organization, respectively, in this state. All outstanding policies, evidence of coverage, provider contracts, or quality of care certificates of any redomesticating insurer or health maintenance organization shall remain in full force and effect in the redomesticated insurer or health maintenance organization, respectively. . . .

Revised Law

Sec. 983.102. EFFECT ON ADMITTED ASSETS. Except as provided by other law, the admitted assets of a redomesticating insurer or health maintenance organization that qualify, on the effective date of the redomestication, as admitted assets under this code continue to qualify as admitted assets after the redomestication. (V.T.I.C. Art. 1.38, Sec. (e).)

Source Law

(e) The admitted assets of the redomesticating insurer or health maintenance organization which qualify as admitted assets under the appropriate section of this code as of the effective date of the redomestication will continue to qualify as admitted assets after the redomestication, subject to the provisions of the appropriate laws in effect at the time of redomestication or any changes to such laws thereafter.

Revisor's Note

Section (e), V.T.I.C. Article 1.38, refers to the provisions of the appropriate laws in effect at the time of redomestication "or any changes to such laws thereafter." The revised law omits the quoted language because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a law applies to all reenactments, revisions, or amendments of the law.

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CHAPTER 984. MEXICAN CASUALTY INSURANCE COMPANIES
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Revised Law

Sec. 984.001. AUTHORITY OF MEXICAN CASUALTY INSURANCE COMPANIES. (a) An insurance company that complies with this chapter may issue an insurance policy described by Subsection (b) as a Mexican casualty insurance company if the company is:

- (1) organized under the laws of the United Mexican States or any state of that nation; and
- (2) authorized to write insurance policies described by Subsection (b) by those laws, the company's charter or articles of association, and a license that is in effect and that is issued by the appropriate insurance regulatory authority of the United Mexican States or any state of that nation.

(b) A Mexican casualty insurance company described by Subsection (a) may issue in this state an insurance policy only if the policy:

- (1) provides automobile coverage or accident or other casualty insurance coverage on a person or personal property; and
- (2) is in effect only while the person or property covered by the policy is within the boundaries of the United Mexican States. (V.T.I.C. Art. 8.24 (intro) (part).)

Source Law

Art. 8.24. Any insurance carrier lawfully organized under the laws of the Republic of Mexico, or under the laws of any state thereof, and duly authorized by such laws and by its charter or articles of association and by current license of the appropriate insurance regulatory authority of such Republic or any state thereof to underwrite risks of the kinds and in the circumstances hereinafter mentioned, may issue in the State of Texas, . . . policies of insurance affording any and all kinds of automobile coverage, accident insurance and/or other casualty coverage, upon persons and/or personal property, to be in force only while such persons and/or personal property shall be physically within the boundaries of the Republic of Mexico, by complying with the following requirements:

Revisor's Note

(1) V.T.I.C. Article 8.24 refers to an "insurance carrier . . . organized under the laws of the Republic of Mexico, or under the laws of any state thereof" and that meets certain other criteria. In this section and throughout this chapter, the revised law refers to an insurance carrier that issues policies under this chapter as a "Mexican casualty insurance company" because that is the term by which those companies are generally

known, as indicated by the heading to the article revised in this chapter and by references to those companies in other statutes. The revised law also replaces references to "carrier" with "company" for consistency of terms used throughout this code, and replaces references to "Republic of Mexico" with "United Mexican States," the official name of that nation.

(2) V.T.I.C. Article 8.24 refers to a Mexican casualty insurance company that is "lawfully" organized. The revised law omits the reference to "lawfully" because it does not add to the clear meaning of the law. A company that is not "lawfully" organized is not organized in this context.

Revised Law

Sec. 984.002. AUTHORIZED AGENT REQUIRED. (a) A Mexican casualty insurance company may engage in the business of insurance in this state only through a resident agent in this state who:

(1) has the company's written authorization to engage in the business of insurance for the company; and

(2) is licensed by the department under Article 21.14.

(b) The agent's license must specifically authorize the agent to write for Mexican casualty insurance companies insurance coverage authorized by this chapter. (V.T.I.C. Art. 8.24, Subsec. (h).)

Source Law

(h) It shall underwrite business in Texas only through its resident Texas agents thereunto duly authorized by it in writing and duly licensed by such department under the provisions of Article 21.14 of this code, as the same now exists or as it may be amended hereafter, and the license issued to such Texas agents shall specially authorize them to write for such foreign carriers complying herewith the risks authorized hereby.

Revisor's Note

Subsection (h), V.T.I.C. Article 8.24, refers to "Article 21.14 of this code, as the same now exists or as it may be amended hereafter." The revised law omits the phrase "as the same now exists or as it may be amended hereafter" as unnecessary because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

[Sections 984.003-984.050 reserved for expansion]

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Revised Law

Sec. 984.051. CERTIFICATE OF AUTHORITY REQUIRED. A Mexican casualty insurance company must hold a certificate of authority to engage in the business of insurance under this chapter.

(V.T.I.C. Art. 8.24 (intro) (part).)

Source Law

Art. 8.24. [Any insurance carrier lawfully organized under the laws of the Republic of Mexico . . . may issue in the state of Texas,] under license of the department, [policies of insurance]

Revisor's Note

V.T.I.C. Article 8.24 authorizes Mexican casualty insurance companies to issue insurance policies in this state "under license of the department." In this section and throughout this chapter, the revised law substitutes "certificate of authority" for "license" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in the business of insurance. In addition, a specific reference to the department is unnecessary because the department is the only entity that issues certificates of authority to engage in the business of insurance under this chapter.

Revised Law

Sec. 984.052. APPLICATION. (a) To issue insurance policies under this chapter, a Mexican casualty insurance company must file with the department an application for a certificate of authority under this chapter.

(b) The application must be:

- (1) in writing;
- (2) accompanied by a correct English translation of the company's charter and bylaws; and
- (3) certified by:
 - (A) two of the company's principal officers; and
 - (B) the insurance regulatory officials under whose supervision the company operates in the United Mexican States.

(c) Before the department issues a certificate of authority under this chapter to a Mexican casualty insurance company, the company must file with the department:

- (1) a photostatic copy of any license held by the company to engage in the business of insurance in the United Mexican States;
- (2) a copy of the company's most recent financial reports or statements; and
- (3) a copy of the most recent examination reports of the company's affairs and financial condition by the insurance regulatory authorities under which the company operates in the United Mexican States. (V.T.I.C. Art. 8.24, Subsecs. (a), (b) (part).)

Source Law

(a) Such insurance carrier shall file with the department a written application for certificate to do business in this State, accompanied by a correct English translation of its charter and by-laws, duly certified by two of its principal officers and by the insurance regulatory officials under whose supervision it operates in the Republic of Mexico.

(b) Before admission, . . . , such carrier shall also file with such department a photostatic copy of its current license or licenses to operate in the Republic of Mexico, and shall file a copy of its latest financial reports or statements, and of the latest examination reports of its affairs and financial condition by the insurance regulatory authorities under which it operates in Mexico.

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 8.24, requires a Mexican casualty insurance company to file certain items "[b]efore admission." For clarity and consistency of terminology used throughout this chapter, the revised law substitutes "[b]efore the department issues a certificate of authority under this chapter" for "[b]efore admission."

(2) Subsection (b), V.T.I.C. Article 8.24, refers to a "current license or licenses." The revised law omits the reference to "current" because it does not add to the clear meaning of the law. A license that is not current is not a license.

[Sections 984.053-984.100 reserved for expansion]

SUBCHAPTER C. DEPOSIT WITH COMPTROLLER

Revised Law

Sec. 984.101. DEPOSIT WITH COMPTROLLER REQUIRED. (a) A Mexican casualty insurance company shall deposit with the comptroller at least \$25,000 in:

- (1) United States currency; or
- (2) securities that are:

(A) eligible for other casualty insurance companies authorized to engage in the business of insurance in this state; and

(B) approved by the department.

(b) The deposit shall be used to pay any lawful claim or final judgment against the company, including any claim or judgment for tax due to this state and any policy claim or other debt or obligation incurred in the course of the company's operations as provided by this chapter.

(c) The company shall periodically deposit additional currency or securities described by Subsection (a) as necessary to maintain a minimum total deposit of \$25,000. (V.T.I.C.)

Art. 8.24, Subsec. (c) (part).)

Source Law

(c) Such carrier shall deposit with the comptroller at least Twenty-five Thousand (\$25,000.00) Dollars in lawful money of the United States or in securities eligible for other casualty insurers licensed in Texas and approved by such department, which deposit shall be liable for all lawful claims and final judgments against such insurance carrier, including taxes due the State of Texas, and policy claims and other debts and obligations incurred in the course of operations hereunder as provided herein, and such deposit shall be kept replenished from time to time with like cash or approved securities to maintain a minimum total deposit of Twenty-five Thousand (\$25,000.00) Dollars. . . .

Revisor's Note

Subsection (c), V.T.I.C. Article 8.24, refers to "lawful money of the United States." For clarity, the revised law substitutes "United States currency" for the quoted phrase.

Revised Law

Sec. 984.102. PAYMENTS FROM DEPOSIT. On approval of the department, the comptroller shall pay from the deposit required under this subchapter any unsatisfied final judgment obtained against the Mexican casualty insurance company in a court of this state based on substituted service as authorized by Chapter 804. (V.T.I.C. Art. 8.24, Subsec. (d).)

Source Law

(d) The comptroller, upon the approval of the department, shall pay from the deposit required herein any unsatisfied final judgment obtained against such carrier in any court of competent jurisdiction in Texas based upon such substituted service as authorized by Article 1.36 of this code.

Revisor's Note

Subsection (d), V.T.I.C. Article 8.24, refers to a "court of competent jurisdiction." The revised law omits "of competent jurisdiction" as unnecessary because the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 984.103. RETURN OF DEPOSIT. With the approval of the department, the comptroller shall return the deposit required under this subchapter, or the unencumbered balance of the deposit, to the Mexican casualty insurance company on:

(1) the company's withdrawal from the business of insurance in this state; and

(2) a showing to the department that:

(A) each policy written by the company in this state has expired or been canceled; and

(B) each claim or obligation of the company on a policy written in this state that constitutes a lawful charge against the deposit has been satisfied. (V.T.I.C. Art. 8.24, Subsec. (c) (part).)

Source Law

(c) . . . Such deposit or the unencumbered balance thereof shall be returned to such carrier with approval of such department upon withdrawing from the business authorized hereby and upon a showing to such department that all of its policies written in Texas hereunder have expired or have been canceled and that all of its claims and obligations upon policies written in this State which would constitute lawful charges against such deposits have been satisfied.

[Sections 984.104-984.150 reserved for expansion]

SUBCHAPTER D. TAXES AND CHARGES; REPORTS

Revised Law

Sec. 984.151. PREMIUM TAX. (a) A Mexican casualty insurance company shall pay to this state an annual premium tax based solely on the company's gross premium receipts from insurance policies issued by the company in this state that cover resident citizens of this state or property or risks principally domiciled or located in this state, as shown by reports made to the department each year.

(b) The company shall pay the tax at the same percentage rate and in the same manner that is required of other insurance companies authorized to write accident and casualty coverage in this state. (V.T.I.C. Art. 8.24, Subsec. (e) (part).)

Source Law

(e) Such carrier shall pay the State of Texas annually a premium or occupation tax based solely upon its gross premium receipts from insurance policies issued by it in Texas which cover resident citizens of Texas or property or risks principally domiciled or located in this State, as shown by reports made to the department each year, upon the same percentage rate, and in the same manner, as other licensed insurance carriers in Texas writing accident and casualty coverage. . . .

Revisor's Note

Subsection (e), V.T.I.C. Article 8.24, refers to a "premium or occupation tax" based on "gross premium receipts." Throughout this chapter, the revised law substitutes the phrase "premium tax" because that phrase most accurately describes the tax and is

most consistent with terminology used throughout the code.

Revised Law

Sec. 984.152. OTHER TAXES AND CHARGES. In addition to paying a premium tax as required by Section 984.151, a Mexican casualty insurance company shall pay any other maintenance fee, charge, or tax that is required of other insurance companies authorized to write accident and casualty coverage in this state on the same basis as is required of those companies. (V.T.I.C. Art. 8.24, Subsec. (e) (part).)

Source Law

(e) . . . Each such carrier likewise shall pay such other maintenance fees, charges and taxes and upon the same basis as other licensed insurance carriers writing accident and casualty coverage in Texas are required by law to pay; and

Revised Law

Sec. 984.153. REPORTS. A Mexican casualty insurance company shall make the same reports that other insurance companies authorized to write accident and casualty coverage in this state are required to make. The company shall make the reports on forms adopted by the department. (V.T.I.C. Art. 8.24, Subsec. (e) (part).)

Source Law

(e) . . . Each such carrier . . . shall make the same reports as are required of such other insurance carriers, but in such adapted forms as may be prescribed by the department for such purposes.

[Sections 984.154-984.200 reserved for expansion]

SUBCHAPTER E. REGULATION AND ENFORCEMENT

Revised Law

Sec. 984.201. AGREEMENT TO COMPLY WITH CHAPTER. A Mexican casualty insurance company shall file in English a document executed by the company's officials expressly accepting the terms of this chapter and agreeing that the department may revoke, suspend, or refuse to grant a certificate of authority under this chapter on a determination by the commissioner that the company:

(1) is insolvent or in hazardous financial condition;
or

(2) has violated an applicable law of this state or of the company's home jurisdiction. (V.T.I.C. Art. 8.24, Subsec. (g).)

Source Law

(g) Such carrier shall file in English a document executed

by its officials expressly accepting the terms of this article and agreeing that such department may at any time in its lawful discretion revoke, suspend or refuse to grant or renew the license of such department to such carrier to conduct in Texas the business hereby authorized, upon a determination by the Commissioner of Insurance that it is insolvent or in hazardous financial condition, or that it has violated any applicable law of this State or of its home jurisdiction.

Revisor's Note

(1) Subsection (g), V.T.I.C. Article 8.24, requires a Mexican casualty insurance company to file with the department a document in which the company agrees that the department "may at any time in its lawful discretion revoke, suspend or refuse to grant or renew" the company's certificate of authority to engage in the business of insurance in this state. The revised law omits the reference to "at any time in its lawful discretion" because a general grant of authority to take action includes the authority to take that action at any time the action may legally be taken.

(2) Subsection (g), V.T.I.C. Article 8.24, provides that the department may refuse to renew a certificate of authority in certain circumstances. The revised law omits the reference to the renewal of a certificate of authority as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . to the extent that they require periodic renewal of certificates of authority."

(3) Subsection (g), V.T.I.C. Article 8.24, refers to the "Commissioner of Insurance." Chapter 31, Insurance Code, defines "commissioner" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance. The revised law is drafted accordingly.

Revised Law

Sec. 984.202. ANNUAL STATEMENT. A Mexican casualty insurance company shall file annually with the department each of the items listed in Section 984.052(c). (V.T.I.C. Art. 8.24, Subsec. (b) (part).)

Source Law

(b) [Before admission,] and annually thereafter[, such carrier shall also file with such department a photostatic copy of its current license or licenses to operate in the Republic of Mexico, and shall file a copy of its latest financial reports or statements, and of the latest examination reports of its affairs

and financial condition by the insurance regulatory authorities under which it operates in Mexico].

Revised Law

Sec. 984.203. AUTHORITY TO CONDUCT EXAMINATION. The department may examine at any time the affairs and condition and any books or records of a Mexican casualty insurance company, at the company's expense, to determine the company's:

- (1) financial condition and solvency; and
- (2) compliance with the applicable laws of this state and of the company's home jurisdiction. (V.T.I.C. Art. 8.24, Subsec. (f).)

Source Law

(f) Such department shall have the authority to examine at any or all times, at the expense of such carrier, the affairs and condition and all books and records of such carrier for the purpose of ascertaining its financial condition and solvency, and its compliance with the applicable laws of this State and of its home jurisdiction.

Revised Law

Sec. 984.204. AUTHORITY TO REVOKE OR SUSPEND CERTIFICATE OF AUTHORITY. The commissioner may revoke or suspend a Mexican casualty insurance company's certificate of authority under this chapter if the commissioner, after notice and an opportunity for a hearing, determines that the company, with neglect and wilful disregard, systematically failed to comply with obligations derived from insurance policies issued in this state and the laws applicable to those policies. (V.T.I.C. Art. 8.24, Subsec. (i) (part).)

Source Law

(i) The department shall have authority to suspend or revoke the certificate of authority of any insurance carrier authorized to do business in Texas under this Article, if the State Board of Insurance, after notice and opportunity for hearing, shall find that such carrier has systematically, with neglect and with willful disregard, failed to comply with its obligations derived from the contracts of insurance, and the laws applicable thereto, as contained in policies issued in the State of Texas.

. . .

Revisor's Note

(1) Subsection (i), V.T.I.C. Article 8.24, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and

transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and Texas Department of Insurance, respectively. Accordingly, the revised law substitutes a reference to the commissioner for a reference to the State Board of Insurance.

(2) Subsection (i), V.T.I.C. Article 8.24, states that a Mexican casualty insurance company is entitled to an appeal under V.T.I.C. Article 1.04, revised as Subchapter D, Chapter 36. The revised law omits that statement as unnecessary because Subchapter D, Chapter 36, provides sufficient authority for the right to appeal. The omitted law reads:

Any carrier aggrieved by an order of the State Board of Insurance hereunder shall be entitled to appeal therefrom pursuant to the provisions of Article 1.04 of this code.

TITLE 7. LIFE INSURANCE AND ANNUITIES

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- CHAPTER 1101. LIFE INSURANCE
- CHAPTER 1102. PAYMENT OF INSURANCE BENEFITS IN CURRENCY
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- CHAPTER 1105. STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE
- CHAPTER 1106. REINSTATEMENT OF CERTAIN LIFE INSURANCE POLICIES
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- CHAPTER 1109. UNCLAIMED LIFE INSURANCE AND ANNUITY CONTRACT PROCEEDS
- CHAPTER 1110. INTEREST RATES ON CERTAIN POLICY LOANS
- CHAPTER 1111. LIFE AND VIATICAL SETTLEMENTS AND ACCELERATED TERM LIFE INSURANCE BENEFITS

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SUBTITLE B. GROUP LIFE INSURANCE

- CHAPTER 1131. GROUP LIFE INSURANCE AND WHOLESALE, FRANCHISE, OR EMPLOYEE LIFE INSURANCE
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- CHAPTER 1151. INDUSTRIAL LIFE INSURANCE
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TITLE 7. LIFE INSURANCE AND ANNUITIES

SUBTITLE A. LIFE INSURANCE IN GENERAL

CHAPTER 1101. LIFE INSURANCE

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CHAPTER 1101. LIFE INSURANCE
SUBCHAPTER A. REQUIRED POLICY PROVISIONS

Revised Law

Sec. 1101.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a life insurance policy:

- (1) issued or delivered in this state; or
- (2) issued by a life insurance company organized under the laws of this state. (V.T.I.C. Art. 3.44 (part).)

Source Law

Art. 3.44. [No] policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company organized under the laws of this State, [unless the same shall contain provisions substantially as follows:]

Revised Law

Sec. 1101.002. POLICY PROVISIONS REQUIRED. (a) Except as provided by this section, a life insurance policy must contain provisions that are substantially the same as the provisions required by this subchapter.

(b) A single premium life insurance policy is not required to contain a provision under this subchapter to the extent that the provision is not applicable to a single premium insurance policy. (V.T.I.C. Art. 3.44 (part).)

Source Law

Art. 3.44. No [policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company organized under the laws of this State,] unless the same shall contain provisions substantially as follows:

11. . . . Any foregoing provision, not applicable to single premium policies shall, to that extent, not be incorporated therein. . . .

Revised Law

Sec. 1101.003. ENTIRE CONTRACT. (a) A life insurance policy constitutes the entire contract between the parties, except that if the application is made a part of the contract, the policy and the application constitute the entire contract.

(b) A life insurance policy must provide that the policy or

the policy and the application for the policy constitute the entire contract between the parties. (V.T.I.C. Arts. 3.44 (part); 21.24.)

Source Law

[Art. 3.44]

3. That the policy, or policy and application, shall constitute the entire contract between the parties and

Art. 21.24. Every policy of insurance issued or delivered within this State by any life insurance company doing business within this State shall contain the entire contract between the parties, and the application therefor may be made a part thereof.

Revised Law

Sec. 1101.004. PREMIUMS PAYABLE IN ADVANCE. A life insurance policy must provide that all premiums are payable in advance at the home office of the company that issues the policy or to an agent of the company on delivery of a receipt signed by at least one of the company officers designated in the policy. (V.T.I.C. Art. 3.44 (part).)

Source Law

1. That all premiums shall be payable in advance either at the home office of the company or to an agent of the company upon delivery of a receipt signed by one or more of the officers who are designated in the policy. . . .

Revised Law

Sec. 1101.005. GRACE PERIOD. (a) Except as provided by Subsection (b), a life insurance policy:

(1) must contain a provision for a grace period of at least one month for the payment of each premium after the first payment during which the policy remains in force; and

(2) may:

(A) provide for an interest charge on a premium paid during a grace period; or

(B) provide that if an insured dies during a grace period the overdue premium will be deducted from any settlement made under the policy.

(b) The commissioner by rule may require a life insurance policy issued under Section 884.402(3) to contain a grace period that is longer than the grace period required by this section.

(V.T.I.C. Art. 3.44 (part).)

Source Law

2. For a grace period of at least one month, for the payment of every premium after the first, which may be subject to

an interest charge, during which month the insurance shall continue in force, which may stipulate that if the insured shall die during the period of grace the overdue premium will be deducted in any settlement under the policy, provided, however, the State Board of Insurance may, by rule, provide for a longer grace period for policies issued under Subsection (b), Section 1, Article 22.23A, Insurance Code. . . .

Revisor's Note

Subdivision 2, V.T.I.C. Article 3.44, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Accordingly, the reference to the State Board of Insurance has been changed to the "commissioner" in the revised law.

Revised Law

Sec. 1101.006. INCONTESTABILITY. (a) Except as provided by Subsection (b), a life insurance policy must provide that a policy in force for two years from its date of issue during the lifetime of the insured is incontestable, except for nonpayment of premiums.

(b) At the option of the company, a life insurance policy may provide that the policy may be contested at any time for violation of policy conditions relating to naval and military service in a time of war. (V.T.I.C. Art. 3.44 (part).)

Source Law

3. That the policy, or policy and application, [shall constitute the entire contract between the parties and] shall be incontestable after it has been in force during the lifetime of the insured for two (2) years from its date, except for non-payment of premiums, and which provisions may, at the option of the company, contain an exception for violation of the conditions of the policy relating to naval and military service in time of war. . . .

Revised Law

Sec. 1101.007. STATEMENTS OF INSURED. A life insurance policy must provide that, in the absence of fraud, a statement made by an insured is considered a representation and not a warranty. (V.T.I.C. Art. 3.44 (part).)

Source Law

4. That all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties. . . .

Revised Law

Sec. 1101.008. ADJUSTMENT OF AMOUNT PAYABLE IF AGE OF INSURED IS UNDERSTATED. A life insurance policy must provide that if the age of an insured has been understated, the amount payable under the policy is the amount that the premium paid would have purchased if the insured's age had been stated correctly. (V.T.I.C. Art. 3.44 (part).)

Source Law

5. That if the age of the insured has been understated, the amount payable under the policy shall be such as the premium paid would have purchased at the correct age. . . .

Revised Law

Sec. 1101.009. POLICY LOANS. (a) The following policies are not required to comply with this section:

- (1) a term life insurance policy;
- (2) a pure endowment contract issued or granted:
 - (A) as an original contract; or
 - (B) in exchange for a lapsed or surrendered policy; or
- (3) a policy that does not provide for cash values or nonforfeiture values and that meets the requirements of Section 884.403(b).

(b) A life insurance policy must provide that the company that issues the policy will loan to the policy owner at a specified interest rate an amount equal to the sum of the policy's cash value and any dividend additions to the policy, or, at the policy owner's option, an amount less than that sum, if:

- (1) the policy is in force;
- (2) the premiums for the policy have been paid for at least three full years; and
- (3) the policy is properly assigned.

(c) A life insurance policy must also provide that:

- (1) a policy loan is secured only by the policy;
- (2) the company may deduct from a policy loan the sum of the amount of existing debt on the policy and the balance of unpaid premiums for the current policy year;
- (3) the company may collect in advance interest on the policy loan to the end of the current policy year; and
- (4) failure to repay the policy loan or interest on the loan does not void the policy until the total amount owed under the loan equals or exceeds the policy's cash value.

(d) A life insurance policy may provide that a policy loan may be deferred for a period not to exceed six months after the date the application for the loan is made.

(e) A life insurance policy may not require a prerequisite to a policy loan if the prerequisite is not required or

authorized by this section. (V.T.I.C. Art. 3.44 (part).)

Source Law

6. That after three (3) full years' premiums have been paid, the company, at any time while the policy is in force, will advance upon proper assignment of the policy and upon the sole security thereof at a specified rate of interest a sum equal to, or at the option of the owner of the policy less than, the cash value of the policy and of any dividend additions thereto; and that the company may deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premiums for the current policy year, and may collect interest in advance on the loan to the end of the current policy year, which provision may also provide that such loans may be deferred for not exceeding six (6) months after the application therefor is made. It shall also be stipulated in the policy that failure to repay any such advance, or to pay interest, shall not void the policy until the total indebtedness thereon to the company shall equal or exceed the cash value. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in term insurance, nor in pure endowments issued or granted as original policies, or in exchange for lapsed or surrendered policies or for policies not providing for cash values or non-forfeiture values meeting the requirements of Subsection (b), Section 1, Article 22.23A, Insurance Code. . . .

Revisor's Note

Subdivision 6, V.T.I.C. Article 3.44, refers to an "advance" of an amount of money against a life insurance policy and to a "loan value" of the advance. The revised law substitutes "loan" for "advance" to ensure consistent use of terminology in this code.

Revised Law

Sec. 1101.010. NONFORFEITURE BENEFITS AND CASH SURRENDER VALUES IN GENERAL. A life insurance policy must provide nonforfeiture benefits, including cash surrender values, in accordance with:

- (1) Subchapter D; or
 - (2) Chapter 1105, for a policy issued on or after the date determined under Section 1105.002(a) or (b), as applicable.
- (V.T.I.C. Art. 3.44 (part).)

Source Law

7. Provisions for non-forfeiture benefits in the event of default in premium payments and for cash surrender values in accordance with the provisions of this Section 7 and Section 8 of this Article 3.44 in the case of policies issued prior to the

operative date of Article 3.44a (the Standard Non-forfeiture Law), and in accordance with provisions of Article 3.44a in the case of policies issued on or after said date. . . . This provision shall not be required in term insurance. . . .

Revisor's Note

Subdivision 7, V.T.I.C. Article 3.44, requires policies issued "prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law)" to contain provisions for nonforfeiture benefits and cash surrender values in accordance with Subdivisions 7 and 8, V.T.I.C. Article 3.44. Policies issued on or after that date are required to contain provisions for nonforfeiture benefits and cash surrender values in accordance with Article 3.44a.

Subdivisions 7 and 8, V.T.I.C. Article 3.44, are revised in this chapter as Subchapter D. Accordingly, the revised law in this section requires policies issued before the "operative date of Article 3.44a" to contain provisions in accordance with that subchapter. Subchapter D also contains Subdivision 9, V.T.I.C. Article 3.44, a provision that is not expressly mentioned in Subdivision 7. In context, however, it is clear that Subdivisions 7, 8, and 9 are intended to operate together and apply to the same group of policies described by Subdivision 7.

V.T.I.C. Article 3.44a is revised as Chapter 1105. Section 13, V.T.I.C. Article 3.44a, which defines the "operative date" of that article, is revised as Section 1105.002. That section of the revised law omits the reference to "the operative date" of the law and substitutes a clear statement of the law's applicability to certain policies. Accordingly, the revised law in this section, for purposes of describing the policies required to contain provisions for nonforfeiture benefits and cash surrender values in accordance with Chapter 1105, omits the reference to "the operative date" and substitutes language consistent with Section 1105.002.

Revised Law

Sec. 1101.011. TIME FOR SETTLEMENT OF CLAIM. A life insurance policy must provide that settlement under the policy after the death of the insured will be made not later than two months after the date of receipt of proof of:

- (1) the death; and
- (2) the right of the claimant to the proceeds of the policy. (V.T.I.C. Art. 3.44 (part).)

Source Law

10. That when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of or not later than two (2) months after due proof of death and the right of the claimant to the proceeds. . . .

Revised Law

Sec. 1101.012. TABLE OF INSTALLMENTS OF PROCEEDS. A life insurance policy that provides that the policy proceeds are payable in installments must include a table that shows the amount of the installments. (V.T.I.C. Art. 3.44 (part).)

Source Law

11. A table showing the amounts of installments in which the policy may provide its proceeds may be payable. . . .

Revised Law

Sec. 1101.013. STATEMENT OF MAXIMUM AMOUNT PAYABLE UNDER FAMILY GROUP LIFE INSURANCE POLICY. A family group life insurance policy must clearly state:

(1) the maximum amount that is payable to the payee in the policy on the death of an insured or insureds; and

(2) any terms under which an amount other than the maximum amount of the policy is payable. (V.T.I.C. Art. 3.44 (part).)

Source Law

12. In all family group life insurance policies there shall be clearly stated the maximum amount which is payable to the payee in the policy in the case of the death of any insured person or persons. Regardless of what the maximum amount of said policy is or may be, any provision for payment other than the full amount of said policy shall be clearly stated in the policy.

[Sections 1101.014-1101.050 reserved for expansion]

SUBCHAPTER B. PROHIBITED POLICY PROVISIONS

Revised Law

Sec. 1101.051. APPLICABILITY OF SUBCHAPTER. Unless otherwise provided by this subchapter, this subchapter applies to a life insurance policy:

(1) issued or delivered in this state; or

(2) issued by a life insurance company organized in this state. (V.T.I.C. Art. 3.45 (part).)

Source Law

Art. 3.45. [No] policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company incorporated under the laws of this State, [if it contains any of the following provisions:]

Revisor's Note

V.T.I.C. Article 3.45 refers to a life insurance company "incorporated" under the laws of this state. The revised law

substitutes "organized" for "incorporated" to provide for consistent use of terminology in this code.

Revised Law

Sec. 1101.052. EXCLUSION. Unless otherwise provided by this subchapter, this subchapter does not apply to a policy issued instead of or in exchange for a policy issued before July 10, 1909. (V.T.I.C. Art. 3.45 (part).)

Source Law

3. . . . No foregoing provision relating to policy forms shall apply to policies issued in lieu of, or in exchange for, any other policies issued before July 10, 1909.

Revised Law

Sec. 1101.053. CERTAIN LIMITATIONS PERIODS. A life insurance policy may not include a provision that limits the time during which an action under the policy may be commenced to a period of less than two years after the date the cause of action accrues. (V.T.I.C. Art. 3.45 (part).)

Source Law

Art. 3.45. No [policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company incorporated under the laws of this State,] if it contains any of the following provisions:

1. A provision limiting the time within which any action at law or in equity may be commenced to less than two (2) years after the cause of action shall accrue. . . .

Revisor's Note

Subdivision 1, V.T.I.C. Article 3.45, refers to an action "at law or in equity." The revised law omits the reference as unnecessary because an action can only be brought at law or in equity.

Revised Law

Sec. 1101.054. RETROACTIVE ISSUANCE OR EFFECT; EXCHANGE OR CONVERSION. (a) Except as provided by Subsection (b), a life insurance policy may not contain a provision under which the policy is issued or takes effect on a date more than six months before the date of the original policy application if the provision causes the insured to rate at an age that is younger than the age of the insured on the date of the application. For the purposes of this subsection, the age of the insured on the date of the application is the age of the insured on the birthday of the insured that is nearest to the date of the application.

(b) An issuer of a life or endowment insurance policy or annuity contract may, with the consent of the policyholder or

contract holder, exchange the policy or contract for, or convert the policy or contract into, a policy of another plan of insurance or an endowment or annuity contract as of a date not earlier than the effective date of the original policy or contract.

(c) If an exchange or conversion is made under Subsection (b) and the newly written policy or contract is issued as of a date earlier than the date of the application for exchange or conversion, the amount of life or endowment insurance or annuity provided under the newly written policy or contract may not exceed the greater of:

(1) the amount that the premium paid for the original policy or contract would have purchased on the plan of the newly written policy or contract for an individual the age of the insured on the effective date of the original policy or contract; or

(2) the amount of the original policy or contract.

(V.T.I.C. Art. 3.45 (part).)

Source Law

2. A provision by which the policy shall purport to be issued or to take effect more than six (6) months before the original application for the insurance was made, if thereby the insured would rate at any age younger than his age at date when the application was made, according to his age at nearest birthday, except that, any life insurance company, with the consent of the policyholder, may exchange, alter, or convert any policy of life or endowment insurance or annuity issued by it for or into a policy of another plan of insurance or annuity as of a date not prior to the effective date of the original policy or annuity being exchanged, altered, or converted. If such newly written policy or annuity is issued as of a date prior to the date of application for exchange, alteration, or conversion, the amount of insurance or annuity thereunder shall not exceed, on the succeeding plan, whichever is the greater of the following two amounts:

a. the amount that the premium paid for the original policy or annuity would have purchased at the age of the insured on the effective date of said original policy or annuity, on the plan of the newly written policy or annuity; or

b. the amount of the original policy or annuity. . . .

Revisor's Note

Subdivision 2, V.T.I.C. Article 3.45, refers to "exchange, alteration, or conversion" of certain policies or contracts. A policy or contract that is altered is converted into another policy or annuity. Therefore, the revised law omits the

references to "alteration" because the meaning of that term is included within the meaning of "conversion."

Revised Law

Sec. 1101.055. SETTLEMENT ON MATURITY LESS THAN FACE VALUE.

(a) Except as provided by Subsection (b), a life insurance policy may not contain a provision for a settlement at maturity that is less than the amount insured on the face of the policy plus the amount of any dividend additions to the policy minus the sum of the amount of any debt to the company that issues the policy and the amount of any premium that may be deducted from the settlement under the terms of the policy.

