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TEXAS INSURANCE CODE 1984



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Texas Insurance Code

WITH TABLES
AND INDEX

TEXAS STATE
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OCT 4 1984

*As Amended through the
1983 Regular and First
Called Sessions of the
68th Legislature*

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Texas Insurance Code, Thirteenth Edition

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PREFACE

This Pamphlet contains the text of the Insurance Code as well as those provisions of Title 78 of the Civil Statutes, Insurance, that were neither repealed nor otherwise disposed of by the enactment of the Insurance Code. Both the texts of the Code and Title 78 are complete through the 1983 Regular and First Called Sessions of the 68th Legislature. The Insurance Code was originally enacted by Acts 1951, 52nd Leg., ch. 491.

Disposition and Derivation Tables are included preceding the Insurance Code, thus providing a means of tracing repealed subject matter into the Code and, on the other hand, of searching out the source of Code articles.

A detailed descriptive word Index at the end of this Pamphlet is furnished to facilitate the search for specific textual provisions.

Comprehensive coverage of the judicial constructions and interpretations of the Insurance Code and Title 78, together with cross references, references to law review commentaries discussing particular provisions, and other editorial features, is provided in the volumes of Vernon's Texas Statutes and Codes Annotated.

THE PUBLISHER

July, 1984

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TITLE 78. INSURANCE

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EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

* No legislation for which the ninety day effective date is applicable.

DISPOSITION TABLE

Showing where provisions of former insurance Articles in the Civil Statutes have been incorporated in the Insurance Code, 1951.

Civ.St. Former Article	Insurance Code Article	Civ.St. Former Article	Insurance Code Article
1302a, § 1	9.03	4590a, § 13	20.20
1302a, § 2	9.06	4590a, § 14	20.21
1302a, § 3	9.07	4590a, § 15	20.06
1302a, § 3-A	9.08	4590a, §§ 16-19	Omitted
1302a, § 4	9.10	4679	Repealed
1302a, § 5	9.11	4679a	1.02(a)
1302a, § 6	9.12	4679b	1.03
1302a, § 7	9.13	4679c	1.04
1302a, § 8	9.14	4679d, § 6	1.05
1302a, § 9	9.15	4679d, § 6A	1.06
1302a, § 10	9.16, 9.17	4679d, § 6B	1.07
1302a, § 11	9.19	4680	1.08
1302a, § 12	9.20	4681	1.09
1302a, § 13	9.21	4682(1)	1.10(1)
1302a, § 14	9.22	4682(2)	1.10(2)
1302a, § 15	9.23	4682(3)	—
1302a, § 16	9.24	4682(4)	3.32
1302a, § 17	9.25	4682(5)	3.30
1302a, § 18	9.26		repealed
1302a, § 19	9.27	4682(6)	3.31
1302a, § 20	9.28	4682(7)	1.10(3)
1302a, § 21	9.30		6.01
1302a, § 22	9.31	4682(8)	6.02
1302a, § 23	9.32	4682(9)	1.10(5)
1302a, § 24	9.33	4682(10)	1.10(6)
1302a, § 24a	9.46	4682(11)	1.10(7)
3920	4.07	4682(12)	1.10(8)
4590a, § 1	20.01	4682(13)	1.10(9)
4590a, § 1a (a) to (e)	20.02	4682(14)	1.10(10)
4590a, § 1a (f)	20.03	4682(15)	1.10(11)
4590a, § 1a (g)	20.04	4682(16)	1.10(12)
4590a, § 1a (h)	20.05	4682(17)	1.10(13)
4590a, § 1a (i)	20.07	4682(18)	1.10(14)
	repealed	4682(19)	1.10(15)
4590a, § 1a (j)	20.08	4682(20)	1.10(16)
4590a, § 2	20.09	4682a	1.02(b)
4590a, § 3	20.10	4682b, § 1	5.01
4590a, § 4	20.11	4682b, § 1A	5.02
4590a, § 5	20.12	4682b, § 2	5.03
4590a, § 6	20.13	4682b, § 3	5.04
4590a, § 7	20.14	4682b, § 4	5.05
4590a, § 8	20.15	4682b, § 5	5.06
4590a, § 9	20.16	4682b, § 6	5.07
4590a, § 10	20.17	4682b, § 7	5.08
4590a, § 11	20.18	4682b, § 8	5.09
4590a, § 12	20.19	4682b, § 9	5.10

DISPOSITION TABLE

Civ.St. Former Article	Insurance Code Article		Civ.St. Former Article	Insurance Code Article
4682b, § 10	5.11		4713	2.16
4682b, § 11	—		4714	2.17
4682b, § 11a	5.12		4715	2.18
4682c	Expired		4716	3.01
4683	1.11		4717	3.02
4684	1.12		4718	3.04
4685	1.13		4719	3.05
4686	1.14		4720	3.06
4687	—		4721	3.07
4688	3.28		4722	3.08
4689	1.10(4)		4723	3.09
4690	1.15		4724	3.63
4690a	1.16		4725	3.39
4690b	1.17		4726	3.40
4690c	1.18		4727	3.67
4691	1.19		4728	3.10
4692	1.20		4729	3.11
4693	1.21		4730	3.12
4694	1.22		4730a	21.08
4695	1.23		4731	3.13
4696	1.24		4732	3.44
4697	1.25		4733	3.45
4698	2.19		4734	3.47
4698a, § 1	5.13		4735	3.64
4698a, § 2	5.14		4736	3.62
4698a, § 3	5.15		4736a	3.48
4698a, § 4	5.16		4737	3.61
4698a, § 5	5.17		4738	3.54
4698a, § 6	5.18		4739	3.15
4698a, § 7	5.19		4740	3.16
4698a, § 8	5.20		4741	3.18
4698a, § 9	5.21		4742	3.19
4698a, § 10	5.22			repealed
4698a, § 11	5.23		4743	3.17
4698a, § 12	5.24		4744	3.29
4698a, § 13	Omitted		4745	3.68
4698a, § 14	Omitted		4746	—
4698b, § 1	5.72		4747	3.14
4698b, § 2	5.73			repealed
4698b, § 3	5.74		4748	3.60
4698b, § 4	5.75		4749	3.42
4699	2.01		4750	3.43
4700	2.02			repealed
4701	2.04		4751	3.57
4702	2.05		4752	3.03
4703	2.06			repealed
4704	2.07		4753	21.31
4705	2.08(1-3)		4754	4.01
4706	2.10		4755	3.20
4707	2.09		4756	3.21
4708	2.11		4757	3.22
4709	2.12		4758	—
4710	2.13		4759	3.23
4711	2.14		4760	3.24
4712	2.15		4761	3.26

DISPOSITION TABLE

Civ.St. Former Article	Insurance Code Article	Civ.St. Former Article	Insurance Code Article
4762	3.41	4823	10.04
4763	3.65	4824	10.05
4764	3.66	4825	10.06
4764a	3.50	4826	10.07
4764b	3.52	4827	10.08
4764c	3.53	4828	10.09
4765	3.33	4829	10.10
	repealed	4830	10.11
4766	3.34	4831	10.12
4767	3.35	4831a	10.13
	repealed	4832	10.14
4768	3.36	4833	—
4769 (part)	4.03	4834	10.15
4769½	—	4835	10.16
4769a, §§ 1-5	—	4836	10.17
4770	4.05	4837	10.18
4771	4.06	4838	10.19
4772	3.25	4838a	—
4773	3.59	4839	10.20
4774	3.58	4840	10.21
4775	3.55	4841	10.22
4776	3.56	4842	10.23
4777	3.15	4843	10.24
4778	3.37	4844	10.25
	repealed	4845	10.26
4779	3.38	4846	10.27
4780	3.27	4847	10.28
4781	Repealed	4848	10.29
4782-4782c	Repealed	4849	10.30
4783	Repealed	4850	10.31
4784-4799	Repealed	4851	10.32
4800	11.01	4852	10.33
4801	11.02	4853	10.34
4802	11.03	4854	10.35
4803	11.04	4855	10.36
4804	11.05	4856	10.37
4805	11.06	4857	10.38
4806	11.07	4858	—
4807	11.08	4858a	10.39
4808	11.09	4859-4859d	—
	repealed	4859e	10.40
4809	11.10	4859f, § 1	13.01
4810	11.11	4859f, § 2	—
4811	11.12	4859f, § 3	14.06
4812	11.13	4859f, § 4	14.10
4813	—	4859f, § 5	14.15
4814	11.14	4859f, § 6	14.16, 14.17
4815	11.15	4859f, § 6a	Omitted
4816	11.16	4859f, § 6b	Omitted
4817	11.17	4859f, § 7(a)	14.08
4818	11.18	4859f, § 7(b)	14.09
4819	11.19	4859f, § 8	13.03
4820	10.01	4859f, § 9	14.28
4821	10.02	4859f, § 10	14.04
4822	10.03	4859f, § 11	13.04

DISPOSITION TABLE

Civ.St. Former Article	Insurance Code Article	Civ.St. Former Article	insurance Code Article
4859f, § 12	13.05	4860a—20, § 4	16.04, 17.04
4859f, § 13	14.11, 14.33	4860a—20, § 5	16.06, 17.05
4859f, § 14	13.06	4860a—20, § 6	16.08, 17.06
4859f, § 15	13.07	4860a—20, § 7	16.10, 17.08
4859f, § 16	14.34	4860a—20, § 8	16.11, 17.09
4859f, § 17	14.35	4860a—20, § 9	16.13, 17.10
4859f, § 18	13.08	4860a—20, § 10	16.20, 17.11
4859f, § 19	13.09	4860a—20, § 11	16.12, 17.12
4859f, § 20	—	4860a—20, § 12	16.14, 17.13
4860a—1	15.01	4860a—20, § 13	16.08, 17.14
4860a—2	15.02	4860a—20, § 14	16.08, 17.15
4860a—3	15.03	4860a—20, § 15	16.07, 17.16
4860a—4	15.04	4860a—20, § 16	16.15, 17.17
4860a—5	15.05	4860a—20, § 17	16.18
4860a—6	15.06	4860a—20, § 18	16.19, 17.18
4860a—6a	15.07	4860a—20, § 19	16.21, 17.19
4860a—7	15.08	4860a—20, § 20	16.17, 17.20
4860a—8	15.09	4860a—20, § 21	16.08, 17.07
4860a—9	15.10	4860a—20, § 22	16.16
4860a—10	15.11	4860a—20, § 23	16.24, 17.22
4860a—11	15.12	4860a—20, § 24	16.08, 17.23
4860a—12	15.13	4860a—20, § 25	16.09, 17.24
4860a—13	15.14	4860a—20, §§ 26, 27	—
4860a—14	15.15	4861-4871	Repealed
4860a—15	15.16	4871a	21.27
4860a—16	15.17	4872-4875	Repealed
4860a—17	15.18	4875a—1	12.01
4860a—18	15.19	4875a—2	12.02
4860a—18a	—	4875a—3	12.03
4860a—19	15.20	4875a—4	12.04
4860a—20, § 1	16.01, 17.01	4875a—5	12.05
4860a—20, § 1a (1947)	16.01, 17.25, § 1	4875a—5(5) (part)	14.08, 14.11
4860a—20, § 2	16.03, 17.02	4875a—6	12.07
4860a—20, § 2a	16.01, 17.25, § 2	4875a—7	14.09
4860a—20, § 2a (a)	17.25, § 3	4875a—8	14.03
4860a—20, § 2a (b)	17.25, § 4	4875a—9	12.08
4860a—20, § 2a (c)	17.25, § 5	4875a—10	14.11
4860a—20, § 2a (d)	17.25, § 6	4875a—11	14.27
4860a—20, § 2a (e)	17.25, § 7	4875a—12	12.09
4860a—20, § 2a (f)	17.25, § 8	4875a—13	14.31
4860a—20, § 2a (g)	17.25, § 9	4875a—14	12.10
4860a—20, § 2a (h)	17.25, § 10	4875a—15	14.22
4860a—20, § 2a (i)	17.25, § 11	4875a—16	14.28
4860a—20, § 2a (j)	17.25, § 12	4875a—17	14.24
4860a—20, § 2a (k)	17.25, § 13	4875a—18	14.26
4860a—20, § 2a (l)	17.25, § 14	4875a—19	14.15
4860a—20, § 2a (m)	17.25, § 15	4875a—20	14.15
4860a—20, § 2a (n)	17.25, § 16	4875a—21	14.16
4860a—20, § 2a (o)	17.25, § 17	4875a—22	12.11
4860a—20, § 2a (p)	17.25, § 18	4875a—23	—
4860a—20, § 2a (q)	17.25, § 19	4875a—24	12.12
4860a—20, § 2a (r)	17.25, § 20	4875a—25	14.34
4860a—20, § 2a (s)	—	4875a—26	12.13
4860a—20, § 2a (t)	17.25, § 21	4875a—27	12.14
4860a—20, § 3	16.05, 17.03	4875a—28	12.15

DISPOSITION TABLE

Civ. St. Former Article	Insurance Code Article		Civ. St. Former Article	Insurance Code Article
4875a—29	12.16		4922	6.06
4875a—30	12.17		4923	6.07
4875a—31	12.18		4924	6.08
4876, 4877	—		4925	6.09
4878	5.25			repealed
4879	5.26		4926	6.10
4880	5.27			repealed
4881	5.28		4927	6.11
4882	5.29		4928	6.12
4883	5.30		4929	6.13
4884	5.31		4929a	6.13
4885	5.32		4930	6.14
4886	5.33		4931	6.15
4887	5.34		4932	6.16
4888	5.35		4933-4940	Repealed
4889	5.36		4942-4968	Repealed
4890	5.37		4969	7.01
4891	5.38			repealed
4892	5.39		4970	7.19-1
4893	5.40		4971-4986	7.03-7.18
4894	5.41			repealed
4895	5.42		4987	21.39
4896	5.43		4988	21.40
4897	5.44		4989	8.01
4898	5.45		4990	8.02
4899	5.46		4991	8.03
4900	5.47		4992	8.04
4901	5.48		4993	8.05
4902	5.49		4994	8.06
4903	5.50		4995	8.07
4904	5.51, 5.67		4996	8.08
4905	5.67		4997	8.09
4905A	5.52		4998	8.10
4905B	5.53		4999	8.11
4905C	5.54		5000	8.12
4906	Repealed		5001	8.13
4907	5.55		5002	8.14
4908	5.56		5003	8.15
4909	5.58		5004	8.16
4910	5.59		5005	8.17
4911	5.60		5006	—
4912	5.65		5007	8.18
4913	5.57		5008	8.19
4914	5.61		5009	8.20
4915	5.62		5010	8.21
4916	5.66		5011	8.22
4917	5.63		5012	8.23
4918	5.64		5012a	8.24
4918a	5.68		5013	18.01
4918b, § 1	5.69		5014	18.02
4918b, § 2	5.70		5015	18.03
4918b, § 3	5.71		5016	18.04
4919	6.03		5017	18.05
4920	6.04		5017a	18.06
4921	6.05		5017b	18.07

DISPOSITION TABLE

Civ.St. Former Article	Insurance Code Article	Civ.St. Former Article	Insurance Code Article
5017c	18.08	5058	21.09
5017d	18.09	5059	21.10
5017e	18.10	5060	21.11
5018	18.11	5061	21.12
5018a	18.12	5062	21.13
5018b	18.13	5062a	—
5019	18.14	5062b	21.14
5019a	18.15	5063	21.04
5020	18.16	5064	21.05
5021	18.17	5065	21.06
5022	18.18	5066	21.15
5022a	18.19	5067	21.36
5022b	18.20	5068	21.43
5022c	18.21	5068a	21.22
5022d	18.22	5068b, §§ 1-5	21.07
5023	18.23	5068b, § 6	21.07A
5023a	18.24	5068b, §§ 7, 7a	21.07
5024	19.01	5068c	21.28
5025	19.02	5068d	21.37
5026	19.03	5068e	21.38
5027	19.04		repealed
5028	19.05	5068-1, § 1	14.01
5029	19.06	5068-1, § 2	14.02
5029a	19.07	5068-1, § 3	12.06, 14.14
5030	19.08	5068-1, § 4	14.07
5031	19.09	5068-1, § 5	14.08
5032	19.10, 19.11	5068-1, § 6	14.10
5033	19.12	5068-1, § 7	14.13
5033a	—	5068-1, § 8	14.12
5034	21.29	5068-1, § 9	14.18
5035	21.30	5068-1, § 10	14.19
5036	21.32	5068-1, § 11	14.23
5037	2.03	5068-1, § 12	14.25
5038	21.33	5068-1, § 13	14.29
5039	21.34	5068-1, § 14	14.30
5040	21.25	5068-1, § 15	14.31
5041	21.26	5068-1, § 16	14.27
5042	21.41	5068-1, § 17	14.32
5043	21.16	5068-1, § 18	14.05
5044	21.17	5068-1, § 19	14.33
5045	21.18	5068-1, § 20	14.36
5046	21.19	5068-1, § 21	—
5047	21.23	5068-1, § 22	—
5048	3.49	5068-1, § 23	14.37
5049	21.35	5068-1, § 24	14.38
5050	21.24	5068-1, § 25	14.39
5051	3.46	5068-1, § 26	14.54
5052	21.20	5068-1, § 27	14.55
5053	21.21	5068-1, § 28	14.56
5053a	3.51	5068-1, § 29	14.57
5054	21.42	5068-1, § 30	14.58
5055	21.01	5068-1, § 31	14.59
5056	21.02	5068-1, § 32	—
5057	21.03	5068-1, § 33	—
5057a	4.01	5068-1, § 34	—

DISPOSITION TABLE

Civ.St. Former Article	Insurance Code Article	Former Article Penal Code (1925)	Insurance Code Article
5068—1, § 35	14.60	570b	21.15—1
5068—1, § 36	Omitted	571	21.51
5068—2	14.20	571a	5.12—1
5068—2a	14.20	572	21.15—2
5068—3	14.61	573	21.15—3
5068—4	14.53	574	21.15—4
5068—5	14.21	575	3.56—1
5068—6	13.02	576	21.15—5
5068—7, § 1(A)	14.40	577	3.67—1
	repealed		repealed
5068—7, § 1(B)	14.41	578	21.21A
	repealed	579	19.10—1
5068—7, § 1(C)	14.42	580	5.68—1
5068—7, § 1(D)	14.43	580a	14.37—1
5068—7, § 1(E)	14.44	580b	21.21B
5068—7, § 1(F)	14.45		repealed
5068—7, § 1(G)	14.46	581	10.41
5068—7, § 1(H)	14.47	582	10.42
5068—7, § 1(I)	14.48	583	10.43
5068—7, § 1(J)	14.49	584	10.44
5068—7, § 2(A)	14.50	585	10.45
5068—7, § 2(B)	14.51	586	11.18—1
5068—7, § 3	14.52	588	14.56—1
5068—7, § 4	—	589	15.19—1
5068—7, § 5	—	590	15.19—2
7064 (part)	4.02	590a	12.15
7064½	—	591	18.01—1
7064a	4.04, 4.11	592	18.03—1
		593	18.11—1
		594	18.16—1
		595	18.22—1
		596	5.41—1
		597	5.48—1
		597a	5.43—1
		598	5.48—2
		601	15.20—1
		1117a	15.21

Former Article Penal Code (1925)	Insurance Code Article
568	21.02—1
569	21.02—2
570	21.02—3
570a	21.07A

DERIVATION TABLE

Showing the source of the articles of the Insurance Code, 1951.

Insurance Code	Former Article	Insurance Code	Former Article
1.02(a)	4679a	2.09	4707
1.02(b)	4682	2.10	4706
1.03	4679b	2.11	4708
1.04	4679c	2.12	4709
1.05	4679d, § 6	2.13	4710
1.06	4679d, § 6A	2.14	4711
1.07	4679d, § 6B	2.15	4712
1.08	4680	2.16	4713
1.09	4681	2.17	4714
1.10(1)	4682(1)	2.18	4715
1.10(2)	4682(2)	2.19	4698
1.10(3)	4682(7)	3.01	4716
1.10(4)	4689	3.02	4717
1.10(5)	4682(9)	3.03 repealed	4752
1.10(6)	4682(10)	3.04	4718
1.10(7)	4682(11)	3.05	4719
1.10(8)	4682(12)	3.06	4720
1.10(9)	4682(13)	3.07	4721
1.10(10)	4682(14)	3.08	4722
1.10(11)	4682(15)	3.09	4723
1.10(12)	4682(16)	3.10	4728
1.10(13)	4682(17)	3.11	4729
1.10(14)	4682(18)	3.12	4730
1.10(15)	4682(19)	3.13	4731
1.10(16)	4682(20)	3.14 repealed	4747
1.11	4683	3.15	4739, 4777
1.12	4684	3.16	4740
1.13	4685	3.17	4743
1.14	4686	3.18	4741
1.15	4690	3.19 repealed	4742
1.16	4690a	3.20	4755
1.17	4690b	3.21	4756
1.18	4690c	3.22	4757
1.19	4691	3.23	4759
1.20	4692	3.24	4760
1.21	4693	3.25	4772
1.22	4694	3.26	4761
1.23	4695	3.27	4780
1.24	4696	3.28	4688
1.25	4697	3.29	4744
2.01	4699	3.30 repealed	4682(5)
2.02	4700	3.31	4682(6)
2.03	5037	3.32	4682(4)
2.04	4701	3.33 repealed	4765
2.05	4702	3.34	4766
2.06	4703	3.35 repealed	4767
2.07	4704	3.36	4768
2.08(1 to 3)	4705	3.37 repealed	4778

DERIVATION TABLE

Insurance Code	Former Article	Insurance Code	Former Article
3.38 -----	4779	5.18 -----	4698a, § 6
3.39 -----	4725	5.19 -----	4698a, § 7
3.40 -----	4726	5.20 -----	4698a, § 8
3.41 -----	4762	5.21 -----	4698a, § 9
3.42 -----	4749	5.22 -----	4698a, § 10
3.43 repealed -----	4750	5.23 -----	4698a, § 11
3.44 -----	4732	5.24 -----	4698a, § 12
3.45 -----	4733	5.25 -----	4878
3.46 -----	5051	5.26 -----	4879
3.47 -----	4734	5.27 -----	4880
3.48 -----	4736a	5.28 -----	4881
3.49 -----	5048	5.29 -----	4882
3.50 -----	4764a	5.30 -----	4883
3.51 -----	5053a	5.31 -----	4884
3.52 -----	4764b	5.32 -----	4885
3.53 -----	4764c	5.33 -----	4886
3.54 -----	4738	5.34 -----	4887
3.55 -----	4775	5.35 -----	4888
3.56 -----	4776	5.36 -----	4889
3.57 -----	4751	5.37 -----	4890
3.58 -----	4774	5.38 -----	4891
3.59 -----	4773	5.39 -----	4892
3.60 -----	4748	5.40 -----	4893
3.61 -----	4737	5.41 -----	4894
3.62 -----	4736	5.42 -----	4895
3.63 -----	4724	5.43 -----	4896
3.64 -----	4735	5.44 -----	4897
3.65 -----	4763	5.45 -----	4898
3.66 -----	4764	5.46 -----	4899
3.67 -----	4727	5.47 -----	4900
3.68 -----	4745	5.48 -----	4901
4.01 -----	4754, 5057a	5.49 -----	4902
4.02 -----	7064 (part)	5.50 -----	4903
4.03 -----	4769 (part)	5.51 -----	4904
4.04 -----	7064a	5.52 -----	4905A
4.05 -----	4770	5.53 -----	4905B
4.06 -----	4771	5.54 -----	4905C
4.07 -----	3920	5.55 -----	4907
4.11 -----	7064a	5.56 -----	4908
5.01 -----	4682b, § 1	5.57 -----	4913
5.02 -----	4682b, § 1A	5.58 -----	4909
5.03 -----	4682b, § 2	5.59 -----	4910
5.04 -----	4682b, § 3	5.60 -----	4911
5.05 -----	4682b, § 4	5.61 -----	4914
5.06 -----	4682b, § 5	5.62 -----	4915
5.07 -----	4682b, § 6	5.63 -----	4917
5.08 -----	4682b, § 7	5.64 -----	4918
5.09 -----	4682b, § 8	5.65 -----	4912
5.10 -----	4682b, § 9	5.66 -----	4916
5.11 -----	4682b, § 10	5.67 -----	4904, 4905
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5.13 -----	4698a, § 1	5.69 -----	4918b, § 1
5.14 -----	4698a, § 2	5.70 -----	4918b, § 2
5.15 -----	4698a, § 3	5.71 -----	4918b, § 3
5.16 -----	4698a, § 4	5.72 -----	4698b, § 1
5.17 -----	4698a, § 5	5.73 -----	4698b, § 2

DERIVATION TABLE

Insurance Code	Former Article	Insurance Code	Former Article
5.74	4698b, § 3	9.17	1302a, § 10
5.75	4698b, § 4	9.19	1302a, § 11
6.01	4682(7)	9.20	1302a, § 12
6.02	4682(8)	9.21	1302a, § 13
6.03	4919	9.22	1302a, § 14
6.04	4920	9.23	1302a, § 15
6.05	4921	9.24	1302a, § 16
6.06	4922	9.25	1302a, § 17
6.07	4923	9.26	1302a, § 18
6.08	4924	9.27	1302a, § 19
6.09 repealed	4925	9.28	1302a, § 20
6.10 repealed	4926	9.30	1302a, § 21
6.11	4927	9.31	1302a, § 22
6.12	4928	9.32	1302a, § 23
6.13	4929, 4929a	9.33	1302a, § 24
6.14	4930	9.46	1302a, § 24a
6.15	4931	10.01	4820
6.16	4932	10.02	4821
7.01 repealed	4969	10.03	4822
7.03 to 7.18 repealed	4971 to 4986	10.04	4823
7.19—1	4970	10.05	4824
8.01	4989	10.06	4825
8.02	4990	10.07	4826
8.03	4991	10.08	4827
8.04	4992	10.09	4828
8.05	4993	10.10	4829
8.06	4994	10.11	4830
8.07	4995	10.12	4831
8.08	4996	10.13	4831a
8.09	4997	10.14	4832
8.10	4998	10.15	4834
8.11	4999	10.16	4835
8.12	5000	10.17	4836
8.13	5001	10.18	4837
8.14	5002	10.19	4838
8.15	5003	10.20	4839
8.16	5004	10.21	4840
8.17	5005	10.22	4841
8.18	5007	10.23	4842
8.19	5008	10.24	4843
8.20	5009	10.25	4844
8.21	5010	10.26	4845
8.22	5011	10.27	4846
8.23	5012	10.28	4847
8.24	5012a	10.29	4848
9.03	1302a, § 1	10.30	4849
9.06	1302a, § 2	10.31	4850
9.07	1302a, § 3	10.32	4851
9.08	1302a, § 3-A	10.33	4852
9.10	1302a, § 4	10.34	4853
9.11	1302a, § 5	10.35	4854
9.12	1302a, § 6	10.36	4855
9.13	1302a, § 7	10.37	4856
9.14	1302a, § 8	10.38	4857
9.15	1302a, § 9	10.39	4858a
9.16	1302a, § 10	10.40	4859e

DERIVATION TABLE

Insurance Code	Former Article	Insurance Code	Former Article
11.01	4800	14.09	4859f, § 7(b)
11.02	4801		4875a-7
11.03	4802	14.10	4859f, § 4
11.04	4803		5068-1, § 6
11.05	4804	14.11	4859f, § 13
11.06	4805		4875a-5(5)
11.07	4806		(part)
11.08	4807		4875a-10
11.09	repealed	14.12	5068-1, § 8
11.10	4809	14.13	5068-1, § 7
11.11	4810	14.14	5068-1, § 3
11.12	4811	14.15	4859f, § 5
11.13	4812		4875a-19
11.14	4814		4875a-20
11.15	4815	14.16	4859f, § 6
11.16	4816		4875a-21
11.17	4817	14.17	4859f, § 6
11.18	4818	14.18	5068-1, § 9
11.19	4819	14.19	5068-1, § 10
12.01	4875a-1	14.20	5068-2
12.02	4875a-2		5068-2a
12.03	4875a-3	14.21	5068-5
12.04	4875a-4	14.22	4875a-15
12.05	4875a-5	14.23	5068-1, § 11
12.06	5068-1, § 3	14.24	4875a-17
12.07	4875a-6	14.25	5068-1, § 12
12.08	4875a-9	14.26	4875a-18
12.09	4875a-12	14.27	4875a-11
12.10	4875a-14		5068-1, § 16
12.11	4875a-22	14.28	4859f, § 9
12.12	4875a-24		4875a-16
12.13	4875a-26	14.29	5068-1, § 13
12.14	4875a-27	14.30	5068-1, § 14
12.15	4875a-28	14.31	4875a-13
12.16	4875a-29		5068-1, § 15
12.17	4875a-30	14.32	5068-1, § 17
12.18	4875a-31	14.33	4859f, § 13
13.01	4859f, § 1		5068-1, § 19
13.02	5068-6	14.34	4859f, § 16
13.03	4859f, § 8		4875a-25
13.04	4859f, § 11	14.35	4859f, § 17
13.05	4859f, § 12	14.36	5068-1, § 20
13.06	4859f, § 14	14.37	5068-1, § 23
13.07	4859f, § 15	14.38	5068-1, § 24
13.08	4859f, § 18	14.39	5068-1, § 25
13.09	4859f, § 19	14.40	repealed
14.01	5068-1, § 1	14.41	repealed
14.02	5068-1, § 2	14.42	5068-7, § 1(C)
14.03	4875a-8	14.43	5068-7, § 1(D)
14.04	4859f, § 10	14.44	5068-7, § 1(E)
14.05	5068-1, § 18	14.45	5068-7, § 1(F)
14.06	4859f, § 3	14.46	5068-7, § 1(G)
14.07	5068-1, § 4	14.47	5068-7, § 1(H)
14.08	4859f, § 7(a)	14.48	5068-7, § 1(I)
	4875a-5(5)	14.49	5068-7, § 1(J)
	(part)	14.50	5068-7, § 2(A)
	5068-1, § 5		

DERIVATION TABLE

Insurance Code	Former Article	Insurance Code	Former Article
14.51 -----	5068—7, § 2(B)	16.21 -----	4860a—20, § 19
14.52 -----	5068—7, § 3	16.24 -----	4860a—20, § 23
14.53 -----	5068—4	17.01 -----	4860a—20, § 1
14.54 -----	5068—1, § 26	17.02 -----	4860a—20, § 2
14.55 -----	5068—1, § 27	17.03 -----	4860a—20, § 3
14.56 -----	5068—1, § 28	17.04 -----	4860a—20, § 4
14.57 -----	5068—1, § 29	17.05 -----	4860a—20, § 5
14.58 -----	5068—1, § 30	17.06 -----	4860a—20, § 6
14.59 -----	5068—1, § 31	17.07 -----	4860a—20, § 21
14.60 -----	5068—1, § 35	17.08 -----	4860a—20, § 7
14.61 -----	5068—3	17.09 -----	4860a—20, § 8
15.01 -----	4860a—1	17.10 -----	4860a—20, § 9
15.02 -----	4860a—2	17.11 -----	4860a—20, § 10
15.03 -----	4860a—3	17.12 -----	4860a—20, § 11
15.04 -----	4860a—4	17.13 -----	4860a—20, § 12
15.05 -----	4860a—5	17.14 -----	4860a—20, § 13
15.06 -----	4860a—6	17.15 -----	4860a—20, § 14
15.07 -----	4860a—6a	17.16 -----	4860a—20, § 15
15.08 -----	4860a—7	17.17 -----	4860a—20, § 16
15.09 -----	4860a—8	17.18 -----	4860a—20, § 18
15.10 -----	4860a—9	17.19 -----	4860a—20, § 19
15.11 -----	4860a—10	17.20 -----	4860a—20, § 20
15.12 -----	4860a—11	17.22 -----	4860a—20, § 23
15.13 -----	4860a—12	17.23 -----	4860a—20, § 24
15.14 -----	4860a—13	17.24 -----	4860a—20, § 25
15.15 -----	4860a—14	17.25, § 1 -----	4860a—20, § 1a (1947)
15.16 -----	4860a—15	17.25, § 2 -----	4860a—20, § 2a
15.17 -----	4860a—16	17.25, § 3 -----	4860a—20, § 2a(a)
15.18 -----	4860a—17	17.25, § 4 -----	4860a—20, § 2a(b)
15.19 -----	4860a—18	17.25, § 5 -----	4860a—20, § 2a(c)
15.20 -----	4860a—19	17.25, § 6 -----	4860a—20, § 2a(d)
16.01 -----	4860a—20, § 1 4860a—20, § 1a (1947) 4860a—20, § 2a	17.25, § 7 -----	4860a—20, § 2a(e)
16.03 -----	4860a—20, § 2	17.25, § 8 -----	4860a—20, § 2a(f)
16.04 -----	4860a—20, § 4	17.25, § 9 -----	4860a—20, § 2a(g)
16.05 -----	4860a—20, § 3	17.25, § 10 -----	4860a—20, § 2a(h)
16.06 -----	4860a—20, § 5	17.25, § 11 -----	4860a—20, § 2a(i)
16.07 -----	4860a—20, § 15	17.25, § 12 -----	4860a—20, § 2a(j)
16.08 -----	4860a—20, § 6 4860a—20, § 13 4860a—20, § 14 4860a—20, § 21 4860a—20, § 24 4860a—20, § 25	17.25, § 13 -----	4860a—20, § 2a(k)
16.09 -----	4860a—20, § 7	17.25, § 14 -----	4860a—20, § 2a(l)
16.10 -----	4860a—20, § 8	17.25, § 15 -----	4860a—20, § 2a(m)
16.11 -----	4860a—20, § 11	17.25, § 16 -----	4860a—20, § 2a(n)
16.12 -----	4860a—20, § 9		
16.13 -----	4860a—20, § 12		
16.14 -----	4860a—20, § 16		
16.15 -----	4860a—20, § 22		
16.16 -----	4860a—20, § 20		
16.17 -----	4860a—20, § 17		
16.18 -----	4860a—20, § 18		
16.19 -----	4860a—20, § 10		
16.20 -----			

DERIVATION TABLE

Insurance Code	Former Article	Insurance Code	Former Article
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17.25, § 18	4860a—20, § 2a(p)	20.11	4590a, § 4
17.25, § 19	4860a—20, § 2a(q)	20.12	4590a, § 5
17.25, § 20	4860a—20, § 2a(r)	20.13	4590a, § 6
17.25, § 21	4860a—20, § 2a(t)	20.14	4590a, § 7
18.01	5013	20.15	4590a, § 8
18.02	5014	20.16	4590a, § 9
18.03	5015	20.17	4590a, § 10
18.04	5016	20.18	4590a, § 11
18.05	5017	20.19	4590a, § 12
18.06	5017a	20.20	4590a, § 13
18.07	5017b	20.21	4590a, § 14
18.08	5017c	21.01	5055
18.09	5017d	21.02	5056
18.10	5017e	21.03	5057
18.11	5018	21.04	5063
18.12	5018a	21.05	5064
18.13	5018b	21.06	5065
18.14	5019	21.07	5068b, §§ 1 to 5 5068b, §§ 7, 7a
18.15	5019a	21.07A	5068b, § 6
18.16	5020	21.08	4730a
18.17	5021	21.09	5058
18.18	5022	21.10	5059
18.19	5022a	21.11	5060
18.20	5022b	21.12	5061
18.21	5022c	21.13	5062
18.22	5022d	21.14	5062b
18.23	5023	21.15	5066
18.24	5023a	21.16	5043
19.01	5024	21.17	5044
19.02	5025	21.18	5045
19.03	5026	21.19	5046
19.04	5027	21.20	5052
19.05	5028	21.21	5053
19.06	5029	21.22	6068a
19.07	5029a	21.23	5047
19.08	5030	21.24	5050
19.09	5031	21.25	5040
19.10	5032	21.26	5041
19.11	5032	21.27	4871a
19.12	5033	21.28	5068c
20.01	4590a, § 1	21.29	5034
20.02	4590a, §§ 1a(a) to (e)	21.30	5035
20.03	4590a, § 1a(f)	21.31	4753
20.04	4590a, § 1a(g)	21.32	5036
20.05	4590a, § 1a(h)	21.33	5038
20.06	4590a, § 15	21.34	5039
20.07 repealed	4590a, § 1a(i)	21.35	5049
20.08	4590a, § 1a(j)	21.36	5067
20.09	4590a, § 2	21.37	5068d
		21.38 repealed	5068e
		21.39 repealed	4987
		21.40	4988
		21.41	5042
		21.42	5054
		21.43	5068

DERIVATION TABLE

Insurance Code Article	Penal Code (1925)	Insurance Code Article	Penal Code (1925)
3.56—1	575	15.21	1117a
3.67—1, repealed	577	18.01—1	591
5.12—1	571a	18.03—1	592
5.41—1	596	18.11—1	593
5.43—1	597a	18.16—1	594
5.48—1	597	18.22—1	595
5.48—2	598	19.10—1	579
5.68—1	580	21.02—1	568
10.41	581	21.02—2	569
10.42	582	21.02—3	570
10.43	583	21.07A	570a
10.44	584	21.15—1	570b
10.45	585	21.15—2	572
11.18—1	586	21.15—3	573
12.15	590a	21.15—4	574
14.37—1	580a	21.15—5	576
14.56—1	588	21.21A	578
15.19—1	589	21.21B repealed	580b
15.19—2	590	21.51	571
15.20—1	601		

THE INSURANCE CODE

An Act arranging the Statutes of this State affecting the business of insurance in appropriate Chapters and Articles into a consistent whole and under a single code; making such editorial changes in context as are necessary to that accomplishment; preserving the substantive law as it existed immediately before the passage of this Act except as to laws affecting the business of insurance passed at the Regular Session of the 52nd Legislature, and as to such laws thus passed, preserving same and each of them, and containing all details appropriate to achievement of those purposes; providing for severability of the different Articles or parts of Articles so that unconstitutionality of one or more shall not affect the remainder of the Act; repealing in Section 4 hereof, certain Statutes and Acts together with all laws or parts of laws in conflict herewith; and declaring an emergency.

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2. Incorporation of Insurance Companies	2.01
3. Life, Health and Accident Insurance	3.01
Subchapter	
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J. Professional Liability Insurance for Physicians, Podiatrists and Hospitals	5.82
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6. Fire and Marine Companies	6.01
7. Surety and Trust Companies	7.01
8. General Casualty Companies	8.01
9. Texas Title Insurance Act	9.01
10. Fraternal Benefit Societies	10.01
11. Mutual Life Insurance Companies	11.01
12. Local Mutual Aid Associations	12.01
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Disposition and Derivation Tables are included at the front of this pamphlet, providing a means of tracing the re-

pealed provisions of Vernon's Annotated Texas Statutes into the Insurance Code and, on the other hand, of searching out the source of the Insurance Code Articles.

CHAPTER ONE. THE BOARD, ITS POWERS AND DUTIES

- Art.**
- 1.01. Short Title.
 - 1.02. State Board of Insurance.
 - 1.03. Terms of Office.
 - 1.04. Duties and Organization of the State Board of Insurance.
 - 1.05. Bond and Compensation.
 - 1.06. Ineligibility.
 - 1.06A. Conflict of Interest.
 - 1.06B. Lobbying Activities.
 - 1.07. Industrial Accident Board.
 - 1.08. Office of the Clerk.
 - 1.09. Commissioner of Insurance.
 - 1.09A. Office of the State Fire Marshal.
 - 1.09-1. Represented by the Attorney General.
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 - 1.10. Duties of the Board.
 - 1.11. May Change Form of Annual Statement.
 - 1.12. When Parties Refuse to Testify.
 - 1.13. Officers Shall Execute Service.
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 - 1.14-1. Unauthorized Insurance.
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 - 1.15. To Examine Carriers.
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 - 1.17. Appointment of Examiners and Actuaries by State Board of Insurance; Salaries.
 - 1.18. Oath and Bond of Examiners and Assistants; Action on Bond for False Reports.
 - 1.19. In Case of Examination.
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 - 1.27, 1.28. Blank.
 - 1.29. Prohibited Activities of Officers, Directors and Certain Shareholders.
 - 1.30. Notification.
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 - 1.31A. State Board of Insurance Operating Fund.
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 - 1.32. Hazardous Financial Condition.
 - 1.33. Summary Procedures for Routine Matters.
 - 1.33A. Application of Administrative Procedure and Open Meetings Laws.
 - 1.34. Immunity From Liability.
 - 1.34. Information Concerning State Board of Insurance.
 - 1.35. Notice of Policyholder Complaint Procedures.

Art. 1.01. Short Title

This Act constitutes and shall be known as the Insurance Code.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 1.02. State Board of Insurance

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

(b) All of the powers, functions, authorities, prerogatives, duties, obligations and responsibilities, heretofore vested in and devolving upon the Board of Insurance Commissioners as heretofore constituted under prior statutes; the Chairman of said Board; the Life Insurance Commissioner; the Fire Insurance Commissioner; and the Casualty Insurance Commissioner, shall hereafter be vested in the State Board of Insurance as a body, and except as provided herein, they shall be exercised, performed, carried out, and administered by the Commissioner of Insurance as the chief executive and administrative officer of the Board in accordance with the pertinent laws of this state and the rules and regulations for uniform application made by the Board and subject to supervision of the Board. The duties of the State Board of Insurance shall be primarily in a supervisory capacity and the carrying out and administering the details of the Insurance Code shall be primarily the duty and responsibility of the Commissioner of Insurance acting under the supervision of the Board.

(c) Except as otherwise provided herein, all remaining references in the Insurance Code and other statutes of this state to "Board of Insurance Commissioners," "Board," or individual Commissioners shall mean the "State Board of Insurance" or the "Commissioner of Insurance," consistent with their respective duties and responsibilities under the terms and provisions of this amendatory Act.

(d) Upon the appointment of the members of the State Board of Insurance and on February 10th of

each odd-numbered year thereafter, the Governor shall appoint from among the membership a Chairman who shall be known and designated as the Chairman of the State Board of Insurance.

(e) Irrespective of any provisions of the Insurance Code to the contrary, all references to a State official as being "Chairman of the Board of Insurance Commissioners," "Chairman of the State Board of Insurance," "Chairman of the Board," "Chairman of such Board," "Chairman of said Board," and the word "Chairman" in those provisions of the Insurance Code and other statutes of this State having to do with service of process upon an insurer shall be construed to be references to the Commissioner of Insurance and the requirements of such statutes relating to service of process upon insurers shall be satisfied where the service upon and acts to be done by the State official designated by such a statute is had upon and the acts performed by the Commissioner of Insurance.

(f) The State Board of Insurance is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act, the board is abolished effective September 1, 1995.

(g) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

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

- (1) does not have at the time of appointment the qualifications required by this article for appointment to the board;
- (2) does not maintain during the service on the board the qualifications required by this article for appointment to the board; or
- (3) violates a prohibition established by Article 1.06A of this code.

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

(j) The board shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plan must include:

- (1) a comprehensive analysis of all employees by race, sex, ethnic origin, class of position, and salary or wage;
- (2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;
- (3) steps reasonably designed to overcome any identified underutilization of minorities and women in the board's work force; and

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

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

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 1035, ch. 391, § 1; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2; Acts 1971, 62nd Leg., p. 2829, ch. 924, § 1, eff. June 15, 1971; Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.058, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 3892, ch. 622, §§ 1, 95, eff. Sept. 1, 1983.]

Art. 1.03. Terms of Office

(a) Upon the effective date of this Act amending the Insurance Code, the Governor shall appoint, by and with the advice and consent of the Senate of Texas, three members to the State Board of Insurance. One appointment shall be for a term expiring January 31, 1959; another, for a term expiring January 31, 1961; and a third, for a term expiring January 31, 1963. Thereafter, in each odd-numbered year, the Governor shall appoint, by and with the advice and consent of the Senate of Texas, a member for a term of six years which term shall begin on the first day of February of each such year. Each member shall serve until his successor has qualified; provided that the Governor may remove from office any member of the Board who fails for any reason to attend a meeting of the Board for three consecutive months, and he shall remove from office any member of the Board who for any reason fails to attend a meeting of the Board for six months. Such removal shall be by an instrument in writing filed with the Secretary of State and the State Board of Insurance, and the office of the member so removed shall be deemed vacant the same as if the member had died or resigned. The members of the Board of Insurance Commissioners in office immediately prior to the effective date of this Act amending the Code shall serve as interim members of the State Board of Insurance until the members of such Board provided for in this Act shall have been appointed and qualified.

(b) Vacancies occurring in any such office on the Board during any term shall, with the advice and consent of the Senate, be filled by appointment by the Governor, which appointment shall extend only to the end of the unexpired term.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 1035, ch. 391, § 2; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2.]

Art. 1.04. Duties and Organization of the State Board of Insurance

(a) The State Board of Insurance shall operate and function as one body or a unit and a majority vote of the members of the Board shall be necessary to transact any of its official business. The Board shall maintain one official set of records of its proceedings and actions.

(b) The State Board of Insurance shall determine policy, rules, rates and appeals but otherwise it shall execute its duties through the Commissioner of Insurance as herein provided for, in accordance with the laws of this state and the rules and regulations for uniform application as made by the Board.