(b) A life insurance policy may provide for a settlement that will be less than the amount required under Subsection (a) if the death of the insured is:

(1) by the insured's own hand regardless of whether the insured is sane or insane;

(2) caused by following a hazardous occupation that is stated in the policy; or

(3) the result of aviation activities under conditions specified in the policy and approved by the department under Article 3.42. (V.T.I.C. Art. 3.45 (part).)

Source Law

3. A provision for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions, if any, less any indebtedness to the company on the policy, and less any premium that may by the terms of the policy be deducted; provided, however, that any company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations, or in the event the death of the insured should result from aviation activities under the conditions specified in the policy, to be approved by the Board of Insurance Commissioners, as provided in this chapter. . . .

Revisor's Note

(1) Subdivision 3, V.T.I.C. Article 3.45, refers to the "Board of Insurance Commissioners." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other

insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Accordingly, the reference to the Board of Insurance Commissioners has been changed appropriately.

(2) Subdivision 3, V.T.I.C. Article 3.45, provides that the subdivision does not apply to "purely accident and health policies." The revised law omits the provision as unnecessary, because the subdivision only applies to a life insurance policy, and an accident and health policy is not a life insurance policy. The omitted law reads:

3. . . . This provision shall not apply to purely accident and health policies. . . .

(3) Subdivision 3, V.T.I.C. Article 3.45, states that a policy benefit may be reduced for a death resulting from aviation activities "under the conditions specified in the policy, to be approved by the Board of Insurance Commissioners, as provided in this chapter," meaning Chapter 3 of this code. The portions of Chapter 3 that govern approval of life insurance policies are contained in Article 3.42 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 1101.056. PRELIMINARY TERM INSURANCE OF MORE THAN ONE YEAR IN LEVEL PREMIUM POLICY. (a) Sections 1101.051 and 1101.052 do not apply to this section.

(b) This section does not apply to a life insurance policy issued on or after the date determined under Section 1105.002(a) or (b), as applicable.

(c) A level premium life insurance policy may not be issued or sold in this state by any company if the policy provides for more than one year of preliminary term insurance. (V.T.I.C. Art. 3.46.)

Source Law

Art. 3.46. No level premium policy of life insurance shall be issued or sold by any company in this state which provides for more than one year preliminary term insurance. The provisions of this Article shall not apply to policies and contracts issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law).

Revisor's Note

(1) The language in Subsection (a) of the revised law is new and has been added to maintain any distinction that may exist in the applicability of V.T.I.C. Article 3.46, revised in this section, and V.T.I.C. Article 3.45, also revised in this subchapter.

(2) V.T.I.C. Article 3.46 states that the article does not apply to certain "policies and contracts." The article only regulates the issuance or sale of a "policy." Therefore, the revised law omits as unnecessary the reference to "contracts."

[Sections 1101.057-1101.100 reserved for expansion]

SUBCHAPTER C. POLICY PROVISIONS REQUIRED BY OTHER
JURISDICTIONS

Revised Law

Sec. 1101.101. REQUIRED POLICY PROVISIONS. (a) A policy issued in this state by a life insurance company not organized under the laws of this state may contain any provision that the law of the state, territory, district, or county under which the company is organized requires the policy to contain.

(b) Notwithstanding Article 3.42, a policy issued or delivered in another state, territory, district, or county by a life insurance company organized under the laws of this state may contain any provision required by the laws of that state, territory, district, or county. (V.T.I.C. Art. 3.47.)

Source Law

Art. 3.47. The policies of a life insurance company not organized under the laws of this State may contain any provision which the law of the state, territory, district or county under which the company is organized, prescribes shall be in such policies when issued in this State; and the policies of a life insurance company organized under the laws of this State may, when issued or delivered in any other state, territory, district or county contain any provision required by the laws of the state, territory, district or county in which the same are issued, anything in this chapter to the contrary notwithstanding.

Revisor's Note

V.T.I.C. Article 3.47, states that a policy may contain certain provisions "anything in this chapter to the contrary notwithstanding," meaning Chapter 3 of this code. The portions of Chapter 3 that govern approval of life insurance policies are contained in Article 3.42 of this code. The revised law is drafted accordingly.

[Sections 1101.102-1101.150 reserved for expansion]

SUBCHAPTER D. RIGHTS OF INSURED UNDER CERTAIN OLDER
POLICIES

Revised Law

Sec. 1101.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a life insurance policy issued before a date described by Section 1101.010(a)(2). A term life insurance policy is not required to comply with this subchapter. (New.)

Revisor's Note

Section 1101.151 is added to the revised law to clarify the

application of this subchapter.

Revised Law

Sec. 1101.152. STIPULATED FORM OF INSURANCE. In case of a default in the payment of a premium after premiums have been paid for three years, a life insurance policy to which this subchapter applies must contain a provision that secures a stipulated form of insurance on the life of the insured. (V.T.I.C. Art. 3.44 (part).)

Source Law

7. . . . Policies issued prior to the operative date of Article 3.44a shall contain a provision substantially as follows: a provision which, in the event of default in the premium payments after premiums shall have been paid for three (3) full years, shall secure a stipulated form of insurance on the life of the Insured, . . .

Revised Law

Sec. 1101.153. COMPUTATION OF NET VALUE OF STIPULATED FORM OF INSURANCE. (a) Except as provided by Subsection (c), the net value of a life insurance policy secured under Section 1101.152 must be equal to the amount of the reserve on the policy for which premium payment is in default and on any dividend additions to that policy on the date of default, less the sum of:

(1) not more than two and one-half percent of the amount insured under the policy and any existing dividend additions to the policy; and

(2) the amount of any existing indebtedness to the company on the policy.

(b) The reserve described by Subsection (a) excludes any reserve for disability or accidental death benefits.

(c) The net value of a life insurance policy that is secured under Section 1101.152 for a policy other than an industrial life insurance policy and that is issued to insure a female risk may be computed using an age not more than three years younger than the actual age of the insured if the policy uses the same age differential to compute the policy reserve.

(d) Except as provided by Subsection (e), the amount of the policy reserve under Subsection (a) must be computed according to the mortality table, interest rate, and method adopted in the policy for computing the reserve.

(e) In computing the value of paid-up term insurance with any accompanying pure endowment, a rate of mortality may be assumed that is not more than:

(1) 130 percent of the rate of mortality according to the applicable table, or, for a substandard policy, the adopted multiple of that mortality rate, if the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary

Mortality Table is adopted for computing the reserve; or

(2) the rate of mortality shown by the Commissioners 1958 Extended Term Insurance Table, or, for a substandard policy, the adopted multiple of that mortality rate, if the Commissioners 1958 Standard Ordinary Mortality Table is adopted for computing the reserve.

(f) Subject to Subsection (g), a life insurance policy must state:

(1) the amount and term of the insurance to be secured in accordance with Section 1101.152 computed as if there were no indebtedness on the policy and no dividend additions to the policy; and

(2) the mortality table, interest rate, method, and, if the policy is issued to insure the life of a woman, any age differential, that will be used to compute the policy reserve.

(g) A mortality table, interest rate, method, or age differential stated under Subsection (f) must be authorized by law to compute the reserve liability on the policy. (V.T.I.C. Art. 3.44 (part).)

Source Law

7. . . . Policies issued prior to the operative date of Article 3.44a shall contain a provision substantially as follows: . . . the net value of which shall be equal to the reserve (exclusive of any reserve for disability or accidental death benefits) at the date of default on the policy, and on any dividend additions thereto, according to the mortality table, rate of interest and method adopted for computing such reserve, less a sum of not more than two and one-half per cent (2 1/2%) of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy; provided, however, that if the mortality table adopted for computing such reserve is either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table, then in calculating the value of paid-up term insurance with accompanying pure endowment, if any, a rate of mortality may be assumed which is not more than one hundred thirty per cent (130%) of the rate of mortality according to such adopted table or, in case of sub-standard policies, the adopted multiple thereof; provided further, that if the mortality table adopted for computing such reserve is the Commissioners 1958 Standard Ordinary Mortality Table, then in calculating the value of paid-up term insurance with accompanying pure endowment, if any, a rate of mortality may be assumed which is not more than that shown in the Commissioners 1958 Extended Term Insurance Table, or, in case of sub-standard policies, the adopted multiple thereof; and provided further as respects policies on female risks, other than policies of industrial

insurance, the net value of any such stipulated form of insurance may be calculated according to an age not more than three (3) years younger than the actual age of the insured, provided the same age differential has been used in computing the policy reserves under such policies. The policy shall state: (1) the amount and term of the stipulated form of insurance calculated upon the assumption of no indebtedness on the policy and no dividend additions thereto; and (2) the method, rate of interest, and mortality table (including any age differential applicable in making such computations on policies issued to female risks) for computing the policy reserve, which must be such as may be authorized by law for use in computing the reserve liability of the company on such policy. . . .

Revised Law

Sec. 1101.154. SURRENDER OF POLICY FOR SPECIFIED CASH SURRENDER VALUE. (a) A life insurance policy to which this subchapter applies must:

(1) provide within one month after a due date for a premium, after premiums have been paid for three years, the policy may be surrendered to the company that issues the policy at the company's home office in return for an amount equal to the cash value of the policy; and

(2) specify the cash value of the policy, which, subject to Subsection (b), may not be less than the amount that would otherwise be available to secure insurance in accordance with Section 1101.152.

(b) The cash value of the policy may not exceed the amount of the policy reserve.

(c) The policy may provide that the company that issues the policy may defer payment of the cash value of the policy for a period not to exceed six months after the date of application for the payment. (V.T.I.C. Art. 3.44 (part).)

Source Law

7. . . . Policies issued prior to the operative date of Article 3.44a shall contain a provision substantially as follows: Such provision shall also stipulate that the policy may be surrendered to the company at its home office within one month from the due date of any premium for its cash value, which shall be specified in the policy and which shall be at least equal to the sum which would otherwise be available for the purchase of insurance, as aforesaid, but not more than the reserve on the policy, and may stipulate that the company may defer payment for not more than six (6) months after application therefor is made. This provision shall not be required in term insurance. . . .

Revised Law

Sec. 1101.155. CASH VALUE TABLE. A life insurance policy to which this subchapter applies must include a table that shows in dollar amounts the cash value of the policy and the options available to the policy owner if the owner defaults in premium payments during each of the first 20 years that the policy will be in force or each of the years during which premiums are payable, beginning with the first year in which the cash values and options are available. (V.T.I.C. Art. 3.44 (part).)

Source Law

8. In the case of policies issued prior to the operative date of Article 3.44a, a table showing in figures the cash values, and the options available under the policy each year, upon default in premium payments during the first twenty (20) years of the policy or the period during which premiums are payable, beginning with the year in which such values and options become available. . . .

Revised Law

Sec. 1101.156. PURCHASE OF OTHER INSURANCE AND REINSTATEMENT. A life insurance policy to which this subchapter applies must provide that if there is a default in premium payments, the value of the policy shall be applied to the purchase of other insurance and the original life insurance policy may be reinstated within three years after the date of default if:

- (1) other insurance purchased with the value of the original life insurance policy remains in force;
 - (2) the original life insurance policy has not been surrendered to the company and canceled;
 - (3) the company receives evidence of insurability that is satisfactory to the company; and
 - (4) the arrears of premiums are paid with interest.
- (V.T.I.C. Art. 3.44 (part).)

Source Law

9. That if, in event of default in premium payments, the value of the policy shall be applied to the purchase of other insurances; and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three (3) years from such default upon evidence of insurability satisfactory to the company and payments of arrears of premiums with interest. . . .

CHAPTER 1102. PAYMENT OF INSURANCE BENEFITS
IN CURRENCY

- Sec. 1102.001. DEFINITIONS 1411
Sec. 1102.002. BENEFITS PAYABLE IN CURRENCY 1413
Sec. 1102.003. STATEMENT REGARDING VALUE OF FOREIGN
CURRENCY 1413
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CHAPTER 1102. PAYMENT OF INSURANCE BENEFITS
IN CURRENCY

Revised Law

Sec. 1102.001. DEFINITIONS. In this chapter:

- (1) "Insurance policy" means a policy, certificate, or contract of:
- (A) life, term, or endowment insurance, including an annuity or pure endowment contract;
 - (B) group life or term insurance, including a group annuity contract;
 - (C) industrial life insurance;
 - (D) accident or health insurance;
 - (E) group accident or health insurance;
 - (F) hospitalization insurance;
 - (G) group hospitalization insurance;
 - (H) medical or surgical insurance;
 - (I) group medical or surgical insurance; or
 - (J) fraternal benefit insurance.
- (2) "Insurer" means any insurer, including a:
- (A) life, accident, health, or casualty insurance company;
 - (B) mutual life insurance company;
 - (C) mutual insurance company other than a life insurance company;
 - (D) mutual or natural premium life insurance company;
 - (E) general casualty company;
 - (F) Lloyd's plan or a reciprocal or interinsurance exchange;
 - (G) fraternal benefit society; or
 - (H) group hospital service corporation. (V.T.I.C. Art. 3.42A, Sec. (a) (part).)

Source Law

(a) [All benefits payable under] any policy, contract, or certificate of life, term, or endowment insurance, group life or term insurance, industrial life insurance, accident or health insurance, group accident or health insurance, hospitalization insurance, group hospitalization insurance, medical or surgical

insurance, group medical or surgical insurance, fraternal benefit insurance, annuity or pure endowment contract, or group annuity contract [delivered, issued, or used in this state by] a life, accident, health, or casualty insurance company, a mutual life insurance company, mutual insurance company other than life, mutual, or natural premium life insurance company, general casualty company, Lloyd's reciprocal or interinsurance exchange, fraternal benefit society, group hospitalization service, or any other insurer

Revisor's Note

(1) The definition of "insurance policy" is derived from Section (a), V.T.I.C. Article 3.42A. A part of that law has been revised as a definition for drafting convenience and for the convenience of the reader.

(2) Section (a), V.T.I.C. Article 3.42A, refers to a "group hospitalization service." The phrase describes an entity most commonly referred to as a "group hospital service corporation," which is governed by V.T.I.C. Chapter 20, revised as Chapter 842. Consequently, the revised law substitutes "group hospital service corporation" for "group hospitalization service" to provide for consistent use of terminology throughout this code.

Revised Law

Sec. 1102.002. BENEFITS PAYABLE IN CURRENCY. Each benefit payable under an insurance policy delivered, issued, or used in this state by an insurer shall be payable in currency. (V.T.I.C. Art. 3.42A, Sec. (a) (part).)

Source Law

Art. 3.42A. (a) All benefits payable under any policy, contract, or certificate of . . . insurance . . . [, annuity or pure endowment contract, or group annuity contract] delivered, issued, or used in this state by . . . any . . . insurer shall be payable in currency.

Revised Law

Sec. 1102.003. STATEMENT REGARDING VALUE OF FOREIGN CURRENCY. (a) An insurance policy described by Section 1102.002 providing that benefits are payable in foreign currency must include a conspicuous statement that the value of the currency denominated in the policy can fluctuate as compared to the value of United States currency.

(b) The statement must be:

- (1) included as part of the policy; or
- (2) attached to the insurance policy at the time it is issued. (V.T.I.C. Art. 3.42A, Sec. (c).)

Source Law

(c) Any such policy, contract, or certificate of insurance providing that benefits are payable in foreign currency must conspicuously state that the currency in which the policy is denominated can fluctuate in value as compared to the currency of the United States of America or a statement to such effect shall be attached to any such policy upon issue.

Revised Law

Sec. 1102.004. PREVIOUSLY APPROVED INSURANCE POLICY FORM PAYABLE IN FOREIGN CURRENCY. (a) The commissioner may disapprove or withdraw approval of a previously approved insurance policy form that provides benefits payable in foreign currency if the commissioner determines that the foreign currency has been less stable than United States currency in the previous 20-year period.

(b) This section does not require the resubmission for approval of any previously approved insurance policy form unless:

(1) withdrawal of approval is authorized under this section or Article 3.42; or

(2) after notice and hearing, the commissioner determines that approval was obtained by improper means, including by misrepresentation, fraud, or a misleading statement or document. (V.T.I.C. Art. 3.42A, Sec. (b).)

Source Law

(b) In addition to any other ground authorized by this code for disapproval or withdrawal of a previously approved policy form, the board shall have the authority to disapprove or withdraw approval of any such policy, contract, or certificate of insurance, the benefits of which are payable in foreign currency, if the board determines such foreign currency to have been less stable than the currency of the United States over the preceding 20-year period. This article shall not be construed to require the resubmission for reapproval of any heretofore approved policy, contract, or certificate of insurance form, unless withdrawal of such previous approval is authorized under Article 3.42, this article, or unless it is determined, after notice and hearing, that such approval was obtained by misrepresentation, fraud, misleading statements or documentation, or other improper means.

Revisor's Note

(1) Section (b), V.T.I.C. Article 3.42A, provides that the authority of the board over approval of insurance naming a foreign currency for the payment of benefits is "[i]n addition to any other ground authorized by this code for disapproval or

withdrawal of a previously approved policy form." The revised law omits the quoted language as unnecessary. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in conflict. The general principle applies to this revision.

(2) Section (b), V.T.I.C. Article 3.42A, refers to "the board," meaning the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the State Board of Insurance have been changed appropriately.

Revised Law

Sec. 1102.005. RULES. The commissioner may adopt reasonable rules to accomplish the purposes of this chapter, including rules requiring:

- (1) appropriate reserves for insurance policies subject to this chapter; or
- (2) prudent investment of premiums collected from insurance policies subject to this chapter regardless of any other provision of this code related to the investment of money by an insurance company. (V.T.I.C. Art. 3.42A, Sec. (d).)

Source Law

(d) The State Board of Insurance may adopt reasonable rules to carry out the purposes of this article, including but not limited to requiring appropriate reserves for such policies and requiring prudent investment of premiums collected from such insurance without regard to any other provision of this code relating to the investment of funds by insurance companies.

Revisor's Note

Section (d), V.T.I.C. Article 3.42A, provides for the adoption of rules, including "but not limited to" rules regarding certain topics. The revised law omits "but not limited to" as unnecessary because Section 311.005(13), Government Code (Code Construction Act), and Section 312.011(19), Government Code, applicable to the revised law, provide that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

CHAPTER 1103. LIFE INSURANCE POLICY BENEFICIARIES
SUBCHAPTER A. STATUTORY LIFE INSURANCE BENEFICIARIES;
INSURABLE INTEREST

- Sec. 1103.001. APPLICABILITY OF SUBCHAPTER 1417
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[Sections 1103.006-1103.050 reserved for expansion]

SUBCHAPTER B. DESIGNATION OF BENEFICIARY OR OWNER OF LIFE
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- Sec. 1103.101. APPLICABILITY OF SUBCHAPTER 1425
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CHAPTER 1103. LIFE INSURANCE POLICY BENEFICIARIES
SUBCHAPTER A. STATUTORY LIFE INSURANCE BENEFICIARIES;
INSURABLE INTEREST

Revised Law

Sec. 1103.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a life insurance policy issued by a legal reserve life insurance company. (V.T.I.C. Art. 3.49 (part).)

Source Law

Art. 3.49. [Any corporation, partnership, joint stock association or any trust estate doing business for profit, may be named beneficiary in any policy of insurance] issued by a legal

reserve life insurance company [on the life of any officer or stockholder of said corporation, joint stock association or trust estate; or any partnership or member thereof may be the beneficiary in any policy of insurance] issued by a legal reserve life insurance company [upon the life of any member of said partnership; or any religious, educational, eleemosynary, charitable or benevolent institution or undertaking may be named beneficiary in any policy of life insurance] issued by any legal reserve life insurance company [upon the life of any individual]. . . .

Revisor's Note

V.T.I.C. Article 3.49 refers to insurance policies issued by a "legal reserve life insurance company." The article subsequently refers to life insurance policies issued by "legal reserve companies." It is clear from the context that the article applies only to life insurance policies issued by legal reserve life insurance companies. The revised law is drafted accordingly.

Revised Law

Sec. 1103.002. INSURABLE INTEREST OF BENEFICIARY. A beneficiary described by this subchapter who is designated in a life insurance policy has an insurable interest for the face amount of the policy and is entitled to collect that amount. (V.T.I.C. Art. 3.49 (part).)

Source Law

Art. 3.49. . . . The beneficiaries aforementioned shall have an insurable interest for the full face of the policy and shall be entitled to collect same. . . .

Revisor's Note

V.T.I.C. Article 3.49 grants an insurable interest to certain classes of beneficiaries designated in life insurance policies, including classes of beneficiaries designated in life insurance policies "heretofore issued." It is clear that the legislature included the provision regarding policies "heretofore issued" to extend the application of the article to beneficiaries of policies issued before the effective date of the article. The provision, having accomplished its purpose on the date the article became effective, is executed law. Therefore, the revised law omits the provision as unnecessary. The omitted law reads:

Art. 3.49. . . . On all policies of life insurance heretofore issued by legal reserve companies in which any of the aforementioned shall have been designated beneficiaries in the policies, said

beneficiaries shall have an insurable interest to the full extent of the face of the policy and be entitled to collect same.

Revised Law

Sec. 1103.003. CORPORATION, JOINT STOCK ASSOCIATION, OR TRUST ESTATE AS BENEFICIARY. A corporation, a joint stock association, or a trust estate that is engaging in business for profit may be designated as a beneficiary in a policy that insures the life of an officer or stockholder of the corporation, joint stock association, or trust estate. (V.T.I.C. Art. 3.49 (part).)

Source Law

Art. 3.49. Any corporation, partnership, joint stock association or any trust estate doing business for profit, may be named beneficiary in any policy of insurance . . . on the life of any officer or stockholder of said corporation, joint stock association or trust estate; or

Revisor's Note

V.T.I.C. Article 3.49 states that a "corporation, partnership, joint stock association or . . . trust estate doing business for profit" may be a beneficiary of a policy insuring the life of an officer or stockholder of "said corporation, joint stock association or trust estate." The revised law omits the reference to a "partnership" because it is clear from the context of Article 3.49 that the substantive provisions of the article that apply to a partnership are contained in the portion of the article revised as Section 1103.004.

Revised Law

Sec. 1103.004. PARTNERSHIP OR PARTNER AS BENEFICIARY. A partnership or a member of a partnership may be designated as a beneficiary in a policy that insures the life of a member of the partnership. (V.T.I.C. Art. 3.49 (part).)

Source Law

Art. 3.49. . . . any partnership or member thereof may be the beneficiary in any policy of insurance . . . upon the life of any member of said partnership; or

Revised Law

Sec. 1103.005. RELIGIOUS, EDUCATIONAL, ELEEMOSYNARY, CHARITABLE, OR BENEVOLENT INSTITUTION OR UNDERTAKING AS BENEFICIARY. A religious, educational, eleemosynary, charitable, or benevolent institution or undertaking may be designated as a beneficiary in a policy that insures the life of an individual. (V.T.I.C. Art. 3.49 (part).)

Source Law

Art. 3.49. . . . any religious, educational, eleemosynary, charitable or benevolent institution or undertaking may be named beneficiary in any policy of life insurance . . . upon the life of any individual. . . .

[Sections 1103.006-1103.050 reserved for expansion]

SUBCHAPTER B. DESIGNATION OF BENEFICIARY OR OWNER OF LIFE
INSURANCE POLICY; INSURABLE INTEREST

Revised Law

Sec. 1103.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a life insurance policy issued by:

- (1) a legal reserve life insurance company; or
- (2) a mutual assessment life insurance company.

(V.T.I.C. Art. 3.49-1, Secs. 1 (part), 2 (part), 3 (part).)

Source Law

Sec. 1. [Any person of legal age may apply for insurance on his life] in any legal reserve or mutual assessment life insurance company

Sec. 2. [Any person of legal age whose life is insured under any existing or future policy of insurance] by any legal reserve or mutual assessment life insurance company [may . . . designate in writing as the beneficiary or beneficiaries thereof]

Sec. 3. [Any person of legal age may consent in writing to the purchase of or the application for an individual or group insurance policy or policies] issued by any legal reserve or mutual assessment life insurance company

Revised Law

Sec. 1103.052. LIBERAL CONSTRUCTION. This subchapter shall be liberally construed to implement the purposes of this subchapter. (V.T.I.C. Art. 3.49-1, Sec. 5 (part).)

Source Law

Sec. 5. . . . This Act shall be liberally construed to effectuate its purposes, and

Revisor's Note

(1) Section 5, V.T.I.C. Article 3.49-1, refers to the cumulative effect of that article. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless it provides otherwise or unless the statutes are in conflict. The general principle applies to this revision. The omitted law reads:

Sec. 5. The provisions of this Act are cumulative of existing law in Texas, statutory and otherwise, on the question of insurable interest

(2) Section 5, V.T.I.C. Article 3.49-1, provides that the article is "enacted in specific recognition" of certain provisions of V.T.I.C. Article 21.23, revised as Subchapter D. The revised law omits the provision as unnecessary because Subchapter D applies to a life insurance policy governed by this subchapter without a specific reference to Subchapter D in this subchapter. The omitted law reads:

Sec. 5. . . . This Act is enacted in specific recognition of the provisions of Article 21.23 of the Texas Insurance Code, 1951, that the interest of any beneficiary in a life insurance policy is forfeited if the beneficiary is the principal or an accomplice in bringing about the death of the insured. . . .

(3) Section 5, V.T.I.C. Article 3.49-1, states that the provisions of the article may not be "limited or restricted by previous declarations or holdings" of the courts of this state that define the term insurable interest. Under accepted general principles of statutory construction, declarations or holdings of a court that are made before a statute is enacted do not limit or restrict the effect of the statute. Therefore, the revised law omits the provision as unnecessary. The omitted law reads:

Sec. 5. . . . its provisions are not to be limited or restricted by previous declarations or holdings of the Courts of Texas defining the term insurable interest.

Revised Law

Sec. 1103.053. INSURABLE INTEREST OF BENEFICIARY, OWNER, TRANSFEREE, OR ASSIGNEE. (a) Except as provided by Subsection (b), a beneficiary or owner of a life insurance policy who is designated in accordance with this subchapter or an entity to which a life insurance policy or an interest, benefit, right, or title in a life insurance policy is transferred or assigned in accordance with this subchapter has an insurable interest in the life of the individual who is insured under the policy.

(b) An individual, partnership, association, corporation, or other legal entity that is directly or indirectly engaged in the business of burying the dead does not directly or indirectly have an insurable interest in the life of an individual unless the interest is established under other applicable statutory law

or under common law. (V.T.I.C. Art. 3.49-1, Secs. 1 (part), 2 (part), 3 (part), 4.)

Source Law

Sec. 1. . . . with respect to any such policy or policies any such beneficiary or owner so designated shall at all times thereafter have an insurable interest in the life of such person, except as provided in Section 4 of this Act.

Sec. 2. . . . with respect to any such policy any such beneficiary, transferee or assignee shall at all times thereafter have an insurable interest in the life of such person, except as provided in Section 4 of this Act.

Sec. 3. . . . with respect to any such policy or policies any such owner or beneficiary shall at all times thereafter have an insurable interest in the life of such person, except as provided in Section 4 of this Act.

Sec. 4. Notwithstanding the provisions thereof, no person, persons, partnership, association, corporation or other legal entity, or any combination thereof, directly or indirectly engaged in the business of burying the dead shall have or obtain, directly or indirectly, any insurable interest in the life of any person by virtue of Sections 1, 2, or 3 of this Act, or shall have an insurable interest in the life of any person unless such insurable interest be established under and by virtue of other applicable statutory or common law.

Revisor's Note

(1) Section 4, V.T.I.C. Article 3.49-1, restricts the ability of a "person, persons, partnership, association, corporation or other legal entity, or any combination thereof" engaged in a certain business to have an insurable interest in the life of a person. The revised law omits the reference to "any combination thereof" as unnecessary because if a prohibition or power applies to one of the listed entities, it is clear from the context of the article that the prohibition or power continues to apply to that entity even in combination with other entities. Similar changes have been made throughout the subchapter.

(2) Section 4, V.T.I.C. Article 3.49-1, states that certain entities may not "have or obtain" an insurable interest in the life of a person under certain sections of the article. The revised law omits the reference to "obtain" as unnecessary because in the context of Article 3.49-1, the meaning of that term is included within the meaning of "have."

Revised Law

Sec. 1103.054. DESIGNATION OF BENEFICIARY OR OWNER IN POLICY APPLICATION. An individual of legal age may:

(1) apply for a policy insuring the individual's life;

and

(2) designate in writing in the application for the policy any individual, partnership, association, corporation, or other legal entity as:

(A) a beneficiary of the policy;

(B) an absolute or partial owner of the policy;

or

(C) both a beneficiary and an absolute or partial owner of the policy. (V.T.I.C. Art. 3.49-1, Sec. 1 (part).)

Source Law

Art. 3.49-1

Sec. 1. Any person of legal age may apply for insurance on his life . . . and in such application designate in writing any person, persons, partnership, association, corporation or other legal entity, or any combination thereof, as the beneficiary or beneficiaries, or the absolute or partial owner or owners, or both beneficiary and owner, of any policy or policies issued in connection with such application; and

Revised Law

Sec. 1103.055. DESIGNATION OF BENEFICIARY OF POLICY; TRANSFER OR ASSIGNMENT OF POLICY OR INTEREST. An individual of legal age who is insured under a life insurance policy may in writing:

(1) in a manner and to the extent permitted by the policy, designate any individual, partnership, association, corporation, or other legal entity as a beneficiary of the policy; and

(2) in a manner and to the extent not prohibited by the policy, transfer or assign to any entity described by Subdivision (1):

(A) the policy; or

(B) an interest, benefit, right, or title in the policy. (V.T.I.C. Art. 3.49-1, Sec. 2 (part).)

Source Law

Sec. 2. Any person of legal age whose life is insured under any existing or future policy of insurance . . . may, in the manner and to the extent permitted by the policy, designate in writing as the beneficiary or beneficiaries thereof any person, persons, partnership, association, corporation or other legal entity, or any combination thereof, and in addition, in any manner and to any extent not prohibited by the terms of the policy, may transfer or assign in writing any such policy or any interest, benefit, right or title therein to any person, persons, partnership, association, corporation or other legal entity, or any combination thereof, and

Revisor's Note

Section 2, V.T.I.C. Article 3.49-1, grants certain authority to a person of legal age whose life is insured under "any existing or future" insurance policy. It is clear that the legislature included the quoted language to extend the application of the section to a person of legal age whose life is insured under a policy issued before the effective date of the section. The quoted language, having accomplished its purpose on the date the section became effective, is executed law. Therefore, the revised law omits the quoted language as unnecessary.

Revised Law

Sec. 1103.056. PURCHASE OF OR APPLICATION FOR POLICY BY THIRD PARTY. An individual of legal age may in a single written document:

- (1) consent to the purchase of or application for an individual or group life insurance policy by a third party; and
- (2) designate or consent to the designation of any individual, partnership, association, corporation, or other legal entity as:

- (A) a beneficiary of the policy;
- (B) an absolute or partial owner of the policy;

or

- (C) both a beneficiary and an absolute or partial owner of the policy. (V.T.I.C. Art. 3.49-1, Sec. 3 (part).)

Source Law

Sec. 3. Any person of legal age may consent in writing to the purchase of or the application for an individual or group insurance policy or policies . . . by a third party or parties and in such written document consent to or designate any person, persons, partnership, association, corporation or other legal entity, or any combination thereof, as the absolute or partial owner or owners or beneficiary, or any combination thereof, of any policy or policies issued in connection with such consent or designation; and

[Sections 1103.057-1103.100 reserved for expansion]

SUBCHAPTER C. PAYMENT OF PROCEEDS

Revised Law

Sec. 1103.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a life insurance policy issued by a legal reserve life insurance company. (V.T.I.C. Art. 3.48 (part).)

Source Law

Art. 3.48. [Whenever any person shall procure the issuance of a policy of insurance on his or her life] in any legal reserve

life insurance company

Revisor's Note

V.T.I.C. Article 3.48 provides that the article applies to "policies now in existence [and] . . . policies hereafter written." It is clear that the legislature included the application provision to extend the application of the article to policies issued before the effective date of the article. The provision, having accomplished its purpose on the date the article became effective, is executed law. Therefore, the revised law omits the provision as unnecessary. The omitted law reads:

Art. 3.48. . . . The provisions of this article shall apply to all policies now in existence as well as to all policies hereafter written.

Revised Law

Sec. 1103.102. PAYMENT TO DESIGNATED BENEFICIARY. (a) Except as provided by Subsection (b), if an individual obtains a policy insuring the individual's life, designates in writing a beneficiary to receive the proceeds of the policy, and files the written designation with the company, the company shall pay the proceeds that become due on the death of the insured to the designated beneficiary.

(b) A company that issues a life insurance policy is not required to pay the proceeds of the policy to a designated beneficiary under Subsection (a) if the company receives notice of an adverse claim to the proceeds from a person who has a bona fide legal claim to all or part of the proceeds. (V.T.I.C. Art. 3.48 (part).)

Source Law

Art. 3.48. Whenever any person shall procure the issuance of a policy of insurance on his or her life . . . and designate in writing filed with the company the beneficiary to receive the proceeds thereof, the company issuing such policy shall, in the absence of the receipt by it of notice of an adverse claim to the proceeds of the policy from one having a bona fide legal claim to such proceeds or a part thereof, pay such proceeds becoming due on the death of the insured to the person so designated as beneficiary, and

Revised Law

Sec. 1103.103. DISCHARGE OF LIABILITY. In the absence of notice under Section 1103.102(b) received by the company before the date of payment, a company that issues a life insurance policy is discharged from all liability under the policy if the

company pays the proceeds of the policy to a designated beneficiary under Section 1103.102(a). (V.T.I.C. Art. 3.48 (part).)

Source Law

Art. 3.48. . . . [the company issuing such policy shall, in the absence of the receipt by it of notice of an adverse claim to the proceeds of the policy . . . pay such proceeds becoming due on the death of the insured . . . and] such payment so made, in the absence of such notice received by the insurance company prior to the date of the payment of the proceeds, shall discharge the company from all liability under the policy. . . .

Revised Law

Sec. 1103.104. INTEREST ON PROCEEDS. (a) Interest on the proceeds of a life insurance policy accrues from the date the company that issues the policy receives due proof of loss until the date the company accepts the claim and offers to pay.

(b) Interest that accrues under this section shall be paid at the same time that the proceeds of the policy are paid under this subchapter.

(c) The interest rate under this section is the rate provided in the policy or, if a rate is not provided in the policy, the rate at which interest accrues on proceeds that are left on deposit with the company that issues the policy.

(V.T.I.C. Art. 3.48 (part).)

Source Law

Art. 3.48. . . . Interest shall accrue from the date due proof of loss is received by the insurance company to the date the insurer accepts the claim and offers to pay. Interest shall be paid at the same time that proceeds from the policy are paid under this article. The rate of interest shall be either the rate so provided in the policy or, if there is no such provision in the policy, the rate of interest on proceeds left on deposit with the insurer. . . .

[Sections 1103.105-1103.150 reserved for expansion]

SUBCHAPTER D. FORFEITURE OF BENEFICIARY'S RIGHTS

Revised Law

Sec. 1103.151. FORFEITURE. A beneficiary of a life insurance policy or contract forfeits the beneficiary's interest in the policy or contract if the beneficiary is a principal or an accomplice in wilfully bringing about the death of the insured.

(V.T.I.C. Art. 21.23 (part).)

Source Law

Art. 21.23. The interest of a beneficiary in a life insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in willfully bringing about the death of the insured. . . .

Revisor's Note

(1) V.T.I.C. Article 21.23 refers to an insurance "policy or contract." The article subsequently refers to an insurance "policy." For consistency, the revised law refers to an insurance "policy or contract" throughout Subchapter D.

(2) V.T.I.C. Article 21.23 refers to the beneficiary of a life insurance policy or contract "heretofore or hereafter issued." It is clear that the legislature included the quoted language to extend the application of the article to the beneficiary of a policy or contract issued before the effective date of the article. The quoted language, having accomplished its purpose on the date the article became effective, is executed law. Therefore, the revised law omits the quoted language as unnecessary.

Revised Law

Sec. 1103.152. PAYMENT OF PROCEEDS TO CONTINGENT BENEFICIARY OR TO RELATIVE. (a) Except as provided by Subsection (b), if a beneficiary of a life insurance policy or contract forfeits an interest in the policy or contract under Section 1103.151, a contingent beneficiary named by the insured in the policy or contract is entitled to receive the proceeds of the policy or contract.

(b) A contingent beneficiary is not entitled to receive the proceeds of a life insurance policy or contract if the contingent beneficiary forfeits an interest in the policy or contract under Section 1103.151.

(c) If there is not a contingent beneficiary entitled to receive the proceeds of a life insurance policy or contract under Subsection (a), the nearest relative of the insured is entitled to receive those proceeds. (V.T.I.C. Art. 21.23 (part).)

Source Law

Art. 21.23. . . . When such is the case, a contingent beneficiary named by the insured in the policy shall receive the insurance unless that contingent beneficiary was also a principal or an accomplice in willfully bringing about the death of the insured. If no contingent beneficiary is named by the insured in the policy or if all contingent beneficiaries named by the insured in the policy were principals or accomplices in willfully bringing about the death of the insured, the nearest relative of

the insured shall receive said insurance.

CHAPTER 1104. LIFE INSURANCE AND ANNUITY CONTRACTS ISSUED
TO CERTAIN PERSONS

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CERTAIN MINORS

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CHAPTER 1104. LIFE INSURANCE AND ANNUITY CONTRACTS ISSUED
TO CERTAIN PERSONS

SUBCHAPTER A. LIFE INSURANCE AND ANNUITY CONTRACTS WITH
CERTAIN MINORS

Revised Law

Sec. 1104.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a policy or contract issued by a stock or mutual legal reserve life insurance company that:

- (1) is licensed by the department to transact the business of life insurance in this state; and
 - (2) maintains the legal reserve required by state law.
- (V.T.I.C. Art. 3.49-2 (part).)

Source Law

Art. 3.49-2. . . .

(a) This Act applies only to policies and contracts issued by a stock or mutual legal reserve life insurance company that maintains the full legal reserve required under the laws of this State, and that is licensed by the State Board of Insurance to transact the business of life insurance in this State.

. . .

Revisor's Note

V.T.I.C. Article 3.49-2 refers to a company that is licensed by the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of

Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. The reference to the State Board of Insurance has been changed appropriately.

Revised Law

Sec. 1104.002. CERTAIN TRANSACTIONS EXEMPT. This subchapter does not apply to a transaction between an insurance company and a minor described by Section 1104.003(a) that occurs after the date the company receives at its home office or its principal office in this state written notice from a parent of the minor stating that a parent or the parents of the minor elect that this subchapter not apply to the minor specifically named in the notice. (V.T.I.C. Art. 3.49-2 (part).)

Source Law

Art. 3.49-2. . . .

(g) If notice in writing be furnished by the father or mother of any such minor to the insurance company at its home office or its principal office in this State that they or either of them elect that this Act shall not apply to their specified minor child, then the provisions of this Act shall not apply to any transaction by or with any such specified minor child occurring subsequent to the receipt of such notice.

Revised Law

Sec. 1104.003. AUTHORITY TO CONTRACT. (a) Subject to this subchapter, a minor 14 years of age or older who is without a guardian of the estate of the minor may:

(1) contract for or otherwise acquire a life, term, or endowment insurance policy or an annuity contract, including:

(A) applying for the policy or contract; and

(B) making agreements with respect to the policy or contract or a right, privilege, or benefit under the policy or contract;

(2) exercise all rights and powers in regard to the policy or contract in the same manner as an adult; and

(3) surrender an interest in the policy or contract and give a discharge for a benefit paid under the policy or contract.

(b) An insurance policy acquired by a minor under this subchapter must:

(1) be owned by the minor; and

(2) insure the life of:

(A) the minor;

(B) a spouse, child, parent, grandparent, or

sibling of the minor; or

(C) another in whose life the minor has an insurable interest.

(c) A minor who acquires an annuity contract under this subchapter is the annuitant of the contract during the minor's life.

(d) A minor who acquires an insurance policy or an annuity contract under this subchapter, the estate of the minor, or a spouse, child, parent, grandparent, or sibling of the minor must be the beneficiary of the policy or, in the case of an annuity contract, of the death benefit of the contract. (V.T.I.C. Art. 3.49-2 (part).)

Source Law

Art. 3.49-2. A minor not less than fourteen (14) years of age and without a guardian of his estate may, notwithstanding such minority, contract for or otherwise acquire policies of life, term or endowment insurance, or annuity contracts, or both, and may exercise all rights and powers with respect to or under such policies or contracts heretofore or hereafter issued as though of full legal age, and may surrender his interests therein and give a valid discharge for any benefit or money payable thereunder, and . . . subject, however, to the following conditions and limitations:

. . .

(b) The policies of insurance subject to this Act shall be only those policies owned by the minor and insuring the life of the minor, his father, mother, spouse, child, brother, sister, grandfather, grandmother or a person in whose life the minor may have an insurable interest.

(c) The minor shall be the annuitant of any such annuity contract during his life.

(d) The minor, his estate, father, mother, spouse, child, brother, sister, grandfather, or grandmother shall be the beneficiary or beneficiaries of any such policies and of the death benefit of any such annuity contracts.

. . .

(f) During the time in which any such minor is not less than fourteen (14) years of age his applications for such policies and contracts and all agreements with respect to same, or the rights, privileges, and benefits thereunder, may be made by the minor and

Revisor's Note

V.T.I.C. Article 3.49-2 authorizes a minor to "give a valid discharge for any benefit or money payable" under an insurance policy or annuity contract. The revised law omits "valid" as unnecessary because the word does not add to the clear meaning of

the law. A statute would not authorize the giving of an invalid or improper discharge. The revised law omits the reference to "money" because it is included in the meaning of "benefit."

Revised Law

Sec. 1104.004. WRITTEN APPROVAL BY ADULT REQUIRED. An application or agreement made by a minor under this subchapter must be signed or approved in writing by:

- (1) a parent, grandparent, or adult sibling of the minor; or
- (2) if the minor does not have a parent, grandparent, or adult sibling, an adult eligible under the Texas Probate Code to be appointed guardian of the estate of the minor. (V.T.I.C. Art. 3.49-2 (part).)

Source Law

Art. 3.49-2. . . .

(f) . . . shall also be signed or approved in writing by either his father, mother, grandfather, grandmother or adult brother or sister, or if there be none of the foregoing, then by an adult person eligible under the Texas Probate Code to be appointed guardian of the estate of such minor.

. . .

Revised Law

Sec. 1104.005. RESCISSION BECAUSE OF MINORITY PROHIBITED. A minor who acquires a policy or contract under this subchapter may not by reason of minority rescind, avoid, or repudiate:

- (1) the policy or contract; or
- (2) the exercise of a right or privilege, or the receipt of any benefit, under the policy or contract. (V.T.I.C. Art. 3.49-2 (part).)

Source Law

Art. 3.49-2. . . . such minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, or the exercise of any right or privilege or the receipt of any benefit or payment thereunder

Revised Law

Sec. 1104.006. EFFECT ON POLICY OR CONTRACT. This subchapter does not modify any provision in a policy or contract. (V.T.I.C. Art. 3.49-2 (part).)

Source Law

Art. 3.49-2. . . .

(e) Nothing contained in this Act shall be deemed to alter, amend or modify any provision of any policy or contract.

. . .

Revisor's Note

V.T.I.C. Article 3.49-2 provides that the article does not "alter, amend or modify" a policy or contract. The references to "alter" and "amend" are omitted from the revised law because those terms are included in the meaning of "modify."

[Sections 1104.007-1104.020 reserved for expansion]

SUBCHAPTER B. TRUSTEE NAMED AS BENEFICIARY OF
LIFE INSURANCE POLICY

Revised Law

Sec. 1104.021. TRUSTEE NAMED AS BENEFICIARY IN POLICY. (a) An individual may make a trust agreement providing that the proceeds of a life insurance policy insuring the individual be made payable to a trustee named as beneficiary in the policy. The validity of a trust agreement or declaration of trust that designates a beneficiary of a life insurance policy is not affected by whether any corpus of the trust exists in addition to the right of the trustee to receive insurance proceeds.

(b) Life insurance policy proceeds described by Subsection (a) shall be paid to the trustee. The trustee shall hold and dispose of the proceeds as provided by the trust agreement. (V.T.I.C. Art. 3.49-3, Sec. 1, as added Acts 60th Leg., R.S., Ch. 701.)

Source Law

Art. 3.49-3.

Sec. 1. Life insurance may be made payable to a trustee to be named as beneficiary in the policy and the proceeds of such insurance shall be paid to such trustee and be held and disposed of by the trustee as provided in a trust agreement made by the insured during his lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such insurance proceeds as beneficiary.

Revised Law

Sec. 1104.022. TRUSTEE NAMED AS BENEFICIARY IN WILL. (a) A life insurance policy may provide that the beneficiary of the policy be a trustee designated by will in accordance with the policy provisions and the requirements of the insurance company.

(b) Except as provided by Subsection (c), on probate of a will described by Subsection (a), the life insurance policy proceeds shall be paid to the trustee. The trustee shall hold and dispose of the proceeds as provided under the terms of the will as the will existed on the date of the testator's death and in the same manner as other testamentary trusts are administered.

(c) Except as otherwise provided by agreement with the insurance company during the life of the insured, the insurance company shall pay the life insurance policy proceeds to the

executors, administrators, or assigns of the insured if, during the 18-month period beginning on the first day after the date of the insured's death:

(1) a qualified trustee does not make to the insurance company a claim to the proceeds; or

(2) the insurance company is provided satisfactory evidence showing that there is or will be no trustee to receive the proceeds. (V.T.I.C. Art. 3.49-3, Sec. 2, as added Acts 60th Leg., R.S., Ch. 701.)

Source Law

Sec. 2. A policy of life insurance may designate as beneficiary a trustee or trustees named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurance company. Upon probate of the will the proceeds of such insurance shall be payable to the trustee or trustees to be held and disposed of under the terms of the will as they exist as of the date of the death of the testator and in the same manner as other testamentary trusts are administered; but if no qualified trustee makes claim to the proceeds from the insurance company within eighteen months after the death of the insured, or if satisfactory evidence is furnished to the insurance company within such eighteen month period showing that there is or will be no trustee to receive the proceeds, payment shall be made by the insurance company to the executors, administrators or assigns of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured.

Revised Law

Sec. 1104.023. DEBTS; INHERITANCE TAX. Life insurance policy proceeds received by a trustee under this subchapter are not subject to debts of the insured or to inheritance tax to any greater extent than if the proceeds were payable to a beneficiary other than the executor or administrator of the insured's estate. (V.T.I.C. Art. 3.49-3, Sec. 3, as added Acts 60th Leg., R.S., Ch. 701.)

Source Law

Sec. 3. The proceeds of the insurance as received by the trustee or trustees shall not be subject to debts of the insured nor to inheritance tax to any greater extent than if such proceeds were payable to beneficiaries other than the executor or administrator of the estate of the insured.

Revised Law

Sec. 1104.024. COMMINGLING. Life insurance policy proceeds received by a trustee under this subchapter may be commingled

with any other assets properly coming into the trust. (V.T.I.C. Art. 3.49-3, Sec. 4, as added Acts 60th Leg., R.S., Ch. 701.)

Source Law

Sec. 4. Such insurance proceeds so held in trust may be commingled with any other assets which may properly come into such trust.

Revised Law

Sec. 1104.025. CERTAIN PRIOR BENEFICIARY DESIGNATIONS NOT AFFECTED. This subchapter does not affect the validity of a life insurance policy beneficiary designation made before July 1, 1967, that names as beneficiary a trustee of a trust established by will. (V.T.I.C. Art. 3.49-3, Sec. 5, as added Acts 60th Leg., R.S., Ch. 701.)

Source Law

Sec. 5. Nothing in this Act shall affect the validity of any life insurance policy beneficiary designation heretofore made naming trustees of trusts established by will.

Revisor's Note

Section 5, V.T.I.C. Article 3.49-3, as added by Chapter 701, Acts of the 60th Legislature, Regular Session, 1967, refers to a designation "heretofore made." The effective date of that act, which added Article 3.49-3 to the Insurance Code, was July 1, 1967, and the revised law is drafted accordingly.

CHAPTER 1105. STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE
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1989 1477

CHAPTER 1105. STANDARD NONFORFEITURE LAW FOR
LIFE INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 1105.001. SHORT TITLE. This chapter may be cited as
the Standard Nonforfeiture Law for Life Insurance. (V.T.I.C.
Art. 3.44a, Sec. 1.)

Source Law

Art. 3.44a

Sec. 1. This Article shall be known as the Standard
Non-forfeiture Law for Life Insurance.

Revised Law

Sec. 1105.002. APPLICABILITY OF CHAPTER. (a) This chapter
applies to a policy issued by a company on or after January 1,
1974.

(b) This chapter also applies to a policy issued by a
company after a date specified in a written notice:

(1) that was filed by the company with the State Board
of Insurance after August 23, 1963, but before January 1, 1974;
and

(2) under which the company filing the notice elected
to comply before January 1, 1974, with the law codified by this
chapter. (V.T.I.C. Art. 3.44a, Sec. 13.)

Source Law

Sec. 13. After the effective date of this Article, any
company may file with the State Board of Insurance a written
notice of its election to comply with the provisions of this
Article after a specified date before January 1, 1974. After the
filing of such notice, then upon such specified date (which shall
be the operative date for such company), this Article shall
become operative with respect to the policies thereafter issued
by such company. If a company makes no such election, the
operative date of this Article for such company shall be January
1, 1974.

Revisor's Note

Section 13, V.T.I.C. Article 3.44a, refers to "the effective date of this Article." The revised law substitutes August 23, 1963, the effective date of Article 3.44a, for the quoted language.

Revised Law

Sec. 1105.003. EXEMPTIONS. (a) This chapter does not apply to:

- (1) reinsurance;
- (2) group insurance;
- (3) pure endowment;
- (4) an annuity or reversionary annuity contract;
- (5) a term policy of uniform amount that:
 - (A) does not provide guaranteed nonforfeiture or endowment benefits or renewal of the policy;
 - (B) has a term of 20 years or less that expires before the insured reaches 71 years of age; and
 - (C) has uniform premiums that are payable during the entire term of the policy;
- (6) a term policy of decreasing amount:
 - (A) that does not provide guaranteed nonforfeiture or endowment benefits; and
 - (B) on which each adjusted premium, computed as specified by Subchapter B or D, is less than the adjusted premium computed in that manner for a term policy of uniform amount, or a renewal of a term policy of uniform amount, that:
 - (i) does not provide guaranteed nonforfeiture or endowment benefits;
 - (ii) is issued at the same age and for the same initial amount of insurance;
 - (iii) has a term of 20 years or less and expires before the insured reaches 71 years of age; and
 - (iv) has uniform premiums that are payable during the entire term of the policy;
- (7) a policy:
 - (A) that does not provide guaranteed nonforfeiture or endowment benefits; and
 - (B) for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, computed as specified by Section 1105.007, 1105.008, 1105.009, Subchapter B, or Subchapter D, exceeds 2-1/2 percent of the amount of insurance at the beginning of the same policy year;
- (8) a policy delivered outside this state through an agent or other representative of the company that issued the policy; or
- (9) a policy that:
 - (A) does not provide for cash values or

nonforfeiture values; and

(B) meets the requirements of Section 884.403(b).

(b) For purposes of determining the applicability of this chapter, the age at expiry of a joint term life insurance policy is the age at expiry of the oldest insured life on that date.

(V.T.I.C. Art. 3.44a, Sec. 12.)

Source Law

Sec. 12. This Article shall not apply to any of the following:

- (a) reinsurance,
- (b) group insurance,
- (c) pure endowment,
- (d) annuity or reversionary annuity contract,
- (e) term policy of uniform amount, which provides no

guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy,

(f) term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in Sections 5, 6, 7, and 8, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy,

(g) policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in Sections 3, 4, 5, 6, 7, and 8 exceeds two and one-half per cent (2 1/2%) of the amount of insurance at the beginning of the same policy year,

(h) policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy, nor to any

(i) policy issued not providing for cash values or nonforfeiture values meeting the requirements of Subsection (b), Section 1, Article 22.23A, Insurance Code.

For purposes of determining the applicability of this Article, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

Revised Law

Sec. 1105.004. REQUIRED NONFORFEITURE PROVISIONS. (a) A

life insurance policy delivered or issued for delivery in this state must contain in substance the provisions prescribed by Subsections (b), (c), and (d) or corresponding provisions that:

- (1) in the opinion of the department, are at least as favorable to the defaulting or surrendering policyholder; and
- (2) essentially comply with Section 1105.012.

(b) A life insurance policy must provide that if there is a default in the payment of a premium the company, on proper request not later than the 60th day after the due date of the premium that is in default, will grant a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of that due date, in the amount specified by this chapter. A company may substitute for the paid-up nonforfeiture benefit required by this subsection an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits. To elect an alternative paid-up nonforfeiture benefit under this subsection, the person entitled to make the election must submit a proper request not later than the 60th day after the due date of the premium that is in default.

(c) A life insurance policy must:

- (1) provide that on surrender of the policy not later than the 60th day after the due date of a premium payment that is in default the company will pay, in lieu of a paid-up nonforfeiture benefit, a cash surrender value in the amount specified by this chapter if the premiums have been paid for at least:

- (A) three full years for a policy of ordinary insurance; or

- (B) five full years for a policy of industrial insurance;

- (2) provide that a specified paid-up nonforfeiture benefit is effective as specified by the policy unless the person entitled to make the election elects another available option not later than the 60th day after the due date of a premium payment that is in default; and

- (3) provide that on surrender of the policy not later than the 30th day after any policy anniversary the company will pay a cash surrender value in the amount specified by this chapter if:

- (A) the policy has become paid up by completion of all premium payments; or

- (B) the policy is continued under a paid-up nonforfeiture benefit that became effective on or after:

- (i) the third policy anniversary for a policy of ordinary insurance; or

- (ii) the fifth policy anniversary for a

policy of industrial insurance.

(d) A life insurance policy must contain:

(1) subject to Subsection (e), a statement of:

(A) the mortality table, interest rate, and method used to compute the cash surrender values and the paid-up nonforfeiture benefits available under the policy, if the policy:

(i) causes, on a basis guaranteed by the policy, unscheduled changes in benefits or premiums; or

(ii) provides an option for changes in benefits or premiums other than a change to a new policy; or

(B) the mortality table and interest rate used to compute the cash surrender values and the paid-up nonforfeiture benefits available under the policy, with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary during the first 20 policy years or the term of the policy, whichever is shorter, if the policy is a policy other than one described by Paragraph (A)(i) or (ii);

(2) a statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by the insurance laws of this state;

(3) an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy and, if a detailed statement of the method used to compute the values and benefits shown in the policy is not stated in the policy, a statement that the method of computation has been filed with the department; and

(4) a statement of the method to be used to compute the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary after the last anniversary for which those values and benefits are consecutively shown in the policy.

(e) The values and benefits described by Subsection (d)(1)(B) must be computed on the assumption that:

(1) there are no dividends or paid-up additions credited to the policy; and

(2) there is no indebtedness to the company on the policy.

(f) A provision prescribed by Subsection (b), (c), or (d) or a portion of a provision that does not apply because of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

(g) A company shall reserve the right to defer payment of any cash surrender value for a period of six months after demand for payment of the cash surrender value and surrender of the

policy. (V.T.I.C. Art. 3.44a, Sec. 2.)

Source Law

Sec. 2. In the case of policies issued on and after the operative date of this Article (as defined in Section 13), no policy of life insurance, except as stated in Section 12, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the State Board of Insurance are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified, and are essentially in compliance with Section 11 of this law:

(1) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(2) That, upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(3) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.

(4) That, if the policy shall have become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(5) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or

premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(6) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the State in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

Revisor's Note

(1) Section 2, V.T.I.C. Article 3.44a, provides that certain provisions must be included in insurance policies issued "on and after the operative date of this Article (as defined in Section 13)." Section 13 is revised as Section 1105.002, which omits the reference to "the operative date" of the law and substitutes a clear statement of the law's applicability to certain life insurance policies. Accordingly, the revised law

omits the quoted language as unnecessary.

(2) Section 2, V.T.I.C. Article 3.44a, refers to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the State of Board of Insurance have been changed appropriately.

(3) Section 2(6), V.T.I.C. Article 3.44a, requires a life insurance policy to state that "the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered." The revised law substitutes "this state" for "the state in which the policy is delivered" because Section 2, V.T.I.C. Article 3.44a, applies only to a life insurance policy "delivered or issued for delivery in this state."

(4) Section 2(6), V.T.I.C. Article 3.44a, requires certain life insurance policies to include a statement that the method of computing values and benefits shown in the policy has been filed with "the insurance supervisory official of the State in which the policy is delivered." The revised law substitutes "department," meaning the department of insurance, for the quoted language because Section 2, V.T.I.C. Article 3.44a, applies only to a life insurance policy "delivered or issued for delivery in this state."

Revised Law

Sec. 1105.005. COMPUTATION OF ADJUSTED PREMIUMS AND PRESENT VALUES; MORTALITY TABLES AND INTEREST RATES. (a) Except as provided by Subsection (b) or (e) or Section 1105.055, 1105.152, or 1105.153, an adjusted premium or present value determined under this chapter must be computed on the basis of:

(1) the Commissioners 1941 Standard Ordinary Mortality Table for a policy of ordinary insurance; and

(2) the Commissioners 1941 Standard Industrial Mortality Table for a policy of industrial insurance.

(b) For a category of ordinary insurance issued to insure a female risk, an adjusted premium or present value may be computed according to an age not more than three years younger than the actual age of the insured.

(c) All computations must be made using the rate of interest, not to exceed 3-1/2 percent a year, specified by the policy for computing cash surrender values and paid-up nonforfeiture benefits.

(d) In the computation of the present value of any paid-up

term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 percent of the rates shown in the applicable mortality table.

(e) Subject to approval by the department, a company may specify a mortality table other than the applicable table required by this section for use in computing an adjusted premium or present value for insurance issued on a substandard basis. (V.T.I.C. Art. 3.44a, Sec. 5(d).)

Source Law

(d) Except as otherwise provided in Sections 6 and 7, all adjusted premiums and present values referred to in this Article shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3 1/2%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty per cent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

Revisor's Note

Section 5(d), V.T.I.C. Article 3.44a, states that all adjusted premiums and present values under Article 3.44a must be computed using the mortality tables specified in Section 5(d) "[e]xcept as otherwise provided in Sections 6 and 7." Sections 6 and 7 are revised as Sections 1105.152 and 1105.153, respectively. However, for certain policies, Section 8(e), V.T.I.C. Article 3.44a, revised as Section 1105.055, prescribes a mortality table different than the ones specified in Section 5(d). Accordingly, the revised law includes a reference to Section 1105.055.

Revised Law

Sec. 1105.006. DETERMINATION OF RATED AGE. For purposes of

this chapter, the date a policy is issued is the date as of which the rated age of the insured is determined. (V.T.I.C. Art. 3.44a, Secs. 5(a) (part), 8(a) (part).)

Source Law

Sec. 5. (a) . . . The date of issue of a policy for the purpose of this Section shall be the date as of which the rated age of the insured is determined.

Sec. 8. (a) . . . The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

Revised Law

Sec. 1105.007. COMPUTATION OF CASH SURRENDER VALUE FOLLOWING DEFAULT. (a) Any cash surrender value available under a policy on a default in payment of a premium due on a policy anniversary, regardless of whether required by Section 1105.004, must be an amount not less than the amount, if any, by which the present value, on the policy anniversary, of the future guaranteed benefits that would have been available under the policy, including any existing paid-up additions, had there not been a default exceeds the sum of:

(1) the then present value of the adjusted premiums as determined under Subchapter B or D that correspond to premiums that would have become due on and after the policy anniversary; and

(2) the amount of any indebtedness to the company on the policy.

(b) Subsection (a) does not require a cash surrender value greater than the reserve for the policy computed as provided by Article 3.28.

(c) For a policy to which Subchapter B applies and that by rider or supplemental policy provision provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium, the cash surrender value computed under Subsection (a) must be an amount not less than the sum of:

(1) the cash surrender value as computed under Subsection (a) for an otherwise similar policy issued at the same age without the rider or supplemental policy provision; and

(2) the cash surrender value as computed under Subsection (a) for a policy that provides only the benefits provided by the rider or supplemental policy provision.

(d) For a family policy to which Subchapter B applies and that defines a primary insured and provides term insurance on the life of the spouse of the primary insured that expires before the spouse reaches 71 years of age, the cash surrender value as

computed under Subsection (a) must be an amount not less than the sum of:

(1) the cash surrender value as computed under Subsection (a) for an otherwise similar policy issued at the same age that does not provide the term insurance on the life of the spouse; and

(2) the cash surrender value as computed under Subsection (a) for a policy that provides only the benefits provided by the term insurance on the life of the spouse.

(V.T.I.C. Art. 3.44a, Sec. 3 (part).)

Source Law

Sec. 3. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by Section 2, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (a) the then present value of the adjusted premiums as defined in Sections 5, 6, 7, and 8, corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the policy. The preceding sentence shall not require any cash surrender value greater than the reserve for the policy calculated as provided by Article 3.28.

Provided, however, that for any policy issued on or after the operative date of Section 8 as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in the first paragraph of this Section shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

Provided, further, that for any family policy issued on or after the operative date of Section 8 as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one (71), the cash surrender value referred to in the first paragraph of this Section shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in such paragraph for a policy which

provides only the benefits otherwise provided by such term insurance on the life of the spouse.

. . .

Revisor's Note

Section 3, V.T.I.C. Article 3.44a, refers to insurance policies "issued on or after the operative date of Section 8 as defined therein." Section 8 is revised as Subchapter B, which omits the reference to "the operative date" of the law and substitutes a clear statement of the law's applicability to certain life insurance policies. Accordingly, the revised law substitutes a reference to "a policy to which Subchapter B applies" for "a policy issued on or after the operative date of Section 8."

Revised Law

Sec. 1105.008. COMPUTATION OF CASH SURRENDER VALUE ON SURRENDER FOLLOWING POLICY ANNIVERSARY. Any cash surrender value available not later than the 30th day after the date of a policy anniversary under a policy paid up by completion of all premium payments or a policy continued under any paid-up nonforfeiture benefit, regardless of whether required by Section 1105.004, must be an amount not less than the present value, on the policy anniversary, of the future guaranteed benefits available under the policy, including any existing paid-up additions, less any indebtedness to the company on the policy. (V.T.I.C. Art. 3.44a, Sec. 3 (part).)

Source Law

Sec. 3. . . .

Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by Section 2, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

Revised Law

Sec. 1105.009. COMPUTATION OF PAID-UP NONFORFEITURE BENEFITS. Any paid-up nonforfeiture benefit available under the policy on default in the payment of a premium due on a policy anniversary must be such that its present value as of the policy anniversary is at least equal to:

(1) the cash surrender value then available under the policy; or

(2) if a cash surrender value is not available under the policy, the cash surrender value that would have been

required by this chapter in the absence of the condition that premiums must have been paid for at least a specified period. (V.T.I.C. Art. 3.44a, Sec. 4.)

Source Law

Sec. 4. Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this Article in the absence of the condition that premiums shall have been paid for at least a specified period.

Revised Law

Sec. 1105.010. PRORATION OF VALUES; NET VALUE OF PAID-UP ADDITIONS. (a) Any cash surrender value and any paid-up nonforfeiture benefit available under a policy on default in the payment of a premium due at any time other than on the policy anniversary must be computed with allowance for the lapse of time and the payment of fractional premiums after the preceding policy anniversary, except that a cash surrender value or nonforfeiture benefit is not required unless the cash surrender value or nonforfeiture benefit was required on the preceding policy anniversary.

(b) A value determined under Sections 1105.005-1105.009, Subchapter B, or Subchapter D may be computed on the assumption that any death benefit is payable at the end of the policy year of death.

(c) The net value of any paid-up additions, other than paid-up term additions, may not be less than the amounts used to provide those additions. (V.T.I.C. Art. 3.44a, Sec. 10 (part).)

Source Law

Sec. 10. Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary; provided, however, such cash surrender value or nonforfeiture benefit shall not be required unless such cash surrender value or nonforfeiture benefit was required on the preceding policy anniversary. All values referred to in Sections 3, 4, 5, 6, 7, and 8 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall not be less than the amounts used to provide such additions. . . .

Revisor's Note

Section 10, V.T.I.C. Article 3.44a, refers to "the last preceding policy anniversary." The revised law omits "last" as unnecessary. "The preceding" means "the last preceding."

Revised Law

Sec. 1105.011. INCLUSION OF CERTAIN ADDITIONAL BENEFITS IN COMPUTING NONFORFEITURE BENEFITS NOT REQUIRED. (a) Notwithstanding Section 1105.007 or 1105.008, additional benefits described by Subsection (b), and premiums for those benefits, may not be included in computing a cash surrender value or nonforfeiture benefits required by this chapter. Additional benefits described by Subsection (b) are not required to be included in any paid-up nonforfeiture benefits.

(b) This section applies to additional benefits payable:

- (1) in the event of death or dismemberment by accident;
- (2) in the event of total and permanent disability;
- (3) as reversionary annuity or deferred reversionary annuity benefits;
- (4) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this chapter would not apply;
- (5) as term insurance on the life of a child that:
 - (A) is provided in a policy on the life of a parent of the child;
 - (B) expires before the child reaches 26 years of age;
 - (C) is uniform in amount after the child reaches one year of age; and
 - (D) has not become paid up by reason of the death of a parent of the child; or
- (6) as other policy benefits additional to life insurance and endowment benefits. (V.T.I.C. Art. 3.44a, Sec. 10 (part).)

Source Law

Sec. 10. . . . Notwithstanding the provisions of Section 3, additional benefits payable

- (a) in the event of death or dismemberment by accident or accidental means,
- (b) in the event of total and permanent disability,
- (c) as reversionary annuity or deferred reversionary annuity benefits,
- (d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this Article would not apply,
- (e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of

the child if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child, and

(f) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this Article, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

Revisor's Note

Section 10(a), V.T.I.C. Article 3.44a, refers to death or dismemberment "by accident or accidental means." The reference to "accidental means" is omitted from the revised law because "accidental means" is included within the meaning of "accident."

Revised Law

Sec. 1105.012. PROGRESSION OF CASH SURRENDER VALUES. (a) This section applies only to a policy issued on or after January 1, 1985.

(b) Any cash surrender value available under a policy to which this section applies on default in the payment of a premium due on any policy anniversary must be in an amount that does not differ by more than two-tenths of one percent of the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years, from the sum of:

(1) the greater of:

(A) zero; or

(B) the basic cash value as determined under

Subsection (c); and

(2) the present value of any existing paid-up additions minus the amount of any indebtedness to the company under the policy.

(c) The basic cash value must be equal to the present value, on the applicable policy anniversary, of the future guaranteed benefits that would have been available under the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, had there not been a default, less the then present value of the nonforfeiture factors specified by Subsection (d) corresponding to premiums that would have become due on and after that anniversary. The effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described by Section 1105.007 or 1105.151, as applicable, must be the same as the effects specified by Section 1105.007 or 1105.151, as applicable, on the cash surrender values determined under the applicable section.

(d) The nonforfeiture factor for each policy year must be an amount equal to a percentage of the adjusted premium for the policy year, as computed under Section 1105.052 or 1105.151, as applicable. That percentage must:

(1) be the same percentage for each policy year between the second policy anniversary and the later of:

(A) the fifth policy anniversary; or

(B) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of:

(i) the amount of insurance, if the insurance is uniform in amount; or

(ii) the average amount of insurance at the beginning of each of the first 10 policy years; and

(2) be such that each percentage after the later of the policy anniversaries specified by Subdivision (1) applies to at least five consecutive policy years.

(e) Notwithstanding Subsection (d), the basic cash value may not be less than the value that would be obtained if the adjusted premiums for the policy, as computed under Section 1105.052 or 1105.151, as applicable, were substituted for the nonforfeiture factors in the computation of the basic cash value.

(f) In this section:

(1) an adjusted premium or present value for a particular policy must be computed on the same mortality and interest bases as those used to demonstrate that the policy complies with the other sections of this chapter; and

(2) the cash surrender values must include any endowment benefits available under the policy.