(c) All rules and regulations for the conduct and execution of the duties and functions of the State Board of Insurance shall be rules for general and uniform application and shall be made and published by the Board on the basis of a systematic organization of such rules by their subject matter and content. The Commissioner of Insurance may make recommendations to the Board regarding such rules and regulations, including amendments, changes and additions. Such published rules shall be kept current and shall be available in a form convenient to all interested persons.

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

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

(e) Repealed by Acts 1981, 67th Leg., p. 413, ch. 170, § 2, eff. May 20, 1981.

(f) If any insurance company or other party at interest be dissatisfied with any decision, regulation, order, rate, rule, act or administrative ruling adopted by the State Board of Insurance, such dissatisfied company or party at interest after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as defendant. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending.

The Board shall not be required to give any appeal bond in any cause arising hereunder.

(g) In making examinations of any insurance organization as provided by law, the Board may use its own salaried examiners or may employ any holder of a permit to practice public accountancy in Texas who is engaged as an independent public accountant in the public practice as that term is known and understood in the accounting profession. Such examination shall cover the period of time which the Board shall request. In the event the Board does not specify a longer period of time, such examination shall be from the time of the last examination theretofore made by the Board to December 31st of the year preceding the examination then being made and such public accountants shall so certify the period being examined by him. Any such public accountant shall be paid for such examination at the usual and customary rates charged by public accountants for similar services. Such payment shall be made by the insurance organization being examined and all such examination fees so paid shall be allowed as a credit on the amount of premium or other taxes to be paid by any such insurance organization for the taxable year during which examination fees are paid just as examination fees are credited when the Board uses its own salaried examiners.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 1035, ch. 391, § 3; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2; Acts 1961, 57th Leg., p. 566, ch. 264, § 2; Acts 1973, 63rd Leg., p. 1571, ch. 564, § 1, eff. June 15, 1973; Acts 1981, 67th Leg., p. 413, ch. 170, § 2, eff. May 20, 1981; Acts 1981, 67th Leg., p. 2637, ch. 707, § 4(22), eff. Aug. 31, 1981.]

Art. 1.05. Bond and Compensation

(a) Each of the members of the State Board of Insurance shall, before entering upon the duties of this office, give a bond to the State of Texas, executed by a surety company licensed to do business in the State of Texas, in a sum of Fifty Thousand Dollars (\$50,000.00), to be approved by the Governor, conditioned upon the faithful discharge of the duties of his office.

(b) The members of the State Board of Insurance shall receive an annual salary of not to exceed Twenty Thousand Dollars (\$20,000.00) payable in monthly installments as provided in the General Appropriation Bill.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1957, 55th Leg., p. 1454, ch. 499, § 2; Acts 1961, 57th Leg., p. 566, ch. 264, § 1.]

Art. 1.06. Ineligibility

No person who is a stockholder, director, officer, attorney, agent, or employee of any insurance company, insurance agent, insurance broker, or insurance adjuster, or who is in any way directly or indirectly interested in any such business, shall be a member of the State Board of Insurance, be Commissioner of Insurance, or be appointed to, or accept, any office or employment under said Board or Commissioner of Insurance; provided, however, that such ineligibility shall not extend or apply to persons who are merely insured by an insurer, or are merely beneficiaries of such insurance; or who, in their official capacity, are appointed as a receiver, liquidator, or conservator for an insurer.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1957, 55th Leg., p. 1454, ch. 499, § 2.]

Art. 1.06A. Conflict of Interest

(a) A member of the State Board of Insurance, the commissioner of insurance, or an employee of the State Board of Insurance may not be an officer, employee, or paid consultant of a trade association in the insurance industry.

(b) Any person whose employment commences after the effective date of this Act may not be appointed as a member of the State Board of Insurance or employed in an exempt salary position as defined by the General Appropriations Act who at the time of appointment or employment resides in the same household as a person who is an officer, managerial employee, or paid consultant in the insurance industry.

[Acts 1983, 68th Leg., p. 3893, ch. 622, § 2, eff. Sept. 1, 1983.]

Art. 1.06B. Lobbying Activities

A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c,

Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board may not serve as a member of the board or act as the general counsel to the board.

[Acts 1983, 68th Leg., p. 3893, ch. 622, § 2, eff. Sept. 1, 1983.]

Art. 1.07. Industrial Accident Board

Nothing in this Code shall be construed to in any manner affect the duties now imposed by law on the Industrial Accident Board or to take from said board the performance of the duties now imposed on said board by law.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1957, 55th Leg., p. 1454, ch. 499, § 2.]

Art. 1.08. Office of the Clerk

(a) The Board shall appoint a Chief Clerk of the State Board of Insurance. The Chief Clerk shall have the responsibility of keeping and maintaining all records and proceedings of the Board.

(b) The Board may make any appropriate provisions by rules as to method or form by which any records or proceedings are kept and maintained, such as, but not limited to, providing for the mechanical or electrical recording of hearings or meetings in a phonographic transcription form and the photographing or microphotographing of written records or other materials.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 1; Acts 1955, 54th Leg., p. 826, ch. 307, § 1; Acts 1957, 55th Leg., p. 1454, ch. 499, § 2.]

Art. 1.09. Commissioner of Insurance

(a) The Board shall appoint a Commissioner of Insurance, by and with the advice and consent of the Senate of Texas, who shall be its chief executive and administrative officer, who shall be charged with the primary responsibility of administering, enforcing, and carrying out the provisions of the Insurance Code under the supervision of the Board. He shall hold his position at the pleasure of the Board and may be discharged at any time.

(b) Repealed by Acts 1975, 64th Leg., p. 857, ch. 326, § 3, eff. May 30, 1975.

(c) The Commissioner of Insurance shall be a resident citizen of Texas, for at least one (1) year prior to his appointment and shall be a competent and experienced administrator who shall be well informed and qualified in the field of insurance and insurance regulation. He shall have had at least ten (10) years of administrative or professional experience, and shall have had training and experience in the field of insurance or insurance regulation. No former or present member of the Board of Insurance Commissioners shall be appointed Commissioner of Insurance.

(d) The Commissioner of Insurance shall first give a bond to the State of Texas, executed by a surety company licensed to do business in the State of Texas, in the sum of Fifty Thousand Dollars (\$50,000.00), to be approved by the Board, conditioned upon the faithful discharge of the duties of his office.

(e) Compensation to be paid the Commissioner of Insurance shall be such sum as is provided for by the appropriation Acts.

(f) The Commissioner of Insurance or his representative shall meet with the Board in an advisory capacity and without vote in the proceedings of the Board. He shall submit such reports to the Board as it may request or provide for by its rules and regulations.

(g) The Commissioner of Insurance shall appoint such deputies, assistants, and other personnel as are necessary to carry out the duties and functions devolving upon him and the State Board of Insurance under the Insurance Code of this state, subject to the authorization by the Legislature in its appropriations bills or otherwise, and to the rules of the Board.

Text of subsection effective September 1, 1984

(h) The commissioner of insurance or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of each nonentry level classified position for at least 10 days before the position is filled.

Text of subsection effective September 1, 1985

(i) The commissioner of insurance or his designee shall develop a system of annual performance reviews that evaluate both the quality and quantity of the job tasks performed. All merit pay for board employees must be based on the system established under this section.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1957, 55th Leg., p. 1454, ch. 499, § 2; Acts 1975, 64th Leg., p. 857, ch. 326, § 3, eff. May 30, 1975; Acts 1983, 68th Leg., p. 3894, ch. 622, § 3, eff. Sept. 1, 1983.]

Section 96(a) and (b) of the 1983 amendatory act provides:

"(a) Subsection (h), Article 1.09, Insurance Code, takes effect September 1, 1984.

"(b) Subsection (i), Article 1.09, Insurance Code, takes effect September 1, 1985."

Art. 1.09A. Office of the State Fire Marshal

The chairman of the board shall appoint a state fire marshal, who shall be a state commissioned officer, and who shall function as such subject to the rules and regulations of the board. He shall administer, enforce, and carry out the applicable provisions of this code relating to the duties and responsibilities of the state fire marshal under the supervision of the board. He shall hold his position at the pleasure of the board and may be discharged at any time. The state fire marshal shall be the

chief investigator in charge of the investigation of arson and suspected arson within the state, and may commission arson investigators to act under his supervision, and may revoke an investigator's commission for just cause. After consultation with the state fire marshal, the State Board of Insurance shall adopt necessary rules and regulations to guide the state fire marshal and his investigators in the investigation of arson and suspected arson.

[Acts 1975, 64th Leg., p. 857, ch. 326, § 2, eff. May 30, 1975.]

Art. 1.09-1. Represented by the Attorney General

(a) The State Board of Insurance, and the Commissioner of Insurance, shall be represented and advised by the Attorney General in all legal matters before them or in which they shall be interested or concerned. The Board and Commissioner of Insurance shall not employ or obtain any other legal services without the written approval of the Attorney General.

(b) In all rate hearings and policy form proceedings before the Board or the Commissioner of Insurance, the Attorney General may intervene in the public interest. The Board shall have and exercise the power of subpoena and subpoena duces tecum for witnesses, documents, and other evidence to the extent of the jurisdiction of this state for such hearings and proceedings on its own motion or upon application of the Attorney General.

[Acts 1957, 55th Leg., p. 1454, ch. 499, § 3.]

Art. 1.09-2. Eligibility to Run for Public Office

(a)¹ The members of the State Board of Insurance and the Commissioner of Insurance shall be ineligible to run for any public office, or to have their names placed on the official ballot for any office in any election in this state, except and unless such Board member or Commissioner of Insurance has resigned and his resignation has been accepted by the Governor.

[Acts 1957, 55th Leg., p. 1454, ch. 499, § 4.]

¹ So in enrolled bill; there is no "(b)".

Art. 1.09-3. Certain Acts Shall be Unlawful

All members of the State Board of Insurance, Commissioner of Insurance, and all employees and agents of the State Board of Insurance shall be subject to the code of ethics and the standard of conduct imposed by Chapter 100, Acts of the Fifty-fifth Legislature, Regular Session, 1957.¹

[Acts 1957, 55th Leg., p. 1454, ch. 499, § 5. Amended by Acts 1961, 57th Leg., p. 1171, ch. 526, § 1.]

¹ Civil Statutes, art. 6252-9 (repealed; see now, Civil Statutes, art. 6252-9b).

Art. 1.10. Duties of the Board

In addition to the other duties required of the Board, it shall perform duties as follows:

Shall Execute the Laws

1. See that all laws respecting insurance and insurance companies are faithfully executed.

File Articles of Incorporation and Other Papers

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

Shall Calculate Reserve

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

To Calculate Re-insurance Reserve

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

When a Company's Surplus is Impaired

5. Having charged against a company other than life, the reinsurance reserve, as prescribed by the laws of this State, and adding thereto all other debts and claims against the company, the Board shall, in case it finds the minimum surplus required of the company doing the kind or kinds of insurance business set out in its Certificate of Authority impaired to the extent of more than fifty (50%) per cent of said required minimum surplus of a capital stock insurance company, or in case it finds the minimum surplus of a reciprocal, mutual other than a farm mutual, or finds the minimum required aggregate of guaranty fund and surplus of a Lloyd's company, other than life, doing the kind or kinds of insurance business set out in its Certificate of Authority impaired to the extent of more than sixteen and two-thirds (16 $\frac{2}{3}$ %) per cent of said required minimum surplus, give notice to the company to make good the impairment of its surplus to the extent that said impairment shall exist to a greater extent than such applicable per cent, within sixty (60) days, and if this is not done, the Board shall require the company to cease to do business within this State,

and shall thereupon, in case the company is organized under authority of the State, immediately institute legal proceedings to determine what further shall be done in the case. No impairment of the capital stock of a company shall be permitted. No impairment of the surplus of a company shall be permitted in excess of that above set out.

Shall Publish Results of Investigation

6. The Board shall publish the result of its examination of the affairs of any company whenever the Board deems it for the interest of the public.

May Order Sanctions

7. After notice and hearing, the State Board of Insurance may cancel or revoke any permit, license, certificate of authority, certificate of registration, or other authorization issued or existing under its authority or the authorization of this Code if the holder or possessor of same is found to be in violation of, or to have failed to comply with, specific provisions of the Code or any duly promulgated rule or regulation of the State Board of Insurance. In lieu of such cancellation or revocation, the State Board of Insurance may order one or more of the following sanctions if it determines from the facts that such would be more fair, reasonable, or equitable:

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

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

(c) Direct the holder or possessor of such authorization to remit within a specified time, not to exceed sixty (60) days, a specified monetary forfeiture not to exceed Ten Thousand (\$10,000) Dollars for such violation or failure to comply.

Any monetary forfeiture paid as a result of an order issued pursuant to (c) above shall be deposited with the State Treasurer to the credit of the General Revenue Fund. If it is found after hearing that any holder or possessor has failed to comply with an order issued pursuant to (a), (b), and (c) above, the State Board of Insurance shall, unless its order is lawfully stayed, cancel all authorizations of such holder or possessor. The State Board of Insurance shall have authority to informally dispose of any such matters by consent order or default.

The Board shall give notice of any action taken pursuant to this section to the Insurance Commissioner or other similar officer of every state.

The authority vested in the State Board of Insurance in this Article shall be in addition to

and not in lieu of any other authority to enforce or cause to be enforced any sanctions, penalties, fines, forfeitures, denials, suspensions, or revocations otherwise authorized by law, and shall be applicable to every form of authorization to any person or entity holding or possessing the same.

Report to Attorney General

8. It shall report promptly and in detail to the Attorney General any violation of law relative to insurance companies or the business of insurance.

Shall Furnish Blanks

9. It shall furnish to the companies required to report to the Board the necessary blank forms for the statements required.

Shall Keep Records

10. It shall preserve in a permanent form a full record of its proceedings and a concise statement of the condition of each company or agency visited or examined.

Give Certified Copies

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

Report to Governor

12. It shall report annually to the Governor the receipts and expenses of its department for the year, its official acts, the condition of companies doing business in this State, and such other information as will exhibit the affairs of said department. Upon specific request by the Governor, the Board shall report the names and compensations of its clerks.

Send Copies of Reports To

13. It shall send a copy of such annual reports to the Insurance Commissioner or other similar officer of every state and to each company doing business in the State.

Report Laws to Other States

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

See That No Company Does Business

15. It shall see that no company is permitted to transact the business of life insurance in this State whose charter authorizes it to do a fire, marine, lightning, tornado, or inland insurance

business, and that no company authorized to do a life insurance business in this State be permitted to take fire, marine or inland risks.

Admit Mutual Companies

16. The Board shall admit into this State mutual insurance companies engaged in cyclone, tornado, hail and storm insurance which are organized under the laws of other states and which have Two Hundred Thousand (\$200,000.00) Dollars assets in excess of liabilities.

Voluntary Deposits

17. (a) In the event any insurance company organized and doing business under the provisions of this Code shall be required by any other state, country or province as a requirement for permission to do an insurance business therein to make or maintain a deposit with an officer of any state, country, or province, such company, at its discretion, may voluntarily deposit with the State Treasurer such securities as may be approved by the Commissioner of Insurance to be of the type and character authorized by law to be legal investments for such company, or cash, in any amount sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and hold it exclusively for the protection of all policyholders or creditors of the company wherever they may be located, or for the protection of the policyholders or creditors of a particular state, country or province, as may be designated by such company at the time of making such deposit. The company may, at its option, withdraw such deposit or any part thereof, first having deposited with the Treasurer, in lieu thereof, other securities of like class and of equal amount and value to those withdrawn, which withdrawal and substitution must be approved by the Commissioner of Insurance. The proper officer of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the State Treasurer and the Commissioner of Insurance. Any deposit so made for the protection of policyholders or creditors of a particular state, country or province shall not be withdrawn, except by substitution as provided above, by the company, except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding or potential policyholder liabilities or obligations in such other state, country or province requiring such deposit, and upon the filing of such evidence the company may withdraw such deposit at any time upon the approval of the Commissioner of Insurance. Any deposit so made for the protection of all policyholders or creditors wherever they may be located

shall not be withdrawn, except by substitution as provided above, by the company except upon filing with the Commissioner of Insurance evidence satisfactory to him that the company does not have any unsecured liabilities outstanding or potential policy liabilities or obligations anywhere, and upon filing such evidence the company may withdraw such deposit upon the approval of the Commissioner of Insurance. For the purpose of state, county and municipal taxation, the situs of any securities deposited with the State Treasurer hereunder shall be in the city and county where the principal business office of such company is fixed by its charter.

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

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

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

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

Complaint File

18. The State Board of Insurance shall maintain an information file relating to each written complaint that is filed with the board concerning an activity that is regulated by the board.

Notice of Complaint Status

19. If a written complaint is filed with the State Board of Insurance relating to an activity that is regulated by the board, the board, at least quarterly and until final disposition of the complaint, shall notify the person making the complaint and the person complained against of the status of the complaint unless:

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

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

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 2; Acts 1959, 56th Leg., p. 280, ch. 157, § 1; Acts 1959, 56th Leg., p. 637, ch. 291, § 3; Acts 1967, 60th Leg., p. 1825, ch. 705, §§ 1 to 3, eff. Aug. 28, 1967; Acts 1979, 66th Leg., p. 574, ch. 264, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 412, ch. 170, § 1, eff. May 20, 1981; Acts 1983, 68th Leg., p. 3894, ch. 622, §§ 4, 17, eff. Sept. 1, 1983.]

Art. 1.11. May Change Form of Annual Statement

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

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

[Acts 1951, 52nd Leg., ch. 491; Acts 1979, 66th Leg., p. 390, ch. 181, § 1, eff. Aug. 27, 1979.]

Art. 1.12. When Parties Refuse to Testify

If any person refuses to appear and testify or to give information authorized by this chapter to be demanded by the Board, such Board may file the sworn application of any member thereof with any district judge or district court within this State, where said witness is summoned to appear, and said

judge shall summon said witness and require answers to such questions.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 1.13. Officers Shall Execute Service

Peace officers shall execute process directed to them by the Board and make return thereof to it, as in the case of process issued from any court.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 1.14. Shall Issue Certificate of Authority

Sec. 1. No individual, group of individuals, association or corporation, unless now or hereafter otherwise permitted by statute, shall be permitted to engage in the business of insuring others against those losses which may be insured against under the laws of this state. Should the State Board of Insurance be satisfied that any insurance carrier applying for a certificate of authority has in all respects fully complied with the law, it shall be its duty to issue to such carrier a certificate of authority, under its seal, authorizing such carrier to transact insurance business, naming therein the particular kinds of insurance. Each such certificate of authority heretofore or hereafter issued shall be in full force and effect until it is revoked, canceled or suspended according to law; provided, however, that failure to file any annual statement required by law will subject the certificate of authority to being revoked, canceled or suspended.

Sec. 1A. Fees collected by the State Board of Insurance under this article for a certificate of authority shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

Sec. 2. The word "Carrier" as herein used is defined as that type of insurer which, in consideration of premium, issues policies to others insuring against those losses which may be insured against under the provisions of the law, including stock companies, reciprocals or inter-insurance exchanges, Lloyds' associations, fraternal benefit societies and mutual companies of all kinds, including state-wide assessment associations, local mutual aids, burial associations, and county and farm mutual fire associations. Provided that the Board of Insurance Commissioners shall give preference to applications of domestic companies in checking and approving annual statements and issuing Certificates of Authority.

Sec. 3. The Board may inquire into the competence, fitness and reputation of the officers and directors of each carrier. If, after inquiry, and based on substantial evidence, it shall appear to the Board that such officers and directors, or any of them, are not worthy of the public confidence, it shall give such carrier notice in writing of its intention to refuse the application for Certificate of Au-

thority, or to revoke the certificate once granted, stating specifically why the Board intends such action, and the place and time for hearing by the Board, not sooner than ten (10) days nor later than twenty (20) days thereafter.

After notice and hearing, the Board shall forthwith record in its official minutes its findings and order, which shall be subject to full review in a suit filed in a District Court in Travis County. The filing of such suit shall operate as a stay of the Board's order until the court directs otherwise. The court shall consider all of the facts, and shall hear, try and determine said suit de novo as other civil cases. The court may modify, affirm or set aside the action of the Board in whole or in part, and shall enter such judgment as the evidence introduced in court may warrant, including an order directing the Board to take such action as may be justified. Provided, however, that fraternal benefit societies that sell insurance policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempt under the provisions of Article 10.12 or Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 3; Acts 1955, 54th Leg., p. 826, ch. 307, § 2; Acts 1959, 56th Leg., p. 434, ch. 194, § 1; Acts 1983, 68th Leg., p. 3932, ch. 622, § 18, eff. Sept. 1, 1983.]

Repeal

This article was repealed by Acts 1959, 56th Leg., p. 434, ch. 194, § 2, to the extent that it requires periodic renewal of certificates.

Section 2 of the 1959 amendatory act provided: "All laws and parts of laws in conflict herewith are hereby expressly repealed, including but not limited to Articles 1.14, 3.06, 3.08, 3.57, 8.20, 9.10, 10.22, 11.02, 14.17, and 20.02, of the Insurance Code to the extent that they require periodic renewal of certificates of authority; provided, however, that nothing herein shall repeal any provision of law requiring the payment of annual license fees."

Art. 1.14-1. Unauthorized Insurance

Purpose

Sec. 1. The purpose of this Article is to subject certain persons and insurers to the jurisdiction of the State Board of Insurance, of proceedings before the Board, and of the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The Legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to such residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The

Legislature declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers, which are subject to strict regulation, from unfair competition by unauthorized persons and insurers and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the Legislature herein provides methods for substituted service of process upon such persons or insurers in any proceeding, suit or action in any court and substitute service of any notice, order, pleading or process upon such persons or insurers in any proceeding before the State Board of Insurance to enforce or effect full compliance with the insurance and tax statutes of this state, and declares in so doing it exercises its power to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of P.L. 79-15 (1945), (Chapter 20, 1st Sess., S. 340), 59 Stats. 33, as amended,¹ which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

¹ See 15 U.S.C.A. § 1011 et seq.

Insurance Business Defined

Sec. 2. (a) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term insurer as used in this Article includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

1. The making of or proposing to make, as an insurer, an insurance contract.
2. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
3. The taking or receiving of any application for insurance.
4. The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.
5. The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.
6. Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of

another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subdivision shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

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

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

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

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

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

Unauthorized Insurance Prohibited

Sec. 3. No person or insurer shall directly or indirectly do any of the acts of an insurance business set forth in this Article except as provided by and in accordance with the specific authorization of statute. In respect to the insurance of subjects

resident, located or to be performed within this state this section shall not prohibit the collection of premium or other acts performed outside of this state by persons or insurers authorized to do business in this state provided such transactions and insurance contracts otherwise comply with statute.

Service of Process on Commissioner

Sec. 4. (a) Any act of doing an insurance business as set forth in this Article by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor, administrator or personal representative, or successor in interest if a corporation, of the Commissioner of Insurance, his successor or successors in office to be the true and lawful attorney of such person or insurer upon whom may be served all legal process in any action, suit or proceeding in any court arising out of doing an insurance business in this state by such person or insurer, except in an action, suit or proceeding by the State Board of Insurance or by the state. Any act of doing an insurance business as set forth in this Article by any unauthorized person or insurer shall be signification of its agreement that any such legal process so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) Such service of process shall be made by leaving two copies thereof in the hands or office of the Commissioner of Insurance. A certificate by the Commissioner showing such service and attached to the original or third copy of such process presented to him for that purpose shall be sufficient evidence thereof. Service upon the Commissioner as such attorney shall be service upon the principal.

(c) The Commissioner shall forthwith mail one copy of such process to the defendant at its last known principal place of business and shall keep a record of all process so served upon him which shall show the day and hour of service. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(d) Service of process in any such action, suit or proceeding shall, in addition to the manner provided in Paragraphs (b) and (c), be valid if served upon any person within this state who on behalf of such unauthorized person or insurer is doing any act of an insurance business as set forth in this Article and if a copy of such process is sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed and the affidavit of the plaintiff or plaintiff's attorney showing compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(e) No plaintiff or complainant shall be entitled to a judgment by default in any action, suit or proceeding in which the process is served under this subsection until the expiration of 45 days from the date of filing of the affidavit of compliance.

(f) Nothing contained in this section shall limit or abridge the right to serve any process, notice or demand upon any person or insurer in any other manner now or hereafter permitted by law.

Service of Process on Secretary of State

Sec. 5. (a) Any act of doing an insurance business as set forth in this Article by any unauthorized person or insurer is equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor, administrator or personal representative, or successor in interest if a corporation, of the Secretary of State, his successor or successors in office to be the true and lawful attorney of such person or insurers upon whom may be served all legal process in any action, suit or proceeding in any court by the State Board of Insurance or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the State Board of Insurance and which arises out of doing an insurance business in this state by such person or insurer. Any act of doing an insurance business as set forth in this Article by any unauthorized person or insurer shall be signification of its agreement that any such legal process in such court action, suit or proceeding and any such notice, order, pleading or process in such administrative proceeding before the State Board of Insurance so served shall be of the same legal force and validity as personal service of process in this state upon such person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) Such service of process in such action, suit or proceeding in any court or such notice, order, pleading or process in such administrative proceeding authorized by Paragraph (a) shall be made by leaving two copies thereof in the hands or office of the Secretary of State. A certificate by the Secretary of State showing such service and attached to the original or third copy of such process presented to him for that purpose shall be sufficient evidence thereof. Service upon the Secretary of State as such attorney shall be service upon the principal.

(c) The Secretary of State shall forthwith mail one copy of such court process or such notice, order, pleading or process in proceedings before the State Board of Insurance to the defendant in such court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service is sufficient, provided notice of such service and a copy of the court process or the notice, order, pleading or process in such administrative proceeding are sent within 10 days thereafter by registered mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the State Board of Insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at its last known principal place of business of the defendant in the court or administrative proceeding, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney in court proceeding or of the State Board of Insurance in administrative proceeding, showing compliance herewith are filed with the clerk of the court in which such action, suit or proceeding is pending or with the State Board of Insurance in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or the State Board of Insurance may allow.

(d) No plaintiff or complainant shall be entitled to a judgment or determination by default in any court or administrative proceeding in which court process or notice, order, pleading or process in proceedings before the State Board of Insurance is served under this section until the expiration of 45 days from the date of filing of the affidavit of compliance.

(e) Nothing contained in this section shall limit or abridge the right to serve any process, notice, order, pleading or demand upon any person or insurer in

any other manner now or hereafter permitted by law.

(f) The Attorney General upon request of the State Board of Insurance is authorized to proceed in the courts of this or any other state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the State Board of Insurance.

Unauthorized Person or Insurer Defense of Action

Sec. 6. (a) Before any unauthorized person or insurer files or causes to be filed any pleading in any court action, suit or proceeding or in any notice, order, pleading or process in such administrative proceeding before the State Board of Insurance instituted against such person or insurer, by service made as provided in Sections 4 and 5, such person or insurer shall either:

1. Deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the State Board of Insurance in administrative proceedings before the State Board of Insurance, cash or securities or bond with good and sufficient sureties to be approved by the court or the State Board of Insurance, in an amount to be fixed by the court or the State Board of Insurance sufficient to secure the payment of any final judgment which may be rendered in such court proceeding or in such administrative proceeding before the State Board of Insurance, provided that the court or the State Board of Insurance in administrative proceedings before the State Board of Insurance may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to such court or the State Board of Insurance that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such court action, suit or proceeding or in such administrative proceeding before the State Board of Insurance; or

2. Procure proper authorization to do an insurance business in this state.

(b) The court in any action, suit or proceeding in which service is made as provided in Section 4 or the State Board of Insurance in any administrative proceeding before the State Board of Insurance in which service is made as provided in Section 5, may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with Paragraph (a) and to defend such court action or administrative proceeding.

(c) Nothing in Paragraph (a) is to be construed to prevent an unauthorized person or insurer from filing a motion to quash a writ or to set aside service thereof made as provided in Sections 4 or 5 on the ground that such unauthorized person or

insurer has not done any of the acts enumerated in this Article or that the person on whom service was made pursuant to Section 4(d) was not doing any of the acts therein enumerated.

Attorneys' Fees

Sec. 7. In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the person or insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

Validity of Insurance Contracts

Sec. 8. Except for lawfully procured surplus lines insurance and contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with this Article or Article 1.14-2, any contract of insurance effective in this state and entered into by an unauthorized insurer is unenforceable by such insurer. In event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount thereof pursuant to the provisions of such insurance contract.

Investigation and Disclosure of Insurance Contracts

Sec. 9. (a) Whenever the State Board of Insurance has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the State Board of Insurance shall in writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the State Board of Insurance the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation or effectuation of such insurance.

(b) Every person who, for 30 days after such written order pursuant to Paragraph (a), neglects to comply with the requirements of such order or who wilfully makes a disclosure that is untrue, deceptive

or misleading shall forfeit \$50 and an additional \$50 for each day of neglect after expiration of said 30 days.

Reporting of Unauthorized Insurance

Sec. 10. (a) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the State Board of Insurance every insurance policy or contract which has been entered into by any insurer not authorized to transact such insurance in this state.

(b) This section does not apply to transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

Unauthorized Insurance Premium Tax

Sec. 11. (a) Except as to premiums on lawfully procured surplus lines insurance and premiums on independently procured insurance on which a tax has been paid pursuant to this Article or Article 1.14-2, every unauthorized insurer shall pay to the State Board of Insurance before March 1 next succeeding the calendar year in which the insurance was so effectuated, continued or renewed a premium receipts tax of 3.85 percent of gross premiums charged for such insurance on subjects resident, located or to be performed in this state. Such insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. On default of any such unauthorized insurer in the payment of such tax the insured shall pay the tax. If the tax prescribed by this subsection is not paid within the time stated, the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(b) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premiums which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be

deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

Independently Procured Insurance

Sec. 12. (a) Every insured who procures or causes to be procured or continues or renews insurance with any unauthorized insurer, or any insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus lines agent pursuant to the surplus lines law of this state shall within 60 days after the date such insurance was so procured, continued or renewed, file a report of the same with the State Board of Insurance in writing and upon forms designated by the State Board of Insurance and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the State Board of Insurance.

(b) Any insurance in an unauthorized insurer of a subject of insurance resident, located or to be performed within this state procured through negotiations or an application, in whole or in part occurring or made within or from within or outside of this state, or for which premiums in whole or in part are remitted directly or indirectly from within or outside of this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of Paragraph (a).

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

(d) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premi-

ums taxable in this state, all premiums written, procured or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states.

(e) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the State Board of Insurance within the time stated in Paragraph (c). If the tax prescribed by this subsection is not paid within the time stated in Paragraph (c), the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty computed at the rate of one percent per month or any part thereof from the date such payment was due to the date paid.

(f) The Attorney General, upon request of the State Board of Insurance, shall proceed in the courts of this or any other state or in any federal court or agency to recover such tax not paid within the time prescribed in this section.

(g) This section shall not be construed or deemed to abrogate or modify any provision of this Article. This section does not apply as to individual life or individual disability insurance.

Exception in Respect of Filing of Reports of Taxes Due

Sec. 12A. As respects corporations, the Franchise Tax Report filed with the Comptroller of Public Accounts will report the amount of taxes due and payable to the State of Texas under the provisions or under authority of Section 12 of this Article, and such taxes shall not be due until the Franchise Tax Report is due, any other provision of this Article to the contrary notwithstanding. All companies or persons other than corporations filing franchise tax returns shall report to the State Board of Insurance.

Penalty for Unauthorized Insurance

Sec. 13. (a) Any unauthorized insurer who does any unauthorized act of an insurance business as set forth in this Article shall be fined not more than \$5,000.

(b) In addition to any other penalty provided for herein or otherwise provided by law, any person or insurer violating this Article shall forfeit to this state the sum of \$500 for the first offense and an additional sum of \$500 for each month during which any such person or insurer continues such violation.

Unconstitutional Application Prohibited

Sec. 14. 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. [Acts 1967, 60th Leg., p. 401, ch. 185, § 1, eff. May 12, 1967. Amended by Acts 1969, 61st Leg., p. 2298, ch. 775, § 1, eff. June 14, 1969.]

Section 2 of Acts 1967, 60th Leg., p. 401, ch. 185 is codified as article 1.14-2, section 3 of the act of 1967 is a severability provision and is set out as a note under article 1.14-2, and section 4 of the act, set out as a note under article 1.14-2, repealed conflicting laws, including article 21.38, made licenses issued thereunder effective until expiration according to their terms, and made taxes which, accrued under article 21.38, payable at rates in accordance with article 21.38 as they existed before the act of 1967 became effective.

Art. 1.14-2. Surplus Lines Insurance

Purpose

Sec. 1. Insurance transactions which are entered into by citizens of this state with unauthorized 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 insurers that are not authorized to transact the business of insurance in this state; by insuring the maintenance of fair and honest markets; by protecting the revenues of this state; and by protecting authorized 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 unauthorized insurance within the meaning and intent of P.L. 79-15 (1945), (Chap. 20, 1st Sess., S. 340), 59 Stat. 33,¹ the Legislature herein provides an orderly method for the insuring public of this state to effect insurance with unauthorized insurers through qualified, licensed and supervised surplus line agents in this state and under reasonable and practical safeguards so that such insurance coverage may be obtained by residents of this state to the extent that the coverage is not procurable from duly licensed, regulated insurers conducting business in this state.

¹ See 15 U.S.C.A. § 1011 et seq.

Definitions, Classification, and Qualification

Sec. 2. (a) (1) "Surplus lines agent" (i) is an agent authorized under Article 21.14 who is granted a surplus lines license in accordance with this Article, or (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) who is granted a surplus lines license in accordance with this Article and who complies with the provisions of this Article, except it is not necessary that the managing general agent be licensed as a recording agent.

(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 and as the reasonable rules and regulations of the State Board of Insurance shall provide.

(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.

(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.

(b) "Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed under this Article.

Surplus Lines Insurance Authorized

Sec. 3. (a) If insurance coverages of subjects resident, located or to be performed in this state cannot be procured from licensed insurers after diligent effort, such coverages, hereinafter designated as surplus line insurance, may be procured from unauthorized 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 Texas surplus lines agent resident in this state.
4. The other applicable provisions of this section must be complied with.

(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).

Surplus Lines Agent's License

Sec. 4. (a) The State Board of Insurance may issue a surplus lines license to any authorized agent which shall grant such agent authority to procure the kinds of insurance provided for in this Article from companies not licensed in this state under the conditions prescribed in this Article. Unless the State Board of Insurance adopts a system for staggered renewal of licenses under Subsection (c) of this section, every license issued pursuant to this section shall be for a term expiring on the 31st day of December next following the date of issuance, and every license may be renewed for ensuing periods of 12 months. Before any such license shall be issued and before each renewal thereof a written application shall be filed by the applicant in such form as the State Board of Insurance prescribes and the fee provided therefor by this Article shall be paid.

(b) The fee for the issuance of a surplus lines license shall be in an amount not to exceed \$50 as determined by the State Board of Insurance. Fees and renewal fees for a license shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

(c) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

(d) An unexpired license may be renewed by paying the required renewal fee to the board before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original fee for the license. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original issuance fee for the license. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(e) At least 30 days before the expiration of a license, the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his last known address.

Eligibility for Surplus Lines Insurance

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.

(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.

Procedure for Effecting Surplus Lines Contracts

Sec. 6. (a) Before any new or renewal insurance shall be procured in an unlicensed insurer the agent shall make an affidavit, which shall be promptly filed with the State Board of Insurance, that he is after diligent effort unable to procure from any licensed insurer or insurers the full amount of insurance required to protect the interest of the insured. If the annual premiums paid by the insured for such surplus lines coverage exceed \$25,000, the insured may execute the affidavit in lieu of the surplus lines agent.

(b) 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) Within 60 days after the effectuation of any new or renewal surplus lines insurance the surplus lines agent shall file with the State Board of Insurance an exact copy of the policy issued. If a policy has not been issued, the surplus lines agent shall so file an exact 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 State Board of Insurance an exact 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 State Board of Insurance 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. Except, however, as respects this Subsection (c), equivalent information may be filed as required by the Board.

(d) 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 unauthorized 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 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.

(f) 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.

Requirements for Surplus Lines Contracts

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 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. Article 1.14-2, Texas Insurance Code, requires payment of 3.85 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.

Eligibility of Surplus Lines Insurers

Sec. 8. (a) A surplus lines agent shall not knowingly place surplus lines insurance with financially unsound insurers. The agent shall make a reasonable effort to ascertain the financial condition of the unauthorized insurer before placing insurance therewith. An insurer shall not be eligible unless it has capital and surplus or its equivalent that is adequate in relation to its premium writings and the exposure it assumes.

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

(c) No unauthorized 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.

(d) No unauthorized insurer shall be eligible if the insurer or its agents have failed to submit to any fine or penalty levied pursuant to statute. No unauthorized insurer shall be eligible if the insurer is obligated to pay and has failed to pay premium taxes required under Section 11 of Article 1.14-1. 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.

(e) No new or renewal surplus lines insurance shall be placed with any 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 eligible as surplus lines insurance with such surplus lines insurer.

(f) 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 unauthorized insurer.

Validity of Contracts

Sec. 9. (a) Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this Article 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 authorized insurers.

(b) A contract of insurance placed in effect by an unauthorized insurer in violation of this Article is unenforceable by the insurer. The insured shall not be precluded from enforcing his rights in accordance with the terms and provisions of such contract.

Liability of Surplus Lines Insurer for Losses and Unearned Premiums

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.

Actions Against Insurer; Service of Process

Sec. 11. A surplus lines insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract issued by it or certificate, cover note or other confirmation of such insurance issued by the surplus lines agent, pursuant to the same procedure as is provided for unauthorized insurers in Article 1.14-1. Any such policy issued by the insurer, or any certificate of insurance issued by the surplus lines agent, shall contain a provision stating the substance of this section and designating the person to whom the Commissioner of Insurance shall mail process. Each surplus lines insurer assuming a surplus lines risk pursuant to this Article shall be deemed thereby to have subjected itself to the terms of this section. This section shall be cumulative to any other methods which may be provided by law for service of process upon the insurer.

Surplus Lines Insurance Premium Tax

Sec. 12. (a) The premiums charged for surplus lines insurance are subject to a premium receipts tax of 3.85 percent of gross premiums charged for such insurance. The term premium includes all premiums, membership fees, assessments, dues or any other consideration for insurance. Such tax shall be in lieu of all other insurance taxes. The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy or other

initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb such tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of such tax or his commission. The surplus lines agent shall report, under oath, to the State Board of Insurance within 30 days from the 1st day of January and July of each year the amount of gross premiums paid for such insurance placed through him in nonlicensed insurers, and shall pay to the Board the tax provided for by this Article. If a surplus lines policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be deemed written on property or risks located or resident in this state, except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. In event of cancellation and rewriting of any surplus lines insurance contract the additional premium for premium receipts tax purposes shall be the premium in excess of the unearned premium of the canceled insurance contract.

(b) All surplus lines premium receipt taxes collected by a surplus lines agent are trust funds in his hands and the property of this state. Such funds shall be maintained by the surplus lines agent in a separate account and shall not be mingled with any other funds, either business or private. Any surplus lines agent who fails or refuses to pay over to the state the surplus lines premium receipts tax at the time required in this section, or who fraudulently withholds or appropriates or otherwise uses such money or any portions thereof belonging to the state is guilty of theft and shall be punished as provided by law for the crime of theft, irrespective of whether any such surplus lines agent has or claims to have any interest in such money so received by him.

(c) If the property of any surplus lines agent is seized upon any mesne or final process in any court in this state, or when the business of any surplus lines agent is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all surplus lines premium receipts tax money and penalties due the state from such surplus lines agent shall be considered preferred claims and the state shall be a preferred creditor and shall be paid in full.

(d) The Attorney General, upon request of the State Board of Insurance, shall proceed in the courts of this or any other state or in any federal

court or agency to recover such license fees or tax not paid within the time prescribed in this section.

Surplus Lines Agents May Advertise

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.

Surplus Lines Agents' Commissions

Sec. 14. Agents licensed in accordance with this Article may not pay the whole or any part of the commission on surplus lines insurance to any person, except that such commissions may be shared or divided with any other licensed agent.

Records of Surplus Lines Agent

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.

Annual Report of Surplus Lines Agent

Sec. 16. Each surplus lines agent shall, before March 1 in each year, make a report to the State Board 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 unauthorized insurer or insurers is only the amount in excess of the amount procurable from licensed insurers.

Penalty

Sec. 17. Any violation of this section shall subject the agent to suspension of his agent's license for a period of not less than 90 days and a fine of not more than \$500.

Unconstitutional Application Prohibited

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.

[Acts 1967, 60th Leg., p. 408, ch. 185, § 2, eff. May 12, 1967. Amended by Acts 1969, 61st Leg., p. 2121, ch. 725, § 1, eff. June 12, 1969; Acts 1979, 66th Leg., p. 625, ch. 290, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 3932, ch. 622, §§ 19, 41, 42, eff. Sept. 1, 1983.]

Section 1 of Acts 1967, 60th Leg., p. 401, ch. 185 is codified as article 1.14-1; sections 3 and 4 of the act of 1967 provided:

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions and applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 4. All laws or parts of laws in conflict herewith, including Article 21.38 of the Insurance Code, are hereby repealed; provided, however, licenses heretofore issued under authority of Article 21.38 shall remain in effect, subject to the provisions of Article 21.38 before this amendment, until they expire according to their terms; and provided further that all taxes which have accrued under Article 21.38 before this amendment shall be payable at the rates and in accordance with the provisions of Article 21.38 as they existed before this amendment became effective."

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 1.15. To Examine Carriers

Sec. 1. The State Board of Insurance shall, once in each six (6) months for the first three (3) years after organization or incorporation, once in each year for the fourth through sixth years after organization or incorporation and thereafter once in each three (3) years, or oftener, if the Board deems necessary, in person or by one or more examiners commissioned by such Board in writing, visit each carrier organized under the laws of this state and examine its financial condition and its ability to meet its liabilities, as well as its compliance with the laws of Texas affecting the conduct of its business; and such Board shall similarly, in person or by one or more commissioned examiners, visit and examine, either alone or jointly with representatives of the insurance supervising departments of other states, each insurance carrier not organized under the laws of this state but authorized to transact business in this state. Such Board or its commissioned examiners shall have free access to all the books and papers of the carrier or agents thereof relating to the business and affairs of such carrier, and shall have power to summon and examine under oath the officers, agents, and employees of such carrier and any other person within the state relative to the

affairs of such carrier. Such Board may revoke or modify any certificate of authority issued by such Board or by any predecessor in office when any condition or requirement prescribed by law for granting it no longer exists. Such Board shall give such company at least ten (10) days written notice of its intention to revoke or modify such certificate of authority stating specifically the reason for the action it proposes to take.

Sec. 2. The State Board of Insurance in administering any provision of the Insurance Code, Acts 1951, 51st¹ Legislature, Chapter 491, shall be authorized and empowered in determining "value" or "market value" of any investment in or upon real estate or the improvements thereon by any carrier authorized to do business in the State of Texas to consider any and all matters and things relating thereto, including but not restricted to, appraisals by real estate boards or other qualified persons, affidavits by other persons familiar with such values, tax valuations, cost of acquisition, with proper deductions for depreciation and obsolescence, cost of replacement, sales of other comparable property, enhancement in value from whatever cause, income received or to be received, improvements made or any other factor or any other evidence which to said Board may be deemed proper and material.

Sec. 3. Any insurer whose investment in or upon real estate or the improvements thereon may have been determined or found by said Board shall be entitled to make a written request to the Board for a written finding by the Board; and upon such request being made to the Board, the Board shall, within ten (10) days after receipt of such request, enter its written order or finding setting out separately its finding upon each factor or matter upon which its said determination or finding of "value" or "market value" was made and shall in such written order or finding give the names and addresses of all persons who furnished such evidence as to each such matter, factor or thing and upon whom the Board relied in making such determination or finding and shall deliver a copy of such written finding or order to the carrier so requesting the same.

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

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 826, ch. 307, § 3; Acts 1965, 59th Leg., p. 309, ch. 141, § 1.]

¹ So in enrolled bill; probably should read "52nd".

Art. 1.16. Expenses of Examinations; Disposition of Sums Collected

The expenses of all examinations of domestic insurance companies made on behalf of the State of Texas by the State Board of Insurance or under its authority shall be paid by the corporations examined in such amount as the Commissioner of Insurance shall certify to be just and reasonable.

Assessments for the expenses of such domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the State Board of Insurance upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets and/or insurance in force; provided such assessments shall be made and collected as follows: (1) expenses attributable directly to a specific examination including employees' salaries and expenses shall be collected at the time of examination; (2) assessments calculated annually for each corporation or association which take into consideration annual premium receipts and/or admitted assets and/or insurance in force shall be assessed annually for each such corporation or association. Provided further that the amount of all such assessments paid in each taxable year to or for the use of the State of Texas by any insurance corporation or association hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance corporation or association for such taxable year.

All sums collected by the State Board of Insurance provided in this Article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund; and the salaries and expenses of the actuaries and examiners, and all other expenses relating to such examinations, shall be paid upon the certificate of the State Board of Insurance by warrant of the Comptroller of Public Accounts drawn upon such fund.

If at any time it shall appear that additional pro rata assessments are necessary to cover all of the expenses and disbursements required by law and necessary to comply with this Article and Articles 1.17 and 1.18 of this Code, the same shall be made, and any surplus arising from any and all such assessments, over and above such expenses and disbursements, shall be applied in reduction of subsequent assessments.

In case of an examination of a company not organized under the laws of Texas, whether such examination is made by the Texas authorities alone, or jointly with the insurance supervisory authorities of another state or states, the expenses of such examination due to Texas' participation therein shall

be borne by the company under examination. Payment of such cost shall be made by the company upon presentation of itemized written statement by the Commissioner of Insurance and shall consist of the examiners' remuneration and expenses, and the other expenses of the State Board of Insurance properly allocable to the examination. Payment shall be made directly to the State Board of Insurance, and all money collected by assessment on foreign companies for the cost of examination shall be deposited in the State Treasury by the State Board of Insurance to the credit of the State Board of Insurance operating fund and shall be spent as provided by the General Appropriations Act only on warrants issued by the Comptroller of Public Accounts pursuant to duly certified requisitions of the State Board of Insurance.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 826, ch. 307, § 4; Acts 1979, 66th Leg., p. 568, ch. 262, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Art. 1.17. Appointment of Examiners and Actuaries by State Board of Insurance; Salaries

The State Board of Insurance shall appoint a chief examiner and such number of assistant examiners as it deems necessary for the purpose of making examinations of insurance companies, corporations, or associations at the expense of such companies, corporations, or associations as are provided for by law. The State Board of Insurance shall also appoint the number of actuaries it considers necessary to advise it in connection with the performance of its duties and for aid, advice, and counsel in connection with such examinations. Such examiners and actuaries shall perform all the duties relative to examinations. It is the purpose of this Article and Articles 1.16 and 1.18 of this Code to provide for the examination by the State Board of Insurance of all corporations, firms, or persons engaged in the business of writing insurance of any kind in this State whether now subject to the supervision of the State Board of Insurance or not.

All such examiners and actuaries shall be employed subject to the will of the State Board of Insurance and the number of such examiners and actuaries may be increased or decreased from time to time to suit the needs of the examining work.

Where the State Board of Insurance shall deem it advisable it may commission any actuary of the Board, the chief examiner, or any other examiner or employee of the Board, or any other person, to conduct or assist in the examination of any company not organized under the laws of Texas and allow them compensation as herein provided, except that they may not be otherwise compensated during the time they are assigned to such foreign company examinations. Other than as provided herein, neither any actuary nor any examiner of the State

Board of Insurance may continue to serve as such if, while holding such position, he directly or indirectly accepts from any insurance company any employment or pay or compensation or gratuity on account of any service rendered or to be rendered on any account whatsoever.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 826, ch. 307, § 5; Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983].

Art. 1.18. Oath and Bond of Examiners and Assistants; Action on Bond for False Reports

Each examiner and assistant examiner, before entering upon the duties of his appointment shall take and file in the office of the Secretary of State an oath to support the Constitution of this State, to faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept as presents or emoluments any pay, directly or indirectly, for the discharge of his duty, other than the remuneration fixed and accorded to him by law; and that he will not reveal the condition of, nor any information secured in the course of any examination of any corporation, firm or person examined by him, to anyone except the Members of the Board of Insurance Commissioners, or their authorized representative, or when required as witness in Court.

Every such examiner shall enter into a bond payable to the State in the sum of Ten Thousand Dollars (\$10,000) and every assistant examiner shall enter into a bond in the sum of Five Thousand Dollars (\$5,000), to be approved by the Board of Insurance Commissioners and deposited in the office of the State Comptroller, conditioned that he will faithfully perform his duties as such examiner.

In case any such examiner or assistant examiner shall knowingly make any false report or give any information in violation of law relative to any such examination of any corporation, firm or person so examined, any such corporation, firm or person shall have a right of action on such bond for his injuries in a suit brought in the name of the State at the relation of the injured party.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 826, ch. 307, § 6.]

Art. 1.19. In Case of Examination

The Board of Insurance Commissioners for the purpose of examination authorized by law, has power either in person or by one or more examiners by it commissioned in writing:

1. To require free access to all books and papers within this State of any insurance companies, or the agents thereof, doing business within this State.
2. To summon and examine any person within this State, under oath, which it or any examiner

may administer, relative to the affairs and conditions of any insurance company.

3. To visit at its principal office, wherever situated, any insurance company doing business in this State, for the purpose of investigating its affairs and conditions, and shall revoke the certificate of authority of any such company in this State refusing to permit such examination. The reasonable expenses of all such examination shall be paid by the company examined.

The Board may revoke or modify any certificate of authority issued by it when any conditions prescribed by law for granting it no longer exist.

The Board shall also have power to institute suits and prosecutions, either by the Attorney General or such other attorneys as the Attorney General may designate, for any violation of the law of this State relating to insurance. No action shall be brought or maintained by any person other than the Board for closing up the affairs or to enjoin, restrain or interfere with the prosecution of the business of any such insurance company organized under the laws of this State.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 826, ch. 307, § 7.]

Art. 1.20. Transfer of Securities by Board

No transfer by the Board of securities of any kind, in any way held by it, shall be valid unless countersigned by the State Treasurer.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 1.21. Duty of State Treasurer

It is the duty of the State Treasurer:

1. To countersign any such transfer presented to him by the Board.

2. To keep a record of all transfers, stating the name of the transferee, unless transferred in blank, and a description of the security.

3. Upon countersigning, to advise by mail the company concerned, the particulars of the transaction.

4. In his annual report to the Legislature to state the transfers and the amount thereof, countersigned by him.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 1.22. Free Access to Records

To verify the correctness of records, the Board shall be entitled to free access to the Treasurer's records, required by the preceding article, and the Treasurer shall be entitled to free access to the books and other documents of the Insurance Department relating to securities held by the Board.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 1.23. Instruments and Copies as Evidence

Every instrument executed by any member of the Board of Insurance Commissioners, or by the Commissioner of Insurance of any other state or by an officer of any other state having a title of similar import, relating to insurance and which has been or shall be executed pursuant to authority conferred by law, and authenticated by the seal of office of the Board or such other officer executing the instrument, shall be received as evidence; and copies of papers and records in the office of the Board or in the office of such other officer, certified by a member of the Board if the paper or record is in the office of the Board or by such other officer in whose office such papers or records are found, and authenticated by the appropriate seal of office, shall be received as evidence with the same effect as the originals.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 1.24. To Make Inquiries of Company

The Board is authorized to address any inquiries to any insurance company in relation to its business and condition, or any matter connected with its transactions which the Board may deem necessary for the public good or for a proper discharge of its duties. It shall be the duty of the addressee to promptly answer such inquiries in writing.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 1.25. Biennial Report and Annual Statement to Legislature

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

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

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1983, 68th Leg., p. 3894, ch. 622, § 5, eff. Sept. 1, 1983.]

Arts. 1.26, 1.26-1. Repealed by Acts 1971, 62nd Leg., p. 1069, ch. 222, § 2, eff. Aug. 30, 1971

See, now, article 21.50.

Arts. 1.27, 1.28. [Blank]

Art. 1.29. Prohibited Activities of Officers, Directors and Certain Shareholders

Sec. 1. (a) No director or officer of any insurance company transacting business in or organized under the laws of this State, and no person who is directly or indirectly the beneficial owner of more than 10% of any class of equity security of any such insurance company, shall receive, except as permitted by this Article, any money or valuable thing, either directly or indirectly or through any substantial interest in any other corporation, firm or business unit for negotiating, procuring, recommending or aiding in any purchase, sale or exchange of property or loan, made by any such company or any subsidiary thereof; nor shall he be pecuniarily interested, either as principal, co-principal, agent or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation, firm or business unit, in any such purchase, sale, exchange or loan; nor shall such company make any loan to or guarantee the financial obligation of any such director, officer or shareholder, either directly or indirectly, or through its subsidiaries, nor shall any such director, officer or shareholder accept any such loan or guarantee either directly or indirectly.

(b) "Person," as used herein, shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

"Subsidiary," as used herein shall mean any corporation in which an insurance company owns 50% or more of any class of equity securities of such corporation, or which is managed by or is directly or indirectly controlled by or is subject to control by an insurance company.

"Insurance company," as used herein, shall include and mean capital stock companies, reciprocal or inter-insurance exchanges, Lloyd's companies, fraternal benefit societies, mutual and mutual assessment associations, local mutual aids, local mutual burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of this Code, mutual life insurance companies, mutual insurance companies other than life, stipulated premium companies, title insurance companies, and all other insurers transacting an insurance business in this State.

(c) Nothing in this Article shall be construed as prohibiting the following:

(1) Any such director, officer or shareholder from becoming a policyholder of the insurance company and enjoying the usual rights of a policyholder or from participating as beneficiary in any pension plan, deferred compensation plan, profit-sharing or bonus plan, stock option plan, or similar plan adopted by the insurance company

and to which he may be eligible under the terms of such plan; or prohibit any such director, officer or shareholder from receiving salaries, bonuses and other remuneration for services rendered to the insurance company as an employee and not in violation of other provisions of the Insurance Code.

(2) Professional services performed by such directors for duties not placed by law upon a director and director's fees and expense reimbursement for the performance of their duties as directors.

(3) The approval and payment of lawful dividends to policyholders and shareholders.

(4) Any other arms-length transaction not forbidden by other statutes between such directors, officers and shareholders and such insurance company, provided such transactions are approved prior to the making thereof by the Commissioner of Insurance.

(5) (A) Any transactions within an insurance holding company system by insurers with their holding companies, subsidiaries or affiliates that are not prohibited by law, that meet the test of being fair and proper, and that are regulated by other statutes; and (B) other transactions or arrangements not prohibited by law that meet the test of being fair and proper as prescribed by rules and regulations adopted by the State Board of Insurance.

Sec. 2. The provisions of this Article are applicable to all insurance companies subject to regulation by the Insurance Code and any provision of exemption or any provision of inapplicability or applicability limiting such regulation in any chapter of the Code are not in limitation of the provisions of this Article, and in the event of conflict between this Article and any other article of the Code or in the event of any ambiguity the provisions of this Article shall govern.

[Acts 1971, 62nd Leg., p. 3404, ch. 1037, § 1, eff. June 16, 1971.]

Section 2 of the 1971 act provided: "Severance Clause. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 1.30. Notification

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, title insurance companies, reciprocal or interinsurance exchanges, Lloyd's associations, fraternal benefit societies, mutual and mutual-assessment companies of all kinds and types, statewide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty and surety

companies, trust companies organized under the provisions of Chapter 7 of Texas Insurance Code,¹ and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically by naming this article exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Notice of Order or Judgment

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

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

Penalty for Failure to Notify

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

[Acts 1975, 64th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 862, ch. 386, § 1, eff. June 6, 1979.]

¹ Article 7.01 et seq.

Art. 1.31. Refunds

This article applies to any tax, fee, or other sum of money, including any interest or penalty, collected or administered by the State Board of Insurance. When the State Board of Insurance determines that any person, firm, or corporation has through mistake of law or fact overpaid or paid erroneously any amount to the state on any tax, fee, or other sum of money, including any interest or penalty, collected or administered by the State Board of Insurance, the State Board of Insurance may refund such payment by warrant on the state treasury from any funds appropriated for such purpose. This article shall not apply to any payment of tax made pursuant to Articles 4769, 7064,¹ and 7064a² of the Revised Civil Statutes of Texas, 1925.

[Acts 1979, 66th Leg., p. 191, ch. 100, § 1, eff. May 2, 1979.]

¹ Transferred; see, now, art. 4.10 of this Code.

² Transferred; see, now, art. 4.11 of this Code.

Art. 1.31A. State Board of Insurance Operating Fund

Definitions

Sec. 1. In this article:

- (1) "Board" means the State Board of Insurance.
- (2) "Commissioner" means the commissioner of insurance.
- (3) "Fund" means the State Board of Insurance operating fund.

Creation of Fund

Sec. 2. The State Board of Insurance operating fund is created in the State Treasury.

Deposit of Revenues in Fund

Sec. 3. Money received by the board from taxes and fees that are required by this code to be credited to the fund and money received by the board from sales, reimbursements, and fees authorized by law other than this code shall be deposited in the fund.

Certain Money Included

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

- (1) fees received by the board for filing charters and charter amendments under Article 3914, Revised Statutes, as amended;
- (2) fees received by the board for providing copies of public records under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes);
- (3) money received by the state fire marshal for licenses under Chapter 498, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 9205, Vernon's Texas Civil Statutes);
- (4) money or credits received by the board for surplus or salvage property under Sections 9.04 and 9.05, Chapter 773, Acts of the 66th Legislature, Regular Session, 1979 (Article 601b, Vernon's Texas Civil Statutes);
- (5) money received by the board from the sale of publications and other printed material under Chapter 248, Acts of the 55th Legislature, Regular Session, 1957 (Article 4413(33), Vernon's Texas Civil Statutes);
- (6) receipts to the board from miscellaneous transactions and sources under Article 4344, Revised Statutes, as amended;
- (7) money received by the board from charges for postage spent to serve legal process under Chapter 288, Acts of the 67th Legislature, Regular Session, 1981 (Article 2041b, Vernon's Texas Civil Statutes);

(8) receipts to the board for furnishing necessary and authorized special or technical services under the Interagency Cooperation Act, as amended (Article 4413(32), Vernon's Texas Civil Statutes);

(9) receipts to the board from the State Treasurer involving warrants for which payment is barred under Article 4371, Revised Statutes, as amended;

(10) money received by the board from sales or reimbursements authorized by the General Appropriations Act; and

(11) money received by the board from the sale of any property purchased with money from the State Board of Insurance operating fund.

Use of Fund

Sec. 5. The money in the fund may be used for the purposes for which any of the money deposited in the fund is authorized to be used by law.

Administration of Fund

Sec. 6. (a) The commissioner shall administer and may spend money from the fund pursuant to laws of the state, rules of the board, and the General Appropriations Act.

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

[Acts 1983, 68th Leg., p. 3909, ch. 622, § 15, eff. Sept. 1, 1983.]

Section 93 of the 1983 Act provided:

"(a) On September 1, 1983, the comptroller shall transfer to and deposit in the State Board of Insurance operating fund all money in the following funds:

- "(1) motor vehicle insurance fund (Fund No. 10);
- "(2) fire insurance fund (Fund No. 13);
- "(3) compensation insurance fund (Fund No. 14);
- "(4) insurance examination fund (Fund No. 54);
- "(5) insurance agents license fund (Fund No. 85);
- "(6) managing general agents fund (Fund No. 93);
- "(7) credit insurance fund (Fund No. 103);
- "(8) fire extinguisher fund (Fund No. 110);
- "(9) mutual assessment fund (Fund No. 113);
- "(10) insurance fee fund (Fund No. 115);
- "(11) fireworks license fund (Fund No. 119);
- "(12) recording agents & solicitors license fund (Fund No. 124);
- "(13) casualty insurance fund (Fund No. 161);
- "(14) title insurance fund (Fund No. 162);
- "(15) aircraft insurance fund (Fund No. 178);
- "(16) insurance premium financing fund (Fund No. 179);
- "(17) burial association rate fund (Fund No. 180);
- "(18) fire alarm and detection systems fund (Fund No. 181);
- "(19) health maintenance organizations fund (Fund No. 182);
- "(20) prepaid legal services fund (Fund No. 183);

"(21) insurance adjusters fund (Fund No. 184); and

"(22) insurance board operating fund (Fund No. 36).

"(b) On transfer and deposit of the money to the State Board of Insurance operating fund as provided by Subsection (a) of this section, the funds listed in Subsection (a) are abolished."

Art. 1.31B. Audit by State Auditor

The State Auditor shall audit the financial transactions of the State Board of Insurance during each biennium.

[Acts 1983, 68th Leg., p. 3895, ch. 622, § 6, eff. Sept. 1, 1983.]

Art. 1.32. Hazardous Financial Condition

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty, and surety companies, trust companies organized under the provisions of Chapter 7 of the Texas Insurance Code of 1951, as amended,¹ and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically, by naming this article, exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

¹ Article 7.01 et seq.

Order to Rectify Financial Condition

Sec. 2. Whenever the financial condition of an insurer when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the insurer, the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases, its method of operation, its affiliations, its investments, any contracts which lead or may lead to contingent liability, or agreements in respect to guaranty and surety, indicate a condition such that the continued operation of the insurer might be hazardous to its policyholders, creditors, or the general public, then the commissioner may, after notice and hearing, order the insurer 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:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce the volume of new business being accepted;

(c) reduce general insurance and commission expenses by specified methods;

(d) suspend or limit the writing of new business for a period of time; or

(e) increase the insurer's capital and surplus by contribution.

Standards and Criteria for Early Warning

Sec. 3. The board is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to its policyholders, creditors, or the general public, and to fix standards for evaluating the financial condition of an insurer, which standards shall be consistent with the purposes expressed in Section 2 of this article.

Arrangements with Other Jurisdictions

Sec. 4. The commissioner is authorized to enter into arrangements or agreements with the insurance regulatory authorities of other jurisdictions concerning the management, volume of business, type of risks to be insured, expenses of operation, plans for reinsurance, rehabilitation, or reorganization, and method of operations of an insurer that is licensed in such other jurisdictions and that is deemed to be in a hazardous financial condition or needful of specific remedies which may be imposed by the commissioner and insurance regulatory authorities of such other jurisdictions.

Additional Authority of Article

Sec. 5. Authority granted by the provisions of this article is in addition to other provisions of law and not in substitution, restriction, or diminution thereof.

[Added as art. 1.30 by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1, eff. June 19, 1975. Renumbered as art. 1.32 by Acts 1981, 67th Leg., p. 201, ch. 94, § 1, eff. Aug. 31, 1981.]

Art. 1.33. Summary Procedures for Routine Matters

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

(b) State Board of Insurance rules creating summary procedures for the processing of routine matters shall provide for reasonable prior notice of proposed agency action, but may establish notice procedures alternative to those contemplated by the Administrative Procedure and Texas Register Act. Such alternative procedures may include, but are not limited to, provisions to post notices in a public area at the offices of the agency for not less than five days prior to taking the proposed action, so long as actual notice of any proposed negative action is given to parties directly involved.

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

(d) Any person affected, directly or indirectly, by the action of the State Board of Insurance on a routine matter shall have a right to have such action reviewed in accordance with the procedures established pursuant to the Administrative Procedure and Texas Register Act by making application to the board no more than 60 days after such action. The timely filing of such application for review shall immediately stay the action taken pursuant to the summary procedure pending a hearing on its merits. The board may make such other rules and regulations respecting such applications and their consideration as it deems advisable, not inconsistent with this section.

[Acts 1981, 67th Leg., p. 2069, ch. 460, § 1, eff. June 11, 1981.]

Art. 1.33A. Application of Administrative Procedure and Open Meetings Laws

The State Board of Insurance is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and except as otherwise specifically provided by this code, to the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

[Acts 1983, 68th Leg., p. 3895, ch. 622, § 7, eff. Sept. 1, 1983.]

Art. 1.34. Immunity From Liability

Text of article as added by Acts 1983, 68th Leg., p. 3823, ch. 596, § 1

(a) A person, or an employee or agent of that person, acting without malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of furnishing to the State Board of Insurance under the requirements of law or at the direction of the board reports or other information relating to any known or suspected fraudulent insurance or reinsurance transaction.

(b) Each member of the State Board of Insurance, the commissioner of insurance, or an employee, an agent, or a designee of the State Board of Insurance, acting without malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of an investigation of any allegedly fraudulent insurance or reinsurance transaction or the publication or dissemination of any official report related to any official investigation of insurance or reinsurance fraud.

[Acts 1983, 68th Leg., p. 3823, ch. 596, § 1, eff. Aug. 29, 1983.]

For text of article as added by Acts 1983, 68th Leg., p. 3896, ch. 622, § 8, see art. 1.34, post

Art. 1.34. Information Concerning State Board of Insurance

Text of article as added by Acts 1983, 68th Leg., p. 3896, ch. 622, § 8

The State Board of Insurance shall prepare information of consumer interest describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available on request to the general public and state agencies.

[Acts 1983, 68th Leg., p. 3896, ch. 622, § 8, eff. Jan. 1, 1984.]

For text of article as added by Acts 1983, 68th Leg., p. 3823, ch. 596, § 1, see art. 1.34, ante

Art. 1.35. Notice of Policyholder Complaint Procedures

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

(b) The notice must include the address of the State Board of Insurance.

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

[Acts 1983, 68th Leg., p. 3896, ch. 622, § 8, eff. Jan. 1, 1984.]

CHAPTER TWO. INCORPORATION OF INSURANCE COMPANIES

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- 2.21. Certificate of Authority.

Art. 2.01. Formation of Company

The provisions of this Chapter shall apply to the formation of each company or organization which proposes to engage in any kind of insurance business, other than life, health or accident insurance companies organized or operating under the provisions of Chapters 3, 10, 11, 12, 13, 14, or 22 of this Code; and except as in this Code otherwise provided.

Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign Articles of Incorporation as provided in this Code. Applicants shall file with the Board an application for charter on such form and include therein such information as may be prescribed by the Board, including the affidavit or affidavits provided by Article 2.05, and the proposed Articles of Incorporation or of Association, and shall deposit with the Board the fees prescribed by law.

Upon receipt of such application, the Board may set a date for the hearing of the same notifying all interested parties by notice published in one or more daily newspapers of this State of the place and date thereof, which date shall be not less than (10) nor more than sixty (60) days after the date of such notice.

The original examination report provided by Article 2.04 shall be a part of the record of the hearing.

In considering any such application, the Board shall, within thirty (30) days after public hearing, determine whether or not:

1. The proposed capital structure meets the minimum requirements of this Code;
2. The proposed officers and directors, attorney in fact or managing head have sufficient

insurance experience, ability, standing and good record to render success of the proposed insurance company probable;

3. The applicants are acting in good faith.

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

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 4; Acts 1983, 68th Leg., p. 3896, ch. 622, § 9, eff. Sept. 1, 1983.]

Art. 2.02. Articles of Incorporation

Such Articles of Incorporation shall contain:

1. The name of the company; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;

2. The locality of the principal business office of such company;

3. The kind of insurance business in which the company proposes to engage; for the purposes of determining the amount of capital and surplus required under this Code of a capital stock company, or the amount of surplus required of a mutual company, reciprocal exchange, or the amount of guaranty fund and surplus required of a Lloyds, full coverage automobile insurance shall be construed as one line of casualty insurance;

4. The amount of its capital stock and its surplus, which shall in no case be less than \$300,000 capital and \$500,000 surplus.

At the time of incorporation all of said capital and surplus shall be in cash.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 5; Acts 1983, 68th Leg., p. 3786, ch. 585, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, as to those articles of incorporation which are filed thereafter with the State Board of Insurance for approval under Article 2.01 and Article 2.02, Insurance Code, as amended by this Act; provided, however, as to those articles of incorporation which have been filed with the State Board of Insurance prior to September 1, 1983, and which are pending approval by the State Board of Insurance on such date, the State Board of Insurance and the attorney general shall process, review, and be entitled to approve such filed and pending articles of incorporation and to grant a charter to the corporation under the authority, terms, conditions, and provisions of Article 2.02, Insurance Code, as it existed prior to the amendment thereof as set forth in Section 1 hereof, and Article 2.02 and Article 2.20, Insurance Code, as amended by this Act, shall take effect as to such approved corporation as of the date of the issuance of the original certificate of authority to such corporation by the State Board of Insurance."

Art. 2.03. Amendments to Charters

Any domestic insurance corporation subject to the provisions of this Chapter may make amendments to its charter as follows:

Applicants shall file with the Board the proposed amendment together with an application on such form and including such information as may be prescribed by the Board, and shall deposit with the Board the fees prescribed by law. Upon such filing the Board may give notice by publication in one or more daily newspapers of this State of a public hearing upon such application; provided that no hearing shall be required in event amendment to charter involves only a stock dividend by means of lawful transfer of surplus to capital or a change of name or a change of locality of the principal business office of said company or a combination of such amendments.

In considering any such application, the Board may hold public hearings and shall within 60 days determine whether or not:

1. The proposed capital structure meets the minimum requirements of this Code;

2. The then officers and directors and managing head have sufficient insurance experience, ability, standing and good record to render success of the company probable;

3. The applicants are acting in good faith;

4. If an amendment to charter involves a diminution of the company's charter powers with respect to the kinds of insurance business in which it may engage, in the manner prescribed by this Code, that all liabilities incident to the exercise of the powers to be eliminated have been terminated or wholly reinsured;

5. The property involved in any increase of capital or surplus or both is properly valued and is as authorized by Article 2.08 or Article 2.10 of this Code, as same may be applicable.

Should the Board determine any of the above issues adversely to the applicants, it shall reject the application. Otherwise the Board shall approve the application, whereupon such amendment shall be deposited with the Board, and shall become effective.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 6; Acts 1983, 68th Leg., p. 3896, ch. 622, § 9, eff. Sept. 1, 1983.]

Art. 2.03-1. Live Stock Insurance Companies; Exemption from Act

Live stock insurance companies organized prior to April 1, 1955 under the provisions of Article 2.03 of the Insurance Code and continuing to do a live stock insurance business only shall be exempt from the provisions of this Act.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 12a.]

Article 2.03-1 was not enacted as part of the Insurance Code of 1951.

Art. 2.04. Original Examination and Application for Charter

When the Articles of Incorporation and Application for Charter of persons desiring to form a company under this Chapter have been deposited with the Board, and the law in all other respects has been complied with by the company, prior to the hearing provided by Article 2.01, the Board shall make or cause an examination to be made by some competent and disinterested person or persons appointed by them for that purpose; and if it shall be found that the capital stock and surplus of the company, to the amount required by law, has been paid in, and is possessed by it, in money, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, the examiners or examiner shall so report to the Board.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 7.]

Art. 2.05. Oath as to Charter and Capital

The incorporators or officers of any such company shall be required to certify under oath to the Board the truth and correctness of the facts set out in the Articles of Incorporation and in addition shall certify under oath to the Board that the capital and surplus is the bona fide property of such company.

If the Board is not satisfied in either event above, it may at the expense of the incorporators require other satisfactory evidence before it shall be required to receive the Articles of Incorporation, or application for charter, or give notice of hearing or hold same, or issue original Certificate of Authority, but may not delay the giving of notice of such hearing for more than ten days.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 8.]

Art. 2.06. Certificate of Examiner

If the examination be made by one, other than the Chairman, the finding shall be certified under the oath of the examiner. Such finding and certificate shall be filed and recorded in the office of the Chairman of the Board.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 2.07. Shares of Stock**Division**

Sec. 1. (a) The shares of any insurance company organized under the laws of this State, if shares with a nominal or par value, shall be divided into shares of not less than One Dollar (\$1) each, and not more than One Hundred Dollars (\$100) each and the stockholders of any such company authorizing the issuance of its stock with a nominal or par value shall be required in good faith to subscribe and fully pay for shares representing at least fifty per cent

(50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value before said company shall be chartered or have its charter amended so as to authorize the issuance of shares with a nominal or par value. At the time of filing of an original charter or any amendment of an existing charter authorizing issuance of stock of a nominal or par value, the company shall file a statement under oath with the State Board of Insurance setting forth the aggregate number of shares with a nominal or par value subscribed and the actual aggregate consideration received by the company for such shares. Any and all such shares with a nominal or par value issued in accordance with the provisions of this Section shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments. The consideration received for such shares shall constitute capital to the extent of the par value of such share, and the excess, if any, of such consideration shall constitute surplus. In no event shall the capital or surplus be less than the minimum required by this Chapter.

(b) In the event all of the shares with a nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares with nominal or par value are sold and issued, the company shall file with the State Board of Insurance, within ninety (90) days after the issuance of such shares a certificate authenticated by the majority of the directors setting forth the aggregate number of such additional shares so issued and the actual aggregate consideration received by the company for such shares. The consideration received for such shares shall constitute capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus. All shares with a nominal or par value issued by the company shall be fully paid for prior to issuance at a rate of not less than the par value thereof. No further act on the part of the company and no charter amendment shall be necessary to effect the increase in capital or surplus, or both, of the company.

(c) The aggregate number of shares which the company has authority to issue may be increased or decreased from time to time by lawful charter amendment as long as shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value is in good faith subscribed and paid for in full.

(d) The privileges and powers conferred by this Article shall be in addition to any and all powers and privileges conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to such companies; provided,

however, life, health, or accident insurance companies operating under Chapter 3 of this Code shall not utilize the provisions of this Article but shall comply with the provisions of Chapter 3 of this Code as amended.

Nominal or Par Value Shares; Conditions of Issuance

Sec. 2. Upon the incorporation or upon the amendment of the charter in the manner now or hereafter provided by law, of any insurance company organized under the laws of this State, provision may be made for the issuance of shares of its stock without a nominal or par value. Every such share shall be equal in all respects to every other such share; provided, however, that the stockholders of any such company authorizing the issuance of its stock without nominal or par value, shall be required in good faith to subscribe and pay for at least fifty (50) per cent of the authorized shares to be issued without nominal or par value, before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without nominal or par value; and provided further that in no event shall the amount so paid be less than Two Hundred Fifty Thousand (\$250,000.00) Dollars.

Disposition of Authorized Capital Stock; Nominal or Par Value Shares Fully Paid and Unassessable

Sec. 3. Such companies may issue and dispose of their authorized shares having no nominal or par value for money or those notes, bonds, mortgages and stocks of which the law requires that capital stock of insurance companies shall consist. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this Section shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments.

Filing Certificate and Articles of Incorporation; Approval of Attorney General; Fee

Sec. 4. Insurance companies authorizing the issuance of shares of their stock without a nominal or par value, shall furnish to and file with the Board at the time of the filing of the charter or amendment to the charter, authorizing the issuance of such stock, a certificate authenticated by the incorporators as to the original charter and by a majority of the directors as to an amendment, setting forth the number of shares without nominal or par value subscribed, and the actual consideration received by the company for such shares, and upon receiving such certificate, together with a charter fee of Twenty-five (\$25.00) Dollars, it shall be the duty of the Board to submit such certificate and the articles of incorporation to the Attorney General for examination; and if he approves the same as conforming with law, he shall so certify and deliver same to the

Chairman of the Board, who shall, upon receipt thereof, record the same in a book kept for that purpose; and upon receipt of a fee of One (\$1.00) Dollar, he shall furnish a certified copy of the charter to the incorporators or of the amendment to the directors, and same shall be effective. In case of original incorporation, said companies shall proceed to organize in the manner now provided by law for the organization of insurance companies.

Certificate Covering Shares of Nominal or No Par Value Sold or Issued

Sec. 5. In the event all of the shares of stock without nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted or the amendment is filed, then when such remaining shares of stock without nominal or par value are sold and issued, the company shall file with the Board, within ninety (90) days after the issuance of such shares a certificate authenticated by a majority of the directors setting forth the number of such shares so issued and the actual consideration received by the company for such shares. That portion of the consideration received by the company for such shares and fixed by the Board of Directors, unless the charter or articles of incorporation reserve to the shareholders the right to fix the consideration, shall constitute capital, and the excess, if any, of such consideration shall constitute surplus. No further action on the part of the company and no charter amendment shall be necessary to effect the increase in capital or surplus, or both, of the company. The consideration received for such shares shall be the same as that required by Article 2.03, Section 5 of this Code.

Powers Granted Additional to Existing Powers

Sec. 6. The privileges and powers conferred by this article shall be in addition to any and all powers and privileges conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to such companies; provided, however, life, health or accident insurance companies operating under Chapter 3 of this Code shall not utilize the provisions of this article but shall comply with the provisions of Chapter 3 of this Code as amended.

Purchase of Capital Stock in Accordance With Texas Business Corporation Act; Approval by State Board of Insurance

Sec. 7. (a) Any such company desiring to purchase, either by tender offer or through negotiated private transaction, issued and outstanding shares of the capital stock of such company may purchase said shares in the name of such company, in accordance with the provisions of the Texas Business Corporation Act, provided prior approval is first obtained from the State Board of Insurance. Appli-

caution for approval shall specify the number of shares offered, their description, the price offered by the company, the book value of said shares, their market value if a market exists, and any other pertinent information regarding the value of said shares and show that said shares will be purchased out of uncommitted earned surplus. A copy of said application shall be given to the seller prior to the filing of said application with the State Board of Insurance. Said application shall be promptly approved by the State Board of Insurance if the application appears to involve a reasonably fair price and complies with this Article and the Texas Business Corporation Act.

(b) Any such company, the shares of whose capital stock are listed on a national securities exchange and which desires to purchase in its own name and for its own account issued and outstanding shares of such capital stock by means of purchases from time to time on the open market may do so in accordance with the provisions of the Texas Business Corporation Act, provided prior approval is first obtained from the State Board of Insurance. Application for approval shall state the maximum number of shares which will be so purchased, the maximum period of time during which such purchases of shares will be made (not to exceed one hundred eighty days), the description of such shares, a commitment by the company that it will not pay for any such shares a price in excess of the mean between the bid price and the asked price at the time of such purchase plus a standard broker's commission, the book value of said shares, and any other pertinent information regarding the value of said shares and show that said shares will be purchased out of uncommitted earned surplus. Said application shall be promptly approved by the State Board of Insurance if the said application complies with this Article and the Texas Business Corporation Act.

(c) No provision of this article shall be deemed to restrict or modify the provisions in the Insurance Code relative to transactions between an insurer and its affiliates, certain shareholders, directors and officers as defined and limited by Chapter 1037, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1.29, Vernon's Texas Insurance Code), and Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), as the same now exist or may be amended in the future.

(d) An application for purchase of an insurer's own shares under the provisions of this article shall be deemed to be tantamount to an application for an extraordinary dividend under the provisions of said Article 21.49-1 of the Insurance Code and the application for such purchase shall be subject to and limited by the substantive requirements for approval of payment of an extraordinary dividend under

said Article 21.49-1 of the Insurance Code as the same exists or may be amended in the future.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 1; Acts 1957, 55th Leg., p. 87, ch. 41, § 1; Acts 1961, 57th Leg., p. 1112, ch. 503, §§ 1, 1a; Acts 1967, 60th Leg., p. 721, ch. 301, § 2, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 252, ch. 121, § 1, eff. Aug. 27, 1973.]

Section 2 of the 1973 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 2.08. Items of Minimum Capital Stock and Minimum Surplus

The minimum capital stock and minimum surplus of any such insurance company, except any writing life, health and accident insurance shall, following incorporation and granting of certificate of authority, consist only of the following:

1. Lawful money of the United States; or
2. Bonds of this state; or
3. Bonds or other evidences of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America; or
4. Notes secured by first mortgages upon unencumbered real estate in this state, the title to which is valid, and the payment of which notes is insured, in whole or in part, by the United States of America or any of its agencies, provided that such investments in such notes shall not exceed one-half (1/2) of the minimum capital stock and minimum surplus of the investing company; or
5. Bonds or other interest-bearing evidences of indebtedness of any counties, cities or other municipalities of this state.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 9; Acts 1959, 56th Leg., p. 250, ch. 145, § 1; Acts 1961, 57th Leg., p. 979, ch. 426, § 1.]

Art. 2.09. Re-investment of Capital Stock

Any such company may exchange and re-invest its capital stock in like securities, as occasion may require.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 2.10. Investment of Funds in Excess of Minimum Capital and Minimum Surplus

No company except any writing life, health and accident insurance, organized under the laws of this state, shall invest its funds over and above its minimum capital and its minimum surplus, as provided in Article 2.02, except as otherwise provided in this Code, in any other manner than as follows:

1. As provided for the investment of its minimum capital and its minimum surplus in Article 2.08;

2. In bonds or other evidences of debt which at the time of purchase are interest-bearing and are issued by authority of law and are not in default as to principal or interest, of any of the States of the United States or in the stock of any National Bank, in stock of any State Bank of Texas whose deposits are insured by the Federal Deposit Insurance Corporation; provided, however, that if said funds are invested in the stock of a State Bank of Texas that not more than thirty-five per cent (35%) of the total outstanding stock of any one (1) State Bank of Texas may be so purchased by any one (1) insurance company; and provided further, that neither the insurance company whose funds are invested in said bank stock nor any other insurance company may invest its funds in the remaining stock of any such State Bank;

3. In bonds, notes, evidences of indebtedness or participations therein secured by a valid first lien upon real property or leasehold estate therein located in the United States of America, its states, commonwealths, territories, or possessions, provided:

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

(1) May exceed ninety per cent (90%) but shall not exceed one hundred per cent (100%) of the value of such real property or leasehold estate therein if the insurer or one or more wholly owned subsidiaries of the insurer own in the aggregate a ten per cent (10%) or greater equity interest in such real property or leasehold estate therein;

(2) May be ninety-five per cent (95%) of the value of such real property if it contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes, and the portion of the unpaid balance of such obligation which is in excess of an amount equal to ninety per cent (90%) of such value is guaranteed or insured by a mortgage insurance company licensed to do business in the State of Texas; or

(3) May be greater than ninety per cent (90%) of the value of such real property to the extent the obligation is insured or guaranteed by the United States of America, or an agency or instrumentality thereof, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended (12 U.S.C. Sec. 1701 et seq.), or the State of Texas; and

(b) The term of an obligation secured by a first lien upon a leasehold estate in real property and improvements situated thereon shall not exceed a period equal to four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate, provided:

(1) The unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the obligation; and

(2) Each obligation shall be payable in equal monthly, quarterly, semi-annual, or annual payments of principal plus accrued interest to the date of such principal payment, so that under either method of repayment such obligation will fully amortize during a period of time not to exceed four-fifths ($\frac{4}{5}$) of the then unexpired term of the security leasehold estate; and

(c) The amount of any one such obligation may not exceed ten per cent (10%) of the insurer's capital and surplus; and

(d) The aggregate of investments made under this Section 3 may not exceed thirty per cent (30%) of the insurer's assets;

4. In bonds or other interest-bearing evidences of debt of any county, municipality, road district, turnpike district or authority, water district, any subdivision of a county, incorporated city, town, school district, sanitary or navigation district, any municipally owned revenue water system, sewer system or electric utility company where special revenues to meet the principal and interest payments of such municipally owned revenue water system, sewer system or electric utility company bonds or other evidences of debt shall have been appropriated, pledged or otherwise provided for by such municipality. Provided, before bonds or other evidences of debt of navigation districts shall be eligible investments such navigation district shall be located in whole or in part in a county containing a population of not less than 100,000 according to the last preceding Federal Census; and provided further, that the interest due on such navigation bonds or other evidences of debt of navigation districts must never have been defaulted;

5. In the stocks, bonds, debentures, bills of exchange or other commercial notes or bills and securities of any solvent dividend paying corporation at time of purchase, incorporated under the laws of this state, or of any other State of the United States, or of the United States, which has not defaulted in the payment of any of its obligations for a period of five (5) years, immediately preceding the date of the investment; provided such funds may not be invested in the stock of any oil, manufacturing or mercantile corporation organized under the laws of this state, unless such corporation has at the time of investment a net worth of not less than \$250,000.00 nor in the

stock of any oil, manufacturing or mercantile corporation, not organized under the laws of this state, unless such corporation has a combined capital, surplus and undivided profits of not less than \$2,500,000.00; provided further:

(a) Any such insurance company may invest its funds over and above its minimum capital stock, its minimum surplus, and all reserves required by law, in the stocks, bonds or debentures of any solvent corporation organized under the laws of this state, or of any other State of the United States, or of the United States.

(b) No such insurance company shall invest any of its funds in its own stock or in any stock on account of which the holders or owners thereof may, in any event, be or become liable to any assessment, except for taxes.

(c) No such insurance company shall invest any of its funds in stocks, bonds or other securities issued by a corporation if a majority of the stock having voting powers of such issuing corporation is owned, directly or indirectly, by or for the benefit of one or more officers or directors of such insurance company; provided, however, that this Section shall not apply to any insurance company which has been in continuous operation for five (5) years.

6. In loans upon the pledge of any mortgage, stock, bonds or other evidence of indebtedness acceptable as investments under the terms of this Article, if the current value of such mortgage, stock, bonds or other evidence of indebtedness is at least twenty-five per cent (25%) more than the amount loaned thereon;

7. In interest-bearing notes or bonds of The University of Texas issued under and by virtue of Chapter 40, Acts of the 43rd Legislature, Second Called Session;¹

8. In real estate to the extent only as elsewhere authorized by this Code;

9. In equipment trust obligations or certificates that are adequately secured or in other adequately secured instruments evidencing an interest in transportation equipment in whole or in part within the United States and a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment;

10. In insured accounts and evidences of indebtedness as defined and limited by Section 1, Chapter 618, page 1356, Acts of the 47th Legislature;² in shares or share accounts as authorized in Section 1, page 76, Acts 1939, 46th Legislature;³ in insured or guaranteed obligations as authorized in Chapter 230, page 315, Acts 1945, 49th Legislature;⁴ in bonds issued under the provisions authorized by Section 9, Chapter 231, page 774, Acts 1933, 43rd Legislature;⁵ in bonds under authority of Section 1, Chapter 1, page 427, Acts 1939, 46th Legislature;⁶ in bonds and other

indebtedness as authorized in Section 1, Chapter 3, page 494, Acts 1939, 46th Legislature;⁷ in "Municipal Bonds" issued under and by virtue of Chapter 280, Acts 1929, 41st Legislature;⁸ or in bonds as authorized by Section 5, Chapter 122, page 219, Acts 1949, 51st Legislature; or in bonds as authorized by Section 10, Chapter 159, page 326, Acts 1949, 51st Legislature;⁹ or in bonds as authorized by Section 19, Chapter 340, page 655, Acts 1949,¹⁰ 51st Legislature;¹¹ or in bonds as authorized by Section 10, Chapter 398, page 737, Acts 1949, 51st Legislature;¹² or in bonds as authorized by Section 18, Chapter 465, page 855, Acts 1949, 51st Legislature;¹³ or in shares or share accounts authorized in Chapter 534, page 966, Acts 1949, 51st Legislature;¹⁴ or in bonds as authorized by Section 24, Chapter 110, page 193, Acts 1949, 51st Legislature;¹⁵ together with such other investments as are now or may hereafter be specifically authorized by law.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 10; Acts 1959, 56th Leg., p. 96, ch. 49, § 1; Acts 1961, 57th Leg., p. 979, ch. 426, § 2; Acts 1979, 66th Leg., p. 325, ch. 151, § 1, eff. May 11, 1979; Acts 1979, 66th Leg., p. 1885, ch. 762, § 1, eff. June 13, 1979; Acts 1983, 68th Leg., p. 5115, ch. 932, § 1, eff. June 19, 1983.]

¹ Civil Statutes, art. 2603d (repealed).

² Civil Statutes, art. 842a.

³ Civil Statutes, art. 881a-24 (repealed; see, now, Civil Statutes, art. 852a, §§ 6.11, 6.12).

⁴ Civil Statutes, art. 842a-1.

⁵ Civil Statutes, art. 1187a, § 9.

⁶ Civil Statutes, art. 1269k-1.

⁷ Civil Statutes, art. 5890c (repealed; see, now, Civil Statutes, art. 5931-11).

⁸ Civil Statutes, art. 7880-19a (repealed; see, now, Water Code, §§ 51.038, 51.039).

⁹ Civil Statutes, art. 6795b-1, § 7(b).

¹⁰ Civil Statutes, art. 8280-134, § 10 (see, now, Water Auxiliary Laws, Table).

¹¹ Civil Statutes, art. 8280-137, § 19 (see, now, Water Auxiliary Laws, Table).

¹² Civil Statutes, art. 8280-138, § 10 (see, now, Water Auxiliary Laws, Table).

¹³ Civil Statutes, art. 8280-139, § 18 (see, now, Water Auxiliary Laws, Table).

¹⁴ Civil Statutes, art. 881a-24 (repealed; see, now, Civil Statutes, art. 852a, §§ 6.11, 6.12).

¹⁵ Civil Statutes, art. 8280-133, § 24 (see, now, Water Auxiliary Laws, Table).

Section 3 of the 1983 amendatory act provides:

"All laws and parts of laws in conflict herewith shall be and the same are hereby repealed, but this Act does not annul or limit any obligation or right previously existing."

Art. 2.10-1. Additional Investment Authority

(1) In addition to the securities authorized as investments in Article 2.10, a company may also invest its funds over and above its minimum capital and minimum surplus, as provided in Article 2.02, in bonds, issued, assumed, or guaranteed by certain international financial institutions in which the Unit-

ed States is a member, to wit: the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), and the Asian Development Bank.

(2) Insurers may make additional investments which are not otherwise permitted by Article 2.08, Article 2.10, or Article 2.10-1 of this code, or which are not otherwise authorized by this code for such insurers, and which investments are not otherwise specifically prohibited by law, or which investments exceed the limits otherwise specified in this code, provided:

(a) The amount of any one such investment may not exceed five percent of the insurer's capital and surplus in excess of the insurer's statutory minimum capital and surplus; and

(b) The aggregate of the investments made under this Subsection (2) may not exceed five percent of the insurer's assets.

[Acts 1971, 62nd Leg., p. 1668, ch. 472, § 1, eff. Aug. 30, 1971. Amended by Acts 1983, 68th Leg., p. 5120, ch. 932, § 2, eff. June 19, 1983.]

Section 3 of the 1983 amendatory act provides:

"All laws and parts of laws in conflict herewith shall be and the same are hereby repealed, but this Act does not annul or limit any obligation or right previously existing."