(g) The amount of any cash surrender value available other than on default in payment of a premium due on a policy anniversary, and the amount of any paid-up nonforfeiture benefits available under the policy on default in the payment of a premium, must be determined in a manner consistent with the manner specified by Section 1105.004, 1105.007, 1105.008, 1105.009, 1105.010, 1105.011, or Subchapter B to determine the analogous minimum amount. The amounts of any cash surrender value or paid-up nonforfeiture benefits granted in connection with additional benefits, such as those listed in Section 1105.011(b), must comply with the principles of this section. (V.T.I.C. Art. 3.44a, Sec. 11.)

Source Law

Sec. 11. This Section, in addition to all other applicable sections of this law, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under

the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one per cent (2/10 of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years, from the sum of (a) the greater of zero and the basic cash value hereinafter specified and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in Section 3 or 5, whichever is applicable, shall be the same as are the effects specified in Section 3 or 5, whichever is applicable, on the cash surrender values defined in such applicable Section.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in Section 5 or 8, whichever is applicable. Such percentage (a) must be the same percentage for each policy year between the second policy anniversary and the later of (1) the fifth policy anniversary and (2) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one per cent (2/10 of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and (b) must be such that no percentage after the later of the two (2) policy anniversaries specified in the preceding item (a) may apply to fewer than five (5) consecutive policy years. Notwithstanding the provisions contained in (a) and (b) of this paragraph, no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in Section 5 or 8, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this Section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this Article. The cash surrender values referred to in this Section shall include

any endowment benefits provided for in the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in Sections 2, 3, 4, 8, and 10. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in items (a) through (f) in Section 10 shall conform with the principles of this Section 11.

Revisor's Note

Section 11, V.T.I.C. Article 3.44a, provides that it applies to certain life insurance policies "in addition to all other applicable sections of this law." The revised law omits the quoted language because other applicable sections of Article 3.44a apply by their own terms, and it is unnecessary to include an express statement of the applicability of those provisions.

[Sections 1105.013-1105.050 reserved for expansion]

SUBCHAPTER B. COMPUTATION OF ADJUSTED PREMIUMS USING
NONFORFEITURE NET LEVEL PREMIUM METHOD

Revised Law

Sec. 1105.051. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to a policy issued on or after January 1, 1989.

(b) This subchapter also applies to a policy issued by a company after the date specified in a written notice:

(1) that was filed with the State Board of Insurance after August 31, 1981, but before January 1, 1989; and

(2) under which the company filing the notice elected to comply before January 1, 1989, with the law codified by this subchapter. (V.T.I.C. Art. 3.44a, Secs. 8(a) (part), (h).)

Source Law

Sec. 8. (a) This Section shall apply to all policies issued on or after the operative date of this Section 8 as defined herein. . . .

(h) After the effective date of this Section 8, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1989, which shall be the operative date of this Section for such company. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1989.

Revisor's Note

Section 8(h), V.T.I.C. Article 3.44a, refers to "the effective date of this Section 8." Section 8 was added by Chapter 508, Acts of the 67th Legislature, Regular Session, 1981. The revised law substitutes August 31, 1981, the effective date of that chapter, for the quoted language.

Revised Law

Sec. 1105.052. COMPUTATION OF ADJUSTED PREMIUMS USING NONFORFEITURE NET LEVEL PREMIUM METHOD. (a) Except as provided by Section 1105.054 and subject to Subsection (b), the adjusted premiums for a policy to which this section applies must be computed on an annual basis and must be a uniform percentage of the respective premiums specified by the policy for each policy year so that the present value, at the date of issue of the policy, of all adjusted premiums is equal to the sum of:

- (1) the then present value of the future guaranteed benefits available under the policy;
- (2) one percent of:
 - (A) the amount of insurance, if the insurance is uniform in amount; or
 - (B) the average amount of insurance at the beginning of each of the first 10 policy years; and
- (3) 125 percent of the nonforfeiture net level premium as determined under Subsection (d).

(b) The amount of premiums specified by the policy and used in computing adjusted premiums under Subsection (a) does not include:

- (1) an amount payable as an extra premium to cover an impairment or special hazard; or
- (2) any uniform annual contract charge or policy fee specified by the policy in a statement of the method to be used to compute the cash surrender values and paid-up nonforfeiture benefits.

(c) In applying the percentage specified by Subsection (a)(3), a nonforfeiture net level premium may not be considered to exceed four percent of:

- (1) the amount of insurance, if the insurance is uniform in amount; or
- (2) the average amount of insurance at the beginning of each of the first 10 policy years.

(d) The nonforfeiture net level premium must be equal to the present value, at the date of issue of the policy, of the guaranteed benefits available under the policy divided by the present value, on the date of issue of the policy, of an annuity of one per year payable on the date of issue of the policy and on each anniversary of the policy on which a premium becomes due. (V.T.I.C. Art. 3.44a, Secs. 8(a) (part), (b).)

Source Law

Sec. 8. (a) . . . Except as provided in Section 8(d), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

(1) the then present value of the future guaranteed benefits provided for by the policy;

(2) one per cent (1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and

(3) one hundred twenty-five per cent (125%) of the nonforfeiture net level premium as hereinafter defined.

Provided, however, that in applying the percentage specified in (3) above no nonforfeiture net level premium shall be deemed to exceed four per cent (4%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. . . .

(b) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

Revised Law

Sec. 1105.053. COMPUTATION OF AMOUNTS FOR POLICY WITH CHANGING BENEFITS OR PREMIUMS. (a) This section applies only to a policy that:

(1) causes, on a basis guaranteed by the policy, unscheduled changes in benefits or premiums; or

(2) provides an option for changes in benefits or premiums other than a change to a new policy.

(b) The adjusted premiums and present values as to a policy to which this section applies must initially be computed on the assumption that future benefits and premiums will not change from those specified on the date the policy is issued. At the time of a change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values

must be recomputed on the assumption that future benefits and premiums will not change from those specified by the policy immediately after the change.

(c) Except as provided by Section 1105.054, the recomputed future adjusted premiums as to a policy to which this section applies must be a uniform percentage of the respective future premiums specified by the policy for each policy year, so that the present value, at the time of change to the newly defined benefits or premiums, of all future adjusted premiums is equal to the amount by which the sum of the then present value of the then future guaranteed benefits available under the policy and the additional expense allowance, as computed under Subsection (e), if any, exceeds the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(d) The amount of future premiums specified by the policy and used in computing adjusted premiums under Subsection (c) does not include:

(1) an amount payable as an extra premium to cover an impairment or special hazard; or

(2) any uniform annual contract charge or policy fee specified by the policy in a statement of the method to be used to compute the cash surrender values and paid-up nonforfeiture benefits.

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of:

(1) one percent of the amount, if any, by which the average amount of insurance at the beginning of each of the first 10 policy years after the change exceeds the average amount of insurance before the change at the beginning of each of the first 10 policy years after the time of the most recent previous change or, if there has not been a previous change, the date the policy is issued; and

(2) 125 percent of any increase in the nonforfeiture net level premium.

(f) The recomputed nonforfeiture net level premium must be equal to the quotient of:

(1) the sum of:

(A) the nonforfeiture net level premium applicable before the change multiplied by the present value of an annuity of one per year payable on each anniversary of the policy on or after the date of the change on which a premium would have become due had the change not occurred; and

(B) the present value of the increase in future guaranteed benefits available under the policy; divided by

(2) the present value of an annuity of one per year payable on each anniversary of the policy, on or after the date of the change, on which a premium becomes due. (V.T.I.C.

Art. 3.44a, Sec. 8(c).)

Source Law

(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

Except as otherwise provided in Section 8(d), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (A) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (i) one per cent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty-five per cent (125%) of the increase, if positive, in the nonforfeiture net level premium.

The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (A) by (B) where (A) equals the sum of (i) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and

(ii) the present value of the increase in future guaranteed benefits provided for by the policy, and (B) equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

Revised Law

Sec. 1105.054. COMPUTATION OF AMOUNTS FOR POLICY ISSUED ON SUBSTANDARD BASIS. (a) This section applies only to a policy issued on a substandard basis that provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance. This section applies notwithstanding any provision of this subchapter to the contrary.

(b) Adjusted premiums and present values as to a policy to which this section applies may be computed as if the policy were issued to provide the higher uniform amounts of insurance of an otherwise similar policy issued on the standard basis. (V.T.I.C. Art. 3.44a, Sec. 8(d).)

Source Law

(d) Notwithstanding any other provisions of this Section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

Revised Law

Sec. 1105.055. USE OF MORTALITY TABLES AND INTEREST RATES WITH NONFORFEITURE NET LEVEL PREMIUM METHOD. (a) Subject to Subsections (c)-(i), an adjusted premium or present value computed under this subchapter must be computed:

(1) for a policy of ordinary insurance:

(A) on the basis of the Commissioners 1980 Standard Ordinary Mortality Table; or

(B) at the option of the company for any one or more specified plans of life insurance, on the basis of the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; and

(2) for a policy of industrial insurance, on the basis of the Commissioners 1961 Standard Industrial Mortality Table.

(b) Subject to Subsections (c)-(i), computations on each policy issued in a particular calendar year must be made using a

rate of interest not to exceed the nonforfeiture interest rate as defined by Section 1105.056 for a policy issued in that calendar year.

(c) At the option of the company, computations for each policy issued in a particular calendar year may be made using a rate of interest not to exceed the nonforfeiture interest rate, as defined by Section 1105.056, for a policy issued in the preceding calendar year.

(d) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, regardless of whether required by Section 1105.004, must be computed on the basis of the mortality table and rate of interest used to determine the amount of the paid-up nonforfeiture benefit and any paid-up dividend additions.

(e) A company may compute the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate not less than the rate specified by the policy for computing cash surrender values.

(f) In the computation of the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than the rates shown in:

(1) the Commissioners 1980 Extended Term Insurance Table, for a policy of ordinary insurance; or

(2) the Commissioners 1961 Industrial Extended Term Insurance Table, for a policy of industrial insurance.

(g) For a policy issued on a substandard basis, the computation of any adjusted premium or present value may be based on appropriate modifications to a table described by Subsection (f).

(h) Any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for:

(1) the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors; or

(2) the Commissioners 1980 Extended Term Insurance Table.

(i) Any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for:

(1) the Commissioners 1961 Standard Industrial Mortality Table; or

(2) the Commissioners 1961 Industrial Extended Term Insurance Table. (V.T.I.C. Art. 3.44a, Sec. 8(e).)

Source Law

(e) All adjusted premiums and present values referred to in this Section shall for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners 1980 Standard Ordinary Mortality Table or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this Section for policies issued in that calendar year. Provided, however, that:

(1) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this Section, for policies issued in the immediately preceding calendar year.

(2) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by Section 2, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(3) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(5) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(6) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the State Board of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select

Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table.

(7) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the State Board of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.

Revisor's Note

(1) Section 8(e)(1), V.T.I.C. Article 3.44a, refers to "the immediately preceding calendar year." The revised law omits "immediately" as unnecessary. "The preceding" means "the immediately preceding."

(2) Sections 8(e)(6) and (7), V.T.I.C. Article 3.44a, refer to a "regulation." The revised law substitutes "rule" for "regulation" because that is the term more commonly used and is the term used by Chapter 2001, Government Code (Administrative Procedure Act). Also, under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 1105.056. NONFORFEITURE INTEREST RATE. The annual nonforfeiture interest rate for a policy issued in a particular calendar year is equal to 125 percent of the calendar year statutory valuation interest rate for that policy as defined by Article 3.28, rounded to the nearest one-fourth of one percent. (V.T.I.C. Art. 3.44a, Sec. 8(f).)

Source Law

(f) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five per cent (125%) of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law, rounded to the nearer one-fourth of one per cent (1/4 of 1%).

Revisor's Note

Section 8(f), V.T.I.C. Article 3.44a, refers to "the Standard Valuation Law." That law is contained in Article 3.28, Insurance Code, and the revised law substitutes a reference to Article 3.28.

Revised Law

Sec. 1105.057. REFILEING OF POLICY PROVISIONS NOT REQUIRED. Notwithstanding any provision of this code to the contrary, as to a policy to which this subchapter applies, a refiling of nonforfeiture values or of the method of computing nonforfeiture

values for a previously approved policy form that involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any provision of the policy form. (V.T.I.C. Art. 3.44a, Sec. 8(g).)

Source Law

(g) Notwithstanding any other provision in this Code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any provisions of that policy form.

[Sections 1105.058-1105.100 reserved for expansion]

SUBCHAPTER C. NONFORFEITURE BENEFITS
FOR CERTAIN PLANS

Revised Law

Sec. 1105.101. NONFORFEITURE BENEFITS FOR INDETERMINATE PREMIUM PLANS AND CERTAIN OTHER PLANS. (a) This section applies to a plan of life insurance that:

(1) provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience; or

(2) is such that minimum values cannot be determined by a method described by Sections 1105.004-1105.009, Subchapter B, or Subchapter D.

(b) The department must be satisfied that:

(1) the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by Sections 1105.004-1105.009, Subchapter B, or Subchapter D; and

(2) the benefits and the pattern of premiums of the plan are not such as to mislead prospective policyholders or insured persons.

(c) The cash surrender values and paid-up nonforfeiture benefits provided by the plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this subchapter as determined under rules adopted by the commissioner.

(d) Notwithstanding any other law of this state, any policy, contract, or certificate providing life insurance under the plan must be approved by the department before the plan may be marketed, issued, delivered, or used in this state. (V.T.I.C. Art. 3.44a, Sec. 9.)

Source Law

Sec. 9. In the case of any plan of life insurance which

provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in Section 2, 3, 4, 5, 6, 7, or 8 herein, then:

(a) The State Board of Insurance must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by Section 2, 3, 4, 5, 6, 7, or 8 herein.

(b) The State Board of Insurance must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds.

(c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by regulations promulgated by the State Board of Insurance.

(d) Notwithstanding any other provision in the laws of this state, any policy, contract, or certificate providing life insurance under any such plan must be affirmatively approved by the State Board of Insurance before it can be marketed, issued, delivered, or used in this state.

Revisor's Note

Section 9(c), V.T.I.C. Article 3.44a, refers to "regulations." The revised law substitutes "rules" for "regulations" for the reasons stated in Revisor's Note (2) to Section 1105.055.

[Sections 1105.102-1105.150 reserved for expansion]

SUBCHAPTER D. COMPUTATION OF ADJUSTED PREMIUMS FOR CERTAIN POLICIES

Revised Law

Sec. 1105.151. COMPUTATION OF ADJUSTED PREMIUMS FOR CERTAIN POLICIES ISSUED BEFORE JANUARY 1, 1989. (a) This section applies only to a policy issued before January 1, 1989, to which Subchapter B does not apply.

(b) The adjusted premiums for a policy to which this section applies must be computed on an annual basis or, at the option of the company, on a fully continuous basis if that basis is consistent with actual policy provisions and the use of that basis is specified by the policy.

(c) Except as provided by Subsection (f), the adjusted premiums must be a uniform percentage of the respective premiums specified by the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, so that the present value, as of the date the

policy is issued, of all the adjusted premiums is equal to the sum of:

(1) the then present value of the future guaranteed benefits available under the policy;

(2) two percent of:

(A) the amount of insurance, if the insurance is uniform in amount; or

(B) the equivalent uniform amount of insurance, as determined under this section, if the amount of insurance varies with the duration of the policy;

(3) 40 percent of the adjusted premium for the first policy year; and

(4) 25 percent of the lesser of:

(A) the adjusted premium for the first policy year; or

(B) the adjusted premium for a whole life policy of the same or an equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance.

(d) In applying the percentages specified by Subsections (c)(3) and (4), an adjusted premium may not be considered to exceed four percent of the amount of insurance or equivalent uniform amount.

(e) For purposes of this section, for a policy that provides an amount of insurance that varies with the duration of the policy:

(1) except as provided by Subdivision (2), the equivalent uniform amount of insurance is considered to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; and

(2) if the policy is issued on the life of a child younger than 10 years of age, the equivalent uniform amount of insurance may be computed as though the amount of insurance provided by the policy before the insured reaches 10 years of age were the amount provided by the policy at age 10.

(f) The adjusted premiums for a policy that provides term insurance benefits by rider or a supplemental policy provision must be equal to the adjusted premiums for an otherwise similar policy issued at the same age without the term insurance benefits, increased, during the period for which premiums for the term insurance benefits are payable, by the adjusted premiums for the term insurance. The adjusted premiums specified by this subsection must be computed separately in the manner specified by Subsections (b)-(e). (V.T.I.C. Art. 3.44a, Secs. 5(a) (part),

(b), (c).)

Source Law

Sec. 5. (a) This Section 5 shall not apply to policies issued on or after the operative date of Section 8 as defined therein. Except as provided in Section 5(c), the adjusted premiums for any policy shall be calculated on an annual basis, or at the option of the company on a fully continuous basis provided such basis is consistent with actual policy provisions and the use of such basis is specified therein, and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(1) the then present value of the future guaranteed benefits provided for by the policy;

(2) two per cent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;

(3) forty per cent (40%) of the adjusted premium for the first policy year;

(4) twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (3) and (4) above, no adjusted premium shall be deemed to exceed four per cent (4%) of the amount of insurance or uniform amount equivalent thereto. . . .

(b) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this Section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

(c) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision

shall be equal to (1) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (2) the adjusted premiums for such term insurance, the foregoing items (1) and (2) being calculated separately and as specified in Sections 5(a) and 5(b).

Revisor's Note

Section 5(a), V.T.I.C. Article 3.44a, states that it does not apply to insurance policies "issued on or after the operative date of Section 8 as defined therein." The revised law provides that it applies only to "a policy issued before January 1, 1989, to which Subchapter B does not apply" and omits the reference to "the operative date of Section 8" for the reason stated in the revisor's note to Section 1105.007.

Revised Law

Sec. 1105.152. COMPUTATION OF ADJUSTED PREMIUMS FOR CERTAIN ORDINARY POLICIES ISSUED BEFORE JANUARY 1, 1989. (a) Except as provided by Subsection (b), this section applies only to an ordinary policy to which Subchapter B does not apply and that is issued on or after January 1, 1974 and before January 1, 1989.

(b) This section also applies to an ordinary policy issued by a company after a date specified in a written notice:

(1) that was filed by the company with the State Board of Insurance after August 23, 1963, but before January 1, 1974; and

(2) under which the company filing the notice elected to comply before January 1, 1974, with the law codified by this section.

(c) An adjusted premium or present value determined under this chapter as to a policy to which this section applies must be computed on the basis of the Commissioners 1958 Standard Ordinary Mortality Table.

(d) A computation as to a policy to which this section applies must be made using the rate of interest specified by the policy for computing cash surrender values and paid-up nonforfeiture benefits, except that the rate of interest may not exceed:

(1) 3-1/2 percent a year for a policy issued before June 14, 1973;

(2) 4 percent a year for a policy issued on or after June 14, 1973, and before August 29, 1977;

(3) 5-1/2 percent a year for a policy issued on or after August 29, 1977, other than a single premium whole life or endowment insurance policy; or

(4) 6-1/2 percent a year for a single premium whole life or endowment insurance policy issued on or after August 29,

1977.

(e) For a category of ordinary insurance issued to insure a female risk:

(1) an adjusted premium or present value for a policy issued before August 29, 1977, may be computed according to an age not more than three years younger than the actual age of the insured; and

(2) an adjusted premium or present value for a policy issued on or after August 29, 1977, may be computed according to an age not more than six years younger than the actual age of the insured.

(f) In the computation of the present value of paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may not exceed the rates shown in the Commissioners 1958 Extended Term Insurance Table.

(g) Subject to approval by the department, a company may specify a mortality table other than the table required by this section for use in computing an adjusted premium or present value for insurance issued on a substandard basis. (V.T.I.C. Art. 3.44a, Sec. 6.)

Source Law

Sec. 6. This Section 6 shall not apply to ordinary policies issued on or after the operative date of Section 8 as defined therein. In the case of ordinary policies issued on or after the operative date of this Section 6 as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3 1/2%) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to August 29, 1977, and a rate of interest not exceeding five and one-half per cent (5 1/2%) per annum may be used for policies issued on or after August 29, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6 1/2%) per annum may be used provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured for policies issued prior to August 29, 1977, and for policies issued on and after August 29, 1977, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. Provided, however, that in

calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

After the effective date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the ordinary policies thereafter issued by such company prior to the operative date of Section 8 as defined therein. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

Revisor's Note

(1) Section 6, V.T.I.C. Article 3.44a, states that it does not apply to insurance policies "issued on or after the operative date of Section 8 as defined therein." Section 6 also refers to "the operative date of this Section 6 as defined herein." The revised law provides that it applies only to "an ordinary policy to which Subchapter B does not apply" and omits the reference to "the operative date of Section 8" for the reason stated in the revisor's note to Section 1105.007. The revised law also omits the reference to "the operative date" of Section 6 and substitutes a clear statement of the law's applicability to certain life insurance policies.

(2) Section 6, V.T.I.C. Article 3.44a, refers to "the effective date of this Article." The revised law substitutes August 23, 1963, the effective date of Article 3.44a, for the quoted language.

Revised Law

Sec. 1105.153. COMPUTATION OF ADJUSTED PREMIUMS FOR CERTAIN INDUSTRIAL POLICIES ISSUED BEFORE JANUARY 1, 1989. (a) Except as provided by Subsection (b), this section applies only to an industrial policy to which Subchapter B does not apply and that is issued on or after January 1, 1974, and before January 1, 1989.

(b) This section also applies to an industrial policy issued by a company after a date specified in a written notice:

(1) that was filed by the company with the State Board of Insurance after August 23, 1963, but before January 1, 1974;

and

(2) under which the company filing the notice elected to comply before January 1, 1974, with the law codified by this section.

(c) An adjusted premium or present value determined under this chapter as to a policy to which this section applies must be computed on the basis of the Commissioners 1961 Standard Industrial Mortality Table.

(d) A computation as to a policy to which this section applies must be made using the rate of interest specified by the policy for computing cash surrender values and paid-up nonforfeiture benefits, except that the rate of interest may not exceed:

(1) 3-1/2 percent a year for a policy issued before June 14, 1973;

(2) 4 percent a year for a policy issued on or after June 14, 1973, and before August 29, 1977;

(3) 5-1/2 percent a year for a policy issued on or after August 29, 1977, other than a single premium whole life or endowment insurance policy; or

(4) 6-1/2 percent a year for a single premium whole life or endowment insurance policy issued on or after August 29, 1977.

(e) In the computation of the present value of paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may not exceed the rates shown in the Commissioners 1961 Industrial Extended Term Insurance Table.

(f) Subject to approval by the department, a company may specify a mortality table other than the table required by this section for use in computing an adjusted premium or present value for insurance issued on a substandard basis. (V.T.I.C. Art. 3.44a, Sec. 7.)

Source Law

Sec. 7. This Section 7 shall not apply to industrial policies issued on or after the operative date of Section 8 as defined therein. In the case of industrial policies issued on or after the operative date of this Section 7 as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3 1/2%) per annum, except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to August 29, 1977, and a rate of

interest not exceeding five and one-half per cent (5 1/2%) per annum may be used for policies issued on or after August 29, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6 1/2%) per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

After the effective date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the industrial policies thereafter issued by such company prior to the operative date of Section 8 as defined therein. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

Revisor's Note

(1) Section 7, V.T.I.C. Article 3.44a, states that it does not apply to insurance policies "issued on or after the operative date of Section 8 as defined therein." Section 7 also refers to "the operative date of this Section 7 as defined herein." The revised law provides that it applies only to "an industrial policy to which Subchapter B does not apply" and omits the reference to "the operative date of Section 8" for the reason stated in the revisor's note to Section 1105.007. The revised law also omits the reference to "the operative date" of Section 7 and substitutes a clear statement of the law's applicability to certain life insurance policies.

(2) Section 7, V.T.I.C. Article 3.44a, refers to "the effective date of this Article." The revised law substitutes August 23, 1963, the effective date of Article 3.44a, for the quoted language.

CHAPTER 1106. REINSTATEMENT OF CERTAIN LIFE INSURANCE POLICIES

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CHAPTER 1106. REINSTATEMENT OF CERTAIN LIFE INSURANCE
POLICIES

Revised Law

Sec. 1106.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to each individual life insurance policy issued to a resident of this state by an insurer authorized to engage in the business of insurance in this state, including a stipulated premium company and a fraternal benefit society, that is subject to lapse on or after September 1, 1995.

(b) This chapter does not apply to a life insurance policy that provides nonforfeiture benefits in accordance with the requirements of this code. (V.T.I.C. Art. 3.44d, Sec. 1.)

Source Law

Art. 3.44d

Sec. 1. (a) This article applies to all individual life insurance policies issued to residents of this state that are subject to lapsing on and after the effective date of this Act, issued by an insurer authorized to do business in this state including stipulated premium companies and fraternal benefit societies.

(b) This article does not apply to a life insurance policy that provides nonforfeiture benefits in accordance with the requirements of this code.

Revisor's Note

Section 1(a), V.T.I.C. Article 3.44d, provides that Article 3.44d applies to individual life insurance policies that are subject to lapsing on and after "the effective date of this Act." Article 3.44d took effect September 1, 1995. The revised law substitutes that date for the quoted language.

Revised Law

Sec. 1106.002. REINSTATEMENT REQUIRED; EXCEPTION. (a) On the lapse of an individual life insurance policy following the unintentional default in the payment of premiums caused by the mental incapacity of the insured, a person is entitled to have the policy reinstated under this chapter if:

(1) the policy had been in effect continuously for at least five years immediately preceding the lapse; and

(2) there was not a default in the payment of premiums on the policy during the period described by Subdivision (1).

(b) The insurer is not required to reinstate a policy or

pay benefits under this chapter if the insured first became mentally incapacitated after the expiration of an applicable grace period contained in the policy. (V.T.I.C. Art. 3.44d, Secs. 2(a), 7.)

Source Law

Sec. 2. (a) A policy shall be entitled to reinstatement under this article if:

(1) it has been in effect continuously for at least five years immediately preceding the lapse;

(2) it has been without default in the payment of premiums during such period; and

(3) there is a subsequent unintentional default in premium payments caused by mental incapacity of the insured.

Sec. 7. An insurer is not required to reinstate coverage or pay benefits under this article if the insured first became mentally incapacitated after the expiration of an applicable grace period contained in the policy.

Revised Law

Sec. 1106.003. MENTAL INCAPACITY DEFINED. In this chapter, "mental incapacity" means a lack of the ability to:

(1) understand and appreciate the nature and consequences of a decision regarding the failure to pay a premium when due; and

(2) reach an informed decision in the matter.

(V.T.I.C. Art. 3.44d, Sec. 3(a) (part).)

Source Law

Sec. 3. (a) For purposes of this article, mental incapacity means lacking the ability . . . to understand and appreciate the nature and consequences of a decision regarding failure to pay a premium when due and the ability to reach an informed decision in the matter.

Revised Law

Sec. 1106.004. DIAGNOSIS OF MENTAL INCAPACITY REQUIRED. For purposes of this chapter, mental incapacity must be:

(1) established by the clinical diagnosis of a physician licensed in this state who is qualified to make the diagnosis; and

(2) based on reasonable medical judgment. (V.T.I.C. Art. 3.44d, Secs. 3(a) (part), (b).)

Source Law

(a) [For purposes of this article, mental incapacity means lacking the ability], based on reasonable medical

judgment

(b) Mental incapacity must be established by the clinical diagnosis of a physician licensed in this state and qualified to make the diagnosis.

Revised Law

Sec. 1106.005. REQUEST FOR REINSTATEMENT; LIMITATION.

(a) A request for reinstatement of a policy under this chapter and proof of mental incapacity may be filed with the insurer by:

- (1) the insured;
- (2) the insured's legal guardian or other legal representative; or
- (3) the legal representative of the insured's estate.

(b) The request and the proof of mental incapacity must be filed not later than the first anniversary of the date the policy lapses. (V.T.I.C. Art. 3.44d, Sec. 4.)

Source Law

Sec. 4. (a) A request for reinstatement of coverage under this article and proof of mental incapacity may be filed with the insurer by:

- (1) the insured;
- (2) the legal guardian of the insured;
- (3) other legal representative of the insured; or
- (4) the legal representative of the estate of the insured.

(b) Proof of mental incapacity and an accompanying request for reinstatement must be made not later than the first anniversary date after the lapse of a policy eligible for reinstatement.

Revised Law

Sec. 1106.006. REINSTATEMENT. (a) After the requirements of Section 1106.005 have been satisfied, the insurer shall reinstate the policy.

(b) The policy must be reinstated within one year from the date of lapse on payment of:

- (1) the premiums owed from the date of initial lapse to the date of reinstatement; and
- (2) interest on the premiums at a rate not to exceed six percent a year for the period.

(c) The insurer may not require evidence of insurability as a condition of reinstatement. (V.T.I.C. Art. 3.44d, Secs. 2(b), 5(a), (b).)

Source Law

[Sec. 2]

(b) A policy shall be reinstated within one year from the

date of lapse if it is an eligible policy as described by this section, on payment of arrears of premiums with interest. The rate of interest may not exceed six percent per annum.

Sec. 5. (a) After the requirements of Section 4 have been satisfied, an insurer subject to this article shall reinstate, without evidence of insurability, coverage that has lapsed under the circumstances described by Section 2.

(b) An insurer may require, as a condition of reinstatement, payment of premiums plus interest owed for the period from the date of initial lapse to the date of reinstatement.

Revised Law

Sec. 1106.007. EFFECT OF REINSTATEMENT. On reinstatement of the policy, the original contractual provisions apply as if the coverage had been continuous. (V.T.I.C. Art. 3.44d, Sec. 5(c).)

Source Law

(c) On reinstatement of the coverage, the original contractual provisions apply as if coverage had been continuous and without interruption.

Revisor's Note

Section 5(c), V.T.I.C. Article 3.44d, provides that on reinstatement of a life insurance policy, the original contractual provisions apply as if "coverage had been continuous and without interruption." The reference to "without interruption" is omitted from the revised law because "without interruption" is included within the meaning of "continuous."

Revised Law

Sec. 1106.008. REDUCTION IN BENEFITS. If there is an uncontroverted claim for benefits in an amount that exceeds the amount of premiums and interest owed and unpaid under a policy that is eligible for reinstatement under this chapter, the insurer shall pay the amount of benefits owed reduced by the amount of premiums and interest owed and unpaid on the date the benefits are paid. (V.T.I.C. Art. 3.44d, Sec. 6.)

Source Law

Sec. 6. An insurer shall pay the amount of benefits owed under a policy that is eligible for reinstatement under this article, reduced by the amount of premiums and interest owed and unpaid on the date on which the benefits are paid, if there is an uncontroverted claim for benefits that exceed the amount of premiums and interest owed.

Revised Law

Sec. 1106.009. DISCLOSURE. (a) Each insurer shall disclose fully to each policyholder or insured the requirements of this chapter.

(b) As to a policy to which this chapter applies that was issued on or after September 1, 1995, an insurer may make the disclosure required by Subsection (a):

(1) not later than the 90th day after the date the policy lapses; or

(2) by including the disclosure information in the policy or in an endorsement attached to the policy.

(c) As to a policy to which this chapter applies that was issued before September 1, 1995, and for which the insurer did not make the required disclosure on or before November 30, 1995, the insurer shall make the disclosure required by Subsection (a) not later than the 90th day after the date the policy lapses.

(d) Notice is considered to comply with Subsection (b) or (c) if the notice is mailed by first class mail to the last known address of the policyholder. (V.T.I.C. Art. 3.44d, Secs. 8(a), (b), (c).)

Source Law

Sec. 8. (a) Each licensed entity shall disclose fully to each of its policyholders, contract holders, or covered persons the requirements of this article.

(b) The disclosure shall be forwarded to applicable policyholders, contract holders, or covered persons either:

(1) within 90 days following lapse of a policy regulated by this article; or

(2) within 90 days after the effective date of this article to each existing policyholder whose policy is regulated by this article. Disclosure thereafter on policies issued after the effective date of this article may be made by including the disclosure information in the policy or in an endorsement attached to the policy.

(c) Notice will be deemed to be in compliance with this article if mailed by first class mail to the last known address of the policyholder or if contained in the policy form or as an endorsement thereto.

Revisor's Note

(1) Section 8(a), V.T.I.C. Article 3.44d, refers to a "licensed entity," "contract holders," and "covered persons." The revised law substitutes "insurer" for "licensed entity" and omits "contract holders" because Article 3.44d applies only to insurance policies. The revised law substitutes "insured" for "covered person" for consistency with other provisions of this chapter.

(2) Section 8(b), V.T.I.C. Article 3.44d, requires a licensed entity to disclose the requirements of Article 3.44d within 90 days of the lapse of a policy regulated by Article 3.44d or "within 90 days after the effective date of this article to each existing policyholder whose policy is regulated by this article." Article 3.44d took effect September 1, 1995. The revised law substitutes November 30, 1995, for "90 days after the effective date of this article." The revised law also substitutes "a policy to which this chapter applies that was issued before September 1, 1995," for "each existing policyholder whose policy is regulated by this article." Section 8(b) also refers to "policies issued after the effective date of this article"; the revised law substitutes September 1, 1995, for "the effective date of this article."

Revised Law

Sec. 1106.010. RULES. The commissioner shall adopt reasonable rules to implement this chapter, and the disclosure required by Section 1106.009 must be made in the form and manner prescribed by the commissioner after notice and hearing. (V.T.I.C. Art. 3.44d, Sec. 8(d).)

Source Law

(d) The commissioner shall adopt reasonable rules to implement this article. Such disclosure must be made in the form and manner prescribed by the commissioner after notice and hearing.

CHAPTER 1107. STANDARD NONFORFEITURE LAW FOR CERTAIN ANNUITIES

SUBCHAPTER A. GENERAL PROVISIONS

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[Sections 1107.055-1107.100 reserved for expansion]

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CHAPTER 1107. STANDARD NONFORFEITURE LAW
FOR CERTAIN ANNUITIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 1107.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to an annuity contract issued on or after August 29, 1979.