Art. 2.10-2. Further Investment Authority for Companies Doing Business in Foreign Countries

In addition to the securities authorized as investments by Article 2.10 of the Insurance Code, any insurer subject to the provisions of Article 2.10 of the Insurance Code that is authorized by the law of a foreign country to engage in a line or lines of insurance which the insurer is authorized to transact in this state may invest in the same kinds of foreign securities originating in such foreign country as would be authorized by Article 2.10 of the Insurance Code (as the same now exists or may be amended in the future) for domestic securities originating in the United States of America; provided, however, that the aggregate investment made under the provisions of this Article in any one country shall not exceed by more than 10% at any time the lesser of the following amounts:

(a) The funds required by the law of the foreign country to be maintained in securities originating in such country.

(b) The total unearned premium reserves, reinsurance reserves, loss reserves and other liabilities, if any, required by the law of this state to be carried by the insurer that are directly attributable to the particular policies or contracts of insurance on residents or property located in the foreign country.

Provided, however, this Article shall not constitute authority to invest in foreign securities originating in any foreign country where the President of the United States or other federal authority is

authorized but has refused to issue on projects in the country guarantees to citizens or corporations of the United States of America guaranteeing against loss by reason of inconvertibility of currency, expropriation, confiscation, war, revolution or insurrection because of the omission or failure of such foreign country to enter into arrangements for the security of American property required by the federal authority for the issuance of such guarantees.

[Acts 1973, 63rd Leg., p. 1300, ch. 490, § 1, eff. June 14, 1973.]

Art. 2.10-3. Repurchase Agreements

(a) Subject to the limitations and restrictions contained herein an insurer may make loans to or purchases of securities from a solvent bank, savings and loan association, credit union, or securities broker registered under the federal Securities Exchange Act of 1934¹ under an agreement (commonly called repurchase agreement), which agreement provides for the purchase by the insurer of securities and which agreement matures in 90 days or less and provides for the repurchase by such entity of the same or similar securities purchased by the insurer provided:

(1) such loan collateral or securities purchased are of the type of investments described and authorized by Paragraph 3 of Article 2.08 of this code and provided that the total market value of such securities shall equal or exceed the amount of such loan or purchase when it is made; and

(2) such loan collateral or securities purchased from any one bank, savings and loan association, credit union, or securities broker may not exceed the greater of five percent of the insurer's assets or five percent of the amount of capital, surplus, and undivided profits of such bank, savings and loan association, credit union, or securities broker.

(b) The State Board of Insurance may promulgate reasonable rules, regulations, and orders consistent with and implementing the provisions of this article.

[Acts 1983, 68th Leg., p. 4025, ch. 627, § 3, eff. June 19, 1983.]

¹ 15 U.S.C.A. § 78a et seq.

Art. 2.10-4. Risk-Limiting Provisions

(a) Subject to the rules and regulations promulgated by the State Board of Insurance and the limitations contained in Subsections (b) and (d) of this article with respect to assets owned by an insurer, an insurer may, for purposes of protecting such assets against the risk of changing asset values or interest rates and for risk reduction only, buy put options or sell call options and terminate the same, buy or sell interest rate futures contracts and options on interest rate futures contracts, or utilize such other instruments or devices as are consistent with this article and are traded on an

established exchange regulated by the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(b) An insurer may engage in the purchase of put options or sale of call options and terminate such option, only with regard to:

- (1) securities owned by the insurer; or
- (2) securities which the insurer may obtain through exercise of warrants or conversion rights held by the insurer.

(c) Subject to the rules and regulations promulgated by the State Board of Insurance and the limitations contained in Subsection (d) of this article with respect to cash flows reasonably anticipated to be available for investment purposes within the succeeding 12 months, which anticipation cannot exceed an amount equal to 10 percent of such insurer's admitted assets, an insurer may, for purposes of protecting such cash flows against the risk of changing asset values or interest rates and for risk reduction only, buy or sell interest rate futures contracts and options on interest rate futures contracts or utilize such other instruments or devices as are consistent with this article and are traded on an established exchange regulated by the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(d) An insurer may engage in the practices authorized by this article only if prior thereto the board of directors of such insurer has adopted a written policy which specifies:

- (1) the types of risk-limiting practices approved for such insurer;
- (2) the aggregate maximum limits in such instruments, which maximum limits must be reasonably related to the insurer's business needs and its capacity to fulfill its obligations thereunder;
- (3) the specific assets or class of assets or cash flows for which risk-limiting practices may be employed; and
- (4) that the insurer's accounting or investment records shall specifically identify the assets or cash flows for which each risk-limiting practice is used.

(e) The State Board of Insurance is hereby authorized to adopt such reasonable rules and regulations, not inconsistent with the provisions of this article, which prescribe reasonable limits, standards, and guidelines with respect to such risk-limiting devices and plans related thereto.

[Acts 1983, 68th Leg., p. 4025, ch. 627, § 3, eff. June 19, 1983.]

Art. 2.11. Directors

The affairs of any insurance companies organized under the laws of this state shall be managed by not fewer than seven (7) directors. Within thirty

(30) days after the subscription books of the company have been filed, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one (1) vote. The directors then in office shall continue in office until their successors have been duly chosen and accepted the trust. The annual meeting for the election of directors of any such company shall be held on or before April 30 of each year as the bylaws of the company may direct. Neither directors nor officers need be stockholders unless the Articles of Incorporation or bylaws so require.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1961, 57th Leg., p. 440, ch. 214, § 1; Acts 1965, 59th Leg., p. 396, ch. 195, § 1.]

Art. 2.12. Special Meeting to Elect Directors

If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty (30) days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located. The directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 2.13. Quorum of Stockholders

Except as may be otherwise provided in this code, no meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present, in person or by proxy, a majority in value of the stockholders equal to fifty-percent of the stock of such company.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1973, 63rd Leg., p. 251, ch. 120, § 1, eff. May 18, 1973.]

Sections 2 and 3 of the 1973 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of the conflict only.

"Sec. 3. If any provision of this Act is declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining provisions of this Act, and they shall remain in full force and effect."

Art. 2.14. Directors Shall Choose Officers

The directors shall choose a president from their own number, and all other officers shall be chosen in accordance with the bylaws of the company, and none of such other officers need be either a director or a stockholder except as required by the bylaws of such company. Officers shall perform such duties, receive such compensation and give such security as the bylaws may require.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1959, 56th Leg., p. 639, ch. 292, § 1.]

Art. 2.15. May Ordain By-Laws

The directors may establish such by-laws and regulations, not inconsistent with law, as shall ap-

pear to them necessary for regulating and conducting the business of the company.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 2.16. Business Records

The directors shall keep a full and correct record of their transactions, to be open during business hours to the inspection of stockholders and others interested therein.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 2.17. Shall Fill Vacancies; Quorum

The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of business.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 2.18. Governed by Other Laws

The laws governing corporations in general shall apply to and govern insurance companies incorporated in this State in so far as the same are not inconsistent with any provision of this Code. None of the provisions of this Chapter 2 shall apply to insurance companies organized or operating under the provisions of Chapter 3 or Chapter 11 of this Code, and Chapters 10, 12, 13, or 14 of this Code.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 2.]

Art. 2.19. Co-operative Savings Companies, Prohibited

There shall not be incorporated any such Co-operative Savings and Contract Loan Companies as are mentioned in Acts of 1923 of the 38th Legislature, Chapter 157, page 336, being Article 4698, Revised Civil Statutes of 1925.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 2.20. Increase of Capital and Surplus

If a domestic insurance company chartered under this chapter or otherwise subject to the capital and surplus requirements of this chapter or a foreign or alien insurance company doing business in Texas as an authorized fire or casualty insurer, or both, on the effective date hereof has less than \$300,000 capital, it may continue to transact the kind or kinds of insurance business for which it held a Texas certificate of authority on that date, provided that it increase its capital so that it has at least \$300,000 capital, either at the time of or immediately after any change of control of the insurance company or change of control of any holding company controlling the insurance company if at any time after the change of control the controlling person or persons will in the aggregate own, hold, or control at least 50 percent of the voting securities of the company. However, the company is not required to increase

its surplus except as necessary to comply with Article 1.10 of this code. For the purposes of this article, however, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, may not be considered a change of control of an insurance company or change of control of a holding company, if ownership is transferred solely to one or more natural persons each of whom would be an heir of the decedent if the decedent had died intestate.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 11. Amended by Acts 1983, 68th Leg., p. 3786, ch. 585, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, as to those articles of incorporation which are filed thereafter with the State Board of Insurance for approval under Article 2.01 and Article 2.02, Insurance Code, as amended by this Act; provided, however, as to those articles of incorporation which have been filed with the State Board of Insurance prior to September 1, 1983, and which are pending approval by the State Board of Insurance on such date, the State Board of Insurance and the attorney general shall process, review, and be entitled to approve such filed and pending articles of incorporation and to grant a charter to the corporation under the authority, terms, conditions, and provisions of Article 2.02, Insurance Code, as it existed prior to the amendment thereof, as set forth in Section 1 hereof, and Article 2.02 and Article 2.20, Insurance Code, as amended by this Act, shall take effect as to such approved corporation as of the date of the issuance of the original certificate of authority to such corporation by the State Board of Insurance."

Art. 2.21. Certificate of Authority

When the said Articles of Incorporation have been deposited with the Board, or when the right to do business has been approved as provided by law, and the law in all other respects has been complied with by the company, the Board shall issue to such company a Certificate of Authority to commence business as proposed in their Articles of Incorporation or application or declaration.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 12.]

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SUBCHAPTER A. TERMS DEFINED;
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Art. 3.01. Terms Defined

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 or foreign country.

Sec. 7. The term "home office" of a company means its principal office within the state or country in which it is incorporated and formed.

Sec. 8. The "insured" or "policyholder" is the person on whose life a policy of insurance is effected.

Sec. 9. The "beneficiary" is the person to whom a policy of insurance effected is payable.

Sec. 10. By the term "net assets" is meant the funds of the company available for the payment of its obligations in this state, including but not limited to:

(a) Uncollected premiums not more than three (3) months past due and deferred premiums on policies actually in force, after deducting from such funds all unpaid losses and claims and claims for losses, and all other debts, exclusive of capital stock; and

(b) All electronic machines, constituting a data-processing system or systems, and all other office equipment, furniture, machines and labor-saving devices heretofore or hereafter purchased for and used in connection with the business of an insurance company to the extent that the total actual cash market value of all of such systems, equipment, furniture, machines and devices constitute less than five per cent (5%) of the otherwise admitted assets of such company; and provided further, that the total value of all such property of a company must exceed Two Thousand Dollars (\$2,000), to qualify hereunder.

(c) The Commissioner of Insurance may adopt regulations defining electronic machines and systems, office equipment, furniture, machines and

labor-saving devices as used in subsection (b), and provide for the maximum period for which each such class of equipment may be amortized.

(d) Companies regulated by the provisions of Chapter 14 of this Insurance Code, same being local mutual aid associations, local mutual burial associations and state-wide mutual assessment corporations, and companies regulated by the provisions of Chapter 22 of this Insurance Code, same being stipulated premium companies, may include among their admitted assets any asset herein designated as "net assets" except that companies regulated by the provisions of Chapter 14 of this Code may only include the same within the assets of the expense fund of any such company.

Sec. 11. The "profits" of a company are that portion of its funds not required for the payment of losses and expenses, nor set apart for any other purpose required by law.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1961, 57th Leg., p. 1056, ch. 470, § 1; Acts 1963, 58th Leg., p. 185, ch. 105, § 1.]

Art. 3.02. Who May Incorporate

Sec. 1. Any three or more citizens of this State may associate themselves for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company. No such company shall transact more than one of the foregoing classes of business except in separate and distinct departments. In order to form such a company, the incorporators shall sign and acknowledge its articles of incorporation and file the same in the office of the State Board of Insurance. Such articles shall specify:

1. The name and place of residence of each of the incorporators;
2. The name of the proposed company, which shall contain the words "Insurance Company" as a part thereof, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;
3. The location of its home office;
4. The kind or kinds of insurance business it proposes to transact;
5. The amount of its capital stock and its surplus, that in no case may be less than Two Hundred Thousand (\$200,000.00) Dollars capital and Four Hundred Thousand (\$400,000.00) Dollars surplus; all of which capital stock must be fully subscribed and fully paid up and in the hands of the incorporators before said articles of incorporation are filed. Such minimum capital and surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this State or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise au-

thorized by this chapter, and shall not include any real estate; provided, however, that fifty (50%) per cent of the minimum capital may be invested in first mortgage real estate loans. After the granting of charter the surplus may be invested as otherwise provided in this Code. Notwithstanding any other provisions of this Code, such minimum capital shall at all times be maintained in cash or in the classes of investments described in this article;

6. The period of time it is to exist, which shall not exceed five hundred years;

7. The number of shares of such capital stock;

8. Such other provisions not inconsistent with the law as the incorporators may deem proper to insert therein.

Sec. 2. (a) If an insurance company is subject to this chapter and is doing business in this State as an authorized insurer on the effective date hereof and on that date has less than Two Hundred Thousand (\$200,000.00) Dollars capital, it may continue to transact the kind or kinds of insurance business for which it held a Texas certificate of authority on that date, provided that the insurance company increases its capital so that it has at least Two Hundred Thousand (\$200,000.00) Dollars capital, either at the time of or immediately after any change of control of the insurance company or any holding company controlling the insurance company, if at any time after such change of control, the controlling person or persons in the aggregate own, hold, or control in the aggregate at least fifty (50%) percent of the voting securities of the insurance company. The insurance company is not required to increase its surplus. For the purposes of this section, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, may not be considered a change of control of an insurance company or change of control of a holding company, if ownership is transferred solely to one or more natural persons, each of whom would be an heir of the decedent if the decedent had died intestate.

(b) Until the capital and surplus of such company is at least One Hundred Thousand (\$100,000.00) Dollars, no such company shall insure any life for more than Twenty Thousand (\$20,000.00) Dollars in the event of death from natural causes nor more than Forty Thousand (\$40,000.00) Dollars in the event of death from accidental causes. Provided, however, that when the net capital and surplus of any such company is not more than Thirty-five Thousand (\$35,000.00) Dollars, the excess over One Thousand (\$1,000.00) Dollars natural death benefit and Two Thousand (\$2,000.00) Dollars accidental death benefit under any policy issued by it shall be reinsured in some legal reserve company licensed in Texas; that when the net capital and surplus is Thirty-five Thousand and One (\$35,001.00) Dollars to Fifty Thousand (\$50,000.00) Dollars, the natural

death benefit over Two Thousand (\$2,000.00) Dollars and accidental death benefit over Four Thousand (\$4,000.00) Dollars shall be so reinsured; that when the net capital and surplus is Fifty Thousand and One (\$50,001.00) Dollars to Seventy-five Thousand (\$75,000.00) Dollars, the natural death benefit over Three Thousand (\$3,000.00) Dollars and accidental death benefit over Six Thousand (\$6,000.00) Dollars shall be so reinsured; and when the net capital and surplus is Seventy-five Thousand and One (\$75,001.00) Dollars to less than One Hundred Thousand (\$100,000.00) Dollars, the natural death benefit over Four Thousand (\$4,000.00) Dollars and accidental death benefit over Eight Thousand (\$8,000.00) Dollars shall be so reinsured.

Sec. 3. Every life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company incorporated or transacting such business in this State shall be subject to this chapter unless otherwise expressly provided by this Code.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 3; Acts 1983, 68th Leg., p. 3782, ch. 584, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"This Act takes effect September 1, 1983, as to those articles of incorporation which are filed thereafter with the State Board of Insurance for approval under Article 3.02, Insurance Code, as amended; provided, however, as to those articles of incorporation which have been filed with the State Board of Insurance prior to September 1, 1983, and which are pending approval by the State Board of Insurance on such date, the State Board of Insurance and the attorney general shall process, review, and be entitled to approve such filed and pending articles of incorporation and to grant a charter to the corporation under the authority, terms, conditions, and provisions of Article 3.02, Insurance Code, as it existed prior to the amendment thereof as set forth in Section 1 hereof, and Article 3.02, Insurance Code, as amended by this Act, shall take effect as to such approved corporation as of the date of the issuance of the original certificate of authority to such corporation by the State Board of Insurance."

Art. 3.02a. Shares of Stock

(a) The shares of any life, health or accident insurance company organized or operating under the provisions of this Chapter may be divided or converted into shares of either par value or no par value, or some of each, and all issued shares shall be fully paid and nonassessable. If divided or converted into shares of par value, each share shall be for not less than One Dollar (\$1) nor more than One Hundred Dollars (\$100) and the stockholders of any such company authorizing the issuance of its stock with a nominal or par value shall be required in good faith to subscribe and fully pay for shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal par value before said company shall be chartered or have its charter amended so as to authorize the issuance of shares with a nominal or par value. At the time of filing of an original charter or any amendment of an existing charter authorizing the issuance of stock with a nominal or

par value, the company shall file a statement under oath with the State Board of Insurance setting forth the aggregate number of shares with a nominal or par value subscribed and the actual aggregate consideration received by the company for such shares. If divided or converted into shares of no par value, every such share shall be equal in all respects to every other such share. At the time of filing of an original charter or any amendment of an existing charter authorizing the issuance of stock with no par value, the company shall file a statement under oath with the State Board of Insurance setting forth the number of shares without par value subscribed and the actual consideration received by the company for such shares. Provided, however, that the stockholders of any such company authorizing the issuance of its stock without nominal or par value, shall be required in good faith to subscribe and pay for at least fifty per cent (50%) of the authorized shares to be issued without nominal or par value, before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without nominal or par value; and provided further, that in no event shall the amount so paid be less than Two Hundred Fifty Thousand Dollars (\$250,000). The aggregate number of shares which the company has authority to issue may be increased or decreased from time to time by lawful charter amendment so long as at least fifty per cent (50%) of the aggregate number of the authorized shares to be issued without nominal or par value is in good faith subscribed and paid for and so long as shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value has been in good faith subscribed and paid for in full; provided that authorized but unissued shares shall not constitute capital or stock or capital stock of such company.

(b) Such companies may issue and dispose of their authorized shares having no nominal or par value for money or those notes, mortgages and stocks of which the law requires that capital stock of insurance companies shall consist. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this Article shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments. The consideration received for shares with a nominal or par value shall constitute capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus. In the case of issuance of shares without a nominal or par value, that portion of the consideration fixed by the Board of Directors, unless the charter or the articles of incorporation reserve to the shareholders the right to fix the consideration, shall constitute capital and the excess, if any, of such consideration shall

constitute surplus. All shares with a nominal or par value issued by the company shall be fully paid for prior to issuance at a rate of not less than the par value thereof. In no event shall the capital or surplus be less than the minimum required by this Chapter.

(c) In the event all of the shares without nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares without nominal or par value are sold and issued, the company shall file with the State Board of Insurance within ninety (90) days after the issuance of such shares, a certificate authenticated by a majority of the directors setting forth the number of such shares so issued and the actual consideration received by the company for such shares. In the event all of the shares with a nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares with a nominal or par value are sold and issued, the company shall file with the Board, within ninety (90) days after the issuance of such shares, a certificate authenticated by a majority of the directors setting forth the aggregate number of shares so issued and the actual aggregate consideration received by the company for such shares. In the case of the issuance by a company of any of its authorized shares having a nominal or par value, the consideration received therefor shall constitute capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus. In case of the issuance by a company of any of its authorized shares without a nominal or par value, that portion of the consideration fixed by the Board of Directors, unless the charter or articles of incorporation of the company reserve to the shareholders the right to fix the consideration, shall constitute capital, and the excess, if any, shall constitute surplus. All shares with a nominal or par value issued by the company shall be fully paid for prior to issuance at a rate of not less than the par value thereof. No further action on the part of the company and no charter amendment shall be necessary to effect the increase in capital or surplus, or both, of the company.

(d) Nothing herein contained shall be construed to impair the charter rights of companies heretofore authorized to issue stock of no par value or par value.

[Acts 1955, 54th Leg., p. 916, ch. 363, § 4. Amended by Acts 1961, 57th Leg., p. 1112, ch. 503, § 2.]

Art. 3.03. Repealed by Acts 1955, 54th Leg., p. 916, ch. 363, § 5

For provisions relating to incorporation of insurance companies, see now art. 3.02.

Art. 3.04. Application, Charter and Organization

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

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

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

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

4. A charter fee of Twenty-five Dollars (\$25.00).

Sec. 2. When such application for charter, articles of incorporation, affidavit, and charter fee are filed with the State Board of Insurance, the Board may set a date for a public hearing of the same, which date shall be not less than ten (10) nor more than thirty (30) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing and shall furnish a copy of such notice to all interested parties including any parties who have theretofore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings, and no such application shall be granted except when same is adequately supported by competent evidence. Any interested party shall have the right to oppose or support the granting or denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

Sec. 3. In considering any such application, the Board shall, within thirty (30) days after public hearing, determine whether or not:

(a) The minimum capital and surplus, as required by law, is the bona fide property of the company;

(b) The proposed officers, directors and managing executive have sufficient insurance experience, ability and standing to render success of the proposed company probable;

(c) The applicants are acting in good faith.

Sec. 4. If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing giving the reason therefor. Otherwise, the Board shall approve the application, whereupon all such documents shall be deposited with the Board. The Board shall record the documents in a book kept for that purpose; and upon receipt of a fee of One Dollar (\$1.00), it shall furnish a certified copy of the same to the incorporators, upon which they shall become a body politic and corporate and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt bylaws for the government of the company, and elect a board of directors of not less than five (5) members; which board shall have full control and management of the affairs of the corporation, subject to the bylaws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this state. The board of directors so elected shall serve until the fourth Tuesday in April thereafter, on which date, there shall be held a meeting of the stockholders at the home office, and a board of directors elected for the ensuing year; provided, however, that when the board of directors shall consist of nine (9) or more members, in lieu of electing the whole number of directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the terms of office of directors of the first class to expire at the first annual meeting of stockholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of stockholders. Annual meetings of the stockholders, after the first meeting, shall be held at the home office of the company on or before April 30 of each year as may be prescribed in the bylaws of the

corporation. If the stockholders fail to elect directors at any annual meeting, directors may be elected at a special meeting of the stockholders called for that purpose. Neither directors nor officers need be stockholders unless the articles of incorporation or bylaws so require. The directors shall choose a president from their own number, and all other officers shall be chosen in accordance with the bylaws of the company, and none of such other officers need be a director except as required by the bylaws of such company. The duties and compensation of officers of such company shall be in accordance with the bylaws of the company, or, to the extent of the absence of provisions governing the same in the bylaws, then the duties and compensation of officers shall be defined and fixed by the directors. The directors shall keep a full and correct record of their transactions to be open during business hours to the inspection of stockholders. The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of such business. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, except to the extent that the voting rights of the shares of any class or classes of stock are increased, limited or denied by the articles of incorporation as authorized or permitted by the Texas Business Corporation Act, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 6; Acts 1957, 55th Leg., p. 261, ch. 122, § 1; Acts 1959, 56th Leg., p. 937, ch. 433, § 1; Acts 1965, 59th Leg., p. 16, ch. 8, § 1, eff. Feb. 25, 1965; Acts 1983, 68th Leg., p. 3899, ch. 622, § 10, eff. Sept. 1, 1983.]

Art. 3.05. Amendment of Charter

(a) At any regular or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the president and secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock shall in no case be reduced to less than the minimum amount of fully paid up capital stock required by applicable provisions of law. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter

or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidence of stock in exchange for new certificates issued in lieu thereof. The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership.

(b) Any legal reserve life insurance company may purchase in the name of such company, issued and outstanding shares of the capital stock of such company in accordance with the provisions of the Texas Business Corporation Act. Purchases of stock under this paragraph shall not be deemed an investment nor shall such purchases be held in violation of the provisions of the Texas Insurance Code governing eligible investments for such company. Any such company, immediately or within ten days after such purchase, shall file a statement with the Commissioner of Insurance, which statement shall set forth the name of the shareholder or shareholders from whom such shares have been purchased and the sum of money paid for such shares.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1967, 60th Leg., p. 720, ch. 301, § 1, eff. Aug. 28, 1967.]

Art. 3.06. Original Examination and Certificate

When the application for charter, articles of incorporation, affidavit, and charter fee are filed with the State Board of Insurance and before the hearing required by Article 3.04 of this Code, the Board shall make, or cause to be made, at the expense of the company, a full and thorough examination thereof. After the hearing under Article 3.04 of this Code, if the Board finds that all of the capital of the company, as required by law, has been fully paid up and that the capital and surplus is in the custody of the officers, in cash or securities of the class authorized by Article 3.02 of this Code as amended, and if the Board makes the other findings required by Section 3 of Article 3.04 of this Code favorably to the applicant, on compliance with the other requirements of this article and Article 3.04 of this Code, the Board shall issue to such company a certificate of authority to transact such kind or kinds of insurance business within this State as such officers may apply for and as may be authorized by its charter. Before such certificate is issued, not less than two (2) officers of such company shall execute and file with the State Board of Insurance a sworn schedule of all the assets of the company exhibited to the Board upon such examination showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional

and unencumbered property of the company, and are worth the amount stated in such schedule.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 7; Acts 1983, 68th Leg., p. 3905, ch. 622, § 13, eff. Sept. 1, 1983.]

Repeal

This article was repealed by Acts 1959, 56th Leg., p. 434, ch. 194, § 2, to the extent that it requires periodic renewal of certificates.

Art. 3.07. Shall File Annual Statement

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

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.08. Renewal Certificates

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

[Acts 1951, 52nd Leg., ch. 491.]

Repeal

This article was repealed by Acts 1959, 56th Leg., p. 434, ch. 194, § 2, to the extent that it requires periodic renewal of certificates.

Art. 3.09. Copy of Certificates for Agents

Any such company organized under the laws of this State, having received authority from the Board of Insurance Commissioners to transact business in this State, shall receive from such Board, upon written request therefor, a certified copy of its

certificate of authority for each of its agents in this State.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.10. May Reinsure

Any domestic company may reinsure in any solvent assuming insurer, any risk or part of a risk which it may assume; provided, however, no credit for the reserve liability on such reinsurance may be taken by the ceding insurer unless the assuming insurer is licensed to do business in this state, or such reinsurance and the ceding insurer and assuming insurer comply with the provisions of Article 3.10A of this code, and, provided further, no company operating under Section 2(a) of Article 3.02 shall reinsure any risk or part of a risk with any insurer which is not licensed to do business in this state. No such domestic company shall have the power to reinsure its entire outstanding business unless the assuming insurer is licensed in this state and until the contract therefor shall be submitted to the Commissioner of Insurance of Texas and approved by him as protecting fully the interests of all policy holders.

[Acts 1951, 52nd Leg., ch. 401. Amended by Acts 1961, 57th Leg., p. 447, ch. 220, § 1; Acts 1979, 66th Leg., p. 1167, ch. 567, § 1, eff. Aug. 27, 1979.]

Art. 3.10A. Reinsurance Ceded to Nonadmitted Reinsurers

(a) No credit shall be given in the accounting and financial statements, either as an asset or a deduction from liability, of any domestic ceding insurer on account of any reinsurance of insurance policies or reinsurance reserved ceded to an assuming insurer which is not licensed to do business in this state, unless:

(1) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on such reinsured business are deposited by or are withheld from the assuming insurer and are in the custody of the ceding insurer as security for the payment of the assuming insurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the control of the ceding insurer; or

(2) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on such reinsurance business are either placed in a trust account for such purpose with a bank domiciled in this state which is a member of the Federal Reserve System or are represented by an irrevocable letter of credit to the benefit of the ceding insurer from such a bank, and if withdrawals from such trust account or reduction in the amount of the letter of credit cannot be made without the consent of the

ceding insurer except for those amounts which are in excess of the reserves required to be established by the ceding insurer.

(b) As used in this article, the term "assets" refers to any asset or investment authorized by this code to be counted for reserve fund purposes in the financial statements of domestic life, health, and accident insurance companies.

(c) The commissioner of insurance shall have the right to examine any of such reinsurance agreements, deposit arrangements, or letters of credit at any time in accordance with the authority to make examinations of insurance companies as conferred by other provisions of this code.

(d) The State Board of Insurance may promulgate and adopt such rules and regulations as may be deemed necessary to assure uniform standards for such deposit arrangements, trust agreements, letters of credit, and reinsurance agreements, consummated under the provisions of this article.

[Acts 1979, 66th Leg., p. 1168, ch. 567, § 2, eff. Aug. 27, 1979.]

Art. 3.11. Dividends; How Paid

No life insurance company shall declare or pay any dividends to its policyholders, except from the expense loading and profits made by such company; provided, however, any such company not showing a profit may pay dividends on its participating policies from the expense loading on such policies; and provided further, that any payment of dividends from the expense loading shall not be discriminatory as between policyholders. This shall not prohibit the issuance of policies guaranteeing, by coupons or otherwise, definite payments or reductions in premiums, but any such guarantee contained in policies or coupons issued after the effective date of this Act shall be treated as a definite contract benefit and so valued according to the reserve requirements of this Chapter using in the case of policies or coupons issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law) reserve valuation net premium for such benefits which is a uniform percentage of the gross premium, provided that any policy containing such a contract benefit may be valued on a basis which provides for not more than one (1) year preliminary term insurance, and using in the case of policies or coupons issued on or after the operative date of Article 3.44a the commissioners reserve valuation method as defined in Article 3.28. No such company shall declare or pay any dividends to its stockholders, except from the earned surplus of said company, as defined in, and in the manner authorized or provided by the Texas Business Corporation Act. Nothing in this Section

with respect to reserves shall apply to any policy issued prior to September 7, 1955.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 8; Acts 1963, 58th Leg., p. 1117, ch. 434, § 1; Acts 1963, 58th Leg., p. 1362, ch. 518, § 1.]

Acts 1963, 58th Leg., p. 1362, ch. 518, § 2, provides:

"All laws or parts of laws relating to stockholder dividends of life insurance companies organized under Chapter 3 of the Insurance Code which are in conflict with this Act are expressly repealed to the extent of the conflict only; and this Act shall prevail over any conflicting provisions or laws."

Art. 3.12. Compensation of Officers and Others; Including Pensions

(a) No "domestic" company shall pay any salary, compensation or emolument which, together with any salary, compensation or emolument from an affiliated "domestic" company, amounts in any year to more than Fifty Thousand Dollars (\$50,000) to any officer, trustee or director thereof, or to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. The limitation as to time contained herein shall not be construed as preventing any "domestic" company from entering into contracts with its agents for the payment of renewal commissions.

(b) The stockholders of any such "domestic" company may authorize the inauguration of a plan or plans for the payment of pensions, retirement benefits or group insurance to its officers and employees. The stockholders may delegate to the board of directors authority and responsibility for the preparation, inauguration, putting into effect, final approval and administration of any such plan or plans or any amendments thereof.

(c) Mutual companies, acting through their policyholders, may exercise the same discretion and shall have the same authority, privileges and rights as are conferred upon "domestic" companies under Subparagraph (b) next above.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1957, 55th Leg., p. 1330, ch. 451, § 1; Acts 1971, 62nd Leg., p. 2857, ch. 936, § 1, eff. June 15, 1971; Acts 1979, 66th Leg., p. 1810, ch. 737, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1971 amendatory act provides:

"If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 3.13. Disbursement by Vouchers

No "domestic" company shall make any disbursement of One Hundred (\$100.00) Dollars or more, unless the same be evidenced by a voucher signed by, or on behalf of, the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure

be for both services and disbursements, the voucher shall set forth the service rendered and statement of the disbursement made. If the expenditure be in connection with any matter pending before any legislature or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained, the expenditure shall be evidenced by a paid check or an affidavit describing the character and object of the expenditure, and stating the reason for not obtaining such voucher.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.14. Repealed by Acts 1975, 64th Leg., p. 464, ch. 198, § 2, eff. May 15, 1975

See, now, art. 21.39-B.

Art. 3.15. Deposit of Securities in Amount of Capital Stock

(a) Any "domestic" company may, at its option, deposit with the Treasurer of this State, securities in which its capital stock is invested, or securities equal in amount to its capital stock, of the class in which the law of this State permits such insurance companies to invest their capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited with the Treasurer, in lieu thereof, other securities of like class and equal amount and value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Board of Insurance Commissioners. When any such deposit is made, the Treasurer shall execute to the company making such deposit a receipt therefor, giving such description of said stock or securities as will identify the same, and stating that the same are held on deposit as the capital stock investments of such company; and such company shall have the right to advertise such fact or print a copy of the Treasurer's receipt on the policies it may issue; and the proper officer or agent of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the Treasurer and the Board of Insurance Commissioners. The deposit herein provided for, when made by any company, shall thereafter be maintained so long as said company shall have outstanding any liability to its policyholders in this State. For the purpose of state, county and municipal taxation, the situs of securities deposited with the treasurer by domestic insurance companies shall be in the city and county where the principal business office of such company is fixed by its charter.

(b) When two or more companies merge or consolidate or enter a total reinsurance contract by

which the ceding company is dissolved and its assets acquired and liabilities assumed by the surviving company, and the companies have on deposit with the State Treasurer two or more deposits made under Article 3.15 of the Texas Insurance Code, as amended, all such deposits, except the deposit of greatest amount and value may be withdrawn by the new, surviving or reinsuring company upon proper showing before the Commissioner that the company is the owner thereof. The Treasurer of the State of Texas shall release, transfer and deliver such deposit or deposits to the owner as directed by order of the Commissioner.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1957, 55th Leg., p. 812, ch. 344, § 1; Acts 1967, 60th Leg., p. 1827, ch. 705, § 4, eff. Aug. 28, 1967.]

Art. 3.16. Deposits of Securities in Amount of Legal Reserve

Sec. 1. Any life insurance company now or which may hereafter be incorporated under the laws of this State may deposit with the State Board of Insurance for the common benefit of all the holders of its policies and annuity bonds, securities of the kinds in which, by the laws of this State, it is permitted to invest or loan its capital, surplus and/or reserves, equal to the legal reserve on all its outstanding policies in force, which securities shall be held by said State Board of Insurance in trust for the purpose and objects herein specified. The physical delivery of such securities to the State Board of Insurance shall be sufficient without being accompanied by a written transfer of any lien securing them. Any such company may deposit lawful money of the United States in lieu of the securities above referred to, or any portion thereof, and may also, for the purposes of such deposit, convey to said State Board of Insurance in trust the real estate in which any portion of its said reserve may be lawfully invested. In such case, the State Board of Insurance shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with it, whereupon it shall reconvey the same to such company. Said State Board of Insurance may cause any such securities or real estate to be appraised and valued prior to their being deposited with or conveyed to it, in trust as aforesaid; the reasonable expense of such appraisal or valuation to be paid by the company. Under the provisions of this Article, registered as well as unregistered United States Government securities may be deposited.

Sec. 2. Notwithstanding the provisions of Section 1, of this Article, no new deposit of securities will be lawful after the effective date of this Section, except to the extent expressly required by Article 3.17.

Sec. 3. For the purpose of state, county, and municipal taxation the situs of securities deposited with the State Board of Insurance shall be in the

city and county where the principal business office of such company is fixed by its charter.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1957, 55th Leg., p. 812, ch. 344, § 2; Acts 1961, 57th Leg., p. 1053, ch. 469, § 1.]

Art. 3.17. What Deposits May Include

Sec. 1. Any life insurance company which has heretofore issued or assumed the obligations of policies or annuity bonds which have been registered in the manner at any time authorized by this Chapter, shall at all times hereafter have on deposit with the State Board of Insurance securities of the character described in Article 3.16 in amounts equal to or in excess of the aggregate net value of such outstanding registered policies and annuity bonds in force, and for such purpose new and additional deposits of securities shall be made from time to time and in amounts of not less than Five Thousand Dollars (\$5,000). Any such company whose deposits exceed such aggregate net value of its outstanding registered policies and annuity bonds in force may from time to time withdraw such excess by withdrawals of not less than Five Thousand Dollars (\$5,000). Any such company may at any time withdraw any of its deposited securities by depositing in their stead others of equal value and of the character authorized by this Chapter, and may collect the interest, rents and other income from its securities on deposit. The net value of every policy or annuity bond subject to this Act shall be its value according to the standard prescribed by the laws of this State, when the first premium thereon has been paid, less the amount of such liens as the company may have against it not in excess of such value.

Sec. 2. The securities of any such company on deposit with the State Board of Insurance shall be held in trust by said board for the benefit of all of the holders of the outstanding policies and annuity bonds of such company which have been registered pursuant to this Chapter.

Sec. 3. No company which has outstanding registered policies or annuity bonds in force shall reinsure its outstanding registered business, or the whole of any one or more of its registered policies or annuity bonds, except in a company or companies incorporated and organized under the laws of this State or having permission to do business in this State.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1961, 57th Leg., p. 1053, ch. 469, § 2.]

Art. 3.18. Effect and Value of Deposits in Amount of Legal Reserve

Sec. 1. After the effective date of this Section 1, of this Article, no policy or annuity bond shall be registered in the manner heretofore authorized by this Chapter.

Sec. 2. Every life insurance company which is required by this Chapter to have securities on deposit with the State Board of Insurance shall keep records of all of its outstanding registered policies and annuity bonds in force, and of the net value thereof.

Sec. 3. Each life insurance company which is required by this Chapter to have securities on deposit with the State Board of Insurance shall, within fifteen (15) days after the termination of each calendar month, file with said Board a report stating whether or not the value of its securities on deposit is equal to or in excess of the aggregate value of its registered policies and annuity bonds outstanding and in force at the end of such preceding calendar month.

Sec. 4. The securities deposited under this Chapter by each company shall be placed and kept by the State Board of Insurance in some secure safe-deposit, fireproof box or vault in the city or town in or near where the home office of the company is located. The officers of the company shall have access to such securities for the purpose of detaching interest coupons and crediting payment and exchanging securities as above provided, under such reasonable rules and regulations as the State Board of Insurance may establish.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1961, 57th Leg., p. 1053, ch. 469, § 3.]

Art. 3.19. Repealed by Acts 1961, 57th Leg., p. 1053, ch. 469, § 4

SUBCHAPTER B. FOREIGN COMPANIES

Art. 3.20. Statement to be Filed

Any 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 said Board of Insurance Commissioners with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company which statement shall show:

1. The name and locality of the company.
2. The amount of its capital stock.
3. The amount of its capital stock paid up.
4. The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how se-

cured; 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 Board of Insurance Commissioners may require any additional facts to be shown by such annual statement. Each such company shall be required to file a similar statement not later than March 1 of each year.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.21. Articles of Incorporation to be Filed

Any such foreign 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.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.22. Capital Stock and Surplus Requirements

No such foreign stock insurance company shall be licensed by the Board of Insurance Commissioners or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum capital and surplus required by this chapter of a similar domestic company in similar circumstances, including the same character of investments for its minimum capital and surplus. No such foreign mutual insurance company shall be licensed by the Board of Insurance Commissioners or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum free surplus required by Chapter 11 of this Code of a similar domestic company in similar circumstances including the same character of investments for its minimum free surplus.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 9.]

Art. 3.23. Foreign Companies to Deposit

No such foreign insurance company incorporated by or organized under the laws of any foreign government, shall transact business in this State, unless it shall first deposit and keep deposited with the Treasurer of this State, for the benefit of the policyholders of such company, citizens or residents

of the United States, bonds or securities of the United States or the State of Texas to the amount of One Hundred Thousand (\$100,000.00) Dollars.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.24. Deposit Liable for Judgment

The deposit required by the preceding article shall be held liable to pay the judgments of policyholders in such company, and may be so decreed by the court adjudicating the same.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.24-1. Certificate of Authority

When a foreign or alien company has complied with the requirements of this Subchapter and all other requirements imposed on such company by law and has paid any deposit imposed by law, and the operational history of the company when reviewed in conjunction with its loss experience, the kinds and nature of risks insured, the financial condition of the company and its ownership, its proposed method of operation, its affiliations, its investments, any contracts leading to contingent liability or agreements in respect to guaranty and surety, other than insurance, and the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid and required policy reserve increases, indicates a condition such that the expanded operation of the company in this State or its operations outside this State will not create a condition which might be hazardous to its policyholders, creditors or the general public, the Commissioner shall file in the office the documents delivered to him and shall issue to the company a certificate of authority to transact in this State the kind or kinds of business specified therein. Such certificate shall continue in full force and effect upon the condition that the company shall continue to comply with the laws of this State.

[Acts 1973, 63rd Leg., p. 1384, ch. 533, § 1, eff. Aug. 27, 1973.]

Section 2 of the 1973 Act added article 3.55-1; § 3 thereof provided: "If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are declared to be severable."

Art. 3.25. Law Deemed Accepted

Each life insurance company not organized under the laws of this State, hereafter granted a certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact such business hereunder subject to the conditions and requirements that, after it shall cease to transact new business in this State under a certificate of authority, and so long as it shall continue to collect renewal premiums from citizens of this State, it shall be subject to the payment of

the same occupation tax in proportion to its gross premiums during any year, from citizens of this State, as is or may be imposed by law on such companies transacting new business within this State, under certificates of authority during such year. The rate of such tax to be so paid by any such company shall never exceed the rate imposed by law upon insurance companies transacting business in this State. Each such company shall make the same reports of its gross premium receipts for each such year and within the same period as is or may be required of such companies holding certificates of authority and shall at all times be subject to examination by the Board of Insurance Commissioners or some one selected by it for that purpose, in the same way and to the same extent as is or may be required of companies transacting new business under certificates of authority in this State, the expenses of such examination to be paid by the company examined. The respective duties of the Board in certifying to the amount of such taxes and of the State Treasurer and Attorney General in their collection shall be the same as are or may be prescribed respecting taxes due from companies authorized to transact new business within this State.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.26. When Foreign Companies Need Not Deposit

If the deposit required by Article 3.23 of this code has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policyholders of such Company who are citizens and residents of the United States, then no deposit shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.27. Companies Desiring to Loan Money

Any life insurance company not desiring to engage in the business of writing life insurance in this State, but desiring to loan its funds in this State, may obtain a permit to do so from the Secretary of State by complying with the laws of this State relating to foreign corporations engaged in loaning money in this State, without being required to secure a certificate of authority to write life insurance in this State.

[Acts 1951, 52nd Leg., ch. 491.]

SUBCHAPTER C. RESERVES AND INVESTMENTS

Art. 3.28. Standard Valuation Law

Title

Sec. 1. This Article shall be known as the Standard Valuation Law.

Reserve Valuation

Sec. 2. The State Board of Insurance shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, the Board may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the Board may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the State Board of Insurance when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Computation of Minimum Standard

Sec. 3. The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance) shall be that provided in Section 12 of this article. Except as otherwise provided in Sections 4 and 5 of this article, the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance) shall be the commissioners reserve valuation methods defined in Sections 6, 7, and 10 of this article, three and one-half per cent (3½%) interest; in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after June 14, 1973, four per cent (4%) interest for such policies issued prior to August 29, 1977; or five and one-half per cent (5½%) interest for single premium life insurance policies and four and one-half per cent (4½%) interest for all other such policies issued on and after August 29, 1977, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of Section 6 of the Standard Nonforfeiture Law for Life Insurance, as amended, the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after the operative date of Section 6 of the Stan-

dard Nonforfeiture Law for Life Insurance, as amended, and prior to the operative date of Section 8 of the Standard Nonforfeiture Law for Life Insurance, as amended, provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this Act 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 not more than six years younger than the actual age of the insured for policies issued on and after August 29, 1977; and for such policies issued on or after the operative date of Section 8 of the Standard Nonforfeiture Law for Life Insurance, as amended, (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, or (iii) any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard valuation for such policies.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of Section 7 of the Standard Nonforfeiture Law for Life Insurance, as amended, and for such policies issued on or after such operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table, or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the State Board of Insurance.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the State Board of Insurance, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disable-

ment rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates 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 standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the State Board of Insurance.

Computation of Minimum Standard for Annuities

Sec. 4. Except as provided in Section 5 of this article, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this Section 4, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the commissioners reserve valuation methods defined in Sections 6 and 7 of this article and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued prior to August 29, 1977, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

(b) For individual single premium immediate annuity contracts issued on or after August 29, 1977, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the State Board of Insurance, and seven and one-half per cent (7½%) interest.

(c) For individual annuity and pure endowment contracts issued on or after August 29, 1977, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the State Board of Insurance, and five and one-half per cent (5½%) interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent (4½%) interest for all other such individual annuity and pure endowment contracts.

(d) For all annuities and pure endowments purchased prior to August 29, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

(e) For all annuities and pure endowments purchased on or after August 29, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table or any group annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the State Board of Insurance, and seven and one-half per cent (7½%) interest.

After June 14, 1973, 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, 1979, which shall be the operative date of this section for such company; provided, a company may elect a differ-

ent operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this section for such company shall be January 1, 1979.