(b) This chapter also applies to an annuity contract issued by a company after a date specified in a written notice:

(1) that was filed with the State Board of Insurance after August 29, 1977, but before August 29, 1979; and

(2) under which the company filing the notice elected to comply before August 29, 1979, with the law codified by this chapter. (V.T.I.C. Art. 3.44b, Secs. 1 (part), 11.)

Source Law

Art. 3.44b

Sec. 1. In the case of contracts issued on or after the operative date of this Article as defined in Section 11, no contract of annuity, except as stated in Section 10, shall be delivered or issued for delivery in this state

Sec. 11. After the effective date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Article after a specified date before the second anniversary of the effective date of this Article. After the filing of such notices, then upon such specified date, which shall be the operative date of this Article for such company, the Article shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this Article for such company shall be the second anniversary of the effective date of this Article.

Revisor's Note

Section 11, V.T.I.C. Article 3.44b, refers to "the effective date of this Article" and "the second anniversary of the effective date of this Article." The effective date of Article 3.44b is August 29, 1977. Therefore the revised law substitutes "August 29, 1977" for "the effective date of this Article" and "August 29, 1979" for "the second anniversary of the effective date of this Article."

Revised Law

Sec. 1107.002. EXEMPTIONS. (a) This chapter does not apply to:

- (1) a reinsurance contract;
- (2) a group annuity contract that is purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, by an employee organization, or by both, other than a plan that provides individual retirement accounts or individual retirement annuities under Section 408, Internal Revenue Code of 1986, as amended;
- (3) a premium deposit fund;
- (4) a variable annuity contract;
- (5) an investment annuity contract;
- (6) an immediate annuity contract;
- (7) a deferred annuity contract under which annuity payments have begun; or
- (8) a reversionary annuity contract.

(b) This chapter does not apply to a contract delivered outside this state through an agent or other representative of the company that issues the contract. (V.T.I.C. Art. 3.44b, Sec. 10.)

Source Law

Sec. 10. This Article shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship), or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1954, as amended (Title 26, United States Code, as amended), premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

Revisor's Note

Section 10, V.T.I.C. Article 3.44b, refers to Section 408 of the Internal Revenue Code of 1954. That section is now incorporated in the Internal Revenue Code of 1986 and the revised law is drafted accordingly.

Revised Law

Sec. 1107.003. REQUIRED NONFORFEITURE PROVISIONS. (a) An annuity contract delivered or issued for delivery in this state must contain in substance the provisions prescribed by this section or corresponding provisions that, in the opinion of the department, are at least as favorable to the contract holder when payment of considerations under the contract ceases.

(b) The annuity contract must provide that when payment of considerations under a contract ceases, the company will grant a paid-up annuity benefit on a plan stipulated in the contract that has a value that complies with this chapter.

(c) An annuity contract that provides for a lump-sum settlement at maturity or at any other time must provide that on surrender of the contract on or before the time annuity payments begin, the company that issues the contract will pay a cash surrender benefit in an amount that complies with this chapter in lieu of a paid-up annuity benefit. A company shall reserve the right to defer payment of any cash surrender benefit for a period of six months after demand for payment of the benefit is made with surrender of the contract.

(d) An annuity contract must contain:

(1) a statement of the mortality table, if any, and interest rates to be used to compute any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with information that is sufficient to determine the amounts of the benefits;

(2) a statement that any paid-up annuity, cash surrender, or death benefits available under the contract are not less than the minimum benefits required by this state; and

(3) an explanation of the manner in which a paid-up annuity, cash surrender, or death benefit is altered by the existence of any additional amounts credited to the contract by the company that issues the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract. (V.T.I.C. Art. 3.44b, Sec. 1 (part).)

Source Law

Sec. 1. [In the case of contracts issued on or after the operative date of this Article as defined in Section 11,] no contract of annuity, [except as stated in Section 10,] shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding

provisions which in the opinion of the State Board of Insurance are at least as favorable to the contract holder, on cessation of payment of considerations under the contract.

(a) That on cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in Sections 3, 4, 5, 6, and 8 of this Article.

(b) If a contract provides for a lump-sum settlement at maturity, or at any other time, that on surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in Sections 3, 4, 6, and 8 of this Article. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six (6) months after demand therefor with surrender of the contract.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Revisor's Note

(1) Section 1, V.T.I.C. Article 3.44b, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. The reference to the State Board of Insurance has been changed appropriately.

(2) Section 1, V.T.I.C. Article 3.44b, requires an annuity contract to state that certain benefits are not less than the minimum benefits "required by any statute of the state in which the contract is delivered." The revised law substitutes "required by this state" for the quoted language because Section 1, V.T.I.C. Article 3.44b, applies only to a life insurance

policy "delivered or issued for delivery in this state."

Revised Law

Sec. 1107.004. OPTIONAL TERMINATION PROVISION. (a)
Notwithstanding the requirements of Section 1107.003, an annuity contract may provide that the company has the option to terminate the contract by making a cash payment of the then present value of that portion of the paid-up annuity benefit if:

(1) no considerations are received under the contract for two years; and

(2) at maturity, payments on the portion of the paid-up annuity benefit on the plan stipulated in the contract attributable to considerations paid before that period would be less than \$20 each month.

(b) If an annuity contract contains a provision permitted under Subsection (a):

(1) the present value of a portion of a paid-up annuity benefit paid under that provision must be computed on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit; and

(2) a payment made under that provision relieves the company of any further obligation under the contract. (V.T.I.C. Art. 3.44b, Sec. 1 (part).)

Source Law

Sec. 1. . . .

Notwithstanding the requirements of this Section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars (\$20.00) monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

Revisor's Note

Section 1, V.T.I.C. Article 3.44b, refers to a "deferred annuity contract." Under Section 10 of that article, revised as Section 1107.002, this chapter applies only to a deferred annuity. The revised law omits the reference to "deferred" as unnecessary and to ensure consistent use of terminology in this chapter.

Revised Law

Sec. 1107.005. CONTRACT DISCLOSURE THAT CERTAIN BENEFITS NOT PROVIDED. An annuity contract that does not provide a cash surrender benefit or that does not provide a death benefit that is at least equal to the minimum nonforfeiture amount for the contract under Subchapter B before annuity payments begin must include a statement in a prominent place in the contract that those benefits are not provided. (V.T.I.C. Art. 3.44b, Sec. 7.)

Source Law

Sec. 7. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum non-forfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

Revised Law

Sec. 1107.006. MATURITY DATE. (a) In determining the value of benefits under Sections 1107.102, 1107.103, and 1107.104, and subject to Subsection (b), if an annuity contract permits an election to have annuity payments begin on optional maturity dates, the maturity date is considered to be the latest date on which an election is permitted by the contract.

(b) A maturity date determined under this section may not be later than the later of:

(1) the next anniversary of the annuity contract that follows the annuitant's 70th birthday; or

(2) the 10th anniversary of the contract. (V.T.I.C. Art. 3.44b, Sec. 6.)

Source Law

Sec. 6. For the purpose of determining the benefits calculated under Sections 4 and 5 of this Article, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

[Sections 1107.007-1107.050 reserved for expansion]

SUBCHAPTER B. COMPUTATION OF MINIMUM
NONFORFEITURE AMOUNT

Revised Law

Sec. 1107.051. MINIMUM NONFORFEITURE AMOUNT. The minimum value under Subchapter C of a paid-up annuity, cash surrender, or

death benefit shall be computed on the basis of the minimum nonforfeiture amount prescribed by this subchapter. (V.T.I.C. Art. 3.44b, Sec. 2 (intro).)

Source Law

Sec. 2. The minimum values as specified in Sections 3, 4, 5, 6, and 8 of this Article of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum non-forfeiture amounts as defined in this Section.

. . .

Revisor's Note

Section 2, V.T.I.C. Article 3.44b, refers to the "minimum values as specified in Sections 3, 4, 5, 6, and 8 of this Article of any paid-up annuity, cash surrender, or death benefits." The portions of those sections that specify minimum values for paid-up annuity, cash surrender, or death benefits are revised as part of Subchapter C, which also includes other related provisions. The revised law is drafted accordingly.

Revised Law

Sec. 1107.052. CONTRACT WITH FLEXIBLE CONSIDERATIONS. (a) This section applies only to an annuity contract that provides for the payment of flexible considerations.

(b) The minimum nonforfeiture amount on or before annuity payments begin is an amount equal to the accumulation of the prescribed percentages of the amount of net considerations paid to the date of computation, which are accumulated at an interest rate of three percent per year, plus any additional amount credited to the contract by the company, less the amount of:

(1) any withdrawal from or partial surrender of the contract made before the minimum nonforfeiture amount is computed, accumulated at an interest rate of three percent per year; and

(2) any indebtedness to the company on the contract, including any accrued interest due on the indebtedness.

(c) For the purposes of this section, the amount of net consideration for a contract year may not be less than \$0 and is computed by subtracting from the amount of gross considerations credited to the contract during that contract year:

(1) an annual contract charge of \$30; and
(2) a collection charge of \$1.25 for each consideration credited to the contract during that year.

(d) Except as provided by Subsection (e), the percentage of the amount of net consideration to be used in computing a minimum nonforfeiture amount under Subsection (b) is:

(1) 65 percent for the first contract year; and
(2) 87.5 percent for each subsequent contract year.

(e) For a renewal contract year, the percentage of the amount of net consideration to be used to compute a minimum nonforfeiture amount under Subsection (b) is 65 percent of the portion of the total amount of net consideration that exceeds by not more than two times the sum of those portions of the amount of net consideration in all preceding contract years for which the percentage was 65 percent. (V.T.I.C. Art. 3.44b, Sec. 2(a).)

Source Law

(a) With respect to contracts providing for flexible considerations, the minimum non-forfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three per cent (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

(1) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent (3%) per annum; and

(2) the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum non-forfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30.00) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per cent (65%) of the net consideration for the first contract year and eighty-seven and one-half per cent (87 1/2%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five per cent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five per cent (65%).

Revised Law

Sec. 1107.053. CONTRACT WITH FIXED, SCHEDULED CONSIDERATIONS. (a) For an annuity contract that provides for the payment of fixed, scheduled considerations, the minimum nonforfeiture amount is computed in the same manner as the minimum nonforfeiture amount for an annuity contract with flexible considerations that are paid annually, except that:

(1) the amount of net consideration for a contract year is computed using an annual contract charge equal to the lesser of:

(A) \$30; or

(B) 10 percent of the amount of the gross annual considerations paid on the contract; and

(2) the percentage of the net consideration amount for the first contract year to be used to compute the minimum nonforfeiture amount is 65 percent of the amount of net consideration for the first contract year plus 22.5 percent of the amount by which the amount of net consideration for the first contract year exceeds the lesser of:

(A) the amount of net consideration for the second contract year; or

(B) the amount of net consideration for the third contract year.

(b) The computation made under Subsection (a) must assume that the considerations are paid annually in advance. (V.T.I.C. Art. 3.44b, Sec. 2(b).)

Source Law

(b) With respect to contracts providing for fixed scheduled considerations, minimum non-forfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(1) the portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent (65%) of the net consideration for the first contract year plus twenty-two and one-half per cent (22 1/2%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years; and

(2) the annual contract charge shall be the lesser of (i) thirty dollars (\$30.00) or (ii) ten per cent (10%) of the gross annual consideration.

Revised Law

Sec. 1107.054. CONTRACT WITH SINGLE CONSIDERATION. For an annuity contract that provides for the payment of a single consideration, the minimum nonforfeiture amount is computed in the same manner as the minimum nonforfeiture amount for a contract with flexible considerations, except that:

(1) the net consideration amount to be used to compute the minimum nonforfeiture amount is the amount of the gross considerations paid under the contract less a contract charge of \$75; and

(2) the percentage of the net consideration amount to be used to compute the minimum nonforfeiture amount is 90 percent. (V.T.I.C. Art. 3.44b, Sec. 2(c).)

Source Law

(c) With respect to contracts providing for a single consideration, minimum non-forfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum non-forfeiture amount shall be equal to ninety per cent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75.00).

[Sections 1107.055-1107.100 reserved for expansion]

SUBCHAPTER C. VALUE OF NONFORFEITURE BENEFITS

Revised Law

Sec. 1107.101. PRESENT VALUE OF PAID-UP ANNUITY BENEFIT.

(a) The present value of any paid-up annuity benefit available under an annuity contract on the date annuity payments are to begin may not be less than the minimum nonforfeiture amount for that contract on that date as computed under Subchapter B.

(b) The present value of the paid-up annuity benefit shall be computed using the mortality table, if any, and the interest rate specified in the contract for computing the minimum paid-up annuity benefit guaranteed by the contract. (V.T.I.C. Art. 3.44b, Sec. 3.)

Source Law

Sec. 3. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum non-forfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

Revised Law

Sec. 1107.102. COMPUTATION OF PAID-UP ANNUITY BENEFIT UNDER CERTAIN CONTRACTS. (a) This section applies only to an annuity contract that does not provide a cash surrender benefit.

(b) Subject to Subsection (e), the present value of a paid-up annuity benefit available as a nonforfeiture option before the maturity date may not be less than the present value of the portion of the maturity value of the paid-up annuity benefit provided under the contract that arises from considerations paid on the contract before the date the contract is surrendered in exchange for or is changed to a deferred

paid-up annuity.

(c) The present value of a paid-up annuity benefit under Subsection (b) shall be:

(1) computed for the period before the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations paid on the contract to determine the maturity value; and

(2) increased by any additional amount credited by the company to the contract.

(d) Subject to Subsection (e), for an annuity contract that does not provide a death benefit before annuity payments begin, the present value of a paid-up annuity benefit available as a nonforfeiture option shall be computed using the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit.

(e) The present value of a paid-up annuity benefit may not be less than the minimum nonforfeiture amount on the date of surrender or change. (V.T.I.C. Art. 3.44b, Sec. 5.)

Source Law

Sec. 5. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a non-forfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present values of a paid-up annuity be less than the minimum non-forfeiture amount at that time.

Revised Law

Sec. 1107.103. COMPUTATION OF CASH SURRENDER BENEFIT. (a) Subject to Subsection (c), the value of a cash surrender benefit available under an annuity contract before the maturity date may not be less than the present value on the date the contract is surrendered of the portion of the maturity value of the paid-up annuity benefit that arises from considerations paid under the contract before that date and that would be provided under the

contract at maturity less an amount reflecting any withdrawals from or partial surrenders of the contract before that date and the amount of any indebtedness to the company on the contract, including accrued interest due on the indebtedness, plus any additional amount credited by the company to the contract.

(b) The present value used to compute the minimum cash surrender benefit under Subsection (a) shall be computed using an interest rate that is not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations paid on the contract to determine the maturity value.

(c) The value of a cash surrender benefit may not be less than the minimum nonforfeiture amount on the date the contract is surrendered. (V.T.I.C. Art. 3.44b, Sec. 4 (part).)

Source Law

Sec. 4. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one per cent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum non-forfeiture amount at that time. . . .

Revised Law

Sec. 1107.104. COMPUTATION OF DEATH BENEFIT. The value of a death benefit available under an annuity contract that provides a cash surrender benefit may not be less than the value of the cash surrender benefit. (V.T.I.C. Art. 3.44b, Sec. 4 (part).)

Source Law

Sec. 4. . . . The death benefit under such contracts shall be at least equal to the cash surrender benefit.

Revised Law

Sec. 1107.105. COMPUTATION OF BENEFITS AVAILABLE AT TIME OTHER THAN CONTRACT ANNIVERSARY. For an annuity contract that requires payment of fixed, scheduled considerations, the value of

a paid-up annuity, cash surrender, or death benefit that is available under the contract on a date other than an anniversary of the contract date shall be computed to allow for the lapse of time and any scheduled considerations paid after the beginning of the contract year in which payment of considerations under the contract ceased. (V.T.I.C. Art. 3.44b, Sec. 8.)

Source Law

Sec. 8. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of consideration under the contract occurs.

Revised Law

Sec. 1107.106. MINIMUM NONFORFEITURE VALUES UNDER CONTRACT THAT PROVIDES ANNUITY AND LIFE INSURANCE BENEFITS. For a contract that provides, by rider or by supplemental provision, both annuity benefits and life insurance benefits that exceed the greater of the value of the cash surrender benefit or the amount with interest of the gross considerations paid on the contract, the minimum nonforfeiture benefits are equal to the sum of the minimum nonforfeiture benefits for the annuity portion of the contract and the minimum nonforfeiture benefits, if any, for the life insurance portion of the contract, computed as if each portion were a separate contract. (V.T.I.C. Art. 3.44b, Sec. 9 (part).)

Source Law

Sec. 9. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum non-forfeiture benefits shall be equal to the sum of the minimum non-forfeiture benefits for the annuity portion and the minimum non-forfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. . . .

Revised Law

Sec. 1107.107. COMPUTATIONS NOT AFFECTED BY ADDITIONAL BENEFITS. (a) Notwithstanding any other provision of this subchapter or Section 1107.006, a computation of a minimum nonforfeiture amount or of a paid-up annuity, cash surrender, or death benefit under this chapter may not include:

- (1) any additional benefit that is:

(A) payable in the event of total and permanent disability;

(B) payable as a reversionary annuity or deferred reversionary annuity benefit; or

(C) payable as another policy benefit in addition to life insurance, endowment, or annuity benefits; or

(2) the considerations paid for the additional benefit.

(b) A paid-up benefit under an annuity contract is not required to include an additional benefit described by Subsection (a) unless the additional benefit separately requires:

(1) a minimum nonforfeiture amount; or

(2) a paid-up annuity, cash surrender, or death benefit. (V.T.I.C. Art. 3.44b, Sec. 9 (part).)

Source Law

Sec. 9. . . . Notwithstanding the provisions of Sections 3, 4, 5, 6, and 8 of this Article, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum non-forfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this Article. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum non-forfeiture amounts, paid-up annuity, cash surrender and death benefits.

CHAPTER 1108. BENEFITS EXEMPT FROM SEIZURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1108.001. CONSTRUCTION WITH OTHER LAW 1503

Sec. 1108.002. ANNUITY CONTRACTS 1503

[Sections 1108.003-1108.050 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS FROM SEIZURE

Sec. 1108.051. EXEMPTIONS FOR CERTAIN INSURANCE AND ANNUITY BENEFITS 1504

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[Sections 1108.054-1108.100 reserved for expansion]

SUBCHAPTER C. ASSIGNMENT OF BENEFITS

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CHAPTER 1108. BENEFITS EXEMPT FROM SEIZURE

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 1108.001. CONSTRUCTION WITH OTHER LAW. The exemptions under this chapter are in addition to the exemptions from garnishment, attachment, execution, or other seizure under Chapter 42, Property Code. (V.T.I.C. Art. 21.22, Sec. 7.)

Source Law

Sec. 7. The exemptions and protection from seizure under this article are in addition to the exemptions from garnishment, attachment, execution, or other seizure under Chapter 42, Property Code.

Revisor's Note

Section 7, V.T.I.C. Article 21.22, refers to the "exemptions and protection from seizure" provided under the article. The revised law omits the reference to "protection from seizure" because, in context, "protection from seizure" is included within the meaning of "exemptions."

Revised Law

Sec. 1108.002. ANNUITY CONTRACTS. For purposes of regulation under this code, an annuity contract is considered an insurance policy or contract if the annuity contract is issued:

- (1) by a life, health, or accident insurance company, including a mutual company or fraternal benefit society; or
- (2) under an annuity or benefit plan used by an employer or individual. (V.T.I.C. Art. 21.22, Sec. 6.)

Source Law

Sec. 6. For purposes of regulation under this code, an annuity contract issued by a life, health, or accident insurance company, including a mutual company or fraternal company, or under any plan or program of annuities or benefits in use by an employer or individual, shall be considered a policy or contract of insurance.

Revisor's Note

Section 6, V.T.I.C. Article 21.22, refers to a "plan or program" of annuities or benefits. The revised law omits the reference to "program" because, in context, "program" is included within the meaning of "plan." Similar changes have been made throughout the chapter.

[Sections 1108.003-1108.050 reserved for expansion]

SUBCHAPTER B. EXEMPTIONS FROM SEIZURE

Revised Law

Sec. 1108.051. EXEMPTIONS FOR CERTAIN INSURANCE AND ANNUITY BENEFITS. (a) Except as provided by Section 1108.053, this

section applies to any benefits, including the cash value and proceeds of an insurance policy, to be provided to an insured or beneficiary under:

(1) an insurance policy or annuity contract issued by a life, health, or accident insurance company, including a mutual company or fraternal benefit society; or

(2) an annuity or benefit plan used by an employer or individual.

(b) Notwithstanding any other provision of this code, insurance or annuity benefits described by Subsection (a):

(1) inure exclusively to the benefit of the person for whose use and benefit the insurance or annuity is designated in the policy or contract; and

(2) are fully exempt from:

(A) garnishment, attachment, execution, or other seizure;

(B) seizure, appropriation, or application by any legal or equitable process or by operation of law to pay a debt or other liability of an insured or of a beneficiary, either before or after the benefits are provided; and

(C) a demand in a bankruptcy proceeding of the insured or beneficiary. (V.T.I.C. Art. 21.22, Sec. 1.)

Source Law

Art. 21.22

Sec. 1. Notwithstanding any provision of this code other than this article, all money or benefits of any kind, including policy proceeds and cash values, to be paid or rendered to the insured or any beneficiary under any policy of insurance or annuity contract issued by a life, health or accident insurance company, including mutual and fraternal insurance, or under any plan or program of annuities and benefits in use by any employer or individual, shall:

(1) inure exclusively to the benefit of the person for whose use and benefit the insurance or annuity is designated in the policy or contract;

(2) be fully exempt from execution, attachment, garnishment or other process;

(3) be fully exempt from being seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of the insured or of any beneficiary, either before or after said money or benefits is or are paid or rendered; and

(4) be fully exempt from all demands in any bankruptcy proceeding of the insured or beneficiary.

Revisor's Note

(1) Section 1, V.T.I.C. Article 21.22, refers to "money or

benefits." The revised law omits the references to "money" because, in context, "money" is included within the meaning of "benefits." Similar changes have been made throughout the chapter.

(2) Section 1, V.T.I.C. Article 21.22, refers to money or benefits to be "paid or rendered." The revised law substitutes "provided" for "rendered" because "provided" is synonymous with "rendered," and the former is more commonly used. The revised law also omits the reference to "paid" because "paid" is included within the meaning of "provided." Similar changes have been made throughout the chapter.

(3) Section 1, V.T.I.C. Article 21.22, states that certain insurance and annuity benefits are exempt from execution, attachment, garnishment, or "other process." The revised law substitutes "other seizure" for "other process" for consistency with Section 7, V.T.I.C. Article 21.22, revised as Section 1108.001.

(4) Section 1, V.T.I.C. Article 21.22, refers to an exemption for certain insurance benefits from "being seized, taken or appropriated or applied." The revised law omits the reference to "taken" because "taken" is included within the meaning of "appropriated."

Revised Law

Sec. 1108.052. EXEMPTIONS UNAFFECTED BY BENEFICIARY DESIGNATION. The exemptions provided by Section 1108.051 apply regardless of whether:

(1) the power to change the beneficiary is reserved to the insured; or

(2) the insured or the insured's estate is a contingent beneficiary. (V.T.I.C. Art. 21.22, Sec. 2.)

Source Law

Sec. 2. The exemptions provided by Section 1 of this article apply without regard to whether:

(1) the power to change the beneficiary is reserved to the insured; or

(2) the insured or the insured's estate is a contingent beneficiary.

Revised Law

Sec. 1108.053. EXCEPTIONS TO EXEMPTIONS. The exemptions provided by Section 1108.051 do not apply to:

(1) a premium payment made in fraud of a creditor, subject to the applicable statute of limitations for recovering the payment; or

(2) a debt of the insured or beneficiary secured by a pledge of the insurance policy or the proceeds of the policy. (V.T.I.C. Art. 21.22, Sec. 3.)

Source Law

Sec. 3. The exemptions provided by Section 1 of this article do not apply to:

(1) premium payments made in fraud of creditors subject to the applicable statute of limitations for the recovery of the premium payments; or

(2) a debt of the insured or beneficiary secured by a pledge of the policy or its proceeds.

[Sections 1108.054-1108.100 reserved for expansion]

SUBCHAPTER C. ASSIGNMENT OF BENEFITS

Revised Law

Sec. 1108.101. ASSIGNMENT GENERALLY. This chapter does not prevent an insured, owner, or annuitant from assigning, in accordance with the terms of the policy or contract:

(1) any benefits to be provided under an insurance policy or annuity contract to which this chapter applies; or

(2) any other rights under the policy or contract.

(V.T.I.C. Art. 21.22, Sec. 4.)

Source Law

Sec. 4. This article does not prevent the proper assignment of any money or benefits to be paid or rendered under an insurance policy or annuity contract to which this article applies, or any rights under the policy or contract, by the insured, owner, or annuitant in accordance with the terms of the policy or contract.

Revisor's Note

Section 4, V.T.I.C. Article 21.22, refers to the "proper assignment" of certain money or benefits. Section 4 also states that the assignment must be "in accordance with the terms" of an insurance policy or annuity contract. The revised law omits "proper" because, in context, "proper" is included within the meaning of "in accordance with" the policy or contract.

Revised Law

Sec. 1108.102. CERTAIN ASSIGNMENTS VOID. If an insurance policy, annuity contract, or annuity or benefit plan described by Section 1108.051 prohibits a beneficiary from assigning or commuting benefits to be provided or other rights under the policy, contract, or plan, an assignment or commutation or attempted assignment or commutation of the benefits or rights by the beneficiary is void. (V.T.I.C. Art. 21.22, Sec. 5.)

Source Law

Sec. 5. Wherever any policy of insurance, annuity contract,

or plan or program of annuities and benefits mentioned in Section 1 of this article shall contain a provision against assignment or commutation by any beneficiary thereunder of the money or benefits to be paid or rendered thereunder, or any rights therein, any assignment or commutation or any attempted assignment or commutation by such beneficiary of such money or benefits or rights in violation of such provision shall be wholly void.

CHAPTER 1109. UNCLAIMED LIFE INSURANCE AND ANNUITY CONTRACT
PROCEEDS

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 1109.001. APPLICABILITY OF CHAPTER 1508
Sec. 1109.002. ADMINISTRATION AND ENFORCEMENT; RULES 1511
Sec. 1109.003. APPROPRIATIONS TO ADMINISTER CHAPTER 1511
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SUBCHAPTER B. DELIVERY OF PROCEEDS TO STATE

- Sec. 1109.051. COMPANY REPORT OF UNCLAIMED PROCEEDS 1511
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CHAPTER 1109. UNCLAIMED LIFE INSURANCE AND ANNUITY CONTRACT
PROCEEDS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 1109.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to proceeds held and owing by a life insurance company engaged in the business of insurance in this state if:

(1) the last known address, according to the company's records, of the person entitled to the proceeds is located in this state; and

(2) the proceeds have been unclaimed and unpaid for at least three years after the date, according to the company's records, that the proceeds became due and payable under a life or endowment insurance policy or annuity contract that has matured or terminated.

(b) If a person other than the insured or annuitant is entitled to the proceeds and that person's address is not known to the company or if the identity of the person entitled to the proceeds is not certain from the company's records, it is presumed that the last known address of the person entitled to the proceeds is the same as the last known address of the insured or annuitant according to the company's records.

(c) For purposes of Subsection (a), a life insurance policy not matured by proof of the death of the insured is considered to be matured and the proceeds of the policy are considered to be due and payable only if the policy is in force at the time the insured attained the limiting age under the mortality table on which the reserve is based.

(d) An annuity or other obligation, the payment of which is conditioned on the continued life of any individual, is not considered due and payable for purposes of Subsection (a) without proof that the individual was alive at the time or times required by the contract.

(e) Proceeds otherwise admittedly due and payable under a life or endowment insurance policy or annuity contract that has matured or terminated are considered to be held and owing even if the policy or contract has not been surrendered as required.

(V.T.I.C. Art. 4.08, Secs. 2, 3.)

Source Law

Sec. 2. This Article shall apply to unclaimed funds, as defined in Section 3 hereof, of any life insurance company doing business in this state where the last known address, according to the records of such company, of the person entitled to such funds is within this state, provided that if a person other than the insured or annuitant be entitled to such funds and no address of such person be known to such company or if it be not definite and certain from the records of such company what person is entitled to such funds, then in either event it shall be presumed for the purposes of this Article that the last known address of the person entitled to such funds is the same as the last known address of the insured or annuitant according to the records of such company.

Sec. 3. The term "unclaimed funds" as used in this Article shall mean and include all monies held and owing by any life insurance company doing business in this state which shall have remained unclaimed and unpaid for three years or more after it is established from the records of such company that such monies became due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be deemed to be "due and payable" within

the meaning of this Article only if such policy is in force when the insured shall have attained the limiting age under the mortality table on which the reserve is based. Annuities and other obligations, the payment of which is conditioned upon the continued life of any person, shall not be deemed to be "due and payable" in the absence of actual proof that such person was alive at the time or times required by the contract. Monies otherwise admittedly due and payable under any such life or endowment insurance policy or annuity contract shall be deemed to be "held and owing" within the meaning of this Article although the policy or contract shall not have been surrendered as required.

Revisor's Note

(1) Section 2, V.T.I.C. Article 4.08, refers to circumstances in which it is not "definite and certain" who is entitled to certain proceeds. The revised law omits the term "definite" because "definite" is included within the meaning of "certain."

(2) Section 3, V.T.I.C. Article 4.08, defines the term "unclaimed funds" for purposes of that article. The revised law incorporates the substance of the definition into the applicability section to avoid the artificial use of the term "unclaimed funds" to refer only to unclaimed proceeds under certain life insurance policies and annuity contracts. In addition, in this section and throughout this chapter, the revised law substitutes the term "proceeds" for "funds" because "proceeds" is the term most frequently used to refer to money due to a beneficiary or annuitant under an insurance policy or annuity contract.

Revised Law

Sec. 1109.002. ADMINISTRATION AND ENFORCEMENT; RULES. (a) This chapter shall be enforced in the manner provided for enforcement of Chapter 74, Property Code, under Subchapter H of that chapter.

(b) The comptroller may adopt rules necessary to administer this chapter. (V.T.I.C. Art. 4.08, Secs. 14, 15.)

Source Law

Sec. 14. This Article shall be enforced in the manner provided for enforcement of Chapter 74, Property Code, under Subchapter H of that chapter.

Sec. 15. The comptroller may adopt rules necessary to carry out this Article.

Revised Law

Sec. 1109.003. APPROPRIATIONS TO ADMINISTER CHAPTER. To enforce and administer this chapter, the legislature may

appropriate unclaimed money received under Chapter 74, Property Code, or under any other statute requiring the delivery of unclaimed property to the comptroller. (V.T.I.C. Art. 4.08, Sec. 9 (part).)

Source Law

Sec. 9. . . . Unclaimed money received under Chapter 74, Property Code, or any other statute requiring the delivery of unclaimed property to the comptroller may be appropriated by the legislature to enforce and administer this Article.

[Sections 1109.004-1109.050 reserved for expansion]

SUBCHAPTER B. DELIVERY OF PROCEEDS TO STATE

Revised Law

Sec. 1109.051. COMPANY REPORT OF UNCLAIMED PROCEEDS. (a) A life insurance company engaged in the business of insurance in this state that on June 30 holds unclaimed proceeds subject to this chapter shall file a report of those proceeds on or before the following November 1. The report shall be filed in writing with the comptroller.

(b) The report is not required to include proceeds that have been paid to another state or other jurisdiction under any law of that state or jurisdiction relating to escheat or unclaimed money.

(c) The report must be signed and sworn to by an officer of the company and must state:

(1) in alphabetical order the full name of the insured or annuitant, the last known address of the insured or annuitant according to the company's records, and the policy or contract number;

(2) the amount due on the policy or contract according to the company's records;

(3) the date the proceeds became payable;

(4) the name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in the proceeds; and

(5) any other identifying information the comptroller requires.

(d) A life insurance company may report individual amounts of less than \$50 in the aggregate without providing the information listed by Subsection (c). (V.T.I.C. Art. 4.08, Secs. 2 (part), 3 (part), 4 (part).)

Source Law

Sec. 2. . . . any life insurance company doing business in this state

Sec. 3. . . . any life insurance company doing business in

this state

Sec. 4. Every such life insurance company shall on or before the first day of November of each year make a report in writing to the comptroller of all unclaimed funds, as hereinbefore defined, held and owing by it on the 30th day of June next preceding, provided, however, such report shall not be required to include amounts which have been paid to another state or jurisdiction under any escheat or unclaimed funds law thereof. Such report shall be signed and sworn to by an officer of such company and shall set forth: (1) in alphabetical order the full name of the insured or annuitant, the last known address according to the company's records, and the policy or contract number; (2) the amount appearing from the company's records to be due on such policy or contract; (3) the date such unclaimed funds became payable; (4) the name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds; and (5) such other identifying information as the comptroller may require; provided, however, that individual amounts of less than \$50 may be reported in the aggregate without furnishing any of the information required in Clauses (1), (2), (3), (4), and (5) of this Section. . . .

Revised Law

Sec. 1109.052. DELIVERY OF PROCEEDS TO COMPTROLLER. A life insurance company required to file a report under Section 1109.051 shall deliver to the comptroller with the report all unclaimed proceeds described by the report. (V.T.I.C. Art. 4.08, Sec. 6.)

Source Law

Sec. 6. All unclaimed funds contained in the report required to be filed by Section 4 of this Article shall be delivered to the comptroller on or before November 1 with the report.

Revised Law

Sec. 1109.053. RETENTION OF RECORDS BY INSURANCE COMPANY. (a) A life insurance company required to file a report under Section 1109.051 shall maintain a record of:

- (1) the name and last known address, if any, of the insured, annuitant, or beneficiary;
- (2) the policy or contract number; and
- (3) the amount of the proceeds due on the policy or contract according to the company's records.

(b) The company shall maintain the record until at least the 10th anniversary of the date the proceeds are required to be reported, regardless of whether the amount was reported in the aggregate. The comptroller by rule may provide for a shorter

retention period for the record. (V.T.I.C. Art. 4.08, Sec. 4 (part).)

Source Law

Sec. 4. . . . Each life insurance company required to file a report under this Section shall maintain a record of the name and last known address, if any, of the insured, annuitant, or beneficiary, the policy or contract number, and the amount appearing from the company's records to be due on the policy or contract for 10 years after the funds are reportable, whether or not the amount was reported in the aggregate under this Section. The comptroller may provide by rule for a shorter holding period for these records.

Revised Law

Sec. 1109.054. PUBLIC RECORD OF RECEIPT OF PROCEEDS. (a) The comptroller shall maintain in the comptroller's office a public record of each delivery of unclaimed proceeds received under this chapter.

(b) Except as to amounts reported in the aggregate, the record must include:

(1) in alphabetical order, the name and last known address of each insured or annuitant and of each beneficiary or other person who, according to the life insurance company's reports, may have an interest in the proceeds; and

(2) with respect to each policy or contract, the policy or contract number, the name of the company, and the amount of the unclaimed proceeds. (V.T.I.C. Art. 4.08, Sec. 12.)

Source Law

Sec. 12. The comptroller shall keep in his office a public record of each payment of unclaimed funds received by him from any life insurance company. Except as to amounts reported in the aggregate, such record shall show in alphabetical order the name and last known address of each insured or annuitant, and of each beneficiary or other person who, according to the company's reports, may have an interest in such unclaimed funds, and with respect to each policy or contract, its number, the name of the company, and the amount due.

Revised Law

Sec. 1109.055. STATE RESPONSIBILITY FOR PROCEEDS; INDEMNIFICATION OF COMPANY. (a) On the delivery of unclaimed proceeds under this chapter:

(1) the state assumes custody of the proceeds for the benefit of each person entitled to receive the proceeds and for the safekeeping of the proceeds; and

(2) the life insurance company is relieved of and held

harmless by the state from any liability relating to the proceeds for a claim existing at the time of delivery of the proceeds to the comptroller or that arises or is made after delivery of the proceeds.

(b) A life insurance company that delivers proceeds to the comptroller under this chapter in good faith is relieved of liability relating to the proceeds to the extent of the value of the proceeds delivered for a claim existing at the time of delivery or that arises or is made after delivery.

(c) If a life insurance company delivers unclaimed proceeds to the comptroller under this chapter in good faith and, after delivery, a person claims the proceeds from the life insurance company or another state claims the proceeds under its laws relating to escheat or unclaimed property, the attorney general shall, on written notice of the claim, defend the life insurance company against the claim. The life insurance company shall be indemnified against liability on the claim from the unclaimed money received under Chapter 74, Property Code, or under any other statute requiring delivery of unclaimed property to the comptroller. (V.T.I.C. Art. 4.08, Secs. 7, 8.)

Source Law

Sec. 7. Upon the payment of such unclaimed funds to the comptroller the state shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of such unclaimed funds, and the life insurance company making such payment shall immediately and thereafter be relieved of and held harmless by the state from any and all liability for any claim or claims which exist at such time with reference to such unclaimed funds or which thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

Sec. 8. (a) Any life insurance company which in good faith has paid monies to the comptroller pursuant to this Article is relieved of all liability for a claim that exists at the time of delivery, that arises after delivery to the comptroller, or that is made with respect to the property, to the extent of the value of the property delivered.

(b) If a life insurance company in good faith delivers property to the comptroller and after delivery a person claims the property from the life insurance company or another state claims the property under its laws relating to escheat or unclaimed property, the attorney general shall, on written notice of the claim, defend the life insurance company against the claim. The life insurance company shall be indemnified from the unclaimed money received under Chapter 74, Property Code, or any other statute requiring the delivery of unclaimed property to the comptroller, against any liability on the claim.

Revised Law

Sec. 1109.056. EXAMINATION OF COMPANY RECORDS. (a) The comptroller may examine the records of a life insurance company to determine if the company is complying with this chapter.

(b) The comptroller may not make public any information obtained from an examination made under this section. (V.T.I.C. Art. 4.08, Sec. 16.)

Source Law

Sec. 16. The comptroller may examine the records of a life insurance company to determine if the life insurance company is complying with this Article. The comptroller may not make public any information obtained by an examination made under this Section.

Revisor's Note

(End of Subchapter)

Section 9, V.T.I.C. Article 4.08, provides that the comptroller shall deposit unclaimed proceeds delivered to the comptroller under that article in the general revenue fund. The revised law omits that provision because it is unnecessary. Section 74.601(b), Property Code, requires all unclaimed money delivered to the comptroller under any statute requiring the delivery of unclaimed property to the comptroller to be deposited to the credit of the general revenue fund. The omitted law reads:

Sec. 9. Upon receipt of any unclaimed funds from such life insurance companies, the comptroller shall deposit those funds in the general revenue fund. . . .

[Sections 1109.057-1109.100 reserved for expansion]

SUBCHAPTER C. PUBLIC NOTICE

Revised Law

Sec. 1109.101. PUBLIC NOTICE OF UNCLAIMED PROCEEDS. (a) In the calendar year following the year in which a report required by Section 1109.051 is made and in which the unclaimed proceeds described in the report are delivered to the comptroller under Section 1109.052, the comptroller may publish notice based on the information contained in the report. Except as provided by Subsection (d), the comptroller shall publish the notice once in a newspaper published or having a general circulation in each county of this state in which the last known address of a person appearing to be entitled to any of those proceeds is located.

(b) The notice must:

(1) state in alphabetical order the name of each insured or annuitant under the policies or contracts and the municipality of the insured's or annuitant's last known address, if any; and

(2) state that the unclaimed proceeds have been delivered to the comptroller as of the preceding November 1 and may be claimed from the comptroller.

(c) The publication requirements under Subchapter C, Chapter 74, Property Code, apply to publication of notice under this section.

(d) The comptroller may use a method of publishing notice different from that prescribed by Subsection (a) if the comptroller determines that the different method would be as likely to give actual notice to the person required to be named in the notice as the method prescribed by Subsection (a).

(V.T.I.C. Art. 4.08, Sec. 5.)

Source Law

Sec. 5. (a) In the calendar year following the submission of the reports required under Section 4 of this Article and the payment to the comptroller under Section 6 of this Article of all unclaimed funds described in the report, the comptroller may cause to be published notices based on the information contained in such reports. Except as provided by Subsection (d) of this Section, such a notice shall be published once in a newspaper published or having a general circulation in each county of this state in which is located the last known address of a person appearing to be entitled to such funds.

(b) Each such notice shall set forth in alphabetical order the names of the insureds or annuitants under policies or contracts and the city of last known address, if any. The notice shall also state that such unclaimed funds have been delivered to the comptroller on the preceding November 1 and that those funds may be claimed from the comptroller.

(c) The publication requirements under Subchapter C, Chapter 74, Property Code, apply to publication of notice under this section.

(d) The comptroller may use a method of publishing notice that is different from that prescribed by Subsection (a) of this Section if the comptroller determines that the different method would be as likely as the prescribed method to give actual notice to the person required to be named in the notice.

Revisor's Note

Section 5(b), V.T.I.C. Article 4.08, refers to a "city." The revised law substitutes the term "municipality" for "city" because that is the term used in the Local Government Code.

[Sections 1109.102-1109.150 reserved for expansion]

SUBCHAPTER D. CLAIMS FOR PROCEEDS

Revised Law

Sec. 1109.151. FILING OF CLAIM. A person claiming to be entitled to unclaimed proceeds delivered to the comptroller under this chapter may at any time file a claim for the proceeds with the comptroller. (V.T.I.C. Art. 4.08, Sec. 10 (part).)

Source Law

Sec. 10. Any person claiming to be entitled to unclaimed funds paid to the comptroller may file a claim at any time with such official. . . .

Revised Law

Sec. 1109.152. DETERMINATION OF CLAIM. The comptroller may accept or reject a claim made under Section 1109.151. (V.T.I.C. Art. 4.08, Sec. 10 (part).)

Source Law

Sec. 10. . . . The comptroller shall possess full and complete authority to accept or reject any such claim. . . .

Revised Law

Sec. 1109.153. APPEAL. (a) If the comptroller rejects a claim made under Section 1109.151 or does not act on a claim before the 91st day after the date the claim is filed, the claimant may file suit to recover the proceeds.

(b) The comptroller is the defendant in a suit filed under this section. (V.T.I.C. Art. 4.08, Sec. 10 (part).)

Source Law

Sec. 10. . . . If he rejects such claim or fails to act thereon within ninety days after receipt of such claim, the claimant may institute suit therefor in a court of competent jurisdiction naming the comptroller as defendant.

Revisor's Note

Section 10, V.T.I.C. Article 4.08, refers to a suit brought "in a court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 1109.154. PAYMENT OF CLAIM. The comptroller shall pay from unclaimed money received under Chapter 74, Property Code, or under any other statute requiring the delivery of unclaimed property to the comptroller, a claim that:

- (1) the comptroller accepts; or
- (2) a court orders the comptroller to pay. (V.T.I.C. Art. 4.08, Sec. 11.)

Source Law

Sec. 11. Any claim which is accepted by the comptroller or ordered to be paid by him by a court of competent jurisdiction shall be paid out of the unclaimed money received under Chapter 74, Property Code, or any other statute requiring the delivery of unclaimed property to the comptroller.

Revisor's Note

Section 11, V.T.I.C. Article 4.08, refers to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary because the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. See the revisor's note to Section 1109.153.

Revisor's Note

(End of Chapter)

Section 1, V.T.I.C. Article 4.08, provides a short title for that article. The revised law omits the short title because Article 4.08 is not a statute of wide application that is frequently referred to by its short title, and the heading to this chapter of the revised law is sufficient to describe the revised law to the reader. The omitted law reads:

Art. 4.08

Sec. 1. This Article shall be known as
the "Unclaimed Funds Statute for Life
Insurance Companies."

CHAPTER 1110.	INTEREST RATES ON CERTAIN POLICY LOANS	
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CHAPTER 1110. INTEREST RATES ON CERTAIN POLICY LOANS

Revised Law

- Sec. 1110.001. DEFINITIONS. In this chapter:
- (1) "Life insurance policy" includes:
 - (A) a benefit certificate issued by a fraternal benefit society; or

(B) an annuity contract that provides for a policy loan.

(2) "Policy loan" includes any premium loan made under a life insurance policy to pay one or more premiums not paid to the life insurer when due. (V.T.I.C. Art. 3.44c, Sec. 3(h) (part).)

Source Law

(h) For purposes of this section:

. . .

(2) The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due.

. . .

(4) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

Revisor's Note

(1) Section 3(h)(4), V.T.I.C. Article 3.44c, defines the term "policy," and Article 3.44c uses that term throughout. It is clear from the context of Article 3.44c that Article 3.44c applies only to life insurance policies, including the certificates and annuity contracts listed by Section 3(h)(4), and not to other forms of insurance. Accordingly, throughout this chapter the term "life insurance policy" is substituted for the term "policy."

(2) Section 3(h)(4), V.T.I.C. Article 3.44c, refers to "certificates" issued by fraternal benefit societies. The revised law substitutes "benefit certificates" for "certificates" because that is the term used in Chapter 885 of the revised law which codifies the law relating to fraternal benefit societies.

Revised Law

Sec. 1110.002. APPLICABILITY OF CHAPTER. This chapter applies only to a life insurance policy issued on or after August 31, 1981. (V.T.I.C. Art. 3.44c, Secs. 3(a) (part), 4.)

Source Law

Sec. 3. (a) Policies issued on or after the effective date of this Act [shall provide for policy loan interest rates as follows:]

Sec. 4. The provisions of this Act shall not apply to any insurance contract issued before the effective date of this Act.

Revisor's Note

Sections 3(a) and 4, V.T.I.C. Article 3.44c, refer to "the effective date of this Act." Article 3.44c was added by Chapter

784, Acts of the 67th Legislature, Regular Session, 1981. The revised law substitutes August 31, 1981, the effective date of that act, for the quoted language.

Revised Law

Sec. 1110.003. APPLICABILITY OF OTHER LAW. A law not included in this chapter applies to interest rates on policy loans only if that law is made specifically applicable to those rates. (V.T.I.C. Art. 3.44c, Sec. 3(i).)

Source Law

(i) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates.

Revised Law

Sec. 1110.004. MAXIMUM INTEREST RATE ON POLICY LOANS. (a) In this section, "published monthly average" means:

(1) Moody's Corporate Bond Yield Average--Monthly Average Corporates as published by Moody's Investors Service, Inc., or a successor to that corporation; or

(2) if the rate described by Subdivision (1) is no longer published, a substantially similar average established by rule of the commissioner.

(b) A life insurance policy must include a provision for an interest rate on a policy loan that:

(1) does not exceed 10 percent a year; or

(2) is an adjustable maximum interest rate established from time to time by the life insurer as permitted by law and does not exceed the lesser of:

(A) 15 percent a year; or

(B) the greater of:

(i) the published monthly average for the calendar month that ended two months before the date on which the rate is determined; or

(ii) the rate used to compute the cash surrender values under the life insurance policy during the applicable period plus one percent per year.

(c) This section also applies to the interest rate charged, on reinstatement of a policy loan, for the period during and after a lapse of the life insurance policy. (V.T.I.C. Art. 3.44c, Secs. 2; 3(a) (part), (b), (h) (part).)

Source Law

Sec. 2. For purposes of this Act the "published monthly average" means:

(1) Moody's Corporate Bond Yield Average--Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto; or

(2) In the event that Moody's Corporate Bond Yield

Average--Monthly Average Corporates is no longer published, a substantially similar average, established by regulation issued by the State Board of Insurance.

Sec. 3. (a) [Policies issued on or after the effective date of this Act] shall provide for policy loan interest rates as follows:

(1) a provision permitting a maximum interest rate of not more than 10 percent per annum; or

(2) a provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law; provided, however, the maximum interest rate permitted in this subdivision shall not exceed 15 percent per annum.

(b) The rate of interest charged on a policy loan made under Subdivision (2) of Subsection (a) of this section shall not exceed the higher of the following:

(1) the published monthly average for the calendar month ending two months before the date on which the rate is determined; or

(2) the rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.

(h) For purposes of this section:

(1) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy. . . .

Revisor's Note

Section 2, V.T.I.C. Article 3.44c, refers to a "regulation issued by the State Board of Insurance." The revised law substitutes "rule" for "regulation" because, in this context, the terms are synonymous and because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law. The revised law substitutes "commissioner," which is defined by Section 31.001, Insurance Code, to mean the commissioner of insurance, for "State Board of Insurance" because Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Under Subchapter A, Chapter 36, Insurance Code, the commissioner exercises rulemaking authority for the department.

Revised Law

Sec. 1110.005. FREQUENCY OF ADJUSTABLE INTEREST RATE DETERMINATION. A life insurer shall determine the adjustable interest rate under Section 1110.004(b)(2) at regular intervals

at least once every 12 months but not more frequently than once in any three-month period. At the intervals specified in the life insurance policy, the insurer:

(1) may increase the rate charged when the interest rate determined under Section 1110.004(b)(2) would result in a rate increase of at least one-half of one percent per year; and

(2) shall reduce the rate charged when the interest rate determined under Section 1110.004(b)(2) would result in a rate decrease of at least one-half of one percent per year.

(V.T.I.C. Art. 3.44c, Sec. 3(d).)

Source Law

(d) The maximum rate for each policy must be determined at regular intervals at least once every 12 months but not more frequently than once in any three-month period. At the intervals specified in the policy:

(1) the rate being charged may be increased whenever such increase as determined under Subsection (b) of this section would increase that rate by one-half percent or more per annum;

(2) the rate being charged must be reduced whenever such reduction as determined under Subsection (b) of this section would decrease that rate by one-half percent or more per annum.

Revised Law

Sec. 1110.006. INFORMATION TO BE INCLUDED IN POLICY. (a) A life insurance policy must include the substance of the provisions of Section 1110.004(b) that are applicable to the policy.

(b) A life insurance policy that provides for an adjustable interest rate under Section 1110.004(b)(2) must state the frequency at which the rate is to be determined. (V.T.I.C. Art. 3.44c, Secs. 3(c), (g).)

Source Law

(c) If the maximum rate of interest is determined pursuant to subdivision (2) of Subsection (a) of this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(g) The substance of the pertinent provisions of Subsections (a) and (c) of this section shall be set forth in the policies to which they apply.

Revised Law

Sec. 1110.007. NOTICE TO POLICYHOLDER. (a) In this section, "policyholder" includes the owner of a life insurance policy or the person designated to pay premiums as shown on the records of the life insurer.

(b) For a cash loan on a life insurance policy, the life insurer shall notify the policyholder of the initial interest rate on the loan at the time the insurer makes the loan.

(c) For a premium loan on a life insurance policy, the life insurer shall notify the policyholder of the initial interest rate on the loan as soon as reasonably practical after making the loan. Except as provided by Subsection (d), subsequent notice is not required to be given when the insurer makes an additional premium loan on the policy.

(d) At least 30 days before an increase in the interest rate on a policy loan, the life insurer shall send a notice of the rate increase to the policyholder.

(e) The life insurer shall include in a notice required by this section the substance of the provisions of Section 1110.004(b) applicable to the policy. For a policy loan with an adjustable interest rate, the notice must state the frequency at which the rate is to be determined. (V.T.I.C. Art. 3.44c, Secs. 3(e), (h) (part).)

Source Law

(e) The life insurer shall:

(1) notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(2) notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan; notice need not be given to the policyholder when a further premium loan is added, except as provided in Subdivision (3) below;

(3) send to policyholders with loans 30 days advance notice of any increase in the rate; and

(4) include in the notices required above the substance of the pertinent provisions of Subsections (a) and (c) of this section.

(h) For purposes of this section:

. . .

(3) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer. . . .

Revised Law

Sec. 1110.008. LOAN VALUE OF POLICY; TERMINATION OF POLICY BASED ON CHANGE IN INTEREST RATE. (a) The loan value of a life insurance policy shall be determined in accordance with Section 1101.009.

(b) A life insurance policy may not be terminated in a policy year solely as the result of a change in the policy loan

interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which coverage would otherwise have terminated if there had been no change in the interest rate. (V.T.I.C. Art. 3.44c, Sec. 3(f).)

Source Law

(f) The loan value of the policy shall be determined in accordance with Section 6 of Article 3.44 of this code, but no policy shall terminate in a policy year as the sole result of change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

Revisor's Note

(End of Chapter)

Section 1, V.T.I.C. Article 3.44c, states the purpose of the article. The revised law omits Section 1 as unnecessary because the provision is nonsubstantive and because the legislative purpose in enacting the article is clear from the substantive provisions of the article revised in the chapter. The omitted law reads:

Art. 3.44c

Sec. 1. The purpose of this Act is to permit and set guidelines for life insurers to include in life insurance policies issued after the effective date of this Act a provision for periodic adjustment of policy loan interest rates.

CHAPTER 1111. LIFE AND VIATICAL SETTLEMENTS AND

ACCELERATED TERM LIFE INSURANCE BENEFITS

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CHAPTER 1111. LIFE AND VIATICAL SETTLEMENTS AND
ACCELERATED TERM LIFE INSURANCE BENEFITS
SUBCHAPTER A. LIFE AND VIATICAL SETTLEMENTS

Revised Law

Sec. 1111.001. DEFINITIONS. In this subchapter:

(1) "Life settlement" means an agreement that is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state under which a person pays anything of value that is:

(A) less than the expected death benefit of a policy insuring the life of an individual who does not have a catastrophic or life-threatening illness or condition; and

(B) paid in return for the policy owner's or certificate holder's assignment, transfer, bequest, devise, or sale of the death benefit under or ownership of the policy.

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

(3) "Viatical settlement" means an agreement that is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state under which a person pays anything of value that is:

(A) less than the expected death benefit of a policy insuring the life of an individual who has a catastrophic or life-threatening illness or condition; and

(B) paid in return for the policy owner's or certificate holder's assignment, transfer, bequest, devise, or sale of the death benefit under or ownership of the policy.

(V.T.I.C. Art. 3.50-6A, Sec. 1.)

Source Law

Art. 3.50-6A

Sec. 1. In this article:

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

(2) "Viatical settlement" means an agreement that is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state under which a person pays compensation or anything of value that is less than the expected death benefit of a policy insuring the life of an individual who has a catastrophic or life-threatening illness or condition in return for the policy owner's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit under or ownership of the policy.

(3) "Life settlement" means an agreement that is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state under which a person pays compensation or anything of value that is less than the expected death benefit of a policy insuring the life of an individual who

does not have a catastrophic or life-threatening illness or condition in return for the policy owner's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit under or ownership of the policy.

Revisor's Note

Sections 1(2) and (3), V.T.I.C. Article 3.50-6A, refer to "compensation or anything of value." The revised law omits the references to "compensation" because that concept is included in the meaning of "anything of value."

Revised Law

Sec. 1111.002. PURPOSE. The purpose of this subchapter is to:

- (1) provide for registration of persons engaged in the business of life or viatical settlements; and
- (2) provide consumer protection for a person who may sell or otherwise transfer the person's life insurance policy. (V.T.I.C. Art. 3.50-6A, Sec. 2(a).)

Source Law

Sec. 2. (a) The purpose of this article is to register persons engaged in the business of viatical settlements or the business of life settlements and to provide consumer protection for a person who may sell or otherwise transfer the person's life insurance policy.

Revised Law

Sec. 1111.003. RULES; REGISTRATION AND REGULATION. (a) To implement this subchapter, the commissioner shall adopt reasonable rules relating to life settlements and relating to viatical settlements.

(b) The rules adopted by the commissioner under this section must include rules governing:

- (1) registration of a person engaged in the business of life settlements;
- (2) registration of a person engaged in the business of viatical settlements;
- (3) approval of contract forms;
- (4) disclosure requirements;
- (5) prohibited practices relating to:
 - (A) unfair discrimination in the provision of life or viatical settlements; and
 - (B) referral fees paid by persons engaged in the business of life or viatical settlements;
- (6) assignment or resale of life insurance policies;
- (7) maintenance of appropriate confidentiality of personal and medical information; and
- (8) the responsibility of a registrant to ensure

compliance with this subchapter and rules relating to life or viatical settlements after the registration is revoked, suspended, or otherwise lapses.

(c) The commissioner may not adopt a rule establishing a price or fee for the sale or purchase of a life settlement. This subsection does not prohibit the commissioner from adopting a rule relating to an unjust price or fee for the sale or purchase of a life settlement.

(d) The commissioner may not adopt a rule that regulates the actions of an investor providing money to a life or viatical settlement company. (V.T.I.C. Art. 3.50-6A, Secs. 2(b), (c), (e), (f).)

Source Law

(b) The commissioner shall adopt reasonable rules to implement this article as it relates to viatical settlements and as it relates to life settlements.

(c) The rules adopted by the commissioner under this article must include rules governing:

(1) registration of a person engaged in the business of viatical settlements;

(2) registration of a person engaged in the business of life settlements;

(3) approval of contract forms;

(4) disclosure requirements;

(5) prohibited practices relating to:

(A) unfair discrimination in the provision of viatical settlements or life settlements; and

(B) referral fees paid by persons engaged in the business of viatical settlements or life settlements;

(6) the assignment or resale of life insurance policies;

(7) the maintenance of appropriate confidentiality of personal and medical information; and

(8) the responsibility of a registrant to ensure compliance with this article and rules relating to viatical settlements or life settlements after the registration is revoked, is suspended, or otherwise lapses.

(e) The commissioner may not adopt rules establishing prices or fees for the sale or purchase of life settlements. This subsection does not prohibit the commissioner from adopting rules addressing unjust prices or fees for the sale or purchase of life settlements.

(f) The commissioner may not adopt rules that require the regulation of the actions of an investor providing funds to a viatical or life settlement company.

Revisor's Note

Section 2(f), V.T.I.C. Article 3.50-6A, refers to "funds." The revised law substitutes "money" for "funds" for consistency with other recent codes and to reflect modern drafting style.

Revised Law

Sec. 1111.004. ANNUAL FEE FOR REGISTRATION. The commissioner may adopt rules requiring payment of an annual fee in connection with registration. The fee may not exceed \$250. (V.T.I.C. Art. 3.50-6A, Sec. 2(d).)

Source Law

(d) The commissioner may adopt rules requiring payment of an annual fee in connection with registration. The fee may not exceed \$250.

Revised Law

Sec. 1111.005. DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION; ENFORCEMENT. (a) The commissioner may suspend or revoke a registration or deny an application for registration if the commissioner determines that the registrant or applicant, individually or through any officer, director, or shareholder of the registrant or applicant:

- (1) wilfully violated:
 - (A) this subchapter;
 - (B) an applicable provision of this code or another insurance law of this state; or
 - (C) a rule adopted under a law described by Paragraph (A) or (B);
- (2) intentionally made a material misstatement in the application for registration;
- (3) obtained or attempted to obtain registration by fraud or misrepresentation;
- (4) misappropriated, converted to the registrant's or applicant's own use, or illegally withheld money belonging to a party to a life or viatical settlement;
- (5) was guilty of fraudulent or dishonest practices;
- (6) materially misrepresented the terms of business conducted under this subchapter or any other provision of this code or another insurance law of this state;
- (7) made or issued, or caused to be made or issued, a statement materially misrepresenting or making incomplete comparisons regarding the material terms of any business conducted under this subchapter; or
- (8) was convicted of a felony or was convicted of a misdemeanor involving moral turpitude or fraud.

(b) An applicant or registrant whose registration has been denied, suspended, or revoked under this section may not file another application for registration before the first anniversary

of the effective date of the denial, suspension, or revocation or, if judicial review of the denial, suspension, or revocation is sought, the first anniversary of the date of the final court order or decree affirming the action. The commissioner may deny an application filed after that period unless the applicant shows good cause why the denial, suspension, or revocation of the previous registration should not bar the issuance of a new registration.

(c) In addition to an action taken against a person under Subsection (a) or (b), the commissioner may take against the person any action that the commissioner may take against a person engaged in the business of insurance who violates a statute or rule. (V.T.I.C. Art. 3.50-6A, Sec. 4.)

Source Law

Sec. 4. (a) The commissioner may suspend or revoke the registration of a registrant or deny an application for registration under this article if the commissioner finds that the registrant or applicant, individually or through any officer, director, or shareholder of the registrant or applicant:

(1) wilfully violates this article, an applicable provision of this code or another insurance law of this state, or a rule adopted under this article or under such a provision;

(2) intentionally makes a material misstatement in the application for registration under this article;

(3) obtains, or attempts to obtain, registration under this article by fraud or misrepresentation;

(4) misappropriates, converts to the registrant's or applicant's own use, or illegally withholds money belonging to a party to a viatical settlement or life settlement;

(5) is guilty of fraudulent or dishonest practices;

(6) materially misrepresents the terms and conditions of business conducted under this article or any other provision of this code or other insurance laws of this state;

(7) makes or issues, or causes to be made or issued, a statement materially misrepresenting or making incomplete comparisons regarding the material terms or material conditions of any business conducted under this article; or

(8) is convicted of a misdemeanor involving moral turpitude or criminal fraud or a felony.

(b) An applicant or registrant whose registration has been denied, suspended, or revoked under this section may not file another application for registration before the first anniversary of the effective date of the denial, suspension, or revocation or, if judicial review of the denial, suspension, or revocation is sought, the first anniversary of the date of the final court order or decree affirming the action. An application filed after that period may be denied by the commissioner unless the

applicant shows good cause why the denial, suspension, or revocation of the previous license should not bar the issuance of a new license.

(c) In addition to an action taken under Subsections (a) and (b) of this section, the commissioner may take against a person engaged in the business of viatical settlements or life settlements who violates this article, an applicable provision of this code or another insurance law of this state, or a rule adopted under this article or under such a provision any action that the commissioner may take against a person engaged in the business of insurance who violates a statute or rule.

Revisor's Note

(1) Section 4(a)(6), V.T.I.C. Article 3.50-6A, refers to "terms and conditions" and Section 4(a)(7), V.T.I.C. Article 3.50-6A, refers to "material terms or material conditions." The revised law omits the references to "conditions" because the meaning of "conditions" is included in the meaning of "terms."

(2) Section 4(b), V.T.I.C. Article 3.50-6A, in the last sentence, twice refers to a "license." The previous sentence, however, refers to a "registrant" or an applicant for "registration" rather than a "license holder" or applicant for a "license." In addition, the word "license" does not appear elsewhere in Article 3.50-6A. Instead, "registration" is consistently used. The revised law is drafted accordingly.

Revised Law

Sec. 1111.006. APPLICABILITY OF OTHER INSURANCE LAWS. The following laws apply to a person engaged in the business of life or viatical settlements:

- (1) Articles 1.10, 1.10D, 1.19, and 21.21;
- (2) Chapters 82, 83, and 84;
- (3) Sections 31.002, 32.001, 32.002, 32.003, 32.021, 32.023, 32.041, 38.001, 81.004, 801.056, and 862.052; and
- (4) Subchapter C, Chapter 36. (V.T.I.C. Art. 3.50-6A, Sec. 3.)

Source Law

Sec. 3. Articles 1.10, 1.10A, 1.10C, 1.10D, 1.10E, 1.19, 1.19-1, 1.24, and 21.21 of this code apply to a person engaged in the business of viatical settlements or life settlements.

Revisor's Note

Section 3, V.T.I.C. Article 3.50-6A, refers to V.T.I.C. Article 1.10. That statute is codified in part in this code as Chapter 82 and as certain sections in Chapters 31, 32, 81, 822, 841, and 862; the rest of the statute remains in Article 1.10. The revised law is drafted accordingly.

[Sections 1111.007-1111.050 reserved for expansion]

SUBCHAPTER B. ACCELERATED TERM LIFE INSURANCE BENEFITS

Revised Law

Sec. 1111.051. DEFINITIONS. In this subchapter:

(1) "Accelerated benefit" means a benefit paid to an insured instead of a portion of a death benefit.

(2) "Death benefit" means a benefit payable to a beneficiary on the death of an insured.

(3) "Long-term care illness" means an illness or physical condition that results in the inability to perform the activities of daily life or the substantial and material duties of any occupation.

(4) "Terminal illness" means an illness or physical condition, including a physical injury, that can reasonably be expected to result in death within not more than two years. (V.T.I.C. Art. 3.50-6, Secs. (a)(1), (2), (3), (5).)

Source Law

Art. 3.50-6. (a) In this article:

(1) "Accelerated benefit" means a benefit paid to an insured in lieu of a portion of a death benefit.

(2) "Death benefit" means a benefit payable to a beneficiary on the death of an insured.

(3) "Long-term care illness" means an illness or physical condition that results in the inability to perform the activities of daily life or the substantial and material duties of any occupation.

(5) "Terminal illness" means an illness or physical condition, including a physical injury, that can reasonably be expected to result in death in two years or less.

Revised Law

Sec. 1111.052. AUTHORITY TO PAY ACCELERATED TERM LIFE BENEFITS. An insurer may pay an accelerated benefit under an individual or group term life insurance policy or certificate if:

(1) the insurer has received a written medical opinion, satisfactory to the insurer, that the insured has:

(A) a terminal illness;

(B) a long-term care illness; or

(C) an illness or physical condition that is likely to cause permanent disability or premature death, including:

(i) acquired immune deficiency syndrome (AIDS);

(ii) a malignant tumor;

(iii) a condition that requires an organ transplant; or

(iv) a coronary artery disease that results

in acute infraction or requires surgery; and

(2) the amount of the accelerated benefit is deducted from:

(A) the amount of the death benefit payable under the policy or certificate; and

(B) any amount the insured would otherwise be entitled to convert to an individual contract. (V.T.I.C. Art. 3.50-6, Secs. (a)(4), (b).)

Source Law

(a) In this article:

. . .

(4) "Specified disease" means an illness or physical condition that is likely to cause permanent disability or premature death, including the following:

(A) acquired immunodeficiency syndrome (AIDS);

(B) a malignant tumor;

(C) a condition that requires an organ transplant; and

(D) a coronary artery disease that results in acute infarction or requires surgery.

(b) An insurance company may pay an accelerated benefit under an individual or group term life insurance policy or certificate if:

(1) the company has received a written medical opinion, satisfactory to the company, that the insured has a terminal illness, a long-term care illness, or a specified disease; and

(2) the amount of the accelerated benefit is deducted from the amount of the death benefit payable under the policy or certificate and from any amount the insured would otherwise be entitled to convert to an individual contract.

Revised Law

Sec. 1111.053. RULES. The commissioner may adopt rules to implement this subchapter. (V.T.I.C. Art. 3.50-6, Sec. (c).)

Source Law

(c) The commissioner may adopt rules to implement this article.

[Chapters 1112-1130 reserved for expansion]

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CHAPTER 1131. GROUP LIFE INSURANCE AND WHOLESALE,
 FRANCHISE, OR EMPLOYEE LIFE INSURANCE
 SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 1131.001. DEFINITION. In this chapter, "wholesale, franchise, or employee life insurance" means a term life insurance plan under which a number of individual term life insurance policies are issued to a selected group at a rate that is lower than the rate shown in the issuing insurer's manual for an individually issued policy of the same type issued to an insured of the same class. (V.T.I.C. Art. 3.50, Sec. 1(7)(a).)

Source Law

Art. 3.50

Sec. 1. . . .

(7) . . .

(a) Wholesale, franchise or employee life insurance is hereby defined as: a term life insurance plan under which a number of individual term life insurance policies are issued at special rates to a selected group. A special rate is

any rate lower than the rate shown in the issuing insurance company's manual for individually issued policies of the same type and to insureds of the same class.

Revised Law

Sec. 1131.002. CERTAIN GROUP LIFE INSURANCE AUTHORIZED. A group life insurance policy may be delivered in this state only if the policy:

- (1) covers a group described by Subchapter B; and
- (2) complies with this chapter. (V.T.I.C. Art. 3.50, Secs. 1(intro), 3 (part).)

Source Law

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

. . . .

Sec. 3. Except as may be provided in this Article, it shall be unlawful to make a contract of life insurance covering a group in this state, and

Revised Law

Sec. 1131.003. CERTAIN WHOLESALE, FRANCHISE, OR EMPLOYEE LIFE INSURANCE AUTHORIZED. A wholesale, franchise, or employee life insurance policy may be issued or delivered in this state only if the policy:

- (1) covers a group described by Section 1131.065; and
- (2) complies with Subchapter P. (V.T.I.C. Art. 3.50, Sec. 1(7)(intro).)