Computation of Minimum Standard by Calendar Year of Issue

Sec. 5. (a) Applicability of this section

(1)¹ The calendar year statutory valuation interest rates as defined in this Section shall be the interest rates used in determining the minimum standard for valuation of:

(A) all life insurance policies issued in a particular calendar year on or after the operative date of Section 8 of the Standard Nonforfeiture Law for Life Insurance;

(B) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(C) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(D) the net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

(b) Calendar Year Statutory Valuation Interest Rates

(1) The calendar year statutory valuation interest rates, "I," shall be determined as follows and the results rounded to the nearer one-fourth of one per cent (¼ of 1%):

(A) For life insurance,

$$I = .03 + \frac{W(R_1 - .03) + W(R_2 - .09)}{2}$$

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W(R - .03)$$

where R_1 is the lesser of R and $.09$,

R_2 is the greater of R and $.09$,

R is the reference interest rate defined in this section, and

W is the weighting factor defined in this section.

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section, the formula for life insurance stated in Paragraph (A) of Subdivision (1) of Subsection (b) of this section shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for

single premium immediate annuities stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less.

(D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section shall apply.

(E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section shall apply.

(2) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one per cent (½ of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when Section 8 of the Standard Nonforfeiture Law for Life Insurance becomes operative.

(c) Weighting Factors

(1) The weighting factors referred to in the formulas stated above are given in the following tables:

(A) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(B) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other

annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80

(C) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Paragraph (B) of Subdivision (1) of Subsection (c) of this section, shall be as specified in tables (i), (ii), and (iii) below, according to the rules and definitions in (iv), (v), and (vi) below:

(i) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(ii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (i) above increased by:

	Plan Type		
	A	B	C
	.15	.25	.05

(iii) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in (i) or derived in (ii) increased by: .05 .05 .05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valu-

ation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) Plan type as used in the above tables (i), (ii), and (iii) is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of funds by the insurance company, or (2) without such adjustment but in installments over five years or more, or (3) as an immediate life annuity, or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five years or more, or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of

valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(d) Reference Interest Rate

(1) Except as provided in Subsection (e) of this section, the reference interest rate referred to in Subsection (b) of this section shall be defined as follows:

(A) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (d) of this section, with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (d) of this section, with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(E) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June

30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(F) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (d) of this section, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(e) State Board of Insurance Promulgation of Definitions of Reference Interest Rate

The State Board of Insurance shall, not less than annually, determine whether the definition of reference interest rates as specified in Subsection (d) of this section continues to be a reasonably accurate approximation of the average yield achieved from purchases in the United States in publicly quoted markets of investment grade fixed term and fixed interest corporate obligations for the times specified in such subsection and shall, if it determines that such definition is no longer such reasonably accurate approximation, promulgate rules in the manner specified in the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), to adopt such alternative methods as are appropriate to achieve such purpose.

¹ So in enrolled bill; there is no § 5(a)(2).

Commissioners Reserve Valuation Method

Sec. 6. Except as otherwise provided in Sections 7 and 10 of this article, reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an

annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in Section 10 of this article, be the greater of the reserve as of such policy anniversary calculated as previously described in this Section 6 and the reserve as of such policy anniversary calculated as previously described in this Section 6 but with (i) the value defined in Subsection (a) of Section 6 of this article being reduced by fifteen per cent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 3 and 5 of this article shall be used.

Reserves according to the commissioners reserve valuation method for: (1) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (2) group annuity and pure endowment contracts 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, as now or hereafter amended;¹ (3) disability and accidental death benefits in all policies and contracts; and (4) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment

contracts; shall be calculated by a method consistent with the principles of the preceding paragraphs of this section.

¹ 26 U.S.C.A. § 408.

Commissioners Reserve Valuation Method—Annuity and Pure Endowment Benefits

Sec. 7. This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts 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, as now or hereafter amended.

Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

Minimum Reserves

Sec. 8. In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance), be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 6, 7, 10, and 11 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

Optional Reserve Calculation

Sec. 9. Reserves for all policies and contracts issued prior to the operative date of Article 3.44a

(the Standard Nonforfeiture Law for Life Insurance) may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the State Board of Insurance, issued on or after the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance), may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the State Board of Insurance, adopt any lower standard of valuation, but not lower than the minimum herein provided.

Reserve Calculation—Valuation Net Premium Exceeding the Gross Premium Charged

Sec. 10. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in Sections 3 and 5 of this article.

Provided that for any life insurance policy issued on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess

and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this Section 10 shall be applied as if the method actually used in calculating the reserve for such policy were the method described in Section 6 of this article, ignoring the second paragraph of Section 6. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with Section 6, including the second paragraph of that section, and the minimum reserve calculated in accordance with this Section 10.

Reserve Calculation—Indeterminate Premium Plans and Certain Other Plans

Sec. 11. 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 or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in Sections 6, 7, and 10 of this article, the reserves which are held under any such plan must:

- (a) be appropriate in relation to the benefits and the pattern of premiums for that plan, and
- (b) be computed by a method which is consistent with the principles of this Standard Valuation Law, as determined by regulations promulgated by the State Board of Insurance.

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.

Computation of Minimum Standard by Calendar Year of Issue

Sec. 12. This section shall apply only to those policies and contracts issued prior to the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance). The reserve liability of all such policies and contracts shall be computed in accordance with their terms and the following rules:

- (a) As respects policies issued prior to the first day of January, 1910, the computation shall be on the basis of the American Experience Table of Mortality and four and one-half per cent (4½%) interest per annum.
- (b) As respects policies issued after the 31st day of December, 1909, and prior to January 1, 1948, the computation shall be on the basis of the Actuaries or Combined Experience Table of Mortality with four per cent (4%) interest per annum,

if the interest rate guaranteed in the policy is four per cent (4%) per annum or higher. If any such policies were issued upon a reserve basis of an interest rate lower than four per cent (4%) per annum, then the computation shall be made on the basis of the American Experience Table of Mortality with interest at such lower specified rate.

(c) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (A) the specified rate of interest shall not exceed three and one-half per cent (3½%) per annum; (B) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality, the American Men Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or, as respects policies issued after the 31st day of December, 1959, the Commissioners 1958 Standard Ordinary Mortality Table; and (C) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub-Standard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-Standard Industrial Mortality Table, or, as respects policies issued after the 31st day of December, 1963, the Commissioners 1961 Standard Industrial Mortality Table.

(d) As respects policies on female risks issued after the 31st day of December, 1959, other than policies of industrial life insurance, computation shall be based on any mortality table and rate of interest permitted under Subsection (c) of Section 12 of this article and specified in the respective policies but may at the option of the company be based on an age not more than three (3) years younger than the actual age of the insured.

(e) Except as otherwise provided in Section 4 of this article with respect to coverages purchased on or after the operative date of such subsection under group annuity and pure endowment contracts, as respects policies issued on substandard risks and annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the State Board of Insurance.

(f) The reserve values of all policies of group insurance issued prior to May 15, 1947, shall be computed upon the basis of the American Men Ultimate Table of Mortality with interest at the rate of three per cent (3%) or three and one-half per cent (3½%) per annum as provided in such policies. The reserve values of all policies of

group insurance issued on and subsequent to May 15, 1947, and prior to January 1, 1961, shall be computed upon the basis of either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table with interest at a rate not in excess of three and one-half per cent (3½%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to January 1, 1961, shall be computed on the basis of an interest rate not exceeding three and one-half per cent (3½%) per annum and such mortality table as shall be adopted by the company with the approval of the State Board of Insurance.

Repeal of Conflicting Laws

Sec. 13. All acts and parts of acts inconsistent with the provisions of this article are hereby repealed.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1959, 56th Leg., p. 960, ch. 448, § 1; Acts 1963, 58th Leg., p. 1117, ch. 434, § 2; Acts 1973, 63rd Leg., p. 1070, ch. 411, §§ 1, 2, eff. June 14, 1973; Acts 1977, 65th Leg., p. 2098, ch. 842, §§ 1 to 5, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2170, ch. 508, § 1, eff. Aug. 31, 1981.]

Section 3 of the 1973 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 3.29. Extra Hazardous Policies

If any life insurance company doing business under the laws of this State has written or assumed risks that are sub-standard or extra hazardous and has charged therefor more than its published rates of premium, the Board of Insurance Commissioners shall in valuing such policies compute and charge such extra reserves thereon as is warranted by reason of the extra hazard assumed and the extra premium charged. If the Board of Insurance Commissioners shall find, after notice and hearing, that a particular risk or class of risks is sub-standard or extra hazardous, then and in that event no such company shall thereafter write or assume any such risks unless they charge therefor such extra premium as is warranted by reason of the extra hazard assumed.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.30. Repealed by Acts 1963, 58th Leg., p. 1117, ch. 434, § 3, eff. Aug. 23, 1963

See, now, the Standard Valuation Law, art. 3.28.

Art. 3.31. Failure to File Certificate

If any such foreign insurance company shall fail to file the certificate authorized by the preceding

article, it shall be required forthwith to file with the Board of Insurance Commissioners full detailed lists of its policies and securities and shall be liable for all charges and expenses consequent upon its failure so to file such certificate.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.32. Requirement of Securities in Amount of Reserve

Having determined the required reserves on all the policies in force, the Board shall see that the company has in securities of the class and character required by the laws of this State the amount of said reserves on all its policies, after all the debts and claims against it and the minimum capital required by this chapter have been provided for.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 11.]

Art. 3.33. Repealed by Acts 1963, 58th Leg., p. 864, ch. 332, § 1, eff. Aug. 23, 1963

Art. 3.34. Texas Securities

The term "Texas Securities," as used in this Chapter, shall be held to include the following:

PART I. INVESTMENTS.

1. U. S. Bonds and Obligations. That percentage of a life insurance company's investments in the bonds, treasury bills, notes and certificates of indebtedness of the United States and other obligations and securities fully guaranteed as to principal and interest by the full faith and credit of the United States (exclusive of obligations of the United States or any agency or instrumentality thereof specifically included for the full amount thereof under Paragraphs 6 and 7 of this Part I) that its Texas Reserves bear to its total reserves.

2. State Bonds. Bonds of the State of Texas.

3. County, City, School District and other Sub-division Bonds. Bonds and interest-bearing warrants issued by authority of law by any county, city, town, school district, or other municipality or subdivision of the State of Texas which is now or hereafter may be constituted or organized under the laws of this state, and is authorized to issue such bonds and warrants under the Constitution and laws of this state.

4. Bonds of Educational Institutions. Bonds and interest-bearing warrants issued by authority of law by any educational institution of the State of Texas which is now or hereafter may be constituted or organized under the laws of this state, and is authorized to issue such bonds and warrants under the Constitution and laws of this state, provided legal provision has been made by a tax to meet said obligations.

5. Special Obligations of Educational Institutions. Bonds and warrants, including revenue

and special obligations, of any educational institution of the State of Texas when special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged, or otherwise provided by such educational institution.

6. Bonds in Settlement of Insured or Guaranteed Loans. Bonds, debentures and other evidences of indebtedness of the United States or any agency or instrumentality thereof, or the State of Texas or any agency or instrumentality thereof, received and retained in whole or partial settlement of any insurance or guarantee in whole or in part by the United States or any agency or instrumentality thereof, or by the State of Texas or any agency or instrumentality thereof, of notes or bonds secured by mortgage or deed of trust upon real estate situated in this state.

7. Federal Farm Loan Bonds. Bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,¹ where such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this state.

8. Corporate First Mortgage Bonds, Notes, and Debentures. (1) First mortgage bonds or first lien notes secured by real estate or personal property: (a) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (b) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are fully guaranteed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (c) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes; or (d) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years next preceding such investment,

provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or (2) in the notes or debentures of any such corporation incorporated under the laws of this state and doing business in this state with a net worth of not less than Five Million Dollars (\$5,000,000) where no prior lien exists in excess of 10 percent (10%) of the net worth of such corporation, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created in excess of 10 percent (10%) of the net worth of such corporation, against the real or personal property of such corporation at the time the notes or debentures were issued; or (3) in the notes or debentures of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years where no prior lien exists, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created against the real or personal property of such corporation at the time the notes or debentures were issued, but whose notes or debentures are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment and has a net worth of at least Five Million Dollars (\$5,000,000), the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes or whose notes or debentures are fully guaranteed by any such corporation; or (4) in the bonds, bills of exchange, or other commercial notes or bills of any solvent corporation incorporated under the laws of and doing business in this state which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation incorporated under the laws of and doing business in this state which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment, and which corporation has a net worth of not less than Fifty Million Dollars (\$50,000,000) and has no long-term indebtedness in excess of its net worth, as evidenced by its latest published financial statements or other financial data available to the public; but in no event shall the amount of such investment in the

bonds, notes, debentures, or other obligations or any one such corporation exceed five per cent (5%) of the admitted assets of the insurance company making such investment.

9. Securities of Electric or Gas Public Utility Corporations. Such debentures, preferred stock and common stock of any (a) solvent electric or gas public utility corporation, incorporated under the laws of and doing business in this state which derives at least eighty-five per cent (85%) of its gross income from the sale of electricity or gas; or (b) other corporation, incorporated under the laws of and doing business in this state, the principal assets of which are the common stock of subsidiaries which are solvent electric or gas public utility corporations from which it derives at least eight-five per cent (85%) of its gross income, as are authorized investments under the provisions of Article 3.39 and 3.41 respectively, of the Insurance Code of this state, as amended.

10. Bank and Bank Holding Company Stocks. The stock of state banks incorporated under the laws of this state and national banks domiciled and doing business in this state that are members of the Federal Deposit Insurance Corporation and the stock of bank holding companies as defined in the Bank Holding Company Act of 1956 (12 U.S.C.A. Section 1841 et seq.), as amended by the Bank Holding Company Act Amendments of 1970 (12 U.S.C.A. Section 1841 et seq., 1971 et seq.) enacted by the United States Congress, and which are incorporated under the laws of this state and doing business in this state; provided, however, that no such investment shall exceed twenty per cent (20%) of the total outstanding shares of the stock of any such bank or bank holding company, and in no event shall the amount of investment in any such stock exceed ten per cent (10%) of the admitted assets of the insurance company making such investment.

The values of any stock owned by an insurance company in a bank holding company which is directly attributable to an original investment by the insurance company in the stock of either a state bank incorporated in Texas or a national bank domiciled and doing business in Texas, which bank subsequently became the bank holding company as previously defined, shall be treated as Texas Securities hereunder even though such bank holding company is not incorporated in Texas.

11. Debt Obligations of Corporations Not Otherwise Qualified. In addition to those investments otherwise qualifying as Texas Security under other provisions of this Act, investments in corporate first mortgage bonds, debentures, and other debt obligations of any solvent, dividend-paying corporation, which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent divi-

dend corporation which has not been in existence for five (5) consecutive years, but whose corporate obligations are fully guaranteed by a solvent, dividend-paying corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, and which issuing corporation meets at least one of the following criteria, shall be considered as Texas Securities for the purposes of this Act:

a. more than fifty per cent (50%) of the corporation's total assets are "Texas Securities" as herein defined,

b. more than fifty per cent (50%) of the corporation's total gross receipts are from sales which accrued within the State of Texas,

c. more than fifty per cent (50%) of the corporation's employees perform their duties and jobs within the State of Texas.

An insurer claiming as a "Texas Security" one of the foregoing defined investments shall have the burden of proving that such investment meets one of the three above-listed tests.

PART II. LOANS.

1. First Liens upon Real Estate. First lien notes or first mortgage bonds secured by real estate situated in this state, the title to which is valid and the value of which is at least one-third ($\frac{1}{3}$) more than the amount loaned thereon.

2. First Liens upon Leasehold Estates. First lien notes or first mortgage bonds secured by leasehold estates in real property and improvements thereon situated in this state, the title to which is valid; provided that the duration of any loan upon such leasehold estates shall not exceed a period equal to four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate; provided the unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the loan, and any such loan shall be payable only in equal monthly, quarterly, semi-annual or annual installments, on principal or principal and interest during a period not exceeding four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate.

3. Collateral Liens upon Real Estate. Obligations secured collaterally by first mortgage liens or first deed of trust liens against any such first liens on real estate or leasehold estates situated in this state.

4. Insured or Guaranteed Liens upon Real Estate. The foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration and dignity of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, or by the State of Texas or by any agency or instrumentality of either of them, or if not wholly so insured or guaranteed, the difference between the entire amount of the indebtedness

and that portion thereof insured or guaranteed by the United States, or by the State of Texas or by any agency or instrumentality of either of them would not exceed the amount of loan permissible under said restrictions.

5. Policy Loans. Loans made to Texas policyholders on the sole security of the reserve values of their policies.

6. Insurance Requirements on Improvements Securing First Liens on Real Estate. If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the State of Texas for at least fifty per cent (50%) of the value thereof; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

7. Collateral Liens upon other Texas Securities. Obligations collaterally secured by first mortgage liens or first deed of trust liens against any of the securities named or referred to in Part I or Part IV hereof as constituting investments in Texas Securities.

PART III. REAL ESTATE.

All real estate situated in this state now owned and held and all real estate situated in this state hereafter acquired, owned and held by such insurance company in accordance with the provisions of this Chapter.

PART IV. MISCELLANEOUS.

1. Bank Deposits. For the purpose of this Act, "Texas Securities" shall include the average daily balance of cash on deposit, subject to check and withdrawal, in a state or national chartered bank which has qualified for Federal Deposit Insurance Corporation coverage, provided the bank and the deposits are both located within the State of Texas.

The amount to be included in the average daily balance of cash on deposit shall be the sum of the balances on the bank's books at the close of each day, including weekends and/or holidays, divided by the total days of the year.

Each tax return reflecting an amount of average daily balance as a Texas Security must be supported by a sworn certification as to the amount, which shall have been executed by an officer of the bank where the deposits were maintained.

Nonnegotiable certificates of deposit held in a state or national chartered bank, which is insured by Federal Deposit Insurance Corporation cover-

age, shall be defined as a "Texas Security" and not subject to the foregoing restriction if the issuing bank and the deposit is located within the State of Texas and if the funds evidenced by the certificates have been on deposit for at least one year or such funds are committed by the terms of the certificate of deposit for one or more years, or such funds represent the renewal of a certificate of deposit which previously qualified under this provision.

Negotiable certificates of deposit may be treated the same as nonnegotiable if they are held to maturity and the funds evidenced by the certificates have been on deposit for at least one year, or such funds are committed by the terms of the certificate of deposit for one or more years, or such funds represent the renewal of a certificate of deposit which previously qualified under this provision. If not held to maturity, the negotiable certificate shall be included in the average daily balance of cash on deposit and subject to the average daily balance of cash on deposit provisions herein. The amount to be included in the numerator of the formula for the calculation of the average daily balance of cash on deposit shall be the sum of the days on deposit, including weekends and holidays, multiplied by the face amount of the certificate of deposit.

2. Texas Securities under Special Acts. The securities, insured accounts and evidences of indebtedness which are defined as "Texas Securities" under Article 842a and 881a-24 of the Revised Civil Statutes of Texas.

3. Other Texas Securities Specifically Defined by Law. Such other securities, loans and investments as are now or may hereafter be specifically defined by law as "Texas Securities" for purposes of this Chapter.

4. Valuation of Texas Securities and/or Similar Securities. The value of the foregoing Texas Securities, exclusive of cash on deposit, shall be limited to the original cost of common or preferred stock, the amortized value of bonds, debentures, warrants, and other interest-bearing indebtedness, and the unpaid principal balance of mortgage loan notes and collateral loan notes. The improvements situated on Texas real estate held under Articles 3.40 and 3.40-1, Insurance Code, 1951, as amended, shall be valued at the depreciated cost less any outstanding indebtedness. The land shall be valued at the original cost less any outstanding indebtedness. No increases in value to either land or improvements by reason of appraisals will be allowed as a part of the "Texas Securities" for the purposes of this Article.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1953, 53rd Leg., p. 403, ch. 115, § 1; Acts 1959, 56th Leg., p. 96, ch. 49, § 2; Acts 1959, 56th Leg., p. 626, ch. 282, § 1; Acts 1961, 57th Leg., p. 933, ch. 411, § 1; Acts 1977, 65th Leg., p. 1982, ch. 793, § 1, eff. Jan. 1, 1978.]

112 U.S.C.A. § 641 et seq. (repealed).

Art. 3.35. Repealed by Acts 1963, 58th Leg., p. 864, ch. 332, § 1, eff. Aug. 23, 1963

Art. 3.36. Report of Reserves and Investments Required

Each life insurance company doing business in this State shall, not later than ten days after January 31 of each year, file with the Board of Insurance Commissioners on a blank prepared and furnished by it for that purpose, a report showing the entire amount of the reserve on its entire business in force in this State on December 31, preceding, and an itemized schedule of its investments in Texas securities, which report shall be sworn to by either the president or vice president and the secretary of such company. Such report shall contain such other information as may be required by the Board to determine whether or not such company has continuously and in good faith complied with this law; and for that purpose the Board may, whenever it shall deem it proper, require such special or supplementary reports as it may deem necessary.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.37. Repealed by Acts 1963, 58th Leg., p. 864, ch. 332, § 1, eff. Aug. 23, 1963

Art. 3.38. Not to Apply to Fraternal Societies

Nothing in this chapter shall be held to apply to fraternal benefit societies as defined by the laws of this State.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.39. Authorized Investments and Loans for "Domestic" Life Insurance Companies

PART I. AUTHORIZED INVESTMENTS

A life insurance company organized under the laws of this state may invest its several funds, identified as follows, in the following securities, respectively, and none other:

A. ANY OF ITS FUNDS AND ACCUMULATIONS

1. U. S. Bonds and Obligations Guaranteed by the United States. The bonds, treasury bills, notes and certificates of indebtedness of the United States or any other obligation or security fully guaranteed as to principal and interest by the full faith and credit of the United States.

2. Canadian Bonds. The bonds of the Dominion of Canada or any province or city of the Dominion of Canada.

3. State, County and City Bonds. The bonds of any state, county, or city of the United States.

4. County, City and School District Bonds. Any bonds or interest-bearing warrants issued by authority of law by any county, city, town, school district or other municipality or subdivision, which

is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided legal provision has been made by a tax to meet said obligations.

5. Bonds of Educational Institutions. Any bonds or interest-bearing warrants issued by authority of law by any educational institution which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided legal provision has been made by a tax to meet said obligations.

6. Revenue Bonds, etc., of Educational Institutions. The bonds and warrants, including revenue and special obligations, of any educational institution located in any state in the United States when special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such educational institution.

7. Bonds and Warrants of Municipally Owned Systems. The bonds and warrants payable from designated revenues of any city, county, drainage district, road district, town, township, village or other civil administration, agency, authority, instrumentality, or subdivision which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such municipality.

8. Paving Certificates. Any paving certificates or other certificates or evidence of indebtedness issued by any city in any state in the United States and secured by a first lien on real estate.

9. Bonds Issued Under Federal Farm Loan Act. Bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916 (12 U.S.C.A. Sec. 641 et seq.), when such bonds are issued against and secured by promissory notes, or obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unincumbered real estate situated in this state.

10. Corporate First Mortgage Bonds, Notes and Debentures. (1) First mortgage bonds or first lien notes on real estate or personal property: (a) of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (b)

of any solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are fully guaranteed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (c) of any solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes; or (d) of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or (2) in the notes or debentures of any such corporation with a net worth of not less than Five Million Dollars (\$5,000,000) where no prior lien exists in excess of 10 percent of the net worth of such corporation, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created in excess of 10 percent of the net worth of such corporation, against the real or personal property of such corporation at the time the notes or debentures were issued; or (3) in the notes or debentures of any solvent corporation which has not been in existence for five (5) consecutive years where no prior lien exists, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created against the real or personal property of such corporation at the time the notes or debentures were issued, but whose notes or debentures are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment and has a net worth of at least Five Million Dollars (\$5,000,000), the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes, or whose notes or debentures are fully guaranteed by any such corporation; or (4) in the bonds, bills of exchange, or other commercial notes or bills of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next pre-

ceding such investment, or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment, and which corporation has a net worth of not less than Fifty Million Dollars (\$50,000,000) and has no long-term indebtedness in excess of its net worth, as evidenced by its latest published financial statements or other financial data available to the public; but in no event shall the amount of such investment in the bonds, notes, debentures, or other obligations of any one such corporation exceed five percent (5%) of the admitted assets of the insurance company making such investment.

11. Shares of Savings and Loan Associations. The shares, stock, share accounts or savings accounts, and investment certificates of Savings and Loan Associations doing business in this state where such association has qualified for participation in insurance issued by the Federal Savings and Loan Insurance Corporation; no such investment shall exceed twenty per cent (20%) of the total assets of any such Individual Savings and Loan Association.

12. Bank and Bank Holding Company Stocks. The stock of banks, either state or national, that are members of the Federal Deposit Insurance Corporation and the stock of bank holding companies as defined in the Bank Holding Company Act of 1956 (12 U.S.C.A. 1841 et seq.) as amended by the Bank Holding Company Act Amendments of 1970 (12 U.S.C.A. 1841 et seq., 1971 et seq.) enacted by the United States Congress; no such investment shall exceed twenty per cent (20%) of the total outstanding shares of the stock of any such bank or bank holding company and in no event shall the amount of investment in any such stock exceed ten per cent (10%) of the admitted assets of the insurance company making such investment.

13. Debentures of Public Utility Corporations. The debentures of any solvent public utility corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment provided such corporation has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and public utility corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; provided further, that such public utility corporation shall not have failed in any

one of the five (5) years next preceding such investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation and obsolescence, a sum applicable to interest on its outstanding indebtedness equal at least to two times the amount of interest due for that year, or where, in the case of issuance of new debentures, such earnings applicable to interest are equal to at least two times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; or, in the case of a public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment but has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and the public utility corporation so succeeded have not failed in any one of the five (5) years next preceding such investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation and obsolescence, a sum applicable to interest on the outstanding indebtedness equal to at least two times the amount of interest due for that year, to where in the case of issuance of new debentures such earnings applicable to interest are equal to at least two times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; but in no event shall the amount of such investment in debentures under this Subdivision exceed five per cent (5%) of the admitted assets of the insurance company making the investment.

14. Preferred Stock of Public Utility Corporations. The preferred stock of any solvent public utility corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which public utility corporation and the public utility corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; provided further, that such public utility corporation shall not have failed in any one of the five (5) years next preceding such investment to have earned a sum applicable to dividends on such preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock such earnings applicable to dividends are equal at least to three times the amount of the annual dividend requirements after giving effect to such new financing, and where the bonds and debentures are eligible investments for such insurance company; or, in

the case of a public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment, but has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and the public utility corporation so succeeded have not failed in any one of the five (5) years next preceding such investment to have earned a sum applicable to the dividends on such preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock, such earnings applicable to dividends are equal at least to three times the amount of the annual dividend requirements after giving effect to such new financing, and where the bonds and debentures are eligible investments for such insurance company; provided that any preferred stock so purchased shall be of an issue which is entitled to first claim upon the net earnings of such public utility corporation after deducting such sum as may be necessary to service any outstanding bonds and debentures, but in no event shall the amount of such investment in preferred stock under this Subdivision exceed two and one-half per cent (2½%) of the admitted assets of the insurance company making the investment.

15. Securities Not Otherwise Specified. Notwithstanding any expressed or implied prohibitions, a life insurance company may, after the effective date of this amendment, invest any of its funds and accumulations in investments which do not otherwise qualify under any other provision of Chapter 3 of the Insurance Code; provided, however, that the amount of any one such investment under this Section shall not exceed one per cent (1%) of the admitted assets of any such life insurance company; and provided further, that the investments authorized by this Section shall not exceed the lesser of (a) five per cent (5%) of its admitted assets, or (b) the amount of its capital and surplus in excess of Two Hundred Thousand Dollars (\$200,000) as shown on its last annual statement preceding the date of the acquisition of such investment as filed with the State Board of Insurance.

Nothing herein shall be construed or applied so as to authorize any life insurance company to invest any of its funds or accumulations in real property unless already authorized to do so by this Act or some other existing law of the State of Texas.

15A. Other Bonds. A company may also invest its funds and accumulations in:

(1) bonds issued, assumed, or guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), and the Asian Development Bank; and

(2) bonds issued, assumed, or guaranteed by the State of Israel.

16. Securities Authorized by Special Acts of the Legislature. Securities authorized under Articles: 842a; 842a-1; 881a-24; 1187a; 5890c; 6795b-1; 7880-19a; 8247a; 8280-133; 8280-134; 8280-137; 8280-138; and 8280-139 of the Revised Civil Statutes of Texas.

17. Other Securities Specifically Authorized by Law.

(1) Equipment trust obligations or certificates that are adequately secured or other adequately secured instruments evidencing an interest in transportation equipment that is in whole or in part within the United States and a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment; and

(2) Such other securities as are now or may hereafter be specifically authorized by law.

B. POLICY RESERVES AND SURPLUS

1. Specified Municipal Bonds. It may invest its policy reserves and surplus over and above its capital in "Municipal Bonds" issued under and by virtue of Chapter 280, Acts 1929, 41st Legislature.¹

¹ Civil Statutes, art. 7880-3 et seq. (repealed; see, now, Water Code).

C. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

It may invest its capital, surplus and contingency funds over and above the amount of its policy reserves in the following securities:

1. Capital Stock, Bonds, and other Obligations of Corporations. The capital stock, bonds, bills of exchange, or other commercial notes or bills and securities of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment.

2. Bonds or Notes of Educational or Religious Corporations. The bonds or notes of any educational or religious corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent.

3. Limitation of Investments. It may not invest in its own capital stock nor in the stock

of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingent funds, nor in the stock of any manufacturing corporation with a net worth of less than Twenty-Five Thousand Dollars (\$25,000), nor in the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars (\$500,000); provided, however, that it may own and invest not more than twenty-five per cent (25%) of its capital, surplus and contingency funds in the capital stock of one fire and casualty insurance company, provided such investment gives it a majority of the outstanding stock of such fire and casualty insurance company; and provided further, it may additionally invest that portion of its surplus funds which is in excess of the greater amount of either (a) ten per cent (10%) of its admitted assets as determined from its latest annual statement on file with the State Board of Insurance or (b) the minimum capital and surplus requirements for incorporating a life insurance company under Chapter 3 of the Insurance Code, as amended, as it may be amended, in the capital stock, bonds and other obligations of any one or more solvent corporations.

4. Certain Life Income Interests.

(a) Life income interest in an irrevocable express testamentary trust that has as the fee simple recipient of all the corpus of the trust one or more Texas public charities, Texas churches, Texas educational institutions or Texas scientific institutions; provided each recipient is recognized by the Internal Revenue Service of the United States as exempt from payment of income taxes and provided further that (1) the corpus of any such trust is in whole or in part composed of interests in real estate, stocks, bonds, debentures and other securities of an aggregate total value of not less than \$5,000,000; and (2) the corpus of any such trust produces annual income of not less than \$100,000.

(b) No life insurance company's interest in any such trust shall exceed ten per cent (10%) of its admitted assets.

(c) Before such interest shall be acquired, satisfactory evidence shall be presented to the Commissioner of Insurance as follows:

(1) That the interest is subject to and recognized as transferable,

(2) That the interest is capable of reasonable valuation,

(3) That a market for sale of such interest exists,

(4) That the life income interest is supported by life insurance in an amount not less than its admitted value and in form approved by the Commissioner of Insurance.

(d) In valuing such interest on its books, the life insurance company shall value the interest only on the basis of the lesser of, (1) the recognized market established in accordance with Section (c)(3) above, or (2) the ratio that such fractional life income interest in the income of the trust bears to the total market value of the properties held by the trust that are of the type of property a life insurance company can lawfully acquire under the investment statutes of the State of Texas.

D. CAPITAL, SURPLUS AND CONTINGENCY FUNDS NOT TO EXCEED 10%

1. Capital Stock of Other Insurance Corporations. It may invest not to exceed ten per cent (10%) of its capital, surplus, and contingency funds, in not more than twenty per cent (20%) of the capital stock of any other insurance company, now or hereafter organized under this Chapter, whose principal business is the reinsurance, either partially or wholly, of risks ceded to it by other life insurance companies. The investment herein authorized may be made by purchase of stock then issued and outstanding or by subscription to and payment for the increase in the capital stock of such reinsurance corporation.

E. MINIMUM CAPITAL AND SURPLUS

1. Requirement as to Investment of Minimum Capital and Surplus. Notwithstanding other provisions of this Article 3.39 of this Code, the capital and surplus of a company hereafter organized under Article 3.02 of this Code and the free surplus of a company hereafter organized under Article 11.01 of this Code shall, at the time of incorporation, consist only of lawful money of the United States, or bonds of the United States, or of this state, or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this Chapter, and shall not include any real estate; provided, however, that fifty per cent (50%) of the minimum capital may be invested in first mortgage real estate loans; and the minimum capital of a company hereafter organized under said Article 3.02 and the minimum free surplus of a company hereafter organized under said Article 11.01 at all times shall be maintained in cash or in the same classes of investments. After the granting of charter the surplus in excess of such One Hundred Thousand Dollars (\$100,000) may be invested as otherwise provided in this Code for Stock Companies.

F. GENERAL

1. Investment in Foreign Securities. Any such company legally authorized to transact business in a foreign country may invest in the same kind of securities of said country as hereinbefore

authorized in the United States of America for an aggregate amount not exceeding the reserve on the business in force in said country.

2. Investments to be Approved by Board of Directors. No investment shall be made by any such insurance company, unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such investments.

3. Investments of Companies Reinsured. In any case in which a life insurance company organized under the laws of this state shall reinsure the business and take over the assets of another life insurance company, either domestic or foreign, all investments of such reinsured company that were authorized, when made, by the laws of the state in which it was organized, as proper securities for investment of the funds of a life insurance company, and which are taken over by such reinsuring company, shall be considered as valid securities of such reinsuring company under the laws of this state, provided such investments are approved by the Board of Insurance Commissioners of this state, and the same are taken over on terms satisfactory to said Board; and upon the condition that the Board of Insurance Commissioners shall have the power to require the reinsuring company to dispose of such investments upon such notice as it may deem reasonable.

4. Not to Invest in Stock Subject to Assessment. No such insurance company shall invest any of its funds in any stock on account of which the holder or owner thereof may in any event be or become liable to any assessment except for taxes.

5. Certain Investment Privileges are Cumulative. The investment powers conferred by Paragraphs Nos. 11 and 12, Section A, are in addition to those conferred by Paragraphs Nos. 1, 2 and 3, Section C, and are not to be construed as restricting the powers already granted by said Paragraphs Nos. 1, 2 and 3 of Section C and Paragraphs Nos. 11 and 12, Section A, and the powers conferred herein are cumulative with respect to Paragraphs Nos. 1, 2 and 3, Section C, and the powers conferred therein.

PART II. AUTHORIZED LOANS

A life insurance company organized under the laws of this state may loan its several funds identified as follows, taking as collateral security for the payment of such loans the securities named below, and none other.

A. ANY OF ITS FUNDS ACCUMULATIONS

Such company may loan any of its funds and accumulations on the following securities:

1. First Liens Upon Real Estate. First liens upon real estate, the title to which is valid and provided the amount of the loan does not exceed:

(a) seventy-five (75%) per cent of the value of such real estate; or (b) ninety (90%) per cent of the value of such real estate if it contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes; or (c) ninety-five (95%) per cent of the value of such real estate if it contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes, and the portion of the unpaid balance of such loan which is in excess of an amount equal to eighty (80%) per cent of such value is guaranteed or insured by a mortgage insurance company qualified to do business in the State of Texas; provided, however, that loans in excess of seventy-five (75%) per cent of the value of such real estate authorized under (b) or (c) hereof shall not be originated by such company; provided, however, that the aggregate amount of loans secured by first liens on real estate to any one corporation, company, partnership, individual, or any affiliated person or group may not exceed ten (10%) per cent of the admitted assets of such insurer, and provided further that the amount of any such single loan secured by a first lien on real estate may not exceed five (5%) per cent of the admitted assets of the insurer. The limitation provided by this subsection shall not apply to any first lien on real estate where the Commissioner of Insurance finds that: (1) the making or acquiring of such lien is beneficial to and protects the interest of the insurer and (2) no substantial damage to the policyholders and creditors of such insurer appears probable from the taking or acquiring of such lien.

2. First Liens Upon Leasehold Estates. First liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid; provided that the duration of any loan upon such leasehold estates shall not exceed a period equal to four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate, provided the unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the loan, and any such loan shall be payable only in equal monthly, quarterly, semi-annual or annual installments, on principal and interest during a period not exceeding four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate.

3. Collateral Securities. Upon any obligation secured collaterally by any such first liens on real estate or leasehold estates.

4. Policy Loans. Security of its own policies. No loan on any policy shall exceed the reserve values thereof.

5. Other Securities. It may loan any of its funds and accumulations, taking as collateral to secure the payment of such loan, any of the securities named or referred to in Part 1 of this

Article 3.39 above in which it may invest any of its funds and accumulations.

6. Restrictions as to Value of Real Estate Removed Where Loans Insured by the United States. The foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended (12 U.S.C.A. Sec. 1701 et seq.), or by the State of Texas, or, if not wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended, or by the State of Texas, would not exceed the amount of loan permissible under said restrictions.

7. Loans to be Authorized by Board of Directors. No loan, except policy loans, shall be made by any such insurance company unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such loans.

8. Insurance Requirements. If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the state in which such real estate is located, or in a company recognized as acceptable for such purpose by the insurance regulatory official of the state in which such real estate is located, which insurance shall be in an amount of at least fifty per cent (50%) of the value of such buildings; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

B. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

1. Capital Stock, Bonds, and Other Obligations of Solvent Corporations, and Educational or Religious Corporations. It may loan its capital, surplus, and contingency funds, or any part thereof over and above the amount of its policy reserves, taking as security therefor the capital stock, bonds, bills of exchange, or other commercial notes or bills and the securities of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or of any solvent corpo-

ration which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or in the bonds or notes of any Educational or Religious Corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent; provided, the market value of such stock, bills of exchange, or other commercial notes or bills and securities shall be at all times during the continuance of such loan at least fifty per cent (50%) more than the sum loaned thereon; provided that it shall not take as collateral security for any loan its own capital stock, nor shall it take as collateral security for any loan the stock of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingency funds, nor shall it take as collateral security for any loan the stock of any manufacturing corporation with a net worth of less than Twenty-Five Thousand Dollars (\$25,000), nor the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars (\$500,000); and provided further, that it shall not take as collateral security for any such loan any stock on account of which the holder or owner thereof may in any event be or become liable to any assessment except for taxes.

PART III. SEPARATE ACCOUNTS

Any domestic life insurance company may establish one or more separate accounts, and may allocate to such separate account or accounts, in accordance with the terms of a written agreement, any amounts paid to the company in connection with a pension, retirement or profit sharing plan which are to be applied to provide benefits payable in fixed or variable dollar amounts, subject to the following conditions and limitations:

(a) The amounts allocated to each such account and accumulations thereon may be invested and reinvested in any class of investments which may be authorized in the written agreement without regard to any requirements or limitations prescribed by this Chapter Three of the Insurance Code or by any other laws of this state governing the investments of domestic life insurance companies; provided, that to the extent that the company's reserve liability with regard to (1) benefits guaranteed as to amount and duration, and (2) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate

account at least equal to such reserve liability shall be invested in accordance with the laws of this state governing the investments of domestic life insurance companies. The investments in such separate accounts shall not be taken into account in applying the investment limitations applicable to other investments of the company.

(b) The income, if any, and gains and losses, realized or unrealized on each account shall be credited to or charged against the amounts allocated to the account in accordance with the written agreement, without regard to other income, gains or losses of the company.

(c) Assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then in accordance with the terms of the applicable written agreement; provided, that the portion of the assets of such separate account at least equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in Subsection (a) hereof, if any, shall be valued in accordance with the rules otherwise applicable to the company's assets.

(d) Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the company and the company shall not be, or hold itself out to be, a trustee with respect to such amounts.

(e) No investment shall be transferred between separate accounts or between separate and other accounts, unless the State Board of Insurance shall authorize such transfer in circumstances where such transfer would not be inequitable.

(f) If the agreement provides for payment of benefits in variable amounts, any contract delivered, issued or used in this state providing for such variable benefits shall be a group annuity contract. Such contract shall:

(1) Contain an undertaking by the insurance company to provide, to the extent of the interest in such separate account of the employer and of the covered employees, for the future issue of annuities payable to covered employees on or after their retirement, whether such annuities are payable only in variable dollar amounts or in both variable and fixed dollar amounts; and

(2) Be made in connection with a plan (other than one covering employees some or all of whom are employees within the meaning of Section 401(c)(1), as it now exists or may hereafter be amended, of the Internal Revenue Code) which meets the requirements for qualifications under Section 401, as it now exists or may hereafter be amended, of the Internal Revenue Code or the requirements for deduction of the employers' contributions under Section 404(a)(2), as it now exists or may hereafter be amended, of said Code whether or not the em-

ployer deducts the amount paid for the contract under such section; and

(3) Prohibit the allocation to the separate account of any payment or contribution made by the employee; and

(4) Cover at least twenty-five employees at the time of its execution; and

(5) Contain a statement of the essential features of the procedure to be followed by the company in determining the dollar amount of such variable benefits; and

(6) State that such dollar amount may decrease or increase, and contain on its first page, in a prominent position, a statement that the benefits thereunder are on a variable basis, and this requirement shall apply also to any certificate issued under any such contract.

(g) No domestic life insurance company, and no foreign life insurance company admitted to transact business in this state, shall be authorized to deliver, issue or use within this state any group annuity contract providing benefits in variable amounts until said company has satisfied the State Board of Insurance that its condition or methods of operation in connection with the issuance of such contracts will not be such as would render its operation hazardous to the public or its policyholders in this state. In determining the qualification of a company requesting authority to deliver such contracts within this state, the State Board of Insurance shall consider, among other things,

(1) The history and financial condition of the company;

(2) The character, responsibility and general fitness of the officers and directors of the company; and

(3) In the case of a foreign company whether the regulation provided by the state, province or country of its domicile provides a degree of protection to policyholders and the public which is substantially equal to that provided by this section and the rules and regulations issued thereunder.

(h) Nothing contained in this Part III of Article 3.39 of the Insurance Code shall be deemed to authorize the delivery, issue or use in this state of any annuity contract providing benefits in variable amounts other than the group annuity contracts meeting the requirements of paragraph (f) of this Part III of Article 3.39, and the reserve liability for such group annuity contracts shall be established by the State Board of Insurance pursuant to the requirements of the Standard Valuation Law in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

(i) Notwithstanding any other provision of law, the State Board of Insurance shall have sole authority to issue such reasonable rules and regu-

lations as may be necessary to carry out the purposes and provisions of this Part III of Article 3.39 of the Insurance Code.

(j) Nothing herein shall be construed or applied so as to authorize any life insurance company to invest any of its funds or accumulations in real property unless authorized to do so by this Act or some other existing law of the State of Texas.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 12; Acts 1959, 56th Leg., p. 54, ch. 29, § 1; Acts 1959, 56th Leg., p. 96, ch. 49, § 3; Acts 1959, 56th Leg., p. 626, ch. 282, § 1; Acts 1959, 56th Leg., p. 890, ch. 411, §§ 1 to 3; Acts 1961, 57th Leg., p. 925, ch. 410, § 1; Acts 1963, 58th Leg., p. 432, ch. 151, § 1; Acts 1963, 58th Leg., p. 967, ch. 389, § 1; Acts 1965, 59th Leg., p. 375, ch. 181, eff. Aug. 30, 1965; Acts 1965, 59th Leg., p. 497, ch. 257, §§ 1 to 10, eff. Aug. 30, 1965; Acts 1967, 60th Leg., p. 1829, ch. 707, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 229, ch. 91, § 1, eff. April 5, 1969; Acts 1969, 61st Leg., p. 2132, ch. 736, § 1, eff. June 12, 1969; Acts 1971, 62nd Leg., p. 1561, ch. 422, § 1, eff. Aug. 30, 1971; Acts 1971, 62nd Leg., p. 1668, ch. 472, § 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 398, ch. 176, § 1, eff. May 25, 1973; Acts 1973, 63rd Leg., p. 1739, ch. 631, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 1109, ch. 418, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 202, ch. 101, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 327, ch. 151, § 2, eff. May 11, 1979; Acts 1979, 66th Leg., p. 1217, ch. 589, § 1, eff. June 13, 1979.]

Repeal

Part III of this article is repealed by Acts 1983, 68th Leg., p. 4131, ch. 648, § 3, effective September 1, 1984.

Article 3.72, enacted by Acts 1967, 60th Leg., p. 461, ch. 210, § 1, authorizing the issuance of variable annuity contracts, provides in section 16 that nothing in the article shall be deemed to repeal or affect the provisions of Part III of article 3.39, dealing with group variable annuity contracts, or to affect such contracts.

Acts 1967, 60th Leg., p. 1829, ch. 707, § 2 amended Civil Statutes, art. 2669; sections 3 and 4 thereof amended Civil Statutes, art. 2591a conditioned on the adoption of amendment to Const. art. 7, § 11a proposed by Acts 1967, 60th Leg., H.J.R. No. 20, p. 2987.

Sections 2 and 3 of Acts 1971, 62nd Leg., p. 1561, ch. 422, provided:

"Sec. 2. If any provision, section, sentence, clause or part of this Act or the application thereof to any person or circumstance is held invalid, such holding shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws or parts of laws which are in conflict with this Act are hereby repealed or modified to the extent of such conflict only."

The title of Acts 1983, 68th Leg., p. 4124, ch. 648, stated that the Act repealed arts. 3.39, 3.72 and 3.73. Section 2 of said Act provided:

"Part III, Articles 3.39, 3.72, and 3.73, Insurance Code, as amended, are repealed."