Source Law

[Sec. 1]

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

. . . .

Revised Law

Sec. 1131.004. FORFEITURE OF CERTIFICATE OF AUTHORITY FOR UNAUTHORIZED GROUP LIFE INSURANCE CONTRACT. The certificate of authority to engage in the business of insurance in this state of an insurer that enters into a group life insurance contract other than as authorized by this chapter may be forfeited by an action brought for that purpose by the attorney general at the department's request. (V.T.I.C. Art. 3.50, Sec. 3 (part).)

Source Law

Sec. 3. . . . the license to do business in Texas of any company making a contract of life insurance covering a group in this state except as may be provided in this Article may be forfeited by a suit brought for that purpose by the Attorney General of the State of Texas at the request of the State Board of Insurance.

Revisor's Note

(1) Section 3, V.T.I.C. Article 3.50, refers to a "license to do business" in this state. The revised law substitutes "certificate of authority" for "license" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in the business of insurance.

(2) Section 3, V.T.I.C. Article 3.50, refers to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the State Board of Insurance have been changed appropriately.

Revised Law

Sec. 1131.005. GUARANTEEING ISSUANCE OF LIFE INSURANCE POLICY WITHOUT EVIDENCE OF INSURABILITY. (a) In this section, "qualified pension or profit-sharing plan" means a plan that meets the requirements of:

(1) Section 401 or 403, Internal Revenue Code of 1986, and their subsequent amendments; or

(2) any corresponding provisions of prior or subsequent United States revenue laws.

(b) This code does not prohibit a life insurance company authorized to engage in the business of insurance in this state from guaranteeing to issue individual life insurance policies insuring participants in a qualified pension or profit-sharing plan on other than the term plan without evidence of insurability. (V.T.I.C. Art. 3.50-1.)

Source Law

Art. 3.50-1. No provision in the Insurance Code shall be construed to prohibit a life insurance company authorized to do business in this state from guaranteeing to issue individual life insurance policies insuring participants in a qualified pension or profit-sharing plan on other than the term plan without evidence of insurability. The term "qualified pension or

profit-sharing plan" means a plan meeting the requirements of Sections 401 or 403 of the United States Internal Revenue Code as now or hereafter amended, or any corresponding provisions of prior or subsequent United States revenue laws.

Revised Law

Sec. 1131.006. ASSIGNMENT OF BENEFITS. (a) Subject to the terms of a group life insurance policy, an insured under the policy may make to any individual, firm, corporation, association, trust, or other legal entity, other than the insured's employer, an absolute or collateral assignment of all rights and benefits conferred on the insured by the policy or by Subchapter C.

(b) Subsection (a) applies without regard to the date a policy is issued.

(c) Subject to the terms of the policy, an assignment by an insured before September 1, 1969, is valid for the purpose of vesting in the assignee all assigned rights and privileges but without prejudice to the insurer because of any payment the insurer makes or individual policy the insurer issues before receiving notice of the assignment. (V.T.I.C. Art. 3.50, Sec. 2(intro) (part).)

Source Law

Sec. 2. . . . [nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . . provided further that subject to the terms of the policy any person insured under a group life insurance contract, whether issued before or after the effective date of this provision, may make to any person, firm, corporation, association, trust, or other legal entity, other than his employer, an absolute or collateral assignment of all of the rights and benefits conferred on him by any provision of such policy or by this section, but nothing herein shall be construed to have prohibited an insured from making an assignment of all or any part of his rights and privileges under the policy before the effective date of this section and subject to the terms of the policy an assignment by an insured before the effective date of this provision is valid for the purpose of vesting in the assignee all rights and privileges so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment.

. . . .

Revisor's Note

(1) Section 2, V.T.I.C. Article 3.50, refers both to a "person insured" and an "insured." For consistency throughout

the code, the revised law refers to an "insured." Similar changes have been made throughout this chapter.

(2) Section 2, V.T.I.C. Article 3.50, provides that "nothing herein shall be construed to have prohibited an insured from making an assignment of all or any part of his rights and privileges under the policy before the effective date of this section." This language was added to Section 2 by Chapter 557, Acts of the 61st Legislature, Regular Session, 1969; the effective date of that act was September 1, 1969. The revised law omits this provision as executed. Section 2 also provides that "an assignment by an insured before the effective date of this provision is valid." This provision was also added by the 1969 act, and the revised law substitutes September 1, 1969, for "the effective date of this provision."

Revised Law

Sec. 1131.007. POLICY FORM. A policy of group life insurance is subject to Article 3.42. (New.)

Revisor's Note

Section 2, V.T.I.C. Article 3.50, provides in part that "[n]o policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance of the State of Texas and formally approved by such Board." The revised law omits this provision as unnecessary and substitutes a reference to V.T.I.C. Article 3.42. Subsection (a), V.T.I.C. Article 3.42, provides in part that "[n]o policy, contract or certificate of . . . group life or term insurance . . . shall be delivered, issued or used in this state by . . . any . . . insurer, unless the form of said policy, contract or certificate has been filed with the department as provided by Subsections (c) and (d) of this Article." Subsections (c) and (d), V.T.I.C. Article 3.42, provide for approval of policy forms by the commissioner of insurance. The omitted law reads:

Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance of the State of Texas and formally approved by such Board,

[Sections 1131.008-1131.050 reserved for expansion]

SUBCHAPTER B. GROUP AND WHOLESALE, FRANCHISE, OR EMPLOYEE LIFE INSURANCE: ELIGIBLE POLICYHOLDERS

Revised Law

Sec. 1131.051. EMPLOYERS. (a) A group life insurance policy may be issued to an employer or to trustees of a fund established by an employer to insure the employer's employees for

the benefit of persons other than the employer.

(b) A policy to which this section applies may provide that "employee" includes:

- (1) an individual proprietor or partner, if the employer is an individual proprietorship or partnership;
- (2) an employee of a subsidiary corporation of the employer;
- (3) an employee, individual proprietor, or partner of an affiliated corporation, proprietorship, or partnership, if the business of the employer and the affiliated corporation, proprietorship, or partnership is under common control through stock ownership, contract, or otherwise; or
- (4) a retired employee.

(c) The employer or the trustees of a fund established by an employer are the policyholder under a policy to which this section applies.

(d) A policy to which this section applies is subject to Subchapter E. (V.T.I.C. Art. 3.50, Secs. 1(1)(intro), (a) (part).)

Source Law

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

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

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

Revised Law

Sec. 1131.052. LABOR UNIONS. (a) A group life insurance policy may be issued to a labor union to insure the union's members who are actively engaged in the same occupation.

(b) For purposes of this chapter:

- (1) a labor union is considered to be an employer; and
- (2) a member of a labor union is considered to be an

employee of the union.

(c) The labor union is the policyholder under a policy to which this section applies. (V.T.I.C. Art. 3.50, Sec. 1(2).)

Source Law

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

. . .

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

Revised Law

Sec. 1131.053. FUNDS ESTABLISHED BY EMPLOYERS OR LABOR UNIONS. (a) A group life insurance policy that insures the employers' employees or the unions' members for the benefit of persons other than the employers or unions may be issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades.

(b) A policy to which this section applies may provide that "employee" includes:

(1) an individual proprietor or partner, if the employer is an individual proprietorship or partnership;

(2) a trustee, an employee of the trustee, or both, if the person's duties are principally connected with the trusteeship; or

(3) a retired employee.

(c) The trustees are the policyholder under a policy to which this section applies.

(d) A policy may not be issued under this section to insure employees of:

(1) an employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer, without regard to whether the other employer participates in the fund; or

(2) an employer that is not located in this state, unless:

(A) the majority of the employers whose employees are to be insured are located in this state; or

(B) the policy is issued to the trustees of a fund established by one or more labor unions.

(e) A policy to which this section applies is subject to Subchapter F. (V.T.I.C. Art. 3.50, Secs. 1(5)(intro), (a) (part), (f).)

Source Law

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

. . .

(5) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the union, subject to the following requirements:

(a) . . . The policy may provide that the term "employees" shall include retired employees, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. . . . The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

. . .

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

Revised Law

Sec. 1131.054. GOVERNMENTAL ENTITIES OR ASSOCIATIONS OF PUBLIC EMPLOYEES. (a) In this section, "employee" includes an elected or appointed officer of the state.

(b) A group life insurance policy may be issued to a governmental entity or an association of public employees listed in Subsection (c) to insure the governmental entity's employees or the association's members for the benefit of persons other than the governmental entity or association.

(c) This section authorizes issuance of a group life insurance policy to:

(1) a municipality, independent school district, or common school district;

(2) a department of state government;

(3) a state college or university; or

(4) an association of public employees, including an association of:

(A) employees of the United States government, if the majority of the members of the association reside in this state;

(B) state employees; or

(C) any combination of state, county, and municipal employees.

(d) The governmental entity or association is the policyholder under a policy to which this section applies.

(e) A policy to which this section applies is subject to Subchapter G. (V.T.I.C. Art. 3.50, Secs. 1(3)(intro), (d).)

Source Law

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

. . .

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

. . .

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

Revisor's Note

(1) Section 1(3), V.T.I.C. Article 3.50, refers to an association of employees of "the United States Government or any subdivision thereof." The reference to "any subdivision thereof" is omitted from the revised law because under Section 311.005(9), Government Code (Code Construction Act), "United States" is defined to include "a department, bureau, or other agency of the United States of America." That definition applies to the revised law.

(2) Section 1(3), V.T.I.C. Article 3.50, refers to an "incorporated city, town or village." The revised law substitutes the term "municipality" for "city, town or village" because that is the term used in the Local Government Code. The revised law also omits "incorporated" because under the Local Government Code all municipalities must be incorporated.

(3) Section 1(3), V.T.I.C. Article 3.50, refers to "any association of state, county and city, town or village employees, and any association of any combination of state, county or city, town or village employees." The revised law omits the reference to "any association of state, county and city, town or village employees" as unnecessary; such an association is included within the phrase "any association of any combination of state, county or city, town or village employees."

Revised Law

Sec. 1131.055. SPOUSES AND CHILDREN OF EMPLOYEES OF UNITED STATES GOVERNMENT. (a) A group term life insurance policy may be extended, in the form of group term life insurance only, to insure the spouse and natural or adopted minor children of an insured employee of the United States government if:

(1) the policy constitutes a part of the employee benefit program established for the benefit of employees of the United States government; and

(2) the spouse or children of other employees covered by the same employee benefit program in other states are or may be covered by group term life insurance.

(b) A policy to which this section applies is subject to Subchapter H. (V.T.I.C. Art. 3.50, Sec. 1(9)(intro).)

Source Law

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

. . .

(9) Any policy of group term life insurance may be extended, in the form of group term life insurance only, to insure the spouse and minor children, natural or adopted, of an insured employee, provided the policy constitutes a part of the employee benefit program established for the benefit of employees

of the United States government or any subdivision thereof, and provided further, that the spouse or children of other employees covered by the same employee benefit program in other states of the United States are or may be covered by group term life insurance, subject to the following requirements:

. . . .

Revisor's Note

Section 1(9), V.T.I.C. Article 3.50, refers to "the United States government or any subdivision thereof." The revised law omits "any subdivision thereof" for the reason stated in Revisor's Note (1) to Section 1131.054.

Revised Law

Sec. 1131.056. PRINCIPALS. (a) In this section, "agent" includes a general agent, subagent, or salesperson.

(b) A group life insurance policy may be issued to a principal, or if the principal is a life, life and accident, or life, accident, and health insurer, by or to the principal, to insure the principal's agents for the benefit of persons other than the principal.

(c) A policy to which this section applies is subject to Subchapter I. (V.T.I.C. Art. 3.50, Secs. 1(7A)(intro) (part), (a), (e).)

Source Law

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

. . . .

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

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

. . . .

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

Revised Law

Sec. 1131.057. CREDITORS. (a) A group life insurance policy may be issued to a creditor to insure the creditor's debtors.

(b) The creditor is the policyholder under a policy to which this section applies.

(c) A policy to which this section applies is subject to

Subchapter J. (V.T.I.C. Art. 3.50, Sec. 1(4)(intro).)

Source Law

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

. . . .

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

. . . .

Revised Law

Sec. 1131.058. VETERANS' LAND BOARD. (a) A group life insurance policy may be issued to the Veterans' Land Board to insure persons purchasing land under the Veterans' Land Program as provided by Subchapter I, Chapter 161, Natural Resources Code.

(b) The Veterans' Land Board is the policyholder under a policy to which this section applies. (V.T.I.C. Art. 3.50, Sec. 1(8).)

Source Law

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

. . . .

(8) A policy issued to the Veterans Land Board of the State of Texas, who shall be deemed the policyholder to insure persons purchasing land under the Texas Veterans Land Program as provided in Subchapter I, Chapter 161, Natural Resources Code.

Revisor's Note

(1) Section 1(8), V.T.I.C. Article 3.50, refers to the "Veterans Land Board of the State of Texas." The revised law substitutes "Veterans' Land Board" for the "Veterans Land Board of the State of Texas" because that is the proper name of that agency. See Section 49-b, Article III, Texas Constitution.

(2) Section 1(8), V.T.I.C. Article 3.50, refers to the "Texas Veterans Land Program." The revised law substitutes the "Veterans' Land Program" for the "Texas Veterans Land Program" because that is the proper name for that program. See Section 49-b, Article III, Texas Constitution.

Revised Law

Sec. 1131.059. ASSOCIATIONS OR TRUSTS FOR PAYMENT OF FUNERAL EXPENSES. A group life insurance policy may be issued to an association or trust for a group of individuals for the payment of future funeral expenses. (V.T.I.C. Art. 3.50, Sec. 1(5A).)

Source Law

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

. . . .

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

Revised Law

Sec. 1131.060. NONPROFIT ORGANIZATIONS OR ASSOCIATIONS.

(a) A group life insurance policy may be issued to a nonprofit service, civic, fraternal, or community organization or association to insure the organization's or association's members and employees for the benefit of persons other than the organization or association or an officer of the organization or association.

(b) To be eligible to obtain a group life insurance policy under this section, an organization or association must:

- (1) have a constitution or bylaws;
- (2) have actively existed for at least two years; and
- (3) have been formed for purposes other than that of obtaining insurance.

(c) The organization or association is the policyholder under a policy to which this section applies.

(d) A policy to which this section applies is subject to Subchapter K. (V.T.I.C. Art. 3.50, Sec. 1(10)(intro).)

Source Law

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

. . . .

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

.

[Sections 1131.061-1131.063 reserved for expansion]

Revised Law

Sec. 1131.064. OTHER GROUPS. (a) A group life insurance policy may be issued to cover a group other than a group

described by Sections 1131.051-1131.060 if the commissioner finds that:

(1) the issuance of the policy is not contrary to the best interest of the public;

(2) the issuance of the policy would result in economies of acquisition or administration; and

(3) the benefits are reasonable in relation to the premiums charged.

(b) Group life insurance coverage may not be offered under this section in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those prescribed by Subsections (a)(1)-(3) has determined that those requirements have been met.

(c) A policy to which this section applies is subject to Subchapter O. (V.T.I.C. Art. 3.50, Secs. 1(6)(intro), (a), (b).)

Source Law

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

. . .

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

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

(i) the issuance of such group policy is not contrary to the best interest of the public;

(ii) the issuance of the group policy would result in economies of acquisition or administration; and

(iii) the benefits are reasonable in relation to the premiums charged.

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

Revised Law

Sec. 1131.065. WHOLESALÉ, FRANCHISE, OR EMPLOYEE LIFE INSURANCE. (a) Policies of wholesale, franchise, or employee life insurance may be issued to:

(1) the employees of a common employer or employers;

(2) the members of one or more labor unions; or

(3) the members of one or more credit unions.

(b) A policy to which this section applies is subject to

Subchapter P. (V.T.I.C. Art. 3.50, Sec. 1(7)(b) (part).)

Source Law

[Sec. 1]

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

. . . .

(b) Wholesale, franchise or employee life insurance may be issued to (1) the employees of a common employer or employers, . . . ; or (2) the members of a labor union or unions . . . ; or (3) the members of a credit union or credit unions

[Sections 1131.066-1131.100 reserved for expansion]

SUBCHAPTER C. GROUP LIFE INSURANCE:

REQUIRED PROVISIONS

Revised Law

Sec. 1131.101. REQUIRED PROVISIONS. (a) A group life insurance policy may not be delivered in this state unless the policy contains in substance the provisions prescribed by this subchapter or provisions in relation to provisions prescribed by this subchapter that, in the opinion of the commissioner, are:

(1) more favorable to an insured under the policy; or
(2) at least as favorable to an insured under the policy and more favorable to the policyholder.

(b) The standard provisions required for individual life insurance policies do not apply to group life insurance policies. (V.T.I.C. Art. 3.50, Sec. 2(intro) (part).)

Source Law

Sec. 2. . . . nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision, or provisions which in the opinion of the Commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder, provided, however, . . . (b) that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and

Revised Law

Sec. 1131.102. NONFORFEITURE. (a) A group life insurance policy other than a group term life insurance policy must contain nonforfeiture provisions that, in the commissioner's opinion, are equitable to the insured and the policyholder.

(b) This section does not require that a group life

insurance policy contain the same nonforfeiture provisions as required for an individual life insurance policy. (V.T.I.C. Art. 3.50, Sec. 2(intro) (part).)

Source Law

Sec. 2. . . . [nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision, . . . provided, however,] . . . (c) that if the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a non-forfeiture provision or provisions which in the opinion of the Commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same non-forfeiture provisions as are required for individual life insurance policies; and

Revised Law

Sec. 1131.103. GRACE PERIOD. (a) A group life insurance policy must provide that the policyholder or premium payor is entitled to a grace period of 31 days for the payment of any premium, other than the first, due under the policy. During the grace period, the death benefit coverage continues in force unless the policyholder or premium payor gives the insurer written notice of discontinuance before the date of discontinuance and in accordance with the policy.

(b) The policy may provide that the policyholder or premium payor is liable to the insurer for payment of a pro rata premium for the time the policy was in force during a grace period.

(V.T.I.C. Art. 3.50, Sec. 2(1).)

Source Law

[Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . .

(1) A provision that the policyholder or premium payor is entitled to a grace period of thirty-one (31) days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder or premium payor shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder or premium payor shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace

period.

Revised Law

Sec. 1131.104. INCONTESTABILITY OF POLICY. A group life insurance policy must provide that:

(1) the validity of the policy may not be contested, except for nonpayment of premiums, after the policy has been in force for two years after its date of issue; and

(2) a statement made by any insured under the policy relating to the insured's insurability may not be used in contesting the validity of the insurance with respect to which the statement was made after the insurance has been in force before the contest for a period of two years from its date of issue during the insured's lifetime and unless the statement is contained in a written instrument signed by the insured making the statement. (V.T.I.C. Art. 3.50, Sec. 2(2).)

Source Law

[Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . .

(2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two (2) years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two (2) years during such person's lifetime nor unless it is contained in a written instrument signed by him.

Revised Law

Sec. 1131.105. APPLICATION FOR POLICY; STATEMENTS OF INSURED. A group life insurance policy must provide that:

(1) a copy of any application for the policy by the policyholder must be attached to the policy when issued;

(2) a statement made by the policyholder or an insured is considered a representation and not a warranty; and

(3) a statement made by an insured may not be used in any contest under the policy unless a copy of the instrument containing the statement is or has been furnished to the person or the person's beneficiary. (V.T.I.C. Art. 3.50, Sec. 2(3).)

Source Law

[Sec. 2. No policy of group life insurance shall be issued

or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . .

(3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary.

Revised Law

Sec. 1131.106. EVIDENCE OF INSURABILITY. A group life insurance policy must state the conditions, if any, under which the insurer reserves the right to require an individual eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition of obtaining part or all of the coverage. (V.T.I.C. Art. 3.50, Sec. 2(4).)

Source Law

[Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . .

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

Revised Law

Sec. 1131.107. ADJUSTMENT OF PREMIUMS OR BENEFITS IF AGE OF INSURED IS MISSTATED. (a) A group life insurance policy must specify an equitable adjustment of premiums, benefits, or both, to be made if the age of an insured has been misstated.

(b) The provision required by Subsection (a) must contain a clear statement of the method of adjustment to be used.

(c) This section does not apply to a policy to which Section 1131.703 applies. (V.T.I.C. Art. 3.50, Secs. 1(6)(d) (part); 2(5).)

Source Law

[Sec. 1]

(6) . . .

(d) . . . The provisions of Subdivisions 5 through 10 of Section 2 of this article shall not apply to such policies.

[Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . .

(5) A provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

Revised Law

Sec. 1131.108. INSURANCE CERTIFICATE. (a) A group life insurance policy must provide that the insurer will issue to the policyholder for delivery to each insured an individual certificate stating:

(1) the insurance protection to which the insured is entitled;

(2) to whom the insurance benefits are payable; and

(3) the rights and conditions specified by Sections 1131.110-1131.112.

(b) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies.

(V.T.I.C. Art. 3.50, Secs. 1(6)(d) (part); 2(intro) (part), (7).)

Source Law

[Sec. 1]

(6) . . .

(d) . . . The provisions of Subdivisions 5 through 10 of Section 2 of this article shall not apply to such policies.

[Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . . provided, however, (a) that provisions (6) to (10) inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor; . . .

(7) A provision that the insurer will issue to the

policyholder for delivery to each person insured an individual certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in (8), (9), and (10) following.

Revised Law

Sec. 1131.109. PERSON TO WHOM BENEFITS ARE PAYABLE. (a) A group life insurance policy must provide that any amount due because of an insured's death must be paid to the beneficiary designated by the insured or the beneficiary's assignee, subject to:

(1) the provisions of the policy, if the designated beneficiary as to all or any part of the amount is not living at the time the insured dies; and

(2) any right reserved by the insurer in the policy and stated in the certificate to pay at the insurer's option a portion of the amount not to exceed \$250 to any person the insurer determines is equitably entitled to the portion because of having incurred funeral or other expenses incident to the last illness or death of the insured.

(b) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies. (V.T.I.C. Art. 3.50, Secs. 1(6)(d) (part); 2(intro) (part), (6).)

Source Law

[Sec. 1]

(6) . . .

(d) . . . The provisions of Subdivisions 5 through 10 of Section 2 of this article shall not apply to such policies.

[Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . . provided, however, (a) that provisions (6) to (10) inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor; . . .

(6) A provision that any sum becoming due by reason of the death of a person insured shall be payable to the beneficiary designated by the person insured, or his assignee, subject to the provisions of the policy in the event there is no designated beneficiary as to all or any part of such sum living at the death of the person insured, and subject to any right reserved by the

insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding Two Hundred and Fifty (\$250) Dollars to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

Revised Law

Sec. 1131.110. RIGHT TO INDIVIDUAL POLICY ON TERMINATION OF EMPLOYMENT OR MEMBERSHIP. (a) A group life insurance policy must provide that if any portion of the insurance on an individual insured under the policy ceases because the individual's employment or membership in the class or classes eligible for coverage under the policy terminates, the individual is entitled to have the insurer issue to the individual an individual life insurance policy without disability or other supplementary benefits.

(b) An individual must apply for an individual policy and pay the first premium to the insurer not later than the 31st day after the date the individual's employment or membership terminates.

(c) An individual policy under this section must be issued without evidence of insurability.

(d) The insured may select any individual policy, other than a term life insurance policy, customarily issued by the insurer for an individual of the insured's age and for the amount requested.

(e) Except as provided by Subsection (f), the individual policy must be in an amount not to exceed the amount of life insurance that ceases because of the termination of employment or membership.

(f) For purposes of Subsection (e), any amount of insurance that, on or before the date of the termination of employment or membership, has matured as an endowment payable to the insured is not included in the amount that is considered to cease because of the termination. This subsection applies without regard to whether the endowment is payable in full, in installments, or in the form of an annuity.

(g) The premium on an individual policy must be at the insurer's then customary rate applicable to:

(1) the form and amount of the individual policy;
(2) the class of risk to which the insured then belongs; and

(3) the insured's age on the effective date of the individual policy.

(h) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies.
(V.T.I.C. Art. 3.50, Secs. 1(6)(d) (part); 2(intro) (part), (8).)

Source Law

[Sec. 1]

(6) . . .

(d) . . . The provisions of Subdivisions 5 through 10 of Section 2 of this article shall not apply to such policies.

[Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . . provided, however, (a) that provisions (6) to (10) inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor; . . .

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination, and provided further that:

(a) The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(b) The individual policy shall be in an amount not in excess of the amount of life insurance which ceases because of such termination, provided that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purpose of this provision, be included in the amount which is considered to cease because of such termination; and

(c) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

Revised Law

Sec. 1131.111. RIGHT TO INDIVIDUAL POLICY ON TERMINATION OF COVERAGE UNDER GROUP POLICY. (a) A group life insurance policy must provide that if the policy terminates or is amended so as to terminate the insurance of a class of insured individuals, each individual insured under the policy on the date of the termination or amendment whose insurance terminates and who has been insured under the policy for at least five years before the date of the termination or amendment is entitled to have the insurer issue to the individual an individual life insurance policy, subject to the conditions and limitations provided by Section 1131.110.

(b) Notwithstanding Section 1131.110(e), a group life insurance policy may provide that the amount of an individual policy issued under this section may not exceed the lesser of:

(1) the amount of the individual's life insurance coverage that ceases because of the termination or amendment of the group policy, less the amount of any life insurance for which the individual is or becomes eligible under any group policy issued or reinstated by the same or another insurer not later than the 31st day after the date of the termination or amendment; or

(2) \$2,000.

(c) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies.

(V.T.I.C. Art. 3.50, Secs. 1(6)(d) (part); 2(intro) (part), (9).)

Source Law

[Sec. 1]

(6) . . .

(d) . . . The provisions of Subdivisions 5 through 10 of Section 2 of this article shall not apply to such policies.

[Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following provision,] . . . provided, however, (a) that provisions (6) to (10) inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor; . . .

(9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so

insured for at least five (5) years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by (8) above, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one (31) days after such termination, and (b) Two Thousand (\$2,000) Dollars.

Revised Law

Sec. 1131.112. PAYMENT OF BENEFITS ON DEATH OF INSURED BEFORE INDIVIDUAL POLICY BECOMES EFFECTIVE. (a) A group life insurance policy must provide that if an individual insured under the group policy dies during the period within which the individual would have been entitled to have an individual policy issued as provided by Section 1131.110 or 1131.111 and before such an individual policy takes effect, the amount of life insurance that the individual would have been entitled to have issued to the individual under the individual policy is payable as a claim under the group policy.

(b) This section applies without regard to whether:

(1) the application for the individual policy has been made; or

(2) the first premium for the individual policy has been paid.

(c) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies.

(V.T.I.C. Art. 3.50, Secs. 1(6)(d) (part); 2(intro) (part), (10).)

Source Law

[Sec. 1]

(6) . . .

(d) . . . The provisions of Subdivisions 5 through 10 of Section 2 of this article shall not apply to such policies.

[Sec. 2. No policy of group life insurance shall be issued or delivered in this State unless and until a copy of the form thereof has been filed with the State Board of Insurance . . . , nor shall any policy of group life insurance be delivered in this State unless it contains in substance the following

provision,] . . . provided, however, (a) that provisions (6) to (10) inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor; . . .

(10) A provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with (8) or (9) above and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

[Sections 1131.113-1131.150 reserved for expansion]

SUBCHAPTER D. GROUP LIFE INSURANCE:

OPTIONAL PROVISIONS

Revised Law

Sec. 1131.151. CONTINUATION OF BENEFITS FOR FAMILY MEMBERS AFTER DEATH OF INSURED. (a) A group life insurance policy that provides for the insurer to pay benefits for members of the family or dependents of an individual in the insured group may provide for a continuation of any part of those benefits after the death of the individual in the insured group.

(b) Any amounts of insurance provided by benefits under Subsection (a) are not considered to be life insurance for the purpose of determining the maximum amount of term insurance that may be issued on any one life. (V.T.I.C. Art. 3.50, Sec. 6.)

Source Law

Sec. 6. Any group life insurance policy which contains provisions for the payment by the insurer of benefits for members of the family or dependents of a person in the insured group may provide for a continuation of such benefits or any part or parts thereof after the death of the person in the insured group, and provided further that any amounts of insurance so provided by such benefits shall not be construed as life insurance for the purpose of determining the maximum amount of term insurance that may be issued on any one life.

[Sections 1131.152-1131.200 reserved for expansion]

SUBCHAPTER E. GROUP LIFE INSURANCE POLICIES ISSUED TO

EMPLOYERS: ADDITIONAL REQUIREMENTS

Revised Law

Sec. 1131.201. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group

described by Section 1131.051. (V.T.I.C. Art. 3.50, Sec. 1(1)(intro) (part).)

Source Law

[Sec. 1]

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, . . . subject to the following requirements:

. . . .

Revised Law

Sec. 1131.202. ELIGIBLE EMPLOYEES. All employees of the employer, or all of any class or classes of employees determined by conditions relating to their employment, are eligible for insurance under the policy. (V.T.I.C. Art. 3.50, Sec. 1(1)(a) (part).)

Source Law

[Sec. 1]

(1) . . .

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. . . .

Revised Law

Sec. 1131.203. PAYMENT OF PREMIUMS. (a) The policyholder must pay the premium for the policy:

(1) wholly from the employer's fund or funds contributed by the employer; or

(2) partly from funds described by Subdivision (1) and partly from funds contributed by the insured employees.

(b) An insurer may not issue a policy as to which the entire premium is to be derived from funds contributed by the insured employees. (V.T.I.C. Art. 3.50, Sec. 1(1)(b) (part).)

Source Law

[Sec. 1]

(1) . . .

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's fund or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. . . .

Revised Law

Sec. 1131.204. MINIMUM ENROLLMENT. (a) The policy must

cover at least 10 employees on the date the policy is issued.

(b) A policy as to which the insured employees are to pay part of the premium may take effect only if at least 75 percent of the employees eligible on the date the policy takes effect, excluding any employees as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.

(c) A policy as to which the insured employees do not pay any part of the premium must insure:

(1) all eligible employees; or

(2) all eligible employees except any employees as to whom evidence of individual insurability is not satisfactory to the insurer. (V.T.I.C. Art. 3.50, Secs. 1(1)(b) (part), (c).)

Source Law

[Sec. 1]

(1) . . .

(b) . . . A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

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

Revised Law

Sec. 1131.205. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the employees or by the employer or trustees.

(b) An insurer may not issue a policy that provides life insurance on an employee that, together with any other life insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer, exceeds \$250,000, except that if the employee's annual compensation from the employer or employers multiplied by seven exceeds \$250,000, the group term life insurance may not exceed that computed amount.

(c) Subsection (b) does not apply if:

(1) the policy provides group insurance on other than the term plan;

(2) the insurance is to be used to fund benefits under a pension or profit-sharing plan; and

(3) the amount of insurance does not exceed the amount required to provide, at the normal retirement date, the pension specified by the plan.

(d) Notwithstanding Subsection (b), a group policy that is issued by the same or another insurer to replace another group policy may provide term life insurance not to exceed the greater of:

(1) the amount provided by the policy that it replaces; or

(2) the amount provided by Subsection (b). (V.T.I.C. Art. 3.50, Sec. 1(1)(d).)

Source Law

[Sec. 1]

(1) . . .

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), unless seven hundred percent of the annual compensation of such employee from his employer or employers exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), in which event all such term insurance shall not exceed seven hundred percent of such annual compensation, except that this limitation shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension or profit sharing plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

[Sections 1131.206-1131.250 reserved for expansion]

SUBCHAPTER F. GROUP LIFE INSURANCE POLICIES ISSUED
TO FUNDS ESTABLISHED BY EMPLOYERS
OR LABOR UNIONS: ADDITIONAL REQUIREMENTS

Revised Law

Sec. 1131.251. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.053. (V.T.I.C. Art. 3.50, Sec. 1(5)(intro) (part).)

Source Law

[Sec. 1]

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

. . . .

Revised Law

Sec. 1131.252. ELIGIBLE EMPLOYEES OR MEMBERS. (a) The individuals eligible for insurance under the policy are:

- (1) all employees of the employers and the employees of the trade association of those employers;
- (2) all members of the labor union; or
- (3) all of any class or classes of employees or members determined by conditions relating to their employment, to their membership in the unions, or both.

(b) A director of a corporate employer is not eligible for insurance under the policy unless the person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director.

(c) An individual proprietor or partner is not eligible for insurance under the policy unless the person is actively engaged in and devotes a substantial part of the person's time to conducting the business of the proprietorship or partnership.

(V.T.I.C. Art. 3.50, Sec. 1(5)(a) (part).)

Source Law

[Sec. 1]

(5) . . .

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

Revised Law

Sec. 1131.253. PAYMENT OF PREMIUMS. (a) Subject to Subsection (b), the policyholder must pay the premium for the policy:

(1) wholly from funds contributed by the employer or employers, the labor union or unions, or both; or

(2) partly from funds described by Subdivision (1) and partly from funds contributed by the insureds.

(b) An insured's contribution toward the cost of the insurance may not exceed 40 cents per month for each \$1,000 of insurance coverage.

(c) The policy may provide that a participating employer or labor union may pay the premium directly to the insurer for the policy issued to the trustee. If payment is made as provided by this subsection, the employer or labor union is the premium payor for the insured employees or union members for that employer unit. (V.T.I.C. Art. 3.50, Sec. 1(5)(b) (part).)

Source Law

[Sec. 1]

(5) . . .

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or, partly from such funds and partly from funds contributed by the insured persons, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month. . . . The policy may provide that a participating employer or labor union may pay the premium directly to the insurer for the policy issued to the trustee, and in that event, the employer or labor union becomes the premium payor for the insured employees or union members for that employer unit.

Revised Law

Sec. 1131.254. MINIMUM ENROLLMENT. (a) The policy must cover at least 100 individuals on the date the policy is issued unless the policy is issued to the trustees of a fund established by:

(1) employers that have assumed obligations through a collective bargaining agreement and are participating in the fund to:

(A) comply with those obligations with regard to one or more classes of their employees who are covered by the collective bargaining agreement; or

(B) provide insurance benefits for other classes of their employees; or

(2) one or more labor unions.

(b) A policy as to which the insureds are to pay part of the premium from funds contributed specifically for their insurance may take effect only if at least 75 percent of the individuals of each participating employer unit who are eligible on the date the policy takes effect, excluding any individuals as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions.

(c) A policy as to which the insureds do not pay any part of the premium must insure:

(1) all eligible individuals; or

(2) all eligible individuals except any individuals as to whom evidence of individual insurability is not satisfactory to the insurer. (V.T.I.C. Art. 3.50, Secs. 1(5)(b) (part), (c).)

Source Law

[Sec. 1]

(5) . . .

(b) . . . A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible persons of each participating employer unit, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. . . .

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

Revised Law

Sec. 1131.255. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the insureds or by the policyholder or employer.

(b) An insurer may not issue a policy that provides term life insurance on an employee that, together with any other term life insurance under any group life insurance policies issued to trustees or employers, exceeds \$250,000, except that if the

employee's annual compensation from the employer or employers multiplied by seven exceeds \$250,000, the group term life insurance may not exceed that computed amount.

(c) Subsection (b) does not apply if:

(1) the policy provides group insurance on other than the term plan;

(2) the insurance is to be used to fund benefits under a pension plan; and

(3) the amount of insurance does not exceed the amount required to provide, at the normal retirement date, the pension specified by the plan.

(d) Notwithstanding Subsection (b), a group policy that is issued by the same or another insurer to replace another group policy may provide term life insurance not to exceed the greater of:

(1) the amount provided by the policy that it replaces; or

(2) the amount provided by Subsection (b). (V.T.I.C. Art. 3.50, Secs. 1(5)(d), (e).)

Source Law

[Sec. 1]

(5) . . .

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder or employer. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to trustees or employers exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), unless seven hundred percent of the annual compensation of such employee from his employer or employers exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), in which event all such term insurance shall not exceed seven hundred percent of such annual compensation.

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

[Sections 1131.256-1131.300 reserved for expansion]

SUBCHAPTER G. GROUP LIFE INSURANCE POLICIES ISSUED TO
GOVERNMENTAL ENTITIES OR ASSOCIATIONS OF
PUBLIC EMPLOYEES: ADDITIONAL REQUIREMENTS

Revised Law

Sec. 1131.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.054. (V.T.I.C. Art. 3.50, Sec. 1(3)(intro) (part).)

Source Law

[Sec. 1]

(3) A policy issued to any association of employees of the United States Government or any subdivision thereof, . . . an association of public employees, an incorporated city, town or village, an independent school district, common school district, state colleges or universities, any association of state employees, any association of state, county and city, town or village employees, and any association of any combination of state, county or city, town or village employees and any department of the state government . . . subject to the following requirements:

. . . .

Revised Law

Sec. 1131.302. ELIGIBLE EMPLOYEES OR MEMBERS. All employees of the employer or all members of the association are eligible for insurance under the policy. (V.T.I.C. Art. 3.50, Sec. 1(3)(a).)

Source Law

[Sec. 1]

(3) . . .

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

Revised Law

Sec. 1131.303. PAYMENT OF PREMIUMS. (a) The premium for the policy may be paid wholly or partly from funds contributed by:

(1) the employer;
(2) the individuals insured under the policy; or
(3) the insured employees who are members of the association of employees.

(b) Any money or credits received by or allowed to the policyholder under any participation agreement contained in or

issued in connection with the policy must be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution for future premiums.

(c) The employer may deduct from an employee's salary the employee's contribution for the premiums if authorized to do so in writing by that employee. (V.T.I.C. Art. 3.50, Sec. 1(3)(b) (part).)

Source Law

[Sec. 1]

(3) . . .

(b) The premium for a policy issued to any policyholder authorized to be such policyholder under Subsection (3) of Section 1, Article 3.50, Texas Insurance Code, may be paid in whole or in part from funds contributed by the employer, or in whole or in part from funds contributed by the persons insured under said policy; or in whole or in part from funds contributed by the insured employees who are members of such association of employees; provided, however, that any monies or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution therefor; and provided further, that the employer may deduct from the employees' salaries the employees' contributions for the premiums when authorized in writing by the respective employees so to do. . . .

Revised Law

Sec. 1131.304. MINIMUM ENROLLMENT. (a) The policy must cover at least 10 employees or members on the date the policy is issued.

(b) A policy as to which the insured employees or members pay part of the premium may take effect only if at least 75 percent of the employees or members eligible on the date the policy takes effect, excluding any employees or members as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.

(c) A group policy issued before September 1, 1969, to a group described by Section 1131.054 that was in existence on that date continues in force without regard to whether the number of the employees or members insured under the policy was less than 75 percent of the employees or members eligible on that date. (V.T.I.C. Art. 3.50, Secs. 1(3)(b) (part), (c).)

Source Law

[Sec. 1]

(3) . . .

(b) . . . Such policy may be placed in force only if at least 75% of the eligible employees or if an association of employees is the policyholder, 75% of the eligible members of said association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder. Any group policies heretofore issued to any of the groups named in Section 1(3) above and in existence on the effective date of this Act shall continue in force even though the number of employees or members insured thereunder is less than 75% of the eligible employees or members on the effective date of this Act.

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

[Sections 1131.305-1131.350 reserved for expansion]

SUBCHAPTER H. GROUP TERM LIFE INSURANCE POLICIES
EXTENDED TO SPOUSES AND CHILDREN OF EMPLOYEES OF
UNITED STATES: ADDITIONAL REQUIREMENTS

Revised Law

Sec. 1131.351. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group term life insurance policy extended to a group described by Section 1131.055. (V.T.I.C. Art. 3.50, Sec. 1(9)(intro) (part).)

Source Law

[Sec. 1]

(9) Any policy of group term life insurance may be extended, . . . to insure the spouse and minor children, natural or adopted, of an insured employee, . . . subject to the following requirements:

. . . .

Revised Law

Sec. 1131.352. PAYMENT OF PREMIUMS. The policyholder must pay the premium for the group term life insurance solely from funds contributed by the insured employees. (V.T.I.C. Art. 3.50, Sec. 1(9)(a).)

Source Law

[Sec. 1]

(9) . . .

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

Revised Law

Sec. 1131.353. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the insured employees or by the policyholder.

(b) Group term life insurance on the life of an employee's spouse may not exceed the lesser of:

(1) \$10,000; or

(2) one-half of the amount of insurance on the life of the insured employee under the group policy.

(c) Group term life insurance on the life of an employee's minor child may not exceed \$2,000. (V.T.I.C. Art. 3.50, Sec. 1(9)(b).)

Source Law

[Sec. 1]

(9) . . .

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

Revised Law

Sec. 1131.354. CONVERSION RIGHTS. On termination of group term life insurance coverage for a spouse insured under this subchapter because the insured employee's employment terminates or the employee dies, or because the group contract terminates, the spouse has the same conversion rights as to the group term life insurance on the spouse's life as the employee. (V.T.I.C. Art. 3.50, Sec. 1(9)(c).)

Source Law

[Sec. 1]

(9) . . .

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

Revised Law

Sec. 1131.355. CERTIFICATE OF INSURANCE. Only one certificate of insurance issued for delivery to an insured employee is required if the certificate includes a statement concerning any dependent's coverage. (V.T.I.C. Art. 3.50, Sec. 1(9)(d).)

Source Law

[Sec. 1]

(9) . . .

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

[Sections 1131.356-1131.400 reserved for expansion]

SUBCHAPTER I. GROUP LIFE INSURANCE POLICIES
ISSUED TO PRINCIPALS: ADDITIONAL REQUIREMENTS

Revised Law

Sec. 1131.401. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.056. (V.T.I.C. Art. 3.50, Sec. 1(7A)(intro) (part).)

Source Law

[Sec. 1]

(7A) A policy may be issued to a principal, or if such principal is a life or life and accident or life, accident and health insurer, by or to such principal, . . . subject to the following requirements:

. . . .

Revised Law

Sec. 1131.402. ELIGIBLE AGENTS. Agents who are under contract to provide personal services for the principal for a commission or other fixed or ascertainable compensation, or any class or classes of those agents determined by conditions relating to the services the agents provide to the principal, are eligible for insurance under the policy. (V.T.I.C. Art. 3.50, Sec. 1(7A)(b).)

Source Law

[Sec. 1]

(7A) . . .

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

Revisor's Note

Section 1(7A)(b), V.T.I.C. Article 3.50, provides that "[t]he agents eligible for insurance under the policy shall be those who are under contract to render personal services for the principal for a commission or other fixed or ascertainable compensation." The revised law adds a reference to "any class or classes of those agents" because Section 1(7A)(c), V.T.I.C. Article 3.50, revised in pertinent part as Section 1131.404, refers to "all . . . agents or all of any class or classes thereof"; it is clear this concept was also intended to apply under Section 1(7A)(b).

Revised Law

Sec. 1131.403. PAYMENT OF PREMIUMS. The premium for the policy must be paid:

- (1) wholly by the principal; or
- (2) partly from funds contributed by the principal and partly from funds contributed by the insured agents. (V.T.I.C. Art. 3.50, Sec. 1(7A)(c) (part).)

Source Law

[Sec. 1]

(7A) . . .

(c) The premium for the policy shall be paid either wholly by the principal or partly from funds contributed by the principal and partly from funds contributed by the insured agents. . . .

Revised Law

Sec. 1131.404. MINIMUM ENROLLMENT. (a) The policy must cover at least 10 agents on the date the policy is issued.

(b) Subject to Subsection (c), a policy as to which the insured agents pay part of the premium must cover, on the date the policy is issued, at least:

- (1) 75 percent of the eligible agents; or
- (2) 75 percent of any class or classes of eligible agents, determined by conditions relating to the services the agents provide to the principal.

(c) Benefits may be extended to another class of agents if 75 percent of the class request coverage.

(d) A policy as to which the insured agents do not pay any part of the premium must insure:

- (1) all eligible agents; or
- (2) all of any class or classes of eligible agents determined by conditions relating to the services the agents provide to the principal. (V.T.I.C. Art. 3.50, Secs. 1(7A)(intro) (part), (c) (part).)

Source Law

[Sec. 1]

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

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

Revised Law

Sec. 1131.405. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the agents or by the principal.

(b) An insurer may not issue a policy that provides term life insurance on an agent that, together with any other term life insurance under any group life insurance policies issued to the principal, exceeds \$250,000, except that if the agent's annual commissions or other fixed or ascertainable compensation from the principal multiplied by seven exceeds \$250,000, the group term life insurance may not exceed that computed amount. (V.T.I.C. Art. 3.50, Sec. 1(7A)(d).)

Source Law

[Sec. 1]

(7A) . . .

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the principal or by the agents. No policy may be issued which provides term insurance on any agent which together with any other term insurance under any group life insurance policy or policies issued to the principal exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), unless seven hundred percent of the annual commissions or other fixed or ascertainable compensation of such agent from the principal exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), in which event all such term insurance shall not exceed seven hundred percent of such

annual commissions or other fixed or ascertainable compensation.

[Sections 1131.406-1131.450 reserved for expansion]

SUBCHAPTER J. GROUP LIFE INSURANCE POLICIES ISSUED TO CREDITORS:
ADDITIONAL REQUIREMENTS

Revised Law

Sec. 1131.451. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.057. (V.T.I.C. Art. 3.50, Sec. 1(4) (intro).)

Source Law

[Sec. 1]

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

. . . .

Revised Law

Sec. 1131.452. ELIGIBLE DEBTORS. All individuals who become borrowers, or purchasers of securities, merchandise, or other property, under an agreement to pay the borrowed amount or to pay the balance of the price of the securities, merchandise, or other property purchased, are eligible for insurance under the policy. (V.T.I.C. Art. 3.50, Sec. 1(4)(a) (part).)

Source Law

[Sec. 1]

(4) . . .

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons . . . who become borrowers, or purchasers of securities, merchandise or other property, under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property purchased,

Revised Law

Sec. 1131.453. PAYMENT OF PREMIUMS. The policyholder must pay the premium for the policy from:

- (1) the creditor's funds;
- (2) charges collected from the insured debtors; or
- (3) both the creditor's funds and charges collected from the insured debtors. (V.T.I.C. Art. 3.50, Sec. 1(4)(b).)

Source Law

[Sec. 1]

(4) . . .

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

Revised Law

Sec. 1131.454. MINIMUM ENROLLMENT. The policy must cover at least 50 debtors at all times. (V.T.I.C. Art. 3.50, Sec. 1(4)(a) (part).)

Source Law

[Sec. 1]

(4) . . .

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons numbering not less than fifty (50) at all times,

Revised Law

Sec. 1131.455. AMOUNT OF INSURANCE. (a) Except as otherwise provided by this section, the amount of insurance on a debtor's life under the policy may not exceed the lesser of:

(1) the amount of the debtor's indebtedness;

(2) \$50,000, if the indebtedness is not secured by a first lien on real estate; or

(3) \$125,000, if the indebtedness is secured by a first lien on real estate.

(b) Subject to Subsections (c) and (d), the face amount of any loan or loan commitment, totally or partially executed, made to a debtor for educational purposes or to a debtor with seasonal income by a creditor in good faith for general agricultural or horticultural purposes, secured or unsecured, under which the debtor becomes personally liable for the payment of the loan, may be insured in an initial amount of insurance not to exceed the lesser of:

(1) the total amount payable under the contract of indebtedness; or

(2) \$100,000 on any one life.

(c) If indebtedness described by Subsection (b) is payable in substantially equal installments, the amount of insurance may not at any time exceed the greater of the scheduled or actual amount of unpaid indebtedness.

(d) Insurance on a loan commitment described by Subsection (b) that does not exceed one year in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan but may not exceed \$100,000 on any one life. (V.T.I.C. Art. 3.50, Sec. 1(4)(a) (part).)

Source Law

[Sec. 1]

(4) . . .

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

Revised Law

Sec. 1131.456. PAYMENT OF PROCEEDS. (a) The proceeds of the insurance must be payable to the policyholder.

(b) Payment to the policyholder reduces or extinguishes the debtor's unpaid indebtedness to the extent of the payment. In the case of a debtor under a loan or loan commitment described by Section 1131.455(b), any insurance proceeds in excess of the indebtedness to the creditor are payable:

(1) to the debtor's estate; or

(2) under a facility of payment clause. (V.T.I.C. Art. 3.50, Sec. 1(4)(d).)

Source Law

[Sec. 1]

(4) . . .

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment; provided that in the case of a debtor for educational purposes or of a debtor with seasonal income, under a loan or loan commitment

for general agricultural or horticultural purposes of the type described in paragraph (a), the insurance in excess of the indebtedness to the creditor, if any, shall be payable to the estate of the debtor or under the provision of a facility of payment clause.

Revised Law

Sec. 1131.457. ANNUITIES AND ENDOWMENT INSURANCE PROHIBITED. The insurance issued may not include annuities or endowment insurance. (V.T.I.C. Art. 3.50, Sec. 1(4)(c).)

Source Law

[Sec. 1]

(4) . . .

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

[Sections 1131.458-1131.500 reserved for expansion]

SUBCHAPTER K. GROUP LIFE INSURANCE POLICIES ISSUED TO NONPROFIT ORGANIZATIONS OR ASSOCIATIONS: ADDITIONAL REQUIREMENTS

Revised Law

Sec. 1131.501. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.060. (V.T.I.C. Art. 3.50, Sec. 1(10)(intro) (part).)

Source Law

[Sec. 1]

(10) A policy of group life insurance may be issued to a nonprofit service, civic, fraternal, or community organization or association which has had an active existence for at least two years, has a constitution or bylaws, was formed for purposes other than obtaining insurance, . . . subject to the following requirements:

. . . .

Revised Law

Sec. 1131.502. ELIGIBLE MEMBERS. All members of the organization or association, or all of any class of members determined by conditions relating to their membership in the organization or association, are eligible for insurance under the policy. (V.T.I.C. Art. 3.50, Sec. 1(10)(a).)

Source Law

[Sec. 1]

(10) . . .

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

Revisor's Note

Section 1(10)(a), V.T.I.C. Article 3.50, refers to "the association." Subsequent provisions of Section 1(10) also refer to "the association." The language in Section 1(10) that precedes the portion revised as this section refers to "a nonprofit . . . organization or association." (See Section 1131.060.) For consistency, throughout this subchapter the revised law substitutes "organization or association" for "association."

Revised Law

Sec. 1131.503. PAYMENT OF PREMIUMS. (a) The policyholder must pay the premium from:

- (1) the policyholder's funds;
- (2) funds contributed by the employees or members specifically for their insurance; or
- (3) both the policyholder's funds and funds contributed by the employees or members.

(b) The policy may provide that the premium may be paid directly to the insurer by individual employees or members from their own funds. If the premium is paid as provided by this subsection, the respective employees or members become the premium payor for that particular certificate. (V.T.I.C. Art. 3.50, Sec. 1(10)(c).)

Source Law

[Sec. 1]

(10) . . .

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

Revised Law

Sec. 1131.504. MINIMUM ENROLLMENT. The policy must cover at least 25 individuals on the date the policy is issued. (V.T.I.C. Art. 3.50, Sec. 1(10)(d).)

Source Law

[Sec. 1]

(10) . . .

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

Revised Law

Sec. 1131.505. AMOUNTS OF INSURANCE. The amounts of insurance under the policy must be based on a plan that precludes individual selection by the insured members or by the organization or association. (V.T.I.C. Art. 3.50, Sec. 1(10)(b).)

Source Law

[Sec. 1]

(10) . . .

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

[Sections 1131.506-1131.700 reserved for expansion]

SUBCHAPTER O. GROUP LIFE INSURANCE POLICIES ISSUED TO OTHER
GROUPS: ADDITIONAL REQUIREMENTS

Revised Law

Sec. 1131.701. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.064. (V.T.I.C. Art. 3.50, Sec. 1(6) (intro).)

Source Law

[Sec. 1]

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

. . . .

Revised Law

Sec. 1131.702. PAYMENT OF PREMIUMS. The premium for the policy must be paid from:

- (1) the policyholder's funds;
- (2) funds contributed by the insureds; or
- (3) both the policyholder's funds and funds

contributed by the insureds. (V.T.I.C. Art. 3.50, Sec. 1(6)(c).)

Source Law

[Sec. 1]

(6) . . .

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

Revised Law

Sec. 1131.703. INSURANCE FOR LIABILITIES RELATED TO FRINGE BENEFITS. (a) Notwithstanding any other law, an employer may insure the lives of the employer's officers, directors, employees, and retired employees under Section 1131.064 to and in an amount necessary to provide funds to offset liabilities related to fringe benefits.

(b) An employer shall submit evidence of the purpose of the policy to the commissioner.

(c) A policy issued for the purpose described by this section does not reduce any other life insurance benefits offered or provided by the employer. (V.T.I.C. Art. 3.50, Sec. 1(6)(d) (part).)

Source Law

[Sec. 1]

(6) . . .

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

[Sections 1131.704-1131.750 reserved for expansion]

SUBCHAPTER P. WHOLESALE, FRANCHISE, OR EMPLOYEE
LIFE INSURANCE POLICIES: ADDITIONAL REQUIREMENTS

Revised Law

Sec. 1131.751. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a wholesale, franchise, or employee life insurance policy issued as provided by Section 1131.065. (V.T.I.C. Art. 3.50, Sec. 1(7) (intro).)

Source Law

[Sec. 1]

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

. . . .

Revised Law

Sec. 1131.752. PAYMENT OF PREMIUMS. (a) The premium for the policy must be paid:

(1) wholly from funds contributed by the employer or

employers of the insureds;

(2) wholly from funds contributed by the labor or credit union or unions; or

(3) partly from funds described by Subdivision (1) or (2) and partly from funds contributed by the insureds.

(b) An insured's contribution toward the cost of the insurance may not exceed 40 cents per month for each \$1,000 of insurance coverage. (V.T.I.C. Art. 3.50, Sec. 1(7)(c).)

Source Law

[Sec. 1]

(7) . . .

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

Revised Law

Sec. 1131.753. MINIMUM ENROLLMENT. A policy of wholesale, franchise, or employee life insurance must cover at least five employees or members of a labor union or credit union on the date the policy is issued. (V.T.I.C. Art. 3.50, Sec. 1(7)(b) (part).)

Source Law

[Sec. 1]

(7) . . .

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

Revised Law

Sec. 1131.754. AMOUNT OF INSURANCE. (a) An insurer may not issue a policy that provides wholesale, franchise, or employee term life insurance on an employee or member that, together with any other term life insurance policy issued on a wholesale, franchise, or employee or group basis, exceeds \$250,000, except that if the individual's annual compensation from the individual's employer or employers multiplied by seven exceeds \$250,000, the wholesale, franchise, or employee term life insurance may not exceed that computed amount.

(b) Subsection (a) does not apply if:

(1) the policy provides group insurance on other than the term plan;

(2) the insurance is to be used to fund benefits under a pension plan; and

(3) the amount of insurance does not exceed the amount required to provide, at the normal retirement date, the pension specified by the plan.

(c) Notwithstanding Subsection (a), a group policy that is issued by the same or another insurer to replace another group policy may provide term life insurance not to exceed the greater of:

(1) the amount provided by the policy that it replaces; or

(2) the amount provided by Subsection (a). (V.T.I.C. Art. 3.50, Secs. 1(7)(d) (part), (g).)

Source Law

[Sec. 1]

(7) . . .

(d) No policy may be issued on a wholesale, franchise or employee life insurance basis which, together with any other term life insurance policy or policies issued on a wholesale, franchise, employee life insurance or group basis, provides term life insurance coverage for an amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00), unless seven hundred percent of the annual compensation of such employee from his employer or employers exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), in which event all such term insurance shall not exceed seven hundred percent of such annual compensation. . . .

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

Revisor's Note

Section 1(7)(d), V.T.I.C. Article 3.50, refers to "such employee." The language in Section 1(7) that precedes the portion revised as this section refers to "(1) the employees of a common employer or employers, . . . or (2) the members of a labor

union or unions, . . . or (3) the members of a credit union or credit unions." (See Section 1131.065.) For consistency, the revised law substitutes "employee or member" for "employee" throughout this subchapter.

Revised Law

Sec. 1131.755. INDIVIDUAL APPLICATION REQUIRED. (a) An insurer must take an individual application for each policy of wholesale, franchise, or employee life insurance.

(b) For purposes of Section 1131.754, the insurer is entitled to rely on the applicant's statements as to the applicant's other similar life insurance coverage. (V.T.I.C. Art. 3.50, Sec. 1(7)(d) (part).)

Source Law

[Sec. 1]

(7) . . .

(d) . . . An individual application shall be taken for each such policy and the insurer shall be entitled to rely upon the applicant's statements as to applicant's other similar coverage upon his life.

Revised Law

Sec. 1131.756. RIGHT TO INDIVIDUAL POLICY ON TERMINATION OF EMPLOYMENT OR MEMBERSHIP. (a) A policy of wholesale, franchise, or employee life insurance must contain in substance the provisions prescribed by this section.

(b) The policy must provide that, subject to Subsections (c) and (d), if the insurance on an individual insured under the policy ceases because the individual's employment or membership in the labor or credit union terminates, the individual is entitled to have the insurer issue to the individual an individual life insurance policy without disability or other supplementary benefits.

(c) An individual policy under this section must be issued without evidence of insurability.

(d) An individual must apply for an individual policy and pay the first premium to the insurer not later than the 31st day after the date the individual's employment or membership terminates. (V.T.I.C. Art. 3.50, Sec. 1(7)(e).)

Source Law

[Sec. 1]

(7) . . .

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

A provision that if the insurance on an insured person ceases because of termination of employment or of membership in the union, such person shall be entitled to have issued to him by

the insurer, without evidence of insurability an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination.

Revised Law

Sec. 1131.757. OPTIONAL POLICY PROVISIONS. A policy of wholesale, franchise, or employee life insurance may contain in substance provisions under which:

- (1) the policy is renewable at the option of the insurer only;
- (2) coverage by the insurer terminates on termination of employment or membership by the insured employee or member; or
- (3) an individual eligible for insurance must furnish evidence of individual insurability satisfactory to the insurer as a condition to coverage. (V.T.I.C. Art. 3.50, Sec. 1(7)(f).)

Source Law

[Sec. 1]

(7) . . .

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

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

Revised Law

Sec. 1131.758. CERTAIN POLICIES AND PLANS UNAFFECTED. This subchapter does not impair or otherwise affect:

- (1) a policy issued before August 28, 1961;
- (2) a plan of wholesale, franchise, or employee life insurance in effect before August 28, 1961, if the plan was legal on the date policies were issued under the plan; or
- (3) a policy issued on a salary savings franchise plan, bank deduction plan, pre-authorized check plan, or similar plan of premium collection. (V.T.I.C. Art. 3.50, Sec. 1(7)(h).)

Source Law

[Sec. 1]

(7) . . .

(h) Nothing contained in this Subsection (7) shall in any manner alter, impair or invalidate (1) any policy

heretofore issued prior to the effective date of this Act; nor (2) any such plan heretofore placed in force and effect provided such prior plan was at date of issue legal and valid; nor (3) any policy issued on a salary savings franchise plan, bank deduction plan, pre-authorized check plan or similar plan of premium collection.

Revisor's Note

(1) Section 1(7)(h), V.T.I.C. Article 3.50, provides that nothing in that article shall "alter, impair or invalidate" certain insurance policies. The revised law substitutes "impair or otherwise affect" for "alter, impair or invalidate" because in this context, "impair or otherwise affect" is synonymous with the quoted phrase.

(2) Section 1(7)(h), V.T.I.C. Article 3.50, refers to insurance policies issued "prior to the effective date of this Act" and to plans of franchise life insurance "heretofore" placed in force (meaning issued or placed in force before the effective date of Section 1(7)(h)). Section 1(7) was added to Article 3.50 as Section 1(6) by Chapter 263, Acts of the 57th Legislature, Regular Session, 1961. That act took effect August 28, 1961. Accordingly, the revised law substitutes "before August 28, 1961" for "prior to the effective date of this Act" and "heretofore."

(3) Section 1(7)(h), V.T.I.C. Article 3.50, refers to a plan of franchise life insurance being "placed in force and effect." The reference to "placed" is omitted as unnecessary because if a policy is "in effect" before a specified date, it must have been "placed in effect" before that date. The reference to "in force" is omitted from the revised law because "in force" is included within the meaning of "in effect."

[Sections 1131.759-1131.800 reserved for expansion]

SUBCHAPTER Q. EXTENSION OF GROUP LIFE INSURANCE TO SPOUSES AND CHILDREN

Revised Law

Sec. 1131.801. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any group life insurance policy issued and delivered under the laws of this state other than a policy issued and delivered to a creditor as provided by Section 1131.057 or other law providing for credit life insurance. (V.T.I.C. Art. 3.51-4A, Sec. 1 (part).)

Source Law

Art. 3.51-4A

Sec. 1. Insurance under any group life insurance policy issued and delivered pursuant to the laws of the State of Texas, except a policy issued and delivered to a creditor pursuant to Section 1(4) of Article 3.50 of the Texas Insurance Code or pursuant to any other law of the State of Texas providing for

credit life insurance,

Revised Law

Sec. 1131.802. EXTENSION OF GROUP LIFE INSURANCE TO SPOUSES AND CHILDREN; ELIGIBLE CHILDREN. Insurance under a group life insurance policy may be extended to cover:

(1) the spouse of each individual eligible to be insured under the policy; or

(2) a natural or adopted child of each individual eligible to be insured under the policy if the child is:

(A) younger than 21 years of age; or

(B) older than 21 years of age and:

(i) enrolled as a full-time student at an educational institution; or

(ii) physically or mentally disabled and under the parents' supervision. (V.T.I.C. Art. 3.51-4A, Sec. 1 (part).)

Source Law

Sec. 1. Insurance under any group life insurance policy . . . may be extended to cover the spouse, the children under 21 years of age, natural or adopted, and the children over 21 years of age, natural or adopted, who are enrolled as full-time students at an educational institution or are physically or mentally disabled and who are under the supervision of the parents, of each person eligible to be insured thereunder,

Revised Law

Sec. 1131.803. PAYMENT OF PREMIUMS. The premium for group life insurance extended to cover a spouse or child may be paid by:

(1) the group policyholder;

(2) the insured under the policy; or

(3) the group policyholder and the insured jointly.

(V.T.I.C. Art. 3.51-4A, Sec. 2.)

Source Law

Sec. 2. Premiums for the group life insurance on such spouse and children may be paid by the group policyholder or by each insured under the said policy, or by the group policyholder and each such insured jointly.

Revised Law

Sec. 1131.804. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the insured or the policyholder.

(b) The amount of insurance on the life of the spouse or a

child may not exceed the amount of insurance for which the insured is eligible under the policy. (V.T.I.C. Art. 3.51-4A, Sec. 1 (part).)

Source Law

[Sec. 1. Insurance under any group life insurance policy . . . may be extended to cover the spouse, the children under 21 years of age, natural or adopted, and the children over 21 years of age, natural or adopted, who are enrolled as full-time students at an educational institution or are physically or mentally disabled and who are under the supervision of the parents, of each person eligible to be insured thereunder,] provided that:

(1) the amounts of insurance under the policy are based on some plan precluding individual selection either by the insured or the policyholder; and

(2) the amount of such insurance on the life of the spouse or a child may not exceed the amount of the insurance for which the insured is eligible to be insured under said policy.

Revised Law

Sec. 1131.805. CONVERSION RIGHTS. On termination of group life insurance coverage for a spouse insured under this subchapter because the insured's employment terminates, the insured's eligibility for insurance terminates, or the insured dies, or because the group life insurance policy terminates, the spouse has the same conversion rights as to the group life insurance on the spouse's life as the insured. (V.T.I.C. Art. 3.51-4A, Sec. 3.)

Source Law

Sec. 3. Upon termination of the group life insurance with respect to the spouse of any such insured by reason of said insured's termination of employment, eligibility for such insurance, or death, or by termination of the group life insurance policy, such spouse shall have the same conversion rights as to the group life insurance on his or her life as is provided for the insured.

Revised Law

Sec. 1131.806. CERTIFICATE OF INSURANCE. Only one certificate of insurance issued for delivery to an insured is required if the certificate includes a statement concerning any spouse's or child's coverage. (V.T.I.C. Art. 3.51-4A, Sec. 4.)

Source Law

Sec. 4. Only one certificate need be issued for delivery to an insured if a statement concerning any spouse's and any child's

coverage is included in such certificate.

[Sections 1131.807-1131.850 reserved for expansion]

SUBCHAPTER R. CONTINUATION OF CERTAIN GROUP LIFE
INSURANCE DURING LABOR DISPUTE

Revised Law

Sec. 1131.851. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy that is delivered or issued for delivery in this state and as to which any part of the premium is paid or is to be paid by an employer under the terms of a collective bargaining agreement. (V.T.I.C. Art. 3.51-8 (part).)

Source Law

Art. 3.51-8. [No] group life insurance policy . . . shall be delivered or issued for delivery in this state where the premiums or any part thereof is paid or is to be paid in whole or in part by an employer pursuant to the terms of a collective bargaining agreement

Revised Law

Sec. 1131.852. CONTINUATION OF GROUP LIFE INSURANCE DURING LABOR DISPUTE REQUIRED FOR CERTAIN POLICIES. An insurer may not deliver or issue for delivery a policy subject to this subchapter unless the policy provides that if the employees covered by the policy stop work because of a labor dispute, coverage continues under the policy, on timely payment of the premium, for each employee who:

(1) is covered under the policy on the date the work stoppage begins;

(2) continues to pay the employee's individual contribution, subject to the conditions provided by this subchapter; and

(3) assumes and pays during the work stoppage the contribution due from the employer, subject to the conditions provided by this subchapter. (V.T.I.C. Art. 3.51-8 (part).)

Source Law

Art. 3.51-8. No [group life insurance policy or group accident and health insurance policy shall be delivered or issued for delivery in this state where the premiums or any part thereof is paid or is to be paid in whole or in part by an employer pursuant to the terms of a collective bargaining agreement] unless the policy provides that in the event of a cessation of work by the employees covered by the policy as the result of a labor dispute, the policy upon timely payment of the premium shall continue in effect with respect to all employees insured by

the policy on the date of the cessation of work who continue to pay their individual contribution and who assume and pay the contribution due from the employer for the period of cessation of work, under the following conditions:

. . . .

Revised Law

Sec. 1131.853. CONTRIBUTIONS IF POLICYHOLDER IS TRUSTEE.

(a) An employee's contribution for purposes of a policy as to which the policyholder is a trustee or the trustees of a fund established or maintained wholly or partly by the employer is the amount the employee and employer would have been required to contribute to the fund for the employee if:

- (1) the work stoppage had not occurred; and
- (2) the agreement requiring the employer to make contributions to the fund were in effect.

(b) The policy may provide that continuation of coverage is contingent on the collection of individual contributions by the policyholder or the policyholder's agent. (V.T.I.C. Art. 3.51-8, Subdivs. (b), (c) (part).)

Source Law

(b) If the policyholder is a trustee or the trustees of a fund established or maintained in whole or in part by the employer, the employee's contribution shall be the amount which he and his employer would have been required to contribute to the trust for such employee if (1) the cessation of work had not occurred and (2) the agreement requiring the employer to make contributions to the trust were in full force.

(c) The policy may provide that the continuation of insurance is contingent upon the collection of individual contributions . . . by the policyholder or the policyholder's agent with respect to policies referred to in Subdivision (b) above.

Revised Law

Sec. 1131.854. CONTRIBUTIONS IF POLICYHOLDER IS NOT TRUSTEE. (a) A policy as to which the policyholder is not a trustee or the trustees of a fund established or maintained in whole or in part by the employer must provide that the employee's individual contribution:

- (1) is the policy rate applicable:
 - (A) on the date the work stoppage begins; and
 - (B) to an individual in the class to which the employee belongs as provided by the policy; or

(2) if the policy does not provide for a rate applicable to an individual, is an amount equal to the amount determined by dividing:

(A) the total monthly premium in effect under the policy on the date the work stoppage begins; by

(B) the total number of insureds under the policy on that date.

(b) The policy may provide that continuation of coverage under this subchapter is contingent on the collection of individual contributions by the union or unions representing the employees. (V.T.I.C. Art. 3.51-8, Subdivs. (a), (c) (part).)