Art. 3.39a. Life Insurance Company Prohibited from Subscribing to or Underwriting Purchase or Sale of Securities or Property

No life insurance company organized under the laws of this state shall subscribe to, or participate

in, any underwriting of the purchase or sale of securities or property or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation, nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its Board of Directors.

[Acts 1961, 57th Leg., p. 925, ch. 410, § 2.]

Art. 3.39-1. Repurchase Agreements

(a) Subject to the limitations and restrictions contained herein an insurer may make loans to or purchases of securities from a solvent bank, savings and loan association, credit union, or securities broker registered under the Securities Exchange Act of 1934¹ under an agreement (commonly called repurchase agreement), which agreement provides for the purchase by the insurer of securities and which agreement matures in 90 days or less and provides for the repurchase by such entity of the same or similar securities purchased by the insurer provided:

(1) such loan collateral or securities purchased would otherwise be authorized as investments under Article 3.39, Part 1, Subpart A, Subdivision 1, Insurance Code, and provided that the total market value of such securities shall equal or exceed the amount of such loan or purchase when it is made; and

(2) such loan collateral or securities purchased from any one bank, savings and loan association, credit union, or securities broker may not exceed the greater of five percent of the insurer's assets or five percent of the amount of capital, surplus, and undivided profits of such bank, savings and loan association, credit union, or securities broker.

(b) The State Board of Insurance may promulgate reasonable rules, regulations, and orders consistent with and implementing the provisions of this article.

[Acts 1983, 68th Leg., p. 4023, ch. 627, § 1, eff. June 19, 1983.]

¹ 15 U.S.C.A. § 78a et seq.

Art. 3.39-2. Risk-Limiting Provisions

(a) Subject to the rules and regulations promulgated by the State Board of Insurance and the limitations contained in Subsections (b) and (d) of this article with respect to assets owned by an insurer, an insurer may, for purposes of protecting such assets against the risk of changing asset values or interest rates and for risk reduction only, buy put options or sell call options and terminate the same, buy or sell interest rate futures contracts and options on interest rate futures contracts, or utilize such other instruments or devices as are consistent with this article and are traded on an established exchange regulated by the Securities

and Exchange Commission or the Commodities Futures Trading Corporation.

(b) An insurer may engage in the purchase of put options or sale of call options and terminate such options, only with regard to:

- (1) securities owned by the insurer; or
- (2) securities which the insurer may obtain through exercise of warrants or conversion rights held by the insurer.

(c) Subject to the rules and regulations promulgated by the State Board of Insurance and the limitations contained in Subsection (d) of this article with respect to cash flows reasonably anticipated to be available for investment purposes within the succeeding 12 months, which anticipation cannot exceed an amount equal to 10 percent of such insurer's admitted assets, an insurer may, for purposes of protecting such cash flows against the risk of changing asset values or interest rates and for risk reduction only, buy or sell interest rate futures contracts and options on interest rate futures contracts or utilize such other instruments or devices as are consistent with this article and are traded on an established exchange regulated by the Securities and Exchange Commission or the Commodities Futures Trading Corporation.

(d) An insurer may engage in the practices authorized by this article only if prior thereto the board of directors of such insurer has adopted a written policy which specifies:

- (1) the types of risk-limiting practices approved for such insurer;
- (2) the aggregate maximum limits in such instruments, which maximum limits must be reasonably related to the insurer's business needs and its capacity to fulfill its obligations thereunder;
- (3) the specific assets or class of assets or cash flows for which risk-limiting practices may be employed; and
- (4) that the insurer's accounting or investment records shall specifically identify the assets or cash flows for which each risk-limiting practice is used.

(e) The State Board of Insurance is hereby authorized to adopt such reasonable rules and regulations, not inconsistent with the provisions of this article, which prescribe reasonable limits, standards, and guidelines with respect to such risk-limiting devices and plans related thereto.

[Acts 1983, 68th Leg., p. 4024, ch. 627, § 2, eff. June 19, 1983.]

Art. 3.40. May Hold Real Estate

Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

1(a). One building site and office building for its accommodation in the transaction of its business and for lease and rental; and such office building may be on ground on which the company owns a lease having not less than fifty (50) years to run from the date of its acquisition by the company, provided that the company shall own, or be entitled to the use of, all the improvements thereon, and that the value of such improvements shall at least equal the value of the ground, and shall be not less than twenty (20) times the annual average ground rentals payable under such lease; and provided such office building shall have an annual average net rental of at least twice such annual ground rental; and provided further, that such company shall be liable for and shall pay all State and local taxes levied and assessed against such ground and the improvements thereon, which for the purposes of taxation shall be deemed real estate owned by the company. Provided that an acquisition of such an office building on leased ground shall be approved by the State Board of Insurance before such investment.

Branch office buildings in the State of Texas and elsewhere within the United States wherein such company is authorized to do business as shall be requisite for its convenient accommodation in the transaction of its business and for lease and rental and also parking facilities adjacent to or in the vicinity of each office building owned by such insurance company as shall be reasonably requisite for such insurance company and tenants of the buildings; however, at least fifty per cent (50%) of the space in each such branch office building which is available for occupancy for business purposes shall be used by such insurance company for the transaction of its business and not for lease and rental to others; provided, however, that such investments in the properties described in this paragraph shall only be made in towns or cities having a population of fifteen thousand (15,000) or more according to the last Federal Census.

1(b). No such company shall make any investment in the properties described in Subdivision 1(a) above if, after making such investment, the total investment of the company in such properties is in excess of thirty-three and one-third per cent (33 $\frac{1}{3}$ %) of its admitted assets as of December 31st next preceding the date of such investment; provided, however, that such investment may be increased to as much as fifty per cent (50%) of the company's admitted assets upon advance approval by the State Board of Insurance; provided further, that such investment may be further increased if the amount of such additional increase is paid for only from surplus funds and is not included as an admitted asset of the company.

1(c). The value of each such investment in the properties described in Subdivision 1(a) shall be

subject to the approval by the State Board of Insurance; and the Board may, in its discretion, at the time such investment is made or any time when an examination of the company is being made, cause any such investment to be appraised by an appraiser appointed or approved by the Board, and the reasonable expense of such appraisal shall be paid by such insurance company and shall be deemed to be a part of the expense of examination of such company. No such insurance company may hereafter make any increase in the valuation of any of the properties described in Subdivision 1(a) unless and until such increased valuation shall be likewise approved by the Board, subject to the limitations and conditions set out in Subdivision 1(b);

2. Such as have been acquired in good faith by way of security for loans previously contracted or for moneys due;

3. Such as have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings;

4. Such as have been purchased at sales under judgment or decrees of court, or mortgage or other liens held by such companies.

5. All such real property specified in Subdivisions 2, 3, and 4 of this Article which shall not be necessary for its accommodation in the convenient transactions of its business, except interests in minerals and royalties reserved upon the sale of land acquired under such Subdivisions 2, 3, and 4 hereof, and further excepting interests in producing royalties and producing overriding royalties otherwise acquired, shall be sold and disposed of within five (5) years after the company shall have acquired title to the same, or within five (5) years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from the Board that its interests will suffer materially by the forced sale thereof; in which event the time for the sale may be extended to such time as the Board shall direct in such certificate.

In addition to, and without limitation on, the purposes for which real property may be acquired, secured, held or retained pursuant to other provisions of this Article, every such insurance company may secure, hold, retain and convey production payments, producing royalties and producing overriding royalties as an investment for the production of income; provided, however, that the total amount of all such investments in production payments, producing royalties and producing overriding royalties plus the total amount of investments in home office and branch office properties under Subdivision 1(a) of this Article shall not exceed the total amount permitted by and shall be subject to all of the limitations and restrictions of Subdivisions 1(b) and 1(c) of this Article and for this purpose all invest-

ments in production payments, producing royalties and producing overriding royalties pursuant to the provisions of this paragraph shall be deemed to be "properties described in Subdivision 1(a)" of this Article; and provided further, that in valuing each such production payment, producing royalty and producing overriding royalty for the purposes of Subdivision 1(c) of this Article the State Board of Insurance may establish such value as being the maximum amount which the company purchasing such production payment, producing royalty and producing overriding royalty could loan against a first lien on such production payment, producing royalty and producing overriding royalty under the provisions of Part II, Section A, Subsection 2 of Article 3.39 of the Insurance Code; and provided further, no such company shall make any investment in such production payments, producing royalties and producing overriding royalties solely as an investment for the production of income if, after making such investment, the total investment of the company at cost in such production payments, producing royalties and producing overriding royalties is in excess of ten per cent (10%) of its admitted assets as of December 31st next preceding the date of such investment. For the purposes of this paragraph, a production payment is defined to mean a right to oil, gas or other minerals in place or as produced that entitles its owner to a specified fraction of production until a specified sum of money, or a specified number of units of oil, gas or other minerals, has been received; a royalty and an overriding royalty are each defined to mean a right to oil, gas and other minerals in place or as produced that entitles the owner to a specified fraction of production without limitation to a specified sum of money, or a specified number of units of oil, gas or other minerals; "producing" is defined to mean producing oil, gas or other minerals in paying quantities, provided that it shall be deemed that oil, gas or other minerals are being produced in paying quantities if a well has been "shut in" and "shut in royalties" are being paid. In the event production in paying quantities should cease from any such royalty interest or overriding royalty interest held by any insurance company, such royalty or overriding royalty shall be sold and disposed of within two (2) years after such production shall have ceased, unless production in paying quantities shall have been resumed, or unless such Insurance Company shall have procured a certificate from the Board that its interests will suffer materially by the forced sale thereof; in which event the sale may be extended to such time as the Board shall direct in such certificate.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 13; Acts 1959, 56th Leg., p. 890, ch. 411, § 4; Acts 1961, 57th Leg., p. 627, ch. 294, § 1; Acts 1961, 57th Leg., p. 1049, ch. 467, § 4; Acts 1969, 61st Leg., p. 1529, ch. 464, § 1, eff. Sept. 1, 1969; Acts 1977, 65th Leg., p. 207, ch. 102, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:

"All laws or parts of laws in conflict with the provisions of this article are repealed to the extent of such conflict only."

Art. 3.40-1. Investments in Income Producing Real Estate

Sec. 1. Notwithstanding any provision or limitation of Article 3.40 of this Code, any life insurance company organized under the laws of this state may invest any of its funds and accumulations in improved income producing real estate or any interest therein, and may hold, improve, maintain, manage, lease, sell or convey such property or interest therein, subject to the following terms, conditions and limitations:

(1) The term "improved income producing real estate" as used in this Article shall include all commercial and industrial real property, a substantial portion of which has been materially enhanced in value by the construction of durable, permanent-type buildings and other improvements costing an amount at least equal to the value of such real estate exclusive of building and improvements, as may be held or acquired by purchase or lease, or otherwise, for the production of income, excepting any agricultural, horticultural, farm and ranch property, residential property, single or multiunit family dwelling property, which is expressly excluded.

(2) The total amount invested by any such company in all such income producing property and improvements thereof shall not exceed fifteen per centum of its admitted assets, provided, however, that the amount invested in any one such property and its improvements shall not exceed five per centum of its admitted assets. The admitted assets of the company at any time shall be determined from its annual statement made as of the last preceding December 31 and filed with the State Board of Insurance as required by law. The value of any investment made under this Article shall be subject to Subdivision 1(c) of Article 3.40 of this Code.

(3) The investment authority granted by this Article 3.40-1 is in addition to and separate and apart from that granted by Article 3.40 of this Code, provided, however, that no such company shall make any investment in the properties described in this Article 3.40-1 which when added to those described in subdivision 1(a) of Article 3.40 of this Code would be in excess of the limitations provided by subdivision 1(b) of Article 3.40 of this Code.

Sec. 2. The property owned by such life insurance company pursuant to this Article shall not be classified as "Texas Securities".

Sec. 3. Nothing contained in this Article shall permit such a life insurance company to purchase undeveloped real estate for the purpose of development or subdivision.

Sec. 4. No life insurance company may invest more than one per centum of its admitted assets in income producing real estate in any one year during the first seven years after the effective date of this Act, provided, however, if a life insurance company invests less than one per centum of its admitted assets in income producing real estate during any one year such life insurance company may thereafter, at any time, invest the difference between the percentage of admitted assets invested and one per centum of admitted assets and such percentage shall be in addition to and cumulative of the amount of income producing real estate in which such life insurance company may invest in any particular year hereunder.

[Acts 1967, 60th Leg., p. 1753, ch. 660, § 1, eff. Aug. 28, 1967. Amended by Acts 1981, 67th Leg., p. 2657, ch. 713, § 1, eff. Aug. 31, 1981.]

Art. 3.41. Authorized Investments in Securities or Property for Foreign Companies

The assets of any "foreign company" shall be invested in securities or property of the same classes permitted by the laws of this State as to "domestic" companies or by other laws of this State in other securities approved by the Board of Insurance Commissioners as being of substantially the same grade.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.41a. Student Loans

A foreign or domestic life insurance company may make loans to a student enrolled in an institution of higher education provided that the principal amount of the loans is insured by the federal government pursuant to the provisions of the Federal Higher Education Act of 1965, as amended (P.L. 89-329, as amended),¹ or by the Texas Guaranteed Student Loan Corporation, Section 57.01 et seq., Texas Education Code, as added.

[Acts 1971, 62nd Leg., p. 1924, ch. 581, § 1, eff. June 1, 1971. Amended by Acts 1981, 67th Leg., p. 18, ch. 13, § 1, eff. March 20, 1981.]

¹ 20 U.S.C.A. § 1001 et seq.

SUBCHAPTER D. POLICIES AND BENEFICIARIES

Art. 3.42. Policy Form Approval

(a) No 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, or fraternal benefit insurance, and no annuity or pure endowment contract or group annuity contract, shall be 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, Lloyds, reciprocal or interinsurance exchange, fraternal benefit society, group hospitalization service or any other insurer, unless the form of said policy, contract or certificate has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (d) of this Article. Provided, however, that this Article shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the State Board of Insurance and which is entitled by statute to an exemption certificate from said Board in evidence of its exempt status; provided, further, that this Act shall not be construed to enlarge the powers of any of the insurers subject to this Article.

(b) No application form which is required to be or is attached to the policy, contract or certificate, and no rider or endorsement to be attached to, printed upon or used in connection with any policy, contract or certificate described in Paragraph (a) of this Article shall be delivered, issued or used in this state by any insurer described in Paragraph (a) of this Article unless the form of said application, rider or endorsement has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (d) of this Article. Each individual accident and sickness insurance policy application form, which is required to be or is attached to the policy, shall comply with the rules and regulations of the Board promulgated pursuant to Subchapter G of this chapter. Provided, however, that this Article shall not apply to riders or endorsements which relate to the manner of distribution of benefits or to the reservation of rights and benefits under such policies, contracts and certificates, and which are used at the request of the holder of the policy, contract or certificate.

(c) Before submitting a form to the State Board of Insurance under Sections (a) and (b) of this article, a foreign insurer organized under the laws of another state, territory, or country and licensed to transact business in this state, must have the form approved as required by the law, or rules of the domiciliary insurance regulatory authority of the foreign insurer for the delivery, issuance, and use of that form in that state, territory, or country. The foreign insurer shall submit that approval to the Board with the filings made under Sections (a) and (b) of this article. The State Board of Insurance may adopt reasonable rules necessary to permit the exemption or exclusion of a form of a foreign insurer from this state's requirements relating to forms if the application of this state's requirements would be inappropriate, impractical, burdensome, unfair, or inequitable.

(d) Every such filing hereby required shall be made not less than sixty days in advance of any

such issuance, delivery, or use. At the expiration of sixty days the form so filed shall be deemed approved by the State Board of Insurance unless prior thereto it has been affirmatively approved or disapproved by the written order of said Board. After notice and hearing, the State Board of Insurance may withdraw any such approval. Approval of any such form by such Board shall constitute a waiver of any unexpired portion of the waiting period, or periods, herein provided.

(e) The order of the State Board of Insurance disapproving any such form or withdrawing a previous approval shall state the grounds for such disapproval or withdrawal.

(f) The State Board of Insurance may, by written order, exempt from the requirements of this Article for so long as it deems proper, any insurance document or form specified in such order, to which in its opinion this Article may not practically be applied, or the filing and approval of which are, in its opinion, not desirable or necessary for the protection of the public. Additionally, the State Board of Insurance may, after notice and hearing, adopt reasonable rules and amendments to rules that are necessary for it to establish guidelines, procedures, methods, standards, and criteria by which the various and different types of forms and documents submitted to the Board are to be reviewed and approved by the Board as being in compliance with this article, and to provide those guidelines, procedures, methods, standards, and criteria by which a summary review and approval may be given to those particular types of forms and documents designated by the Board that, in its opinion, will expedite the review and approval process of those forms and documents.

(g) The State Board of Insurance shall forthwith disapprove any such form, or withdraw any previous approval thereto if, and only if,

(1) It is in any respect in violation of or does not comply with this Code.

(2) It contains provisions which encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive or contrary to law or to the public policy of this state.

(3) It has any title, heading or other indication of its provisions which is misleading.

(h)(1) The Board may, after notice and hearing, withdraw any previous approval of an individual accident and sickness insurance policy form if, after consideration of all relevant facts, the Board finds that the benefits provided under such policy form are unreasonable in relation to the premium charged, or the reserve required by Article 6.01 of this code is not maintained by the insurer on the policies issued upon such policy form. The Board shall from time to time as conditions warrant, and after notice and hearing, promulgate such reasonable rules and regulations and amendments thereto

as are necessary to establish the standard or standards by which any previous approval of a policy form may be withdrawn. Any such rule or regulation shall be promulgated in accordance with Article 3.70-10 of the Texas Insurance Code. Nothing in this section shall be construed as granting the State Board of Insurance any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any individual accident and sickness insurance policy or policies.

(2) The Board shall require the filing of all rates to be charged for individual accident and sickness policies and may adopt necessary forms to be filed by insurers in conjunction with the annual statement required under Articles 3.07 and 3.20 of this code for reporting the experience on all individual accident and sickness insurance policy forms issued by the insurer so as to determine compliance with Subsection (1) of this section.

(i) Appeals from any order of the State Board of Insurance issued under this Article may be taken to the District Court of Travis County, Texas, in accordance with Article 21.80 of this code, or any amendments thereof.

(j) No policy, contract, or certificate filed pursuant to this article that contains a coordination of benefits provision may be approved for use in this state unless it also provides the order of benefit determination for insured dependent children. An order of benefits determination provision may not be approved unless it complies with the standards specified in Section (g) of this article. The State Board of Insurance is authorized to promulgate and may promulgate and enforce reasonable rules and regulations and may order such provision as is necessary in the accomplishment of the purpose of this section.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1957, 55th Leg., p. 1463, ch. 501, § 1; Acts 1975, 64th Leg., p. 2208, ch. 703, § 4, eff. June 21, 1975; Acts 1979, 66th Leg., p. 873, ch. 398, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 601, ch. 239, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 4938, ch. 882, § 1, eff. Aug. 29, 1983.]

Art. 3.42A. Payment of Benefits in Currency

(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 compa-

ny, Lloyd's reciprocal or interinsurance exchange, fraternal benefit society, group hospitalization service, or any other insurer shall be payable in currency.

(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.

(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.

(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.

[Acts 1983, 68th Leg., p. 2960, ch. 507, § 1, eff. Aug. 29, 1983.]

Art. 3.42B. Benefits Payable to Certain Hospitals

After the effective date of this Act, no insurance policy issued or delivered in this state providing hospital, nursing, medical, or surgical coverage may include a provision which would prevent payment of benefits for expenses of a person who is a non-indigent patient incurred in a hospital facility owned or controlled by the state government or by any unit of local government, provided charges for such expenses are regularly and customarily charged to and collected from non-indigent persons by such hospital facility.

The provisions of this article shall not apply to indigent care nor to chronic disease care, in an eleemosynary institution, sanitarium, sanatorium, mental treatment facility of every type, tuberculosis treatment facility of every type, and cancer treat-

ment facility of every type, where any such care is provided in or by any such facility (regardless of the type or name) owned or controlled by the state government or by any unit of local government. [Acts 1973, 63rd Leg., p. 1037, ch. 402, § 1, eff. Aug. 27, 1973.]

Section 2 of the 1973 Act added a subsec. (D) to art. 3.70-2; § 3 thereof provided:

"Any presently approved policy form containing any provision in conflict with the requirements of this Act may continue to be issued by any insurer regulated by the provisions of this Act, provided there is attached to such previously approved policy form at time of issue a rider or endorsement amending such previously approved policy form to conform to the provisions of this Act."

Art. 3.42-1. Notice Included in Health Insurance Policies

(a) As used in this article, "health insurance policy" means a policy, contract, or certificate of insurance which insures against loss resulting from sickness or accidental bodily injury.

(b) No health insurance policy which is subject to an increase in the premium at time of renewal, which is subject to nonrenewal on the insured attaining a certain age, or which is subject to both of these conditions and limitations, may be delivered, issued, or used in this state unless there is printed, above the first of the policy provisions on the first page in 10-point type, notice that the policy is subject to any or all of the conditions stated in this section.

(c) Until June 1, 1974, any company may continue to use any policy form heretofore approved for issuance by the State Board of Insurance by either (i) stamping or affixing such language at the top of the first policy page or (ii) affixing an endorsement containing such required language at the top of the first page of each such policy form, either of which shall be at least in 10-point type.

[Acts 1973, 63rd Leg., p. 1249, ch. 453, § 1, eff. Aug. 27, 1973.]

Section 3 of the 1973 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 3.43. Repealed by Acts 1957, 55th Leg., p. 1463, ch. 501, § 2

See, now, art. 3.42.

Art. 3.44. Policies Shall Contain Certain Provisions

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:

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.

2. For a grace 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.

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.

4. That all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties.

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.

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.

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 pro-

visions of Article 3.44a in the case of policies issued on or after said date. 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, 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 (2½%) 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. 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.

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.

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.

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.

11. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

Any foregoing provision, not applicable to single premium policies shall, to that extent, not be incorporated therein.

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.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1959, 56th Leg., p. 960, ch. 448, § 2; Acts 1963, 58th Leg., p. 328, ch. 123, § 1; Acts 1963, 58th Leg., p. 1117, ch. 434, § 4; Acts 1963, 58th Leg., p. 1307, ch. 498, § 1.]

Art. 3.44a. Standard Non-forfeiture Law for Life Insurance

Title

Sec. 1. This Article shall be known as the Standard Non-forfeiture Law for Life Insurance.

Non-forfeiture Benefits

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.

Computation of Cash Surrender Value

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.

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.

Computation of Paid-up Nonforfeiture Benefits

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.

Calculation of Adjusted Premiums

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. 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.

(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).

(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 (3½%) 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.

Calculation of Adjusted Premiums—Ordinary Policies

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 (3½%) 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 (5½%) 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 (6½%) 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.

Calculation of Adjusted Premiums—Industrial Policies

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 (3½%) 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 (5½%) 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 (6½%) 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.

Calculation of Adjusted Premiums by the Nonforfeiture Net Level Premium Method

Sec. 8. (a) This Section shall apply to all policies issued on or after the operative date of this Section 8 as defined herein. 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 herein-after 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. 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.

(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.

(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.

(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.

(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.

(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,¹ rounded to the nearer one-fourth of one per cent ($\frac{1}{4}$ of 1%).

(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.

(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.

Nonforfeiture Benefits for Indeterminate Premium Plans and Certain Other Plans

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.

¹ Article 3.28.

Proration of Values; Net Value of Paid-up Additions

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. 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 is 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.

Consistency of Progression of Cash Surrender Values with Increasing Policy Duration

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 ($\frac{2}{10}$ 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 ($\frac{2}{10}$ 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.

Exceptions

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 (2½%) of the amount of insurance at the beginning of the same policy year, nor to any

(h) policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

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.

Effective Date

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.

[Acts 1963, 58th Leg., p. 1117, ch. 434, § 5. Amended by Acts 1973, 63rd Leg., p. 1068, ch. 410, §§ 1, 2, eff. June 14, 1973; Acts 1977, 65th Leg., p. 2095, ch. 841, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2182, ch. 508, § 2, eff. Aug. 31, 1981.]

Section 3 of the 1973 amendatory act provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 3.44b. Standard Non-forfeiture Law for Individual Deferred Annuities

Contracts of Annuity to Contain Certain Provisions

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.

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.

Minimum Non-forfeiture Amounts

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.

(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 (87½%) 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%).

(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 (22½%) 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.

(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).

Present Value of Paid-up Annuity

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.

Contracts Which Provide Cash Surrender Benefits

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. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

Contracts Which Do Not Provide Cash Surrender Benefits

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.

Maturity Dates

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.

Statement Indicating No Benefits

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.

Benefits Available Other Than On Contract Anniversary

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.

Contracts Which Provide Both Annuity Benefits and Life Insurance Benefits

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. 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.

Inapplicability of Article

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.

Operative Date of Article

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.

[Acts 1977, 65th Leg., p. 2104, ch. 843, § 1, eff. Aug. 29, 1977.]

Art. 3.44c. Interest Rates on Life Insurance Policy Loans

Purpose

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.

Definitions

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 aver-

age, established by regulation issued by the State Board of Insurance.

Maximum Rate of Interest on Policy Loans

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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(4) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(i) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates.

Applicability to Existing Policies

Sec. 4. The provisions of this Act shall not apply to any insurance contract issued before the effective date of this Act.

[Acts 1981, 67th Leg., p. 2984, ch. 784, § 1, eff. Aug. 31, 1981.]

Art. 3.45. Policies Shall Not Contain Certain Provisions

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 than¹ two (2) years after the cause of action shall accrue.

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.

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. This provision shall not apply to purely accident and health policies. 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.

[Acts 1951, 52nd Leg., ch. 491.]

¹ So in enrolled bill. Probably should be "than."

Art. 3.46. Level Premium Policies

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 Nonforfeiture Law).

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1963, 58th Leg., p. 1117, ch. 434, § 6.]

Art. 3.47. Policies of Foreign Companies

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.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.48. Payments to Designated Beneficiaries

Whenever any person shall procure the issuance of a policy of insurance on his or her life in any legal reserve life insurance company, 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 such pay-

ment 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.

The provisions of this article shall apply to all policies now in existence as well as to all policies hereafter written.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.49. Statutory Life Insurance Beneficiaries

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. The beneficiaries aforementioned shall have an insurable interest for the full face of the policy and shall be entitled to collect same. 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.

[Acts 1951, 52nd Leg., ch. 491.]

Art. 3.49-1. Life Insurance; Designated Beneficiaries or Owners; Insurable Interest

Designation of Beneficiaries or Owners in Application

Sec. 1. Any person of legal age may apply for insurance on his life in any legal reserve or mutual assessment life insurance company 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 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 3 hereof.

Designation of Beneficiaries or Owners in Existing or Future Policies

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, 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 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 3 hereof.

Exception of Persons, etc., Engaged in Business of Burying Dead

Sec. 3. 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 or 2 hereof, 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.

Cumulative Effect; Liberal Construction

Sec. 4. The provisions of this Act are cumulative of existing law in Texas, statutory and otherwise, on the question of insurable interest. 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.

This Act shall be liberally construed to effectuate its purposes, and its provisions are not to be limited or restricted by previous declarations or holdings of the Courts of Texas defining the term insurable interest.

[Acts 1953, 53rd Leg., p. 400, ch. 113.]

Article 3.49-1 was not enacted as part of the Insurance Code of 1951.

Art. 3.49-2. Life Insurance and Annuity Contracts with Minors Over Fourteen

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 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, subject, however, to the following conditions and limitations:

(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.

(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.

(e) Nothing contained in this Act shall be deemed to alter, amend or modify any provision of any policy or contract.

(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 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.

(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.

[Acts 1959, 56th Leg., p. 912, ch. 417, § 1.]

Article 3.49-2 was not enacted as part of the Insurance Code of 1951.

Art. 3.49-3. Life Insurance and Annuity Contracts of a Spouse

Text of article added by Acts 1967, 60th Leg., p. 740, ch. 309, § 4

A spouse shall have management, control and disposition of any contract of life insurance or annu-

ity heretofore or hereafter issued in his or her name or to the extent provided by the contract or any assignment thereof without the joinder or consent of the other spouse.

[Acts 1967, 60th Leg., p. 740, ch. 309, § 4, eff. Jan. 1, 1968.]

For text of article as added by Acts 1967, 60th Leg., p. 1821, ch. 701, § 1, see art. 3.49-3, post

Art. 3.49-3. Designation of Trustee to Receive Proceeds of Life Insurance Policies and Taxation Thereof

Text of article added by Acts 1967, 60th Leg., p. 1821, ch. 701, § 1

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.

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.

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.

Sec. 4. Such insurance proceeds so held in trust may be commingled with any other assets which may properly come into such trust.

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.

[Acts 1967, 60th Leg., p. 1821, ch. 701, § 1, eff. July 1, 1967.]

For text of article as added by Acts 1967, 60th Leg., p. 735, ch. 309, § 4, see art. 3.49-3, ante

Acts 1967, 60th Leg., p. 1821, ch. 701, §§ 2 to 4 provided:

"Sec. 2. Saving Clause. The repeal of any law by this Act shall not affect or impair any act done or obligation, right, license, permit or penalty accrued or existing under the authority of the law repealed; and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such obligation, right, license, permit or penalty. In addition, any permit or license obtained under any law repealed by this Act shall remain effective for the term and under the conditions prescribed by the repealed law under which the permit or license was granted or issued.

"Sec. 3. Severability. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

"Sec. 4. This Act shall be effective July 1, 1967."

SUBCHAPTER E. GROUP, INDUSTRIAL AND CREDIT INSURANCE

Art. 3.50. Group Life Insurance

Definitions

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 employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the em-

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

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

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

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

(3) A policy issued to any association of employees of the United States Government or any subdivision thereof, provided the majority of the members of such association are residents of this

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

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

(b) The premium for a policy issued to any policyholder authorized to be such policyholder under Subsection (3) of Section 1, Article 3.50, Texas Insurance Code, may be paid in whole or in part from funds contributed by the employer, or in whole or in part from funds contributed by the persons insured under said policy; or in whole or in part from funds contributed by the insured employees who are members of such association of employees; provided, however, that any monies or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution therefor; and provided further, that the employer may deduct from the employees' salaries the employees' contributions for the premiums when authorized in writing by the respective employees so to do. Such policy may be placed in force only if at least 75% of the eligible employees or if an association of employees is the policyholder, 75% of the eligible members of said association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder. Any group policies heretofore issued to any of the groups named in Section 1(3) above and in existence on the effective date of this Act shall continue in force even though the number of employees or members insured thereunder is less than 75% of the

eligible employees or members on the effective date of this Act.

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

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

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

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

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

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

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

payable to the estate of the debtor or under the provision of a facility of payment clause.

(5) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the union, subject to the following requirements:

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

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

for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. The policy may provide that a participating employer or labor union may pay the premium directly to the insurer for the policy issued to the trustee, and in that event, the employer or labor union becomes the premium payor for the insured employees or union members for that employer unit.

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

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

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

(f) No policy may be issued (i) to insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer

(regardless of whether such other employer is or is not participating in the fund); or (ii) to insure employees of any employer which is not located in this state, unless the majority of the employers whose employees are to be insured are located in this state, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(6) A policy issued to cover any other substantially similar group which, in the discretion of the commissioner of insurance, may be subject to the issuance of a group life insurance policy or contract.

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

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

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

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

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

applicant's statements as to applicant's other similar coverage upon his life.

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

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

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

(1) A provision that the policy is renewable at the option of the insurer only;

(2) A provision for termination of coverage by the insurer upon termination of employment by the insured employee;

(3) A provision requiring a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as condition to coverage.

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

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

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

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

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

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

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

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

(8) A policy issued to the Veterans Land Board of the State of Texas, who shall be deemed the policyholder to insure persons purchasing land under the Texas Veterans Land Program as provided in Section 16(B) of Article 5421m, Vernon's Texas Civil Statutes (Chapter 318, Acts of the 51st Legislature, Regular Session, 1949, as amended).¹

(9) Any policy of group term life insurance may be extended, in the form of group term life insurance only, to insure the spouse and minor children, natural or adopted, of an insured employee, provided the policy constitutes a part of the employee benefit program established for the benefit of employees of the United States government or

any subdivision thereof, and provided further, that the spouse or children of other employees covered by the same employee benefit program in other states of the United States are or may be covered by group term life insurance, subject to the following requirements:

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

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

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

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

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

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

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

(c) The premium for the policy shall be paid by the policyholder from the policyholder's own funds or from funds contributed by the employees or members specifically for their insurance, or from both. The policy may provide that the premium may be paid directly to the insurer by

individual employees or members from their own funds, and in that event, the respective employees or members become the premium payor for that particular certificate.

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

¹ Repealed; see, now, Natural Resources Code, §§ 161.361 and 161.363 et seq.

Group Life Insurance Standard Provisions

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, 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, (a) that provisions (6) to (10) inclusive shall not apply to policies issued to a creditor to insure debtors of such creditor; (b) that the standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and (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 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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

Group Policies Unlawful Except as Authorized

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 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.

Secs. 4, 5. Repealed by Acts 1963, 58th Leg., p. 1117, ch. 434, § 7, eff. Aug. 23, 1963.

Dependents: Continuation of Benefits After Death of Insured

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.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1953, 53rd Leg., p. 853, ch. 345, § 1; Acts 1954, 53rd Leg., 1st C.S., p. 52, ch. 18, § 1; Acts 1955, 54th Leg., p. 504, ch. 146, § 1; Acts 1955, 54th Leg., p. 686, ch. 247, § 1; Acts 1955, 54th Leg., p. 809, ch. 299, § 1; Acts 1957, 55th Leg., p. 801, ch. 336, § 1; Acts 1959, 56th Leg., p. 199, ch. 112, § 1; Acts 1959, 56th Leg., p. 812, ch. 369, § 1; Acts 1961, 57th Leg., p. 563, ch. 263, § 1; Acts 1961, 57th Leg., p. 995, ch. 434, § 1; Acts 1962, 57th Leg., 3rd C.S., p. 134, ch. 45, § 2; Acts 1963, 58th Leg., p. 1117, ch. 434, §§ 7, 8, eff. Aug. 24, 1963; Acts 1967, 60th Leg., p. 518, ch. 223, §§ 1 to 3, eff. Aug. 23, 1967; Acts 1967, 60th Leg., p. 1007, ch. 437, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 500, ch. 166, § 1, eff. May 9, 1969; Acts 1969, 61st Leg., p. 1371, ch. 414, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 1704, ch. 557, § 1, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1144, ch. 257, § 1, eff. May 18, 1971; Acts 1971, 62nd Leg., p. 2981, ch. 982, § 1, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 1529, ch. 552, § 1, eff. June 15, 1973; Acts 1975, 64th Leg., p. 766, ch. 299, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 2171, ch. 698, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1512, ch. 612, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2194, ch. 867, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 173, ch. 80, § 1, eff. April 30, 1981; Acts 1981, 67th Leg., p. 201, ch. 94, § 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 124, ch. 30, §§ 1 to 3, eff. April 19, 1983; Acts 1983, 68th Leg., p. 2955, ch. 505, § 1, eff. Aug. 29, 1983.]

Saved From Repeal

Acts 1963, 58th Leg., p. 981, ch. 405, which amended article 3.53, relating to credit life insurance and credit accident and health insurance, provided in section 2 that the act should not repeal or broaden the provisions of this article and that the provisions of this article should remain in full force and effect after the effective date of the act, but that all credit insurance written under the authority of this article should be subject to the provisions of the act after its effective date.

Sections 4 and 5 of Acts 1967, 60th Leg., ch. 223 provided:

"Sec. 4. That all laws or parts of laws in conflict herewith are to that extent hereby repealed; and this Act shall prevail over any conflicting provisions of law.

"Sec. 5. That if any section, paragraph, sentence, clause or word of this Act is held to be unconstitutional, the remaining portion of the same, nevertheless, shall be valid; and the Legislature hereby declares that it would have enacted this Act without such unconstitutional portion."

Art. 3.50-1. Guaranteeing Issuance of Policy Without Evidence of Insurability

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.

[Acts 1965, 59th Leg., p. 563, ch. 286, § 1.]

Art. 3.50-2. Texas Employees Uniform Group Insurance Benefits Act**Citation**

Sec. 1. This Act shall be known and may be cited as the "Texas Employees Uniform Group Insurance Benefits Act."

Purposes

Sec. 2. It is hereby declared that the purposes of this Act are:

- (a) to provide uniformity in life, accident, and health benefits coverages on all employees of the State of Texas;
- (b) to enable the State of Texas to attract and retain competent and able employees by providing them with life, accident, and health benefits coverages at least equal to those commonly provided in private industry;
- (c) to foster, promote, and encourage employment by and service to the State of Texas as a

career profession for persons of high standards of competence and ability;

(d) to recognize and protect the state's investment in each permanent employee by promoting and preserving economic security and good health among state employees;

(e) to foster and develop high standards of employer-employee relationships between the State of Texas and its employees;

(f) to recognize the service to the state by elected state officials by extending to them the same life, accident, and health benefits coverages as are provided herein for state employees; and

(g) to recognize the long and faithful service and dedication of employees of the State of Texas and to encourage them to remain in state service until eligible for retirement by providing health benefits for such employees.

Definitions

Sec. 3. (a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this Act shall have the following meanings:

(1) "Administering firm" shall mean any firm designated by the trustee to administer any coverages, services, benefits, or requirements in accordance with this Act and the trustee's regulations promulgated pursuant thereto.

(2) "Annuitant" shall mean an officer or employee who retires under:

(A) the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes),¹ Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes),² or Chapter 570, Acts of the 65th Legislature, Regular Session, 1977 (Article 6228k, Vernon's Texas Civil Statutes);³

(B) the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Chapter 3, Title I, Texas Education Code,⁴ whose last state employment prior to retirement was as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System; or

(C) the optional retirement program established by Subchapter G, Chapter 51, Texas Education Code, as amended,⁵ and either receives an annuity or is eligible to receive an annuity under that program, if the person's last state employment before retirement, including em-

ployment by a public community/junior college, was as an officer or employee of the Coordinating Board, Texas College and University System, and if the person either:

(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas had the person not elected to participate in the optional retirement program; or

(ii) is disabled.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4) "Department" shall mean commission, board, agency, division, or department of the State of Texas created as such by the constitution or statutes of this state.

(5)(A) "Employee" shall mean any appointive or elective state officer or employee in the service of the State of Texas, except employees of any university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code:

(i) who is retired or retires and is an annuitant under the jurisdiction of the Employees Retirement System of Texas, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), or Chapter 570, Acts of the 65th Legislature, Regular Session, 1977 (Article 6228k, Vernon's Texas Civil Statutes), who is retired or retires and is an annuitant under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Chapter 3, Title I, Texas Education Code, whose last employment with the state prior to retirement was as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System, or who is retired or retires and is an annuitant under the optional retirement program established by Subchapter G, Chapter 51, Texas Education Code, as amended, if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Coordinating Board, Texas College and University System, and if the person either:

(a) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas had the person not elected to participate in the optional retirement program; or

(b) is disabled; or

(ii) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state; or

(iii) who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Comptroller of Public Accounts upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by the State Treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act; or

(iv) who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act.

(B) Persons performing personal services for the State of Texas as independent contractors shall never be considered employees of the state for purposes of this Act.

(C) Repealed by Acts 1977, 65th Leg., p. 55, ch. 31, § 1, eff. March 29, 1977.

(6) "Employer" shall mean the State of Texas and all its departments.

(7) "Health benefits plan" shall mean any group policy or contract, medical, dental, or hospital service agreement, membership or subscription contract, salary continuation plan, or similar group arrangement provided for the purpose of providing, paying for, or reimbursing expenses for health care services, including comparable health care services for employees who rely solely on spiritual means through prayer for healing in accordance with the teaching of a well recognized church or denomination.

(8) "Dependent" shall mean the spouse of an employee or retired employee and an unmarried child under 25 years of age, including: (A) an adopted child and (B) a stepchild, foster child, or other child who is in a regular parent-child relationship and (C) any such child, regardless of age, who lives with or whose care is provided by an employee or annuitant on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the trustee shall determine.

(9) "Qualified carrier" shall mean: (A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of

the insurance laws of the State of Texas, which has a surplus of \$1 million, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; (B) any corporation operating under Chapter 20 of the Insurance Code which provides any of the types of coverage, benefits, or services provided for in this Act, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or (C) any combination or carriers as herein defined, upon such terms and conditions as may be prescribed by the trustee, providing, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(10) "Service" shall mean any personal service of an employee creditable in accordance with rules and regulations promulgated by the trustee.

(11) "Trustee" shall mean the State Board of Trustees, provided for in Section 6, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), to administer the Employees Retirement System of Texas.

(12) "Active employee plan" shall mean a plan or program of group coverages as determined by the trustee as defined in Paragraph (11) above for the benefit of employees of the State of Texas as defined in this Act who are not retired.

(13) "Retired employees plan" shall mean a plan or program of group coverages as determined by the trustee for all retired employees as defined in this Act. This plan may be separate or a part of the active employee plan at the discretion of the trustee, and, if separate, shall include both full benefits and supplemental coverage options.

(14) "Part-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working less than 20 hours per week. A part-time employee shall receive the benefits of one-half the amount of the state's contribution received by full-time employees.

(15) "Full-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working 20 or more hours per week. A full-time employee shall receive the benefits of a full state contribution for coverage under this Act.

(16) "Basic plan for active full-time employees" shall mean the program of group coverages determined by the trustee in which every full-time

employee participates automatically unless participation is specifically waived.

(17) "Basic plan for retired employee-annuitants" shall mean the program of group coverages determined by the trustee in which every retired employee-annuitant participates automatically unless participation is specifically waived.

(b) In addition to the foregoing definitions, the trustee shall have authority to define by rule any words in terms necessary in the administration of this Act.

¹ Repealed; see, now, Civil Statutes Title 110B, § 21.001 et seq.

² Repealed; see, now, Civil Statutes Title 110B, § 41.001 et seq.

³ Repealed; see, now, Civil Statutes Title 110B, § 13.001 et seq.

⁴ Repealed; see, now, Civil Statutes Title 110B, § 31.001 et seq.

⁵ Repealed; see, now, Civil Statutes Title 110B, § 36.001 et seq.

Administration

Sec. 4. The administration and implementation of this Act are vested solely in the trustee. As it shall deem necessary to insure the proper administration of this Act and the insurance coverages, services, and benefits provided for or authorized by this Act, the trustee, as an agency of the State of Texas, shall have full power and authority to hire employees. The duties of such employees and their compensation shall be determined and assigned by the trustee. The trustee may, on a competitive bid basis, contract with a qualified, experienced firm of group insurance specialists or an administering firm who shall act for the trustee in a capacity as independent administrators and managers of the programs authorized under this Act. The independent administrator so selected by the trustee shall assist the trustee to insure the proper administration of the Act and the coverages, services, and benefits provided for or authorized by the Act and shall be paid by the trustee. Compensation of all persons employed by the trustee and their expenses shall be paid at such rates and in such amounts as the trustee shall approve, providing that in no case shall they be greater than those expenses paid for like or similar services. Also, as an agency of the State of Texas, the trustee shall have full power and authority to enter into interagency contracts with any department of the State of Texas. The interagency contracts shall provide for reimbursement to the state departments and shall define the services to be performed by the departments for the trustee. The trustee shall have full power and authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of this Act in all its particulars, including but not limited to the following:

(a) preparation of specifications for coverages provided by authority of this Act;

(b) prescribing the time at which and the conditions under which an employee is eligible for all coverages provided under this Act;

(c) determination of the methods and procedures of claims administration;

(d) determination of the amount of employee payroll deductions and the responsibility of establishing procedures by which such deductions shall be made;

(e) establishment of grievance procedures by which the trustee shall act as an appeals body for complaints by employees regarding the allowance and payment of claims, eligibility, and other matters;

(f) continuing study of the operation of all coverages provided under this Act, including such matters as gross and net cost, administration costs, benefits, utilization of benefits, and claims administration;

(g) administration of the Employees Life, Accident, and Health Insurance and Benefits Fund, providing for the beginning and ending dates of coverages of employees and annuitants and their dependents under benefit plans;

(h) adoption of all rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out its statutory duties and responsibilities;

(i) development of basic plans of group coverages and benefits applicable to all state employees. The trustee also may provide for optional insurance coverages and benefits in addition to the basic plan; and

(j) to provide either additional statewide optional programs or individual agency optional programs as the trustee may determine is appropriate.

Rulemaking

Sec. 4A. The trustee may adopt rules consistent with this Act that provide standards for determining eligibility for participation in the program established by this Act, including standards for determining disability. All costs incurred in determining whether or not a person is disabled who is an annuitant under the optional retirement program established by Subchapter G, Chapter 51, Texas Education Code, as amended, and whose last state employment was as an officer or employee of the Coordinating Board, Texas College and University System, shall paid by that board.

Authority to Establish Group Coverages

Sec. 5. (a) The trustee is authorized, empowered, and directed to establish plans of group coverages for active employees and retired employees which in the trustee's discretion may include but are not necessarily limited to the following: group life coverages, accidental death and dismemberment, health benefits plans, including but not limited to hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, obstetrical benefits, prescribed drugs, medicines,

and prosthetic devices and supplement benefits, supplies, and services in conformity with the provisions of this Act, protection against either long or short term loss of salary and any other group coverages which in the discretion of the trustee with consultation from the advisory committee shall be deemed advisable. All rules and regulations shall be promulgated pursuant thereto. The trustee shall determine the coverages desired for state employees and will submit this information to the State Board of Insurance for any recommendations as to the types and sufficiency of such coverages. The State Board of Insurance will notify the board of trustees within 30 days as to any such recommendations and will furnish the board of trustees with a list of all carriers authorized to do business in the State of Texas who would be eligible to bid on the coverages that are to be insured by a carrier. The trustee will notify those carriers that competitive bidding will be conducted and that they are to submit their bids to the State Board of Insurance by a specified date if they wish to bid on the contract. The State Board of Insurance will, after the designated closing date of receiving bids, examine and evaluate the bidding contracts and certify their actuarial soundness to the trustee within 15 days from the closing date. The trustee shall select the desired carrier or carriers and will notify the bidding eligible carriers as to the results of the bidding. The trustee shall select the desired carrier or carriers to provide services which shall be in the best interest of the employees covered by this Act. The trustee is not required to select the lowest bid but shall take into consideration other factors such as ability to service contracts, past experience, financial ability, and other relevant criteria. Should the trustee select a carrier whose bid differs from that advertised, such deviation shall be recorded and the reasons for such deviation shall be fully justified and explained in the minutes of the next meeting of the trustee.

(b) In the event the trustee shall select as the carrier one whose bid was not the lowest of all bids submitted, such selection shall be submitted together with justifications and reasons therefor to the State Board of Insurance. Such deviating selection shall not be deemed final and binding unless and until a majority of the State Board of Insurance has certified its approval in writing to the trustee, or upon the expiration of 30 days after receipt thereof by the State Board of Insurance such deviating selection shall be deemed approved.

(c) The trustee will be required to submit for competitive bidding the coverages provided by the group plan as follows:

(1) at least every three years;

(2) whenever a change in the types and amounts of coverage occurs, provided that submission for competitive bidding shall not be required more than once within a year from the last submission.

(d) No department shall establish, continue, or authorize payroll deductions for any benefits or coverage as provided in this section without the express approval of the trustee, except for benefits from the deferred compensation program established pursuant to Chapter 197, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-3b, Vernon's Texas Civil Statutes).

(e) The trustee is authorized to select and contract for services performed by health maintenance organizations which are approved by the federal government or the State of Texas to offer health care services to eligible employees and annuitants in a specific area of the state. Eligible employees and annuitants may participate in a selected health maintenance organization in lieu of participation in the health insurance benefits in the Employees Uniform Group Insurance Program, and the employer contributions provided by Section 14(a) of this Act for health care coverage shall be paid to the selected health maintenance organizations on behalf of the participants.

(f) The trustee, in its sole discretion and in accordance with the requirements of this section, shall determine those plans of coverages for which the trustee does not intend to purchase insurance and which it intends to provide directly from the Employees Life, Accident, and Health Insurance and Benefits Fund. The trustee shall make an estimate of the unrestricted balance of the fund. Unless such estimated unrestricted balance is equal to at least 5 percent of the total benefits expected to be provided directly from the fund as a result of claims incurred during the fiscal year, the trustee shall include in the contributions required the amount necessary to establish an unrestricted balance in the fund of not less than 5 percent. The unrestricted balance shall be placed in a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the program.

(g) The trustee shall determine the contributions required to provide coverages directly from the fund and shall submit this information together with supporting documentation to the State Board of Insurance for examination and evaluation. Within 15 days of the receipt of such information, the State Board of Insurance shall certify the actuarial soundness of the proposed level of contributions or shall advise the trustees of any modifications prerequisite to provision of such certification.

(h) In the event the trustee determines that benefits shall be provided from the Employees Life, Accident, and Health Insurance and Benefits Fund, the trustee may contract with a qualified and experienced administering firm on a competitive bid basis to administer the claims arising from the coverages provided in Section 5 of the Act.

(i) The trustee shall select the desired administering firm to provide services which shall be in the

best interests of the employees covered by the Act. The trustee is not required to select the lowest bid but shall take into consideration such other factors as ability to service large group programs, past experience, and other relevant criteria. Should the trustee select a firm whose bid was not the lowest or one whose bid differs from that specified, the reasons for such action shall be fully justified and explained in the minutes of the next meeting of the trustee.

Benefit Certificates

Sec. 6. The trustees shall provide for the issuance to each employee insured under this Act a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Annual Report

Sec. 7. As soon as practicable after the end of each calendar year but not later than 90 days thereafter, the trustee shall make a written report to the State Board of Insurance concerning the coverages provided and the benefits and services being received by all state employees insured under the provisions of this Act. It shall be the duty of the State Board of Insurance to review such report and advise the trustee in regard to the features of the coverages provided for all state employees and cooperate fully with the trustee in carrying out the purposes of the Act.

Reinsurance

Sec. 8. (a) The trustee shall arrange with any carrier or carriers issuing any policy or policies under this Act for the reinsurance, under conditions approved by the trustee, of portions of the total amount of insurance under such policy or policies, with other qualified carriers which elect to participate in the reinsurance.

(b) The trustee shall determine for and in advance of a policy year which qualified carriers are eligible to participate as reinsurers and the amount of insurance under a policy or policies which is to be allocated to the issuing company and reinsurers. The trustee shall make this determination when a participating company withdraws.

Annual Accounting; Special Contingency Reserve

Sec. 9. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the trustee not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the trustee:

(1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) the total of all mortality and other claims, charges, losses, costs, and expenses incurred for that period; and

(3) the amounts of the insurers' allowance for a reasonable profit and contingencies for that period.

(b) An excess of the total of Subdivision (a)(1) of this section over the sum of Subdivisions (a)(2) and (a)(3) of this section shall be held by the carrier issuing the policy as a special contingency reserve to be used by the carrier only for charges, claims, costs, and expenses under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the carrier and approved by the trustee as being consistent with the rates generally used by the carrier for similar funds held under other group insurance policies. When the trustee determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges, claims, costs, or expenses under the policy, any further excess shall be deposited in the State Treasury to the credit of the Employees Life, Accident, and Health Insurance and Benefits Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the State Treasury to the credit of the fund. The carrier may make the deposit in equal monthly installments over a period of not more than two years.

Exemptions

Sec. 10. (a) Exemption from Execution. All benefit payments, employee contributions, optional benefits payments, and any and all rights, benefits, or payments accruing to any person under the provisions of this Act, as well as all money in any fund created by this Act, shall be and the same are hereby exempt from execution, attachment, garnishment, or any other process whatsoever and shall be unassigned except for direct payment which the employee may assign to providers of health care services and as specifically provided in this Act.

(b) Exemption from Taxes on Premiums. Premiums or contributions on policies, insurance contracts, agreements with health maintenance organizations established under this Act or other coverages shall not be subject to any state tax.

Group Life Program

Sec. 11. (a) The trustee is authorized and directed to establish a group life program for all employees, including retired employees, of this state as herein provided, which, subject to the conditions and limitations contained in this Act and the trustee's rules and regulations promulgated pursuant thereto, will provide for each employee group life coverages in such an amount as shall be determined by the trustee. In addition to the benefits hereinabove

provided and subject to the conditions and limitations of the policy or policies purchased by the trustee, such policy or policies shall provide such payments and benefits for employees and retired employees as shall be determined by the trustee. The trustee is also authorized to include the dependents of employees in the life program.

(b) The trustee shall prescribe regulations providing for the conversion of other than annual rates of pay and specify the types of pay included in annual pay and all other matters necessary to implement this section.

Death Claims; Order of Procedure; Escheat

Sec. 12. (a) The amount of group life coverages and group accidental death and dismemberment coverages in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of the deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

(b) If, within one year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by Subsection (a) of this section, or if payment to the person within that period is prohibited by any statute or regulation, payment may be made in the order of precedence as if the person had predeceased the employee, and the payment bars recovery by any other person.

(c) If, within two years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named in Subsection (a) of this section, and neither the trustee nor the office established by the administering carrier has received notice that such a claim will be made, payment may be to the claimant who in the judgment of the trustee is equitably entitled thereto, and the payment bars recovery by any other person.

(d) If, within four years after the death of the employee, payment has not been made under this section and no claim for payment by a person entitled under this section is pending, the amount payable escheats to the credit of the fund.

Automatic Coverage

Sec. 13. (a) Except as provided by Section 13A of this Act, no employee of the State of Texas shall be denied any of the group coverage provided under this Act.

(b) Unless participation is waived specifically or unless an employee or employee-annuitant is expelled from the program under Section 13A of this Act, every full-time employee shall be covered automatically by the basic plan for active full-time employees and every employee-annuitant shall be covered by the basic plan for retired employee-annuitants. Coverage shall begin on the date he becomes eligible, and each policy of insurance purchased by the trustee shall provide for such automatic coverage.

(c) Unless expelled from the program under Section 13A of this Act, each part-time employee is eligible for participation in the group programs provided under this Act upon execution of appropriate payroll deduction authorization for the required payment of premiums.

(d) Except as provided by Section 13A of this Act, on application to the trustee and on arrangement for payment of contributions and postage:

(1) a person who has at least eight years creditable legislative service, as defined in Section 22.002, Title 110B, Revised Statutes, on ending his or her service in the legislature, continues to be eligible for participation in the group programs under this Act;

(2) a person who has at least 10 years of creditable service in the Employees Retirement System, as defined in Section 22.003, Title 110B, Revised Statutes, as an employee of the legislature, on ending his or her service for the legislature, continues to be eligible for participation in the group programs under this Act.

Expulsion From Group Insurance Program

Sec. 13A. (a) After notice and hearing as provided by this section, the trustee may expel from participation in the Texas employees uniform group insurance program any employee, annuitant, or dependent who submits a fraudulent claim under or has defrauded or attempted to defraud any health benefits plan offered under the program.

(b) On receipt of a complaint or on its own motion, the trustee may call and hold a hearing to determine whether or not an employee, annuitant, or dependent has submitted a fraudulent claim under or has defrauded or attempted to defraud any

health benefits plan offered under the Texas employees uniform group insurance program.

(c) A proceeding under this section is a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) At the conclusion of the hearing, if the trustee issues a decision that finds that the accused employee, annuitant, or dependent submitted a fraudulent claim or has defrauded or attempted to defraud any health benefits plan offered under the Texas employees uniform group insurance program, the trustee shall expel the employee, annuitant, or dependent from participation in the program.

(e) An appeal of a decision of the trustee under this section is under the substantial evidence rule.

(f) An employee, annuitant, or dependent expelled from the Texas employees uniform group insurance program may not be insured by any health insurance plan offered by the program for a period of five years from the date the expulsion from the program takes effect.

Payment of Contributions

Sec. 14. (a) The State of Texas shall contribute monthly to the cost of each employee's group coverages such amount as shall be appropriated therefor by the legislature in the General Appropriations Act. A like amount for such employee shall be appropriated by the governing board of state departments in their respective official operating budgets if their employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act. If the cost of the basic plan exceeds the amount of the state's contribution, the state shall deduct from the monthly compensation of the employee or the monthly retirement benefits of the annuitant an amount sufficient to pay the amount of the premiums not covered by the state's contribution.

(b) If an employee or annuitant refuses in writing the coverages, benefits, or services provided by this Act by a statement in writing satisfactory to the trustee, then in no event shall the State of Texas or the employee's department make any contribution to the cost of any other coverages, services, or benefits on such employee or annuitant.

(c) If any employee or annuitant applies for coverages for which the cost exceeds the state's or the employing department's contribution under this Act, he shall authorize in writing and in a form satisfactory to the trustee a deduction from his monthly compensation or annuity the difference between the cost of coverages under the said group programs and the amount contributed therefor by the State of Texas or the employing department.

Employer Contributions

Sec. 15. (a) On or before the first day of November next preceding each regular session of the legislature, the trustee shall certify to the Legislative Budget Board and budget division of the governor's office for information and review the amount necessary to pay the contributions of the State of Texas to the trustee for the coverages provided under this Act during the ensuing biennium. This amount shall be included in the budget of the state which the governor submits to the legislature.

(b) From and after the effective date of this Act, there is hereby allocated and appropriated to the trustee, in accordance with the provisions of this Act, from the several funds from which state employees receive their respective salaries, a sum equal to the total of all employer contributions computed in accordance with the provisions of this Act and the rules and regulations of the trustee promulgated pursuant thereto.

(c) All money hereby allocated and appropriated by the state to the trustee under this Act shall be paid to the trustee in monthly installments based on the annual estimate by the trustee of the contributions to be received for all state employees during said year; provided, however, that in the event said estimate of the contributions of the state employees shall vary from the actual amount of the employer contributions during the year, such adjustments shall be made at the close of each fiscal year as may be required. Each of said monthly installments shall be paid into the appropriate fund created by this Act in the amount certified by the trustee.

(d) The trustee shall certify to the governing boards of those state departments who provide contributions for their employees from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts needed to pay their respective contributions. Such certifications shall be made at least 30 days prior to the meeting at which the governing board adopts its operating budget.

Employees Life, Accident, and Health Insurance and Benefits Fund

Sec. 16. (a) There is hereby created with the treasury of the State of Texas an Employees Life, Accident, and Health Insurance and Benefits Fund which shall be administered by the trustee. The contributions of employees, annuitants, and the state provided for under this Act shall be paid into the fund. The fund is available:

(1) without fiscal year limitation for all payments for any coverages provided for under this Act; and

(2) to pay expenses for administering this Act within the limitations that may be specified annually by the legislature.

(b) Portions of the contributions made by employees, annuitants, and the state shall be regularly set aside in the fund as follows: a percentage determined by the trustee to be reasonably adequate to pay the administrative expenses made available by Subsection (a) of this section. The trustee, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves to be used by the trustee only for charges, claims, costs, and expenses under the program.

(c) The trustee shall have full power to invest and reinvest any of the money in the fund subject only to the restrictions contained in Section 7, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes). The interest on and the proceeds from the sale of these obligations become a part of the fund.

(d) Repealed by Acts 1983, 68th Leg., p. 5187, ch. 942, § 13, eff. Aug. 29, 1983.

Studies, Reports, Records, and Audits

Sec. 17. (a) The trustee shall make a continuing study of the operation and administration of this Act, including surveys and reports of group coverages and benefits available to employees and on the experience thereof.

(b) Each contract entered into under this Act shall contain provisions requiring carriers to

(1) furnish such reasonable reports as the trustee determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the trustee and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purposes of this Act.

(c) Each state department shall keep such records, make such certifications, and furnish the trustee with such information and reports as may be necessary to enable the trustee to carry out its functions under this Act.

Group Insurance Advisory Committee

Sec. 18. (a) There is created and established hereby the Group Insurance Advisory Committee, which shall consist of 23 members who shall be active or retired employees of the State of Texas. One classified employee shall be appointed from each of the 10 largest state agencies or departments by the chief administrative officer of those agencies or departments. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be a classified employee of the governor's office, appointed by the governor. One member shall be a retired state employee appointed by the trustee for a three-year term. The remaining members shall be elected by and from the classified employees of the other state departments and agencies in a manner consonant

with the election for membership to the board of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency or department.

(b) All members of the committee shall be appointed or elected for three-year terms; provided, however, that in the initial appointments and election, the trustee shall designate seven members to serve for one year, seven to serve for two years, and seven to serve for three years. Subsequent appointments or elections shall be for three-year terms. During a term of appointment or election, vacancies shall be filled by an employee of the same agency from which the vacancy occurred, being appointed by the trustees for the balance of the vacated term.

(c) The Group Insurance Advisory Committee shall advise and consult with the trustee on matters concerning all coverages provided under this Act. The committee shall cooperate and work with the trustee in coordinating and correlating the administration of the Employees Uniform Group Insurance Program among the various state departments and agencies. The duties of each member of the Group Insurance Advisory Committee shall be to secure input from fellow employees and shall be considered additional duties required of his or her other state office or employment and all expenses incurred by any such member in performing his or her duties as a member of the committee shall be paid out of funds made available for those purposes to the agency or department of which he or she is an employee or officer.

Coverage for Dependents

Sec. 19. (a) Any employee or annuitant shall be entitled to secure for his dependents any uniform group coverages provided for employees under this Act, as shall be determined by the trustee. Payments required of the employee in excess of employer contributions shall be deducted from the monthly pay of the employee or from his retirement benefits in such manner and form as the trustee shall determine.

(b) A surviving spouse of an employee or a retiree who is entitled to monthly benefits paid by a retirement system named in this Act may, following the death of the employee or retiree, elect to retain the spouse's authorized coverages and also retain authorized coverages for any dependent of the spouse, at the group rate for employees, provided such coverage was previously secured by the employee or retiree for the spouse or dependent, and the spouse directs the applicable retirement system to deduct required contributions from the monthly benefits paid the surviving spouse by the retirement system.

(c) The surviving spouse of an employee or a retiree who designated or selected a time certain annuity option, upon expiration of the annuity option may retain authorized coverages by advance

payment of contributions to the Employees Retirement System of Texas under rules and regulations adopted by the trustee.

Effective Date

Sec. 20. This Act shall become effective September 1, 1975, but no insurance coverages shall be provided hereunder until such time as the trustee shall have made a study of the coverages and benefits authorized by this Act and gathered the necessary statistical data and information to secure such group insurance and the Texas Legislature has appropriated the funds necessary to provide the insurance coverages and benefits provided for in this Act; provided, however, that subject only to the legislature's appropriating the necessary funds, group insurance coverages for state employees contemplated by this Act shall be provided beginning not later than September 1, 1976. Departments are specifically authorized to continue or initiate state employee insurance plans and policies with state financial participation until the date and time this Act is implemented; provided, however, that any experience rating refunds becoming payable to such department under any such plans or policies on or after the date and time this Act is implemented shall be paid to the Employees Life, Accident, and Health Insurance and Benefits Fund, and such payment shall be deemed payment to such department.

Effect of Section Headings

Sec. 21. Section headings contained in this Act shall not be deemed to govern, limit, expand, modify, or in any manner affect the scope, meaning, or intent of the provisions of any section hereof.

Severability

Sec. 22. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision; and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 23. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only.

[Acts 1975, 64th Leg., p. 208, ch. 79, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 55, ch. 31, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 1995, ch. 797, §§ 1 to 10, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 512, ch. 238, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3210, ch. 843, §§ 1 to 3, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4653, ch. 806, §§ 1 to 4, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5176, ch. 942, §§ 1 to 16, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5218, ch. 952, § 1, eff. Aug. 29, 1983.]

Article 3.50-2 was not enacted as part of the Insurance Code of 1951.

Art. 3.50-3. Texas State College and University Employees Uniform Insurance Benefits Act

Citation

Sec. 1. This Act shall be known and may be cited as the "Texas State College and University Employees Uniform Insurance Benefits Act."

Purposes

Sec. 2. It is hereby declared that the policy and purposes of this Act are:

(a) to provide uniformity in the basic group life, accident, and health insurance coverages for all employees of Texas state colleges and universities;

(b) to enable Texas state colleges and universities to attract and retain competent and able employees by providing them with basic life, accident, and health insurance coverages at least equal to those commonly provided in private industry and those provided employees of other agencies of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act;¹

(c) to foster, promote, and encourage employment by and service to the state colleges and universities of Texas as a career profession for persons of high standards of competence and ability;

(d) to recognize and protect the investment of the Texas state colleges and universities in each employee by promoting and preserving economic security and good health among employees of the Texas state colleges and universities;

(e) to foster and develop high standards of employer-employee relationships between the Texas state colleges and universities and their employees;

(f) to recognize the long and faithful service and dedication of employees of the Texas state colleges and universities and to encourage them to remain in service until eligible for retirement by providing health insurance and other group insurance benefits for such employees;

(g) to provide for greater uniformity of procedures for administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the optional retirement programs and tax sheltered annuity programs.

¹ Article 3.50-2.

Definitions

Sec. 3. (a) Unless a different meaning is plainly required by the context, the following words and

phrases as used in this Act shall have the following meanings:

(1) "Administering carrier" shall mean any carrier or organization, qualified to do business in Texas, designated by the administrative council to administer any services, benefits, insurance coverages, or requirements in accordance with this Act and the council's regulations thereunder.

(2) "Retired employee" shall mean an employee as defined in this Act who retires or has retired under a retirement provision under the jurisdiction of:

(A) the Teachers Retirement System of Texas, pursuant to Chapter 3, Title 1, Texas Education Code, as amended;¹

(B) the Optional Retirement Program, Articles 51.351 et seq., Texas Education Code, as amended;² provided, however, that the employee has met service requirements, age requirements, and other applicable requirements as may be promulgated by the administrative council comparable to the requirements for retirement under the Teachers Retirement System of Texas;

(C) the Employees Retirement System of Texas, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes),³ as authorized by Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes);⁴

(D) any other federal or state statutory retirement program to which the institution has made employer contributions; provided, however, that the employee has met service requirements, age requirements, and other applicable requirements as may be promulgated by the administrative council comparable to the requirements for retirement under the Teachers Retirement System of Texas.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4) (A) "Employee" shall mean any person employed by a governing board of a state university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code:

(i) who retires under the provisions cited in subsection (a)(2) of this section;

(ii) who receives his compensation for services rendered to a public community/junior college or a senior college, university, or other agency of education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code, on a warrant or check issued pursuant to a payroll certified by an institution or by an elected or duly appointed officer of this state, and who is eligible for participa-

tion in the Teacher Retirement System of Texas.

(B) Persons performing personal services for such public community/junior colleges or senior colleges, universities, or other agencies of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code, as independent contractors shall never be considered employees for purposes of this Act.

(5) "Employer" shall mean the institutions defined elsewhere in Subsection (8) of this section.

(6) "Group life, accident, or health insurance plan" shall mean any group insurance policy or contract, life, accident, medical, dental, or hospital service agreement, membership or subscription contract, or similar group arrangement provided by an administering carrier.

(7) "Retirement annuity insurance" shall mean policies or contracts provided by an administering carrier or carriers to provide optional retirement and/or tax sheltered annuity benefits as authorized by applicable state and federal statutes.

(8) "Institution" shall mean each association of one or more public community/junior colleges or senior colleges or universities, medical or dental units, technical institutes, or other agencies of higher education under the policy direction of a single governing board.

(9) "Dependent" shall mean the spouse, as defined in the Texas Family Code, of an employee or retired employee, and an unmarried child under 25 years of age including: (A) an adopted child, (B) a stepchild, foster child, or other child who is in a regular parent-child relationship, (C) any such child, regardless of age, who lives with or whose care is provided by an employee or retired employee on a regular basis, if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the administrative council shall determine.

(10) "President" shall mean the duly authorized chief official of any institution covered under the provisions of this Act or such other official as may be designated by a governing board to carry out the provisions of this Act.

(11) "Qualified carrier" shall mean:

(A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has an adequate surplus, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance;

(B) any corporation operating under Chapter 20 of the Texas Insurance Code which provides

any of the types of coverage, benefits, or services provided for in this Act, which has a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or

(C) any combination of carriers as herein defined, upon such terms and conditions as may be prescribed by the administrative council; provided, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(12) "Service" shall mean any personal services of an employee creditable in accordance with rules and regulations promulgated by the administrative council.

(13) "Active employee plan" shall mean a plan or program of group life, accident, or health insurance for active employees as determined by the administrative council as provided in this Act.

(14) "Retired employee plan" shall mean a plan or program of group insurance as determined by the administrative council as defined in this Act for all retired employees as defined in this Act.

(b) In addition to the foregoing definitions, the administrative council shall have authority to define by rule any words and terms necessary in the administration of this Act.

¹ Repealed; see, now, Civil Statutes Title 110B, § 31.001 et seq.

² Repealed; see, now, Civil Statutes Title 110B, § 36.001 et seq.

³ Repealed; see, now, Civil Statutes Title 110B, § 21.001 et seq.

⁴ Repealed.

Authority

Sec. 4. (a) A Texas State College and University Employees Uniform Insurance Benefits Program is hereby created. The uniform insurance benefits program shall be established within the authority of the Coordinating Board, Texas College and University System. The commissioner of higher education, acting under the direction and established policies of the coordinating board, shall appoint a coordinating board staff member who shall serve as executive secretary for the program, and shall provide from appropriated funds such additional staff and other resources necessary to provide technical consulting and administrative and clerical support for the effective administration of this Act by the administrative council and the advisory committee as hereinafter provided.

(b) The administrative council shall be selected, serve, and perform duties as hereinafter described:

(1) Selection. (A) Acting as a group, the presidents of the six senior level institutions having the highest number of employees as defined in

this Act, based on the most current statistical reports of the Coordinating Board, Texas College and University System, shall with prior consultation with all other presidents of all senior level institutions covered by this Act, designate three representatives to serve as members of the council. The persons so designated shall be employees as defined in this Act and may be from any of the senior level institutions.

(B) Acting as a group, the presidents of the three junior level institutions or technical institutions having the highest number of employees as defined in this Act, based on the most current statistical reports of the Coordinating Board, Texas College and University System, shall with prior consultation with all other presidents of all junior level institutions covered by this Act, designate three representatives to serve as members of the council. The persons so designated shall be employees as defined in this Act and may be from any of the junior level institutions or technical institutions.

(C) The commissioner of higher education shall appoint three members of the council, which members shall not be subject to the restrictions in Section 4(b)(2).

(2) Qualifications of members. The persons designated as members of the administrative council, in addition to being employees as defined in this Act, shall have demonstrable qualifications for the administration of the program established by this Act.

(3) Terms of membership. (A) Except for initial appointments, all appointments shall serve for a period of six years each except for appointments to fill vacancies occurring in cases of incomplete terms, in which case the appointment shall be for the remainder of the unexpired term.

(B) The administrative council initially shall be established as follows:

(i) Of the three appointments made by the presidents of senior level institutions as described in Subsection (b)(1)(A) of this section, one of the members so appointed shall serve for a period of six years, one shall serve for a period of four years, and one shall serve for a period of two years from the effective date of this Act. Thereafter terms of all appointees shall be for six years.

(ii) Of the three appointments made by the presidents of the junior level institutions or technical institutions as described in this Act, one of these appointments shall be for a period of six years, one shall be for a period of four years, and one shall be for a period of two years from the effective date of this Act. Thereafter terms of all appointees shall be for six years.

(iii) The members thus appointed shall, at the first organizational meeting of the administra-

tive council, draw lots for terms of office as described above in this Act and shall elect a chairman and other such officers as may be necessary. Thereafter, elections shall be held annually for the chairmanship and other such offices.

(4) Duties. The administrative council shall:

(A) determine basic coverage standards which shall be at least equal to those commonly provided in private industry and those provided employees of other agencies of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act,¹ after considering recommendations of the advisory committee.

(B) require each institution to include in its respective bid documents for the various coverages a provision calling for each bidder to identify its administrative cost as a distinguishable figure and to enumerate what services the bidder will render in exchange for the administrative costs so identified.

(C) determine basic procedural and administrative practices for insurance coverages to be provided employees covered under the provisions of this Act, after considering recommendations of the advisory committee.

(D) determine if existing institutional programs meet, equate to, or exceed standards for such basic coverages. If so, such programs may be continued in accordance with existing contractual arrangements between those institutions and their carrier or carriers, provided, however, that each program so continued shall be submitted by the institution for competitive bidding within standards established by the administrative council at least once during each four-year period following the effective date of coverage under this Act. It is further provided that:

(i) The State Board of Insurance shall provide, by request of the institution, a list of all carriers authorized to do business in the State of Texas and who will be eligible to bid on the insurance coverage or coverages provided in this Act.

(ii) The State Board of Insurance shall, upon request by the institution, examine and evaluate the bidding contracts and certify their actuarial soundness to the institution within 15 days from the date of request.

(iii) The institution is not required to select the lowest bid, but shall take into consideration other factors such as ability to service contracts, past experience, financial stability, and other relevant criteria. Should the institution select a carrier whose bid differs from that advertised, such deviation shall be reported to the administrative council and the reasons for such deviation shall be fully justi-

fied and recorded in the minutes of the next meeting of the administrative council.

(iv) The institution shall select and contract for services performed by health maintenance organizations that are approved by the federal government, if available, or by the State of Texas, if available, to offer health-care services to eligible employees and retired persons in a specific area of the state. Eligible employees and retired persons may participate in a selected health maintenance organization in lieu of participation in the health insurance benefits under this Act, and the employer contributions provided by Section 13 of this Act for health-care coverage shall be paid to the selected health maintenance organizations on behalf of the participants. A health maintenance organization that has been approved to provide health-care services to employees and retired persons of the state under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) is qualified upon proper application to the institution to provide similar services to eligible employees and retired persons of any institution or agency under this Act located in the same area of the state. More stringent requirements may not be imposed on health maintenance organizations under this Act than are imposed by the state or by the federal government.

(E) determine those institutions whose programs contain deficiencies with regard to the basic standards, administrative costs, and practices provided for under this Act. Where such program deficiencies occur, the president of each institution found to be deficient shall be notified of such program deficiencies by the administrative council, which shall also report its action to the commissioner of higher education, and the institution shall be provided a reasonable deadline not to exceed two years for correcting said deficiencies. The affected institution may appeal this determination of deficiency to the Coordinating Board, Texas College and University System. The board shall within 90 days from receipt of the appeal either affirm or reverse the decision of the administrative council. In case of reversal the board shall return the appeal to the administrative council with written instructions for disposition. Where institutions do not correct said deficiencies as directed by the administrative council, the council is hereby authorized and empowered to direct the institution to establish such plans as determined by the council, and to report its action to the commissioner of higher education. If such plans are not established within a reasonable time period not to exceed six months

from date of notification, the council shall notify the state comptroller of public accounts, who shall withhold state insurance premium matching funds from the affected institutions until notified by the administrative council that the deficiencies have been corrected. These notifications to the state comptroller shall be reported to the commissioner of higher education.

(F) provide that the governing boards of two or more institutions of higher education may procure one or more group contracts with any insurance company or companies authorized to do business in this state, insuring the employees of each participating institution. The purpose of such authorization shall be to provide institutions of higher education with the ability to obtain the benefits of economy and/or improved coverages for their employees which may occur through increased purchasing economies for larger groups of employees. All contracts for basic coverages negotiated from the effective date of this Act shall be in compliance with basic coverage standards, rules, and regulations of the administrative council promulgated pursuant to this Act. Each governing board may provide such additional or optional insurance programs and coverages as it deems desirable for its employees.

(G) adopt rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out the statutory responsibilities.

(H) require that procedures be established by each institution to allow each covered employee to obtain prompt action regarding claims pertaining to insurance provided under this Act.

(I) publish such additional goals, guidelines, and surveys as are necessary to assist covered institutions in providing their employees with effective benefits programs.

(J) develop policies, practices, and procedures as necessary in accordance with provisions of applicable statutes to provide for greater uniformity in the administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the Optional Retirement Program, Article 51.351 et seq., Texas Education Code, as amended, and tax sheltered annuity programs as provided in Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 6228a-5, Vernon's Texas Civil Statutes).

(K) establish rules, regulations, and procedures for preparation and review of the annual reports of the institutions as further provided for under Section 6 of the Act.

(c) The advisory committee shall be selected, serve, and perform duties as hereinafter described:

(1) Selection. One member of the advisory committee shall be elected from each of the institutional components, units, or agencies under the policy direction of a single governing board at such times as designated by the administrative council and in accordance with general guidelines for such elections provided by the administrative council.

(2) Qualifications of members. The members of the advisory committee shall be chosen from among employees as defined in this Act. The persons so elected shall demonstrate mature judgment, special abilities, and sincere interests in employee insurance programs and be able to represent the needs of all employees of the institution represented with regard to advisory committee actions.

(3) Terms of membership. Members of the advisory committee elected under the terms of this Act shall serve for a period of two years, subject to reelection. At the initial meeting of the advisory committee, and subsequently each year, the members who are elected shall elect a chairman and other such officers as may be necessary. A vacancy shall be filled by an employee of the same institution from which the vacancy occurred, being appointed by the president of said institution for the balance of the vacated term.

(4) Duties. (A) The advisory committee shall cooperate and work with the administrative council in coordinating and correlating the administration of the group insurance program among the various institutions. Members of the advisory committee shall cooperate and work with the administrative council as advisors in development, implementation, coordination, and administration of the group insurance programs among the various institutions.

(B) The advisory committee shall provide a channel for open communication of ideas and suggestions regarding coverages, eligibility, claims, procedures, bidding, administration, and all other aspects of employee insurance benefits.

(d) Notwithstanding any other provisions of this Act, the governing boards providing programs of benefits under this Act are authorized to self-insure the programs and may, at their discretion, engage a firm to administer the program.

¹ Article 3.50-2.

Benefit Certificates

Sec. 5. The administrative council shall assure that each employee insured under this Act is issued a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Annual Report

Sec. 6. As soon as practicable after the end of each contract year, but not later than 180 days thereafter, each institution covered under the provisions of this Act shall submit an annual report to the administrative council, comparing the insurance coverages provided and the benefits and services received by its employees insured under the provisions of this Act. The administrative council shall, within 30 days of receipt of the institutional annual reports, submit the annual reports together with a summary and commentary to the commissioner of higher education for submission to the Coordinating Board, Texas College and University System.

Reinsurance

Sec. 7. (a) The institutions may arrange with any administering carrier or carriers issuing any policy or policies under this Act for the reinsurance of portions of the total amount of insurance under such policy or policies with other qualified carriers which elect to participate in the reinsurance.

(b) The administrative council may determine all rules, regulations, and actions necessary for the providing of such reinsurance through qualified carriers.

Annual Accounting

Sec. 8. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the institution not later than 120 days after the end of each policy year. The accounting for each line of coverage shall set forth, in a form acceptable to the administrative council:

(1) the cumulative amount of premiums actually remitted to the carrier under the policy from its date of issue to the end of the policy year, the amount of premiums actually remitted under the policy for each year from the anniversary date to the end of that policy year;

(2) the total of all mortality and other claims, charges, losses, costs, contingency reserve for pending and unreported claims and expenses incurred for each of the periods corresponding to each of the periods heretofore described in Subsection (a)(1) of this section;

(3) the amounts of the allowance for a reasonable profit, contingency reserves, and all other administrative charges corresponding to each of the periods as heretofore described in Subsection (a)(1) of this section.

(b) Any excess of the total of Subsection (a)(1) of this section over the corresponding sum of Subsections (a)(2) and (a)(3) of this section may be held by the carrier issuing the policy as a special reserve. Such reserve may be used at the discretion of the institution with prior approval of the administrative council for, but not limited to, providing additional coverage for participating employees, offsetting

necessary employee premium rate increases, or to reduce participating employee premium contributions to the coverage. Any reserve held by the carrier would bear interest at a rate determined each policy year by the carrier and approved by the institution as being consistent with the rate generally used by the carrier for similar funds held under other group insurance policies. Alternative report requirements or arrangements may be approved by the administrative council.

Exemption from Execution

Sec. 9. (a) All insurance benefits and other payments and transactions made pursuant to the provisions of this Act to any employee covered under the provisions of this Act shall be exempt from execution, attachment, garnishment, or any other process whatsoever.

(b) Premiums on policies, insurance contracts, or agreements with health maintenance organizations established under this Act are not subject to any state tax.

Death Claims

Sec. 10. The amount of group life insurance and group accidental death and dismemberment insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order:

(a) to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

(b) if no beneficiary is designated in accordance with Subsection (a) of this section, payment shall be made in accordance with the death benefit provisions of the Teacher Retirement System of Texas, Chapter 3, Title 1, Texas Education Code, as amended.¹

¹ Repealed; see, now, Civil Statutes Title 110B, § 31.001 et seq.

Automatic Coverage

Sec. 11. No eligible employee shall be denied enrollment in any of the coverages provided by this Act; provided, however, that the employee may waive in writing any or all such coverages. Each policy of insurance shall provide for automatic coverage on the date the employee becomes eligible for insurance. From the first day of employment, each active full-time employee who has not waived basic coverage or selected optional coverages shall be protected by a basic plan of insurance coverage automatically. The premium for such coverage shall not exceed the amount of the employer contribution. Each employee who is automatically cover-

ed under this section may subsequently retain or waive the basic plan and may make application for any other coverages provided under this Act within institutional and administrative council standards.

Payment of Premiums

Sec. 12. Each institution and agency covered under the provisions of this Act shall contribute monthly to the cost of each insured employee's coverage no less than the amount appropriated therefor by the legislature in the General Appropriations Act or as determined by the governing board of the institution in its respective official operating budget, if the employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act. The employees shall authorize in writing and in a form satisfactory to the institution a deduction from his monthly compensation of the difference between the total cost of benefits and the amount contributed therefor by the institution or agency.

Employer Contributions

Sec. 13. Certification shall be submitted on or before the first day of November next preceding each regular session of the legislature; the institutions and agencies covered under the provisions of this Act shall certify to the Legislative Budget Board and budget division of the Governor's Budget and Planning Office the amount necessary to pay employer contributions for each active and retired employee from the effective date of this Act. The Legislative Budget Board and the Governor's Budget and Planning Office will establish procedures to insure that eligible institutions request appropriate funds to support this program and shall present appropriate budget recommendations to the legislature. The Teacher Retirement System of Texas, Optional Retirement Program carriers, and Employees Retirement System of Texas shall furnish each institution such information as may be deemed necessary by the administrative council to provide retired employees with the coverages and employer contributions provided under the Act.

Administrative Costs

Sec. 14. No employee covered under the provisions of this Act shall be required to pay out of the amount of employer contributions due him or out of the amount of his additional premiums due for selected coverages, any administrative costs, fees, or tax whatsoever to pay expenses of a state institution, the coordinating board, or committees as herein established for administering this Act. The duties of each member of the administrative council and the advisory committee shall be considered additional duties to those required of his other state office or employment, and all expenses incurred by any such member in performing his duties as a member of the council or committee shall be paid

out of funds made available for those purposes to the institution of which he is an employee or officer.

Studies, Reports, Records, and Audits

Sec. 15. (a) The administrative council shall cause to be established a continuing study of the operation and administration of this Act, including surveys and reports on group insurance coverages and benefits.

(b) Each contract entered into under this Act shall contain provisions requiring administering carriers to

(1) furnish such reasonable reports as the administrative council determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the administrative council and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purpose of this Act.

(c) Each institution shall keep such records, make such certifications, and furnish the administrative council with such information and reports as may be necessary to enable the administrative council to carry out its functions under this Act.

Applicability of State Open-Meetings and Open-Records Statutes and Federal and State Privacy Statutes

Sec. 16. Any reports which shall be required by action of the administrative council and advisory committee which have been established under the Act shall be a matter of open record, available for review under the provisions of applicable open-record statutes of the State of Texas. This shall not be interpreted to require the release of any records pertaining to individuals insured under the provisions of this Act, the release of which would be in conflict with the rights of these individuals under federal and state privacy statutes. Meetings which are necessary for the administration of the Act shall be subject to applicable provisions of state open-meetings statutes.

Coverage for Dependents

Sec. 17. Any employee or retired employee shall be entitled to secure for his dependents any uniform group insurance coverages provided for such dependents under the rules and regulations to be promulgated by the administrative council. Such payments for such coverages for dependents shall be deducted from the monthly pay of the employee or paid in such manner and form as the administrative council shall determine.

Effective Date

Sec. 18. This Act shall become effective September 1, 1977, and basic coverages shall be provided

by each institution covered under this Act beginning no later than September 1, 1979.

Severability

Sec. 19. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision, and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 20. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only.

[Acts 1977, 65th Leg., p. 56, ch. 32, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 96, ch. 50, §§ 1, 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2619, ch. 446, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 5191, ch. 942, § 17, eff. Aug. 29, 1983.]

Article 3.50-3 was not enacted as part of the Insurance Code of 1951.

Art. 3.51. Group Insurance for Employees of State and Its Subdivisions and College and School Employees

Sec. 1. (a) The State of Texas and each of its political, governmental and administrative subdivisions, departments, agencies, associations of public employees, and the governing boards and authorities of each state university, colleges, common and independent school districts or of any other agency or subdivision of the public school system of the State of Texas are authorized to procure contracts with any insurance company authorized to do business in this state insuring their respective employees, or if an association of public employees is the policyholder, insuring its respective members, or any class or classes thereof under a policy or policies of group health, accident, accidental death and dismemberment, disability income replacement and hospital, surgical and/or medical expense insurance or a group contract providing for annuities. The dependents of any such employees or association members, as the case may be, may be insured under group policies which provide hospital, surgical and/or medical expense insurance. The insureds' contributions to the premiums for such insurance or annuities issued to the employer or to an association of public employees as the policyholder may be deducted by the employer from the insureds' salaries when authorized in writing by the respective employees so to do. The premium for the policy or contract 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 insured employees. When an association of public employees is the holder of such a policy of insurance or contract, the premium for employees that are members of such association may be paid in whole or in part by the State of Texas or other agency authorized to procure contracts or policies of insurance under this section, or in whole or in part from funds contributed by the insured employees that are members of such association; provided, however, that any monies or credits received by or allowed to the policyholder or contract holder pursuant to any participation agreement contained in or issued in connection with the policy or contract shall be applied to the payment of future premiums and to the pro rata abatement of the insured employee's contribution therefor.

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

(b) Independent School Districts procuring policies insuring their employees under this Section may pay all or any portion of the premiums on such policies from the local funds of such Independent School District, but in no event shall any part of such premiums be paid from funds paid such districts by the State of Texas.

Sec. 2. All group insurance contracts effected pursuant hereto shall conform and be subject to all the provisions of any existing or future laws concerning group insurance.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1961, 57th Leg., p. 840, ch. 376, § 1; Acts 1967, 60th Leg., p. 239, ch. 126, § 1, eff. Aug. 28, 1967; Acts 1967, 60th Leg., p. 1007, ch. 437, § 2, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1371, ch. 414, § 2, eff. Sept. 1, 1969.]

Art. 3.51-1. Payment of Group Insurance Premiums by Cities, Towns or Villages

Any incorporated city, town or village in the State of Texas which is authorized by law to procure a contract insuring its respective employees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or any portion of the premiums on such policy or policies from the local funds of such city, town or village.

[Acts 1963, 58th Leg., p. 323, ch. 121, § 1. Amended by Acts 1981, 67th Leg., p. 1868, ch. 445, § 1, eff. June 11, 1981.]

Art. 3.51-2. County and Political Subdivision of the State of Texas—Officials, Employees, and Retirees

(a) Each county or political subdivision of the State of Texas is authorized to procure contracts insuring its officials, employees, and retirees or any class or classes thereof under a policy or policies of group life, group health, accident, accidental death and dismemberment, and hospital, surgical, and/or medical expense insurance. The dependents of any such officials, employees, and retirees may be insured under group policies which provide health,

hospital, surgical and/or medical expense insurance. The employees' contributions to the premiums for such insurance issued to the employer as the policyholder may be deducted by the employer from the employees' salaries when authorized in writing by the respective employees so to do; provided, however, no state funds shall be used to procure such contracts, nor shall any state funds be used to pay premiums under said contracts of insurance.

(b) Any county or political subdivision of the State of Texas which is authorized by law to procure a contract insuring its respective officials, employees, and retirees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or any portion of the premiums on such policy or policies from the local funds of such county or political subdivision of the State of Texas. A county or political subdivision of the State of Texas may also pay all or any portion of the premiums on group health, hospital, surgical and/or medical expense insurance coverage for dependents of officials, employees, and retirees.

(c) Each county or political subdivision of the State of Texas is authorized to establish a fund to provide for the life, health, accident, accidental death and dismemberment, and hospital, surgical, and/or medical insurance of its officials, employees and their dependents, and retirees, to be known as the "health and insurance fund—employees and dependents." There shall be credited to such fund such deductions as may be agreed to in writing by any such official, employee, and retiree and contributions from the county or political subdivision, from which fund payment shall be authorized only for the payment of premiums on life, group health, accident, accidental death and dismemberment, and hospital, surgical, and/or medical expense insurance for officials, employees, and retirees, and their dependents, under such rules and regulations as may be adopted by the county or political subdivision, which claims shall be payable under existing laws in like manner as other county or other political subdivision claims. No deduction from the salary of any official, employee, or retiree shall be made except when he shall have consented in writing to such deduction.

[Acts 1967, 60th Leg., p. 1090, ch. 479, § 1, eff. Aug. 28, 1967. Amended by Acts 1975, 64th Leg., p. 278, ch. 120, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 537, ch. 252, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1698, ch. 321, § 1, eff. Aug. 29, 1983.]

Section 2 of the 1975 amendatory act provided:

"The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act and the application of such provision to other persons or circumstances shall not thereby be rendered invalid or unconstitutional, nor be affected thereby."

Art. 3.51-3. Issuance of Group Insurance Policies to Associations of Teachers and School Administrators

Any voluntary association of school administrators and/or teachers in public and/or private

schools, colleges or universities, which association is organized on a non-profit membership basis and is incorporated under the laws of the United States or of this state, is hereby authorized to procure contracts of insurance covering any class or classes of its membership and their dependents under a policy or policies of group life, health, accident, accidental death or dismemberment, and hospital, surgical and/or medical expense insurance; and any insurance company authorized to do business in this state is hereby authorized to issue such policies to any such association under the terms and conditions set out in this Act, any contrary or inconsistent provisions in any other statute notwithstanding. Separate policies may be obtained for one or more of the aforementioned risks, and the association shall be deemed the policyholder. The premium for the policy shall be paid by the policyholder either wholly or partly from the association's funds, or partly from such funds and partly from funds contributed by insured members, or from funds wholly contributed by the insured members. The policy must cover at least twenty-five members at date of issue, and if any part or all of the premiums are to be derived from funds contributed by the insured members specifically for their insurance, the policy may be placed in force only if at least seventy-five per centum (75%) of the then eligible members or a minimum of four hundred members (whichever is less, and excluding any as to whom evidence of individual insurability is not satisfactory to the insurer) elect to make the required contributions and become insured thereunder. The amounts of insurance under the policy must be based on some plan precluding individual selection either by the insured members or by the association.

[Acts 1967, 60th Leg., p. 224, ch. 123, § 1, eff. Aug. 28, 1967.]

Article 3.51-3 was not enacted as part of the Insurance Code of 1951.

Art. 3.51-4. Payment of Premiums of Group Life and Health Insurance Policies for Retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, Retired Employees of the Texas Department of Mental Health and Mental Retardation Who Accepted Retirement Under the Teacher Retirement System of Texas, Retired Employees of the Texas Youth Commission Who Accepted Retirement Under the Teacher Retirement System of Texas, and Retired Employees of the Teacher Retirement System of Texas Who Accepted Retirement Under the Teacher Retirement System of Texas

The premium cost of group life, health, accident, hospital, surgical and/or medical expense insurance

for retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, for retired employees of the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, and the Teacher Retirement System of Texas who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code,¹ shall be paid by the State of Texas, subject to the following limitations and conditions:

(a) Payment shall be from the funds of the agency, commission, board or department from which the officer or employee retired, shall be limited to the same amount allowed active employees under current group life and health insurance programs of the agency, commission, board or department, and shall be made in accordance with rules and regulations to be established no later than September 1, 1973, by the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System for its respective retirees and no later than September 1, 1975, by the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, and the Teacher Retirement System of Texas for their retired employees who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code.

(b) The agency, commission, board and department shall certify to the state comptroller of public accounts and to the state treasurer each month the amount required each month to pay the insurance premiums of the said retirees, and the State of Texas shall pay the amount so ascertained each month, beginning September 1, 1973, to the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System, and beginning September 1, 1975, to the Texas Department of Mental Health and Mental Retardation and the Texas Youth Commission.

[Acts 1973, 63rd Leg., p. 600, ch. 254, § 1, eff. June 11, 1973. Amended by Acts 1975, 64th Leg., p. 1027, ch. 394, § 1, eff. June 19, 1975; Acts 1983, 68th Leg., p. 181, ch. 44, art. III, § 1, eff. April 26, 1983.]

¹ Repealed; see, now, Civil Statutes Title 110B, § 31.001 et seq.

Art. 3.51-4A. Extension of Group Term Life Insurance to Spouses and Children

Sec. 1. Insurance under any group term 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, 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 insured thereunder, provided that the amounts of insurance under the policy are based on some plan precluding individual selection either by the insured or the policyholder, and provided further that the amount of such insurance on the life of the spouse or a child shall not exceed one-half of the amount of insurance on the life of the aforesaid insured under said policy.

Sec. 2. Premiums for the group term 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.

Sec. 3. Upon termination of the group term 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 term life insurance policy, such spouse shall have the same conversion rights as to the group term life insurance on his or her life as is provided for the insured.

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.

[Acts 1973, 63rd Leg., p. 161, ch. 82, § 1, eff. Aug. 27, 1973. Amended by Acts 1975, 64th Leg., p. 773, ch. 299, § 2, eff. May 27, 1975; Acts 1983, 68th Leg., p. 4652, ch. 805, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1973 Act provided: "If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 3.51-5. Payments of Group Life and Health Insurance Premiums for Retired Employees of the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, a Texas Senior College or University, and the Coordinating Board, Texas College and University System

(a) The costs of group life and health insurance premiums to persons retired under the Teacher Retirement Act, who at the time of their retirement were employed by the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission, a Texas senior college or university, and the Coordinating Board, Texas College and University System, shall be fully paid from the funds of such agency, com-

mission, institution, or board under the following provisions and conditions:

(1) The coverage of this Act shall extend to all such retired persons within the limits of eligibility under state contracts in force on the effective date of this Act or as may be otherwise provided by law; (2) such payment shall be in accordance with rules and regulations established by such agency, commission, institution, or board; (3) such agency, commission, institution, and board shall certify to the Comptroller of Public Accounts and the State Treasurer each month the amount so ascertained each month to such agency, commission, institution, and board; (4) payments shall begin on the first day of the month following the month in which this Act takes effect and shall continue to be paid until otherwise provided by law.

(b) There are hereby authorized to be paid out of the funds of each agency, commission, institution, or board named in the Act the sums necessary to fund the payments of premiums provided in this Act.

[Acts 1975, 64th Leg., p. 1062, ch. 408, § 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 182, ch. 44, art. III, § 2, eff. April 26, 1983.]

Art. 3.51-6. Group and Blanket Accident and Health Insurance

Group Insurance Defined; Coverage; Certificate; Fees or Allowances

Sec. 1. (a) Group accident and health insurance is hereby defined to be that form of accident, sickness, or accident and sickness insurance covering groups of persons as provided in Subdivisions (1) through (6) below:

(1) under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor, or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise, and retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. 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;

(2) under a policy issued to an association, including but not limited to a labor union or organizations of such unions, membership corporations organized or holding a certificate of authority under the Texas Non-Profit Corporation Act,¹ and cooperatives and corporations subject to the supervision and control of the Farm Credit Administration of the United States of America, and which association shall have a constitution and bylaws, which has been organized and has had an active existence for at least two years, and which is maintained in good faith for purposes other than that of obtaining insurance, to insure members, employees, or employees of members (active and retired for the benefit of persons other than the association or its officers or trustees);

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or such association, or employees of members of such association for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers, and employees of the employer, retired employees, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy;

(5) under a policy issued by an insurer to a trustee of a fund, which shall be deemed to be the policyholder, to insure former employees, former members, their spouses, former spouses, and their dependents, who were previously insured by such insurer under a policy issued to any of the groups provided for in this article;

(6) under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner of insurance, may be subject to the issuance of a group accident and sickness policy or contract.

(b) The spouse and dependents of employees or members referred to in Subdivisions (a)(1) through (a)(6) of this section may be included within the coverage provided in a group policy.

(c) An insurer issuing a group policy under this article shall furnish to the policyholder for delivery to each employee or member of the insured group a certificate of insurance which shall contain a state-

ment, in summary form, of the essential features of the insurance coverage of such employee or member and to whom benefits are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(d) No group policy of accident, health, or accident and health insurance shall be delivered or issued for delivery in this state which does not conform to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(6) of this section.

(e) No insurer shall pay to any individual, firm, corporation, or group entity any fees or allowances for services related to group policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer, provided that this provision shall not limit the right of the insurer to pay dividends or make returns of premium to any group or to any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit payment of commissions or compensation to a duly licensed agent.

(f) Any group accident and health 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 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 under this chapter. Such coverage may continue for any period subject to any other policy provisions relating to termination of dependent's coverage.

¹ Civil Statutes, art. 1396-1.01 et seq.

Blanket Insurance Defined; Application or Certificate; Liability for Death or Injury of Member; Fees or Allowances

Sec. 2. (a) Blanket accident and health insurance is hereby defined to be that form of accident, health, or accident and health insurance covering groups of persons as provided in (1) through (9) below:

(1) under a policy issued to any common carrier or to any operator, owner, or lessor of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on such common carrier or such means of transportation; or, under a policy issued to any automobile and/or truck leasing company, which shall be deemed the policyholder, covering a group of persons who may become either renters, lessees, or passengers defined by their travel status on such rented or leased vehicles;

(2) under a policy issued to an employer, who shall be deemed the policyholder, covering any group of employees, dependents, or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder;

(3) under a policy issued to a college, school, or other institution of learning, a school district or districts, or school jurisdictional unit, or to the head, principal, or governing board of any such education unit, who or which shall be deemed the policyholder, covering students, teachers, or employees;

(4) under a policy issued to any religious, charitable, recreational, educational, or civic organization, or branch thereof, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to any activity or activities or operations sponsored or supervised by such policyholder;

(5) under a policy issued to a sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials, or supervisors;

(6) under a policy issued to any governmental or volunteer fire department or fire company, first aid, civil defense, or other such governmental or volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(7) under a policy issued to a newspaper or other publisher, which shall be deemed the policyholder, covering its carriers;

(8) under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(9) under a policy issued to cover any other risk or class of risks which, in the discretion of the commissioner of insurance, may be properly eligible for blanket accident and sickness insurance. The discretion of the commissioner of insurance may be exercised on an individual risk basis or class of risks, or both.

(b) An individual application need not be required from a person covered under a blanket accident and sickness policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

(c) Nothing in this section shall be deemed to affect the legal liability of any policyholder for the death of or injury to any member of a group.

(d) No blanket policy shall be delivered or issued for delivery in this state which does not conform to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(9) of this section.

(e) No insurer shall pay to any individual, firm, or corporation any fees or allowances for services related to blanket policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer provided that this provision shall not limit the right of the insurer to pay dividends or make return of premium to any group or any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit the payment of commissions or compensation to a duly licensed agent.

Payment of Benefits

Sec. 3. All benefits under any group or blanket accident and sickness policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, except that if the person insured be a minor or otherwise not competent to give a valid release, such benefits may be made payable to his parent, guardian, or other person actually supporting him. The policy may provide that all or a portion of any indemnities provided by any such policy on account of hospital, nursing, medical, or surgical services may, at the option of the insurer and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the obligation of the insurer with respect to the amount of insurance so paid.

Conversion Privilege

Sec. 3A. (a) In this section:

(1) "Health insurance policy" means a group policy or contract, including group contracts issued by companies subject to Chapter 20, Insurance Code, as amended, providing insurance for hospital, surgical, or medical expenses incurred as a result of an accident or sickness.

(2) "Insured" means an employee or member of a group that is covered by a health insurance policy.

(b) A health insurance policy delivered or issued for delivery in this state that provides for conversion to an individual policy by an insured on termination of membership in or employment with the group shall provide a conversion privilege to an individual policy to the spouse of the insured on death of the insured or divorce from the insured or

on termination of the insured's membership in or employment with the group for any reason including retirement. If the conversion privilege available to the insured provides for coverage of the insured's spouse, the group insurer shall not be required to issue a separate conversion policy to the spouse.

(c) Subsection (b) of this section applies only to a spouse of an insured if the spouse is covered under the health insurance policy at the time of the insured's death or divorce from the insured or termination of the insured's coverage.

Exemptions

Sec. 4. The provisions of this article shall not be applicable to:

(1) credit accident and health insurance policies subject to Article 3.53 of the Insurance Code, as amended;

(2) any group specifically provided for or authorized by law in existence and covered under a policy filed with the State Board of Insurance prior to April 1, 1975;

(3) accident and health coverages that are incidental to any form of group automobile, casualty, property, or workmen's compensation—employers' liability policies promulgated or approved by the State Board of Insurance;

(4) any policy or contract of insurance with a state agency, department, or board providing health services to all eligible persons under Section 6, The Medical Assistance Act of 1967, as amended (Article 695j-1, Vernon's Texas Civil Statutes),¹ 343-353² (42 U.S.C.A. 1396-1396g), providing health care and services under a state plan.

¹ Repealed; see, now, Human Resources Code, § 32.001 et seq.
² So in enrolled bill; probably should read "79 Stat. 343-353".

Rules and Regulations

Sec. 5. The State Board of Insurance is authorized to issue such rules and regulations as may be necessary to carry out the various provisions of this article. Rules and regulations promulgated pursuant to this article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-10, Vernon's Texas Insurance Code).

[Acts 1975, 64th Leg., p. 1112, ch. 419, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 805, ch. 364, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1063, ch. 493, § 1, eff. June 7, 1979; Acts 1981, 67th Leg., p. 184, ch. 85, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 1870, ch. 447, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4673, ch. 812, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1975 Act provided:

"This Act shall apply to all group accident, health, or accident and health insurance policies and all blanket accident, health, or accident and health insurance policies, delivered or issued for delivery in the State of Texas on and after January 1, 1976."

Section 2 of Acts 1979, 66th Leg., p. 805, ch. 364, provided:

"This Act applies to all health insurance policies defined in Section 3A of Article 3.51-6, Insurance Code, and group contracts issued by companies subject to Chapter 20, Insurance Code, as amended, that are delivered or issued for delivery in this state on or after January 1, 1980. Any presently approved policy forms containing any provision in conflict with the requirements of this Act may be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance."

Art. 3.51-6A. Replacement and Discontinuance of Group and Group-Type Accident and Health Insurance

Scope

Sec. 1. This article is applicable to:

(1) all accident and health insurance policies, including subscriber contracts of a nonprofit service corporation subject to Chapter 20 of this code; and

(2) benefit packages of multiple employer trusts which are not exempt from regulation by the State of Texas as employee welfare benefit plans under the Employee Retirement Income Security Act of 1974, as amended (Public Law 93-406),¹ that are delivered or issued for delivery in this state on a group or group-type basis covering a person who is eligible for insurance because of the person's status as an employee of an employer or as a member of a labor union or as a member of an association. This article does not apply to or otherwise regulate any entity not engaged in the business of insurance in this state.

¹ 29 U.S.C.A. § 1001 et seq.

Definitions

Sec. 2. (a) "Group-type basis" means an accident and health benefit plan that meets the following conditions:

(1) insurance coverage is provided through insurance policies or subscriber contracts to classes of employees or members of a labor union or members of an association, in which the classes are defined in terms of conditions pertaining to employment or membership;

(2) coverage is not available to the general public and can be obtained and maintained only because of the covered person's employment status or membership in a labor union or an association;

(3) payment of premiums or subscription charges is arranged on an aggregate or bulk-payment basis to the insurer or nonprofit service corporation; and

(4) the employer, union, or association sponsors the plan. The term does not refer to a salary-budget plan utilizing either individual insurance policies or subscriber contracts that do not meet the conditions specified in this subsection.

(b) "Carrier" means any insurer, including a non-profit service corporation subject to Chapter 20 of this code as specified in Section 1 of this article.

Effective Date of Discontinuance for Nonpayment of Premium or Subscription Charges

Sec. 3. If a policy or contract subject to this article provides a grace period for payment of premiums or subscription charges and for automatic discontinuance of the policy or contract after a premium or subscription charge has remained unpaid through the grace period allowed for that payment, the carrier or other entity responsible for making payments or submitting subscription charges or premiums to the carrier is liable for valid claims for covered losses incurred before the end of the grace period. The State Board of Insurance may adopt reasonable rules that are necessary to implement this section.

Requirements for Notice of Discontinuance

Sec. 4. A notice of discontinuance of the policy or contract must include a request to the group policyholder or other entity responsible for making payments or submitting subscription charges to the carrier for notification of employees covered under the policy or contract of the date on which the policy or contract will discontinue.

Extension of Benefits

Sec. 5. (a) Every policy or other contract subject to this article delivered or issued for delivery in this state or under which the level of benefits is altered, modified, or amended, on or after the date this article takes effect, must contain a reasonable provision for extension of benefits in the event of total disability at the date of discontinuance of the group policy or contract. The provision must at a minimum comply with this section.

(b) In a group or group-type basis coverage providing benefits for loss of time from work or specific indemnity during hospital confinement, discontinuance of the policy during a disability does not discontinue or otherwise affect the benefits payable for that disability or confinement.

(c) In the case of hospital or medical expense coverages other than dental expense coverages, a reasonable extension of benefits provision must be included. The provision is considered reasonable if it provides an extension of benefits for any person under the policy who is totally disabled at the date of discontinuance of the group policy or contract at least for the period of such total disability or for 90 days, whichever is less, for expenses for treatment of the condition causing such total disability.

(d) Any applicable extension of benefits must be described in the policies, contracts, and group insurance certificates. The benefits payable during any

period of extension may be subject to the regular benefit limits of the policy or contract.

(e) Any extension of benefits provision under this Section 5 may provide that the extension of benefits are not applicable to any person whose coverage under the group policy or contract being discontinued is replaced by coverage with a succeeding carrier as defined in Section 6 of this article providing substantially equivalent or greater benefits than those provided by the discontinued policy or contract.

(f) For the purposes of this section, the terms "total disability" and "totally disabled" mean (1) with respect to an employee or other primary insured under the policy, the complete inability of the person to perform all of the substantial and material duties and functions of his or her occupation and any other gainful occupation in which such person earns substantially the same compensation earned prior to disability, and (2) with respect to any other person under the policy, confinement as a bed patient in a hospital.

Continuance of Coverage in Situations Involving Replacement of One Carrier's Coverage by Another

Sec. 6. (a) This section applies to determination of the carrier responsible for liability in those instances in which one carrier's plan of benefits replaces a plan of similar benefits of another.

(b) In this section:

(1) "Prior carrier" means an insurer including a group hospital service corporation subject to Chapter 20 of this code, whose coverage has been replaced by a succeeding carrier.

(2) "Prior plan" means the plan of benefits of a prior carrier.

(3) "Succeeding carrier" means an insurer including a group hospital service corporation subject to Chapter 20 of this code that has replaced the coverage of a prior carrier with its coverage.

(4) "Succeeding carrier's plan" means the plan of benefits of the succeeding carrier.

(c) In this section, any reference to an individual who was or was not totally disabled means the individual's status immediately before the date the succeeding carrier's coverage becomes effective.

(d) The prior carrier is liable only to the extent of its accrued liabilities and extensions of benefits, regardless of whether the group policyholder or other entity responsible for making payments or submitting subscription charges to the carrier secures replacement coverage from a new carrier, self-insures, or foregoes the provision of coverage.

(e) Any person covered under the prior plan on its date of discontinuance who is eligible for coverage in accordance with the succeeding carrier's plan of benefits, in respect of classes eligible and actively at work and nonconfinement rules and who elects such

coverage shall be covered under the succeeding carrier's plan on its effective date; provided that any person who would have been covered under the succeeding provisions of this subsection but for the actively at work or nonconfinement rules shall become covered under the succeeding carrier's plan when such person satisfied such actively at work and nonconfinement rules.

(f) When replacing a prior carrier's plan which is not subject to Section 5 of this article, the succeeding carrier's plan, in the case of a type of coverage for which Section 5 of this article requires an extension of benefits for a person who is totally disabled shall provide the lesser of (1) the extension of benefits which would have been required by the prior carrier's plan under Section 5, or (2) the extension of benefits required for the succeeding carrier's plan; provided, any such benefits may be reduced by any benefits actually payable under the prior carrier's plan.

(g) If there is a preexisting conditions limitation, other than a waiting period, included in the succeeding carrier's plan, the level of benefits applicable to preexisting conditions of persons becoming covered in accordance with this subsection by the succeeding carrier's plan and who were covered under the prior plan on the date of discontinuance of the prior plan during the period of time the limitation applies under the succeeding carrier's plan shall be the lesser of:

(1) the benefits of the succeeding carrier's plan determined without application of the preexisting conditions limitation; or

(2) the benefits of the prior plan.

(h) The succeeding carrier, in applying any waiting periods in its plan, shall give credit for the satisfaction or partial satisfaction of same or similar provisions under a prior plan providing similar benefits.

If a determination of the benefits of the prior plan is required by the succeeding carrier, the prior carrier shall, at the succeeding carrier's request, furnish a statement of the benefits available or pertinent information sufficient either to permit verification of the benefits available under the prior plan or to permit the determination of the benefits by the succeeding carrier. For the purposes of this subsection, benefits of the prior plan are determined in accordance with all of the definitions, conditions, and covered expense provisions of the prior plan and not the succeeding carrier's plan. The benefit determination is made as if the prior plan had not been replaced by the succeeding carrier.

[Acts 1981, 67th Leg., p. 2159, ch. 503, § 1, eff. Jan. 1, 1982.]

Art. 3.51-6B. Coordination of Benefits

Text of article as added by Acts 1983, 68th Leg., p. 2188, ch. 406, § 1

Sec. 1. (a) A policy of group accident and health insurance or blanket accident and health insurance

as defined by Sections 1 and 2, Article 3.51-6, Insurance Code, and individual policy of accident and sickness insurance as defined by Section 1(B)(3), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-1, Vernon's Texas Insurance Code), except an individual policy designed to fully integrate with other policies through a variable deductible, or an evidence of coverage as defined by the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), may not be delivered, issued for delivery, or renewed in this state if the terms of the policy or evidence of coverage exclude or reduce the payment of benefits to or on behalf of any insured or enrollee because benefits are also payable or have been paid under a supplemental policy of accident and health insurance that is individually underwritten and individually issued as a hospital confinement indemnity, specified disease or limited benefit plan of coverage.

(b) Subsection (a) of this section applies to such supplemental policies irrespective of the mode or channel of premium payment to the insurer and regardless of any reduction in the premium by virtue of the insured's membership in any organization or of his status as an employee.

Sec. 2. A provision in a group accident and health insurance or blanket accident and health insurance policy, an individual accident and sickness insurance policy, or an evidence of coverage that violates Section 1 of this article is void.

[Acts 1983, 68th Leg., p. 2188, ch. 406, § 1, eff. Sept. 1, 1983.]

For the text of article as added by Acts 1983, 68th Leg., p. 4909, ch. 872, § 1, see art. 3.51-6B, post

Art. 3.51-6B. Multiple Employer Trusts

Text of article as added by Acts 1983, 68th Leg., p. 4909, ch. 872, § 1

(a) Except as otherwise provided in this article, a person or other entity which has contracted to provide indemnification or expense reimbursement in this state to persons domiciled in this state or for risks located in this state, whether as an insurer, administrator, funding mechanism, or by any other method, for any type of medical expenses including, but not limited to surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether this coverage is by direct payment, reimbursement, or otherwise, is presumed to be and is subject to the jurisdiction of the State Board of Insurance with respect to that activity.

In addition, such person or entity is subject to review by the commissioner of insurance for the purpose of determining whether the same is subject

to the jurisdiction of the State Board of Insurance. A review shall include the trust agreement, articles of association, bylaws, minutes of membership or directors meetings, applications or requests for exemption filed with the United States government the reserving technique or funding mechanism as respects the benefits or programs offered through such person or entity, and the claim settlement practices and history of such person or entity. In reviewing the reserving or funding technique of such person or entity, the commissioner shall apply the reserving requirements for an insurer licensed pursuant to Chapter 3 of the Texas Insurance Code offering similar benefits.

(b) A person or entity may establish that it is subject to the exclusive jurisdiction of the United States by providing to the State Board of Insurance a certificate, license, or other official authorization issued by the United States agency that permits or qualifies such person or entity to provide those services for which it is licensed or certificated and the State Board of Insurance may not exercise jurisdiction. If a person or entity is unable to provide the certificate or license or other official authorization required by this section to establish it is subject to the exclusive jurisdiction of the United States because the same is not available from the United States agency, it may file with the commissioner of insurance a certified copy of all application papers it filed with said agency and if such application, plan, or other paper is valid on its face, the commissioner of insurance may not exercise jurisdiction under this article unless after a review of all relevant matters, including those enumerated in this section, the commissioner determines in his opinion that the person or entity is subject to the jurisdiction of the State Board of Insurance or otherwise subject to the insurance laws of this state. In arriving at the determination of jurisdiction specified above, the commissioner shall consider, in addition to any other relevant factors, the following:

(1) is the trustee appointed, subject to termination, and controlled by the administrator or participating employers;

(2) is there a benefit review committee or similar committee;

(3) if there is a benefit review committee or similar committee, is such committee (A) appointed and controlled by the administrator, trustee, or participating employers, and (B) advisory in nature or does it have actual authority to determine the level of funding for benefits;

(4) are rates of premium or contribution substantially controlled by the administrator or are they substantially controlled by the trustee or participating employers;

(5) are claim adjustment and settlement substantially controlled by the administrator, or subject to the authority of the trustee, benefit review committee, or participating employers;

(6) is the dissemination of information, if any, under greater control of the administrator than the trustee and participating employer; and

(7) is the administrator a third party not directly related to the trustee or participating employers or is the administrator related to, representative of, connected with, or a part of the trustee or participating employers.

In any hearing before the board to review the commissioner's determination of jurisdiction, any plan, fund, or program established by an association of employers and meeting the above criteria shall be presumed to be subject to the jurisdiction of the United States.

(c) A person or entity situated outside this state may establish that it is subject to the jurisdiction of the regulatory authority of another state by providing to the State Board of Insurance an appropriate certificate, license, or other official authorization issued by the regulatory authority of another state that permits or qualifies such person or entity to provide the services for which it is licensed or certified, and the commissioner of insurance may not exercise jurisdiction under this article over such plan or trust situated outside this state unless in the discretion of the commissioner it appears the financial condition or claims practices of such plan or trust is such as to render it detrimental to the best interests of the beneficiaries of this state.

(d) Any person or entity aggrieved by the commissioner's exercise of jurisdiction shall have the right to a hearing. The hearing will be before the State Board of Insurance pursuant to Article 1.04(d) of this code. Any person or entity aggrieved by any decision of the State Board of Insurance respecting such hearing may appeal to the District Court of Travis County, Texas, pursuant to Article 1.04(f) of this code; provided an appeal of the board's action shall not operate to stay the board's decision unless the court finds after hearing that a stay would not be injurious to the welfare of the beneficiaries under the plan or trust or to the public generally.

(e) A person or entity which is unable to establish that it is either an entity situated outside this state subject to the insurance regulatory authority of another state, or subject to the exclusive jurisdiction of the United States, or which is otherwise subject to the jurisdiction of the commissioner of insurance under either Section (b) or (c) of this article is subject to examination by the State Board of Insurance, under Articles 1.15, 1.16, 1.17, 1.18, and 1.19 of this code, to suits and prosecutions under Article 1.19 of this code, and to all other provisions of this code applicable to persons or entities of the same type which are subject to the jurisdiction of the State Board of Insurance.

(f) The State Board of Insurance shall prepare and maintain for public inspection a list of those

persons or entities described in Section (a) of this article not subject to either the insurance regulatory authority of another state or the exclusive jurisdiction of the United States which the board has determined to be under its jurisdiction.

(g) This article shall not be construed to and does not limit the State Board of Insurance or the State of Texas to any remedy or action available under any law respecting any entity specified in this article including, but not limited to Articles 1.14, 1.14-1, 1.19, 21.28 and 21.28-A of this code. It is the sense of the legislature that the State Board of Insurance and the State of Texas be able to choose at any time any remedy or action available under any law respecting the subject matter of this article without regard to prior proceedings under this article. This article does not limit any person, entity, plan, fund, or program from the application of any law of this state which is otherwise applicable. The exercise of jurisdiction by the commissioner of insurance under this article shall not be construed to cause a person or entity not otherwise subject to Article 21.28-C, 21.28-D or 21.28-E of this code to become a member insurer under said articles.

(h) This article does not apply to a plan, fund, or program which was heretofore or is hereafter established and maintained by a single employer for its employees to the extent that such plan, fund, or program was established and is maintained for the purpose of providing for such employees or their dependents the indemnification or expense reimbursement of medical expenses as described in Section (a) of this article or to any self-administered or self-funded employee benefit plan administered by or on behalf of political subdivisions or agencies of this state or under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes). This provision does not relieve any such plan, fund, or program from the application of any other insurance law of this state.

[Acts 1983, 68th Leg., p. 4909, ch. 872, § 1, eff. Aug. 29, 1983.]

For the text of article as added by Acts 1983, 68th Leg., p. 2188, ch. 406, § 1, see art. 3.51-6B, ante

Section 2 of Acts 1983, 68th Leg., p. 2189, ch. 406, § 2, provides: "This Act applies only to policies and evidences of coverage delivered, issued for delivery, or renewed on or after January 1, 1984."

Art. 3.51-7. Payments of Additional Death Benefits for Retired Appointed Officers and Employees of the Teacher Retirement System of Texas, and the Texas Central Education Agency, and the Texas Schools for the Blind and Deaf

(a) This article shall apply only to persons retired as annuitants under the provisions of the Teacher Retirement System of Texas who were immediately

prior to retirement appointed officers or employees of the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf.

(b) There shall be paid from the funds of the Central Education Agency, the Teacher Retirement System of Texas or the Texas Schools for the Blind and Deaf an additional lump-sum death benefit in such amount as, when added to any lump-sum death benefit payable under the provisions of the Teacher Retirement System of Texas, shall equal \$5,000 upon satisfactory proof of the death, occurring on or after September 1, 1977, of any person defined in Part (a) of this article. Each such additional lump-sum death benefit shall be paid from the funds of the agency or school from which such person retired.

(c) Such benefit shall be paid as provided by the laws of descent and distribution unless the retiree has directed in writing that it be paid otherwise.

(d) Such payment shall be made in accordance with rules and regulations established by the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf, and each shall certify to the Comptroller of Public Accounts of Texas and the State Treasurer each month the amounts of all such payments made in the preceding month.

(e) There are hereby authorized to be paid out of the funds of the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf the sums necessary to pay such additional lump-sum death benefits. [Acts 1977, 65th Leg., p. 1272, ch. 494, § 1, eff. June 15, 1977.]

Art. 3.51-8. Continuation of Group Life and Group Accident and Health Insurance During Labor Dispute

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:

(a) If the policyholder is not a trustee or the trustees of a fund established or maintained in whole or in part by the employer, the policy shall provide that the employee's individual contribution shall be the rate in the policy, on the date

cessation of work occurs, applicable to an individual in the class to which the employee belongs as set forth in the policy. If the policy does not provide for a rate applicable to individuals, the policy shall provide that the employee's individual contribution shall be an amount equal to the amount determined by dividing (1) the total monthly premium in effect under the policy at the date of cessation of work by (2) the total number of persons insured under the policy at such date.

(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 union or unions representing the employees for policies referred to in Subdivision (a) above and by the policyholder or the policyholder's agent with respect to policies referred to in Subdivision (b) above.

(d) The policy may provide that the continuation of insurance on each employee is contingent upon timely payment of contributions by the individual and timely payment of the premium by the entity responsible for collecting the individual contributions.

(e) The policy may provide that each individual premium rate shall be increased by any amount up to 20 percent, or any higher percent which may be approved by the commissioner, of that otherwise shown in the policy during the period of cessation of work in order to provide sufficient compensation to the insurer to cover increased administrative costs and increased mortality and morbidity. If the policy does provide for such an increase, this shall have the effect of increasing the employee's contribution by a like percent.

(f) Nothing in this article shall be deemed to limit any right which the insurer may have in accordance with the terms of the policy to increase or decrease the premium rates before, during, or after such cessation of work if in fact the insurer would have had the right to increase the premium rate had the cessation of work not occurred. If such a premium rate change is made, it shall be effective, notwithstanding any other provisions of this article, on such date as the insurer shall determine in accordance with the terms of the policy.

(g) The policy may contain such other provisions with respect to such continuation of insurance as the Commissioner of Insurance may approve.

(h) The policy may provide that, if a premium is unpaid at the date of cessation of work and such premium became due prior to such cessation of work, the continuation of insurance is contingent upon payment of such premium prior to the date the next premium becomes due under the terms of the policy.

(i) Nothing herein shall be deemed to require the continuation of any loss of time payments included in any such group accident and health insurance policy, nor of any other coverages beyond the time that 75 percent of the employees continue such coverage or as to any individual employee beyond the time that he takes full-time employment with another employer; nor shall anything herein be deemed to require continuation of coverage more than six months after the cessation of work.

[Acts 1977, 65th Leg., p. 1948, ch. 774, § 1, eff. Aug. 29, 1977. Renumbered from art. 3.51-7 by Acts 1981, 67th Leg., p. 201, ch. 94, § 4, eff. Aug. 31, 1981.]

Art. 3.51-9. Availability of Alcohol and Other Drug Dependency Coverage

Purpose

Sec. 1. The purpose of this Act is to encourage consumers to avail themselves of basic levels of benefits provided by group health insurance policies, contracts, and coverage provided by health maintenance organizations for the care and treatment of alcohol and other drug dependency and to preserve the right of the consumer to select such coverage according to his medical-economic needs.

Availability of Coverage for Alcohol and Other Drug Dependency

Sec. 2. Insurers, nonprofit hospital and medical service plan corporations subject to Chapter 20 of this code, and health maintenance organizations transacting health insurance or providing other health coverage in this state shall offer and make available, under group policies, contracts, and plans providing hospital and medical coverage on an expense incurred, service or prepaid basis, benefits for the necessary care and treatment of alcohol and other drug dependency that are not less favorable than for physical illness generally, subject to the same durational limits, dollar limits, deductibles, and coinsurance factors. Such offer of benefits shall be subject to the right of the group policy or contract holder to reject the coverage or to select any alternative level of benefits if such right is offered by or negotiated with such insurer, service plan corporation, or health maintenance organization.

Any benefits so provided shall be determined as if necessary care and treatment in an alcohol or other drug dependency treatment center were care and treatment in a hospital. For purposes of this Act,

the term "alcohol or other drug dependency treatment center" means a facility which provides a program for the treatment of alcohol or other drug dependency pursuant to a written treatment plan approved and monitored by a physician and which facility is also (1) affiliated with a hospital under a contractual agreement with an established system for patient referral, or (2) accredited as such a facility by the Joint Commission on Accreditation of Hospitals, or (3) licensed as an alcohol treatment program by the Texas Commission on Alcoholism, or (4) certified as a drug dependency treatment program by the Texas Department of Community Affairs in accordance with such standards, if any, as may be adopted pursuant to Subsection (c) of Section 5.12 of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), by the Executive Director of the Texas Department of Community Affairs, or (5) licensed, certified, or approved as an alcohol or other drug dependency treatment program or center by any other state agency having legal authority to so license, certify, or approve.

Applicability and Effective Date

Sec. 3. This Act applies to group policies or contracts or coverage provided by health maintenance organizations delivered or issued for delivery or renewed, extended, or amended in this state on or after January 1, 1982, or upon the expiration of a collective bargaining agreement applicable to a particular policyholder, whichever is later; provided that this Act does not apply to blanket, short-term travel, accident only, limited or specified disease, individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act,¹ known as Medicare, or any other similar coverage under state or federal governmental plans. With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this Act, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act and other provisions of the Texas Insurance Code.

[Acts 1981, 67th Leg., 1st C.S., p. 63, ch. 7, § 1, eff. Nov. 10, 1981.]

¹ 42 U.S.C.A. § 1395 et seq.

Art. 3.52. Industrial Life Insurance

Definitions

Sec. 1. For the purposes of this article, industrial life insurance shall mean that form of life insurance either

(a) under which the premiums are payable weekly, or

(b) under which the premiums are payable monthly or oftener, but less often than weekly, if the face amount of insurance provided in the policy is not more than One Thousand (\$1,000.00) Dollars; provided that in either case the words "Industrial Policy" are printed on the face of the policy as part of the descriptive matter thereof. When an industrial life insurance policy is issued providing for accident and health benefits, in addition to natural death benefits, the provisions of this article shall apply only to the life insurance benefits provided in the policy, except as hereinafter otherwise specifically provided.

Required Policy Provisions

Sec. 2. No policy of industrial life insurance shall be delivered or issued for delivery in this State, unless the same shall contain in substance the following provisions:

(a) A provision that the insured is entitled to a stated period of grace of at least four (4) weeks within which the payment of any premium after the first may be made. During such period of grace the policy shall continue in full force, but in case the policy becomes a claim during the grace period, before the overdue premiums are paid, the amount of overdue premiums may be deducted in any settlement under the policy.

(b) A provision that the policy shall constitute the entire contract between the parties, but if the insurer desires to make the application a part of the contract it may do so, provided a copy of such application shall be endorsed upon or attached to the policy when issued, and in such case the policy shall contain a provision that the policy and the application therefor shall constitute the entire contract between the parties. The policy shall also contain a provision that all statements made by the insured or on his behalf shall in the absence of fraud be deemed representations and not warranties.

(c) A provision that the policy 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 except for violation of the conditions of the policy, if any, relating to naval or military service in time of war, and except as to provisions and conditions granting or relating to benefits in the event of total or permanent disability as defined in the policy, and those granting or relating to additional insurance specifically against death by accident or by accidental means, or to additional insurance against loss of, or loss of use of, specific members of the body.

(d) A provision that if the age of the insured has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age.

(e) Provisions for non-forfeiture benefits in event of default in premium payments and for cash surrender values in accordance with the provisions of subsections (e), (f) and (g) of this Section 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. Policies issued prior to the operative date of Article 3.44a shall contain a provision substantially as follows: a provision that in event of default in premium payments after premiums shall have been paid for three (3) full years there shall be available a stipulated form of insurance effective from the due date of the defaulted premium; and in event of default in premium payments after premiums shall have been paid for five (5) full years there shall be available, in lieu of the stipulated form of insurance, at the option of the insured, a specified cash surrender value. The net value of the stipulated form of insurance, and the specified cash surrender value, shall not be less than the reserve on the policy at the end of the last completed quarter of the policy year for which premiums shall have been paid, including the reserve for any paid-up additions thereto and the amount of any dividends standing to the credit of the policy, and excluding any reserve on total and permanent disability, as defined in the policy, and additional accidental death benefits, less a sum of not more than:

(1) Two and one-half per cent (2½%) of the maximum amount insured by the policy and dividend additions thereto, if any, when the issue age is under ten (10) years;

(2) Two and one-half per cent (2½%) of the current amount insured by the policy and dividend additions thereto, if any, when the issue age is ten (10) years or older; and less any existing indebtedness to the insurer on or secured by the policy.

If the mortality table adopted for computing such reserve is the 1941 Standard Industrial Mortality Table or the 1941 Sub-standard Industrial Mortality Table, then in calculating the value of the 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 the table used. If the mortality table adopted for computing such reserve is the Commissioners 1961 Standard Industrial 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 1961 Industrial Extended Term Insurance Table, or, in the case of sub-standard policies, such other table of mortality as may be specified by the company and approved by the State Board

of Insurance. The policy shall state 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.

The policy may be surrendered to the insurer at its home office within the period of grace after the due date of the defaulted premium for the specified cash surrender value, provided that the insurer may defer payment for not more than six (6) months after the application therefor is made. In the event that application, which must be in writing, for a stipulated form of insurance or the specified cash surrender value when the same are available, is not made within the grace period, it shall be provided that a stipulated form of insurance shall automatically become effective.

(f) In the case of policies issued prior to the operative date of Article 3.44a, a provision specifying the mortality table, rate of interest, and method of valuation if other than net level premium, adopted for computing the life insurance reserves on the contract.

(g) In the case of policies issued prior to the operative date of Article 3.44a, a table showing in figures the non-forfeiture options available under the policy at the end of each year upon default in premium payments during the premium paying period, but not to exceed the first twenty (20) years of the policy. Such table is to begin with the year in which such values become available. At the expiration of the period for which such values are shown in the policy, the insurer will furnish upon request an extension of such table.

(h) A provision that the policy may be reinstated within one (1) year, or, at the option of the insurer, within fifty-two (52) weeks from the date of default in payment of premiums, unless the cash surrender value has been paid or the period of extended insurance has expired, upon payment of all overdue premiums, the payment or reinstatement of any other indebtedness due to the insurer upon said policy, and upon the presentation of evidence of insurability satisfactory to the insurer. The overdue premiums may, at the option of the insurer, be subject to interest at a rate not exceeding six (6%) per cent per annum as may be specified in the policy.

(i) A provision that when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of, at the insurer's home office, or not later than two (2) months after such receipt of, proof of death satisfactory to the insurer and the right of the claimant to the proceeds.

(j) A title on the face of the policy briefly describing its form.

(k) In the case of an insurer issuing participat- ing policies in this State, a provision that the

insurer shall annually ascertain and apportion any divisible surplus accruing on the policy.

(1) A provision that no agent shall have the power or authority to waive, change, or alter any of the terms or conditions of any application or any policy delivered or issued for delivery pursuant to the terms of this Article.

Any of the provisions of Section 2, or portions thereof, not applicable to nonparticipating or term policies shall, to that extent, not be incorporated therein.

The provisions of Section 2 shall not apply to policies issued or granted pursuant to the nonforfeiture provisions prescribed in clause (e) of said Section, nor shall clauses (e) and (g) of said Section be required in term insurances of twenty (20) years or less.

Application to Existing Policies

Sec. 3. Any policy of industrial life insurance delivered or issued for delivery in this State prior to March 29, 1941, and pursuant to the provisions of Article 3.43, and upon which premiums have been paid for three (3) full years, which does not by its terms secure, upon default in payments of premiums, to the insured or beneficiary thereof, a stipulated form of insurance, shall nevertheless entitle such insured or beneficiary to either extended or paid-up insurance, the net value of which shall be determined as is provided in clause (e) of Section 2 of this article, providing such insured or beneficiary elects and notifies the home office of the insurer in writing, prior to the expiration of the period of extended insurance, which of said two (2) forms he has elected to take; and any such insured or beneficiary failing to elect and notify the insurer in writing of such election within such time shall be deemed to have elected extended insurance.

Authorized Provisions

Sec. 4. In addition to the provisions required by Section 2, any policy of industrial life insurance delivered or issued for delivery in this State may contain, in substance, the following provisions, in addition to any other provision or provisions not elsewhere prohibited by this Article:

(a) A provision excluding liability or promising a benefit less than the full amount payable as a death benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations.

(b) A provision limiting the maximum amount payable on the death of an infant under fifteen (15) years of age.

Prohibited Provisions

Sec. 5. No industrial life insurance policy delivered or issued for delivery in the State of Texas shall contain any provision which (a) limits 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; (b) except as otherwise provided herein, provides for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions thereto, if any, less any indebtedness to the insurer on the policy, and less any premium that may, by the terms of the policy, be deducted, and provided also that this provision shall not prevent an additional accidental death benefit being limited so as not to be payable in event of death from certain causes of accidents; and further providing 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 Chapter 3 of this code.

Approval of Policy, Rider, Endorsement, Etc., By Board of Insurance Commissioners

Sec. 6. No insurance company transacting business in this State shall hereafter deliver or issue for delivery in this State any policy of industrial life insurance, or any policy of industrial life insurance providing for accident and health benefits in addition to natural death benefits, or attach to, or print or stamp upon such policy, any rider, or endorsement, until the form of such policy, rider, or endorsement has been submitted to and approved by the Board of Insurance Commissioners of the State of Texas. It shall be the duty of the Board of Insurance Commissioners to disapprove any such policy, rider, or endorsement if it violates any of the provisions of this article, and to give written notice to the insurer of such disapproval in which notice the Board shall specify the particulars in respect to which the policy, rider, or endorsement violates the provisions of this article. If the Board of Insurance Commissioners shall disapprove any such policy, rider, or endorsement, the insurer may, within ninety (90) days after the mailing of the written notice of such disapproval by the Board, institute proceedings in the District Court of Travis County, Texas, to review the action of the Board thereon.

Associations Excepted

Sec. 7. This article shall not apply to local mutual aid associations or state-wide mutual life, health, and accident companies and burial associations operating under Chapter 14 of this code, but this article and no other shall apply to and govern the form and content of industrial life insurance policies as they are defined herein, issued by all other insurance companies.

Certain Non-Profit Organizations Excepted

Sec. 8. Nothing contained in this article shall be so construed as to affect or apply to orders, societies, associations, or labor organizations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business, and who do not operate for profit; nor shall this article apply to the ladies societies or ladies auxiliaries to such orders, societies, associations, or labor organizations, nor to fraternal orders, associations, and societies.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1963, 58th Leg., p. 1117, ch. 434, § 9; Acts 1963, 58th Leg., p. 1307, ch. 498, § 2.]

Art. 3.53. Credit Life Insurance and Credit Accident and Health Insurance**Purpose**

Sec. 1. The purpose of this Act is to promote the public welfare by regulating credit life insurance and credit accident and health insurance. Nothing in this Act is intended to prohibit or discourage reasonable competition. The provisions of this Act shall be liberally construed.

Scope and Definitions**Sec. 2. A. Citation and Scope.**

(1) This Act may be cited as "The Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance."

(2) All life insurance and all accident and health insurance sold in connection with loans or other credit transactions of less than five (5) years duration, the premium for which is charged to or paid for in whole or in part either directly or indirectly by the debtor, shall be subject to the provisions of this Act, regardless of the nature, type or plan of the credit insurance coverage or premium payment system, except where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

B. Definitions.

For the purpose of this Act:

(1) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(2) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;

(3) "Creditor" means the lender of money or vendor or lessor of goods, services, or property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title or interest of any such

lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer or employee of any of them or any other person in anyway associated with any of them;

(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction;

(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction;

(6) "Commissioner" means The Commissioner of Insurance;

(7) "State Board of Insurance" means the three (3) member State Board of Insurance.

Forms of Credit Life Insurance and Credit Accident and Health Insurance

Sec. 3. Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

A. Individual policies of life insurance issued to debtors on the term plan;

B. Individual policies of accident and health insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;

C. Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

D. Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage.

Amount of Credit Life Insurance and Credit Accident and Health Insurance**Sec. 4. A. Credit Life Insurance.**

(1) The initial amount of credit life insurance on any debtor shall not exceed the total amount repayable under the contract of indebtedness and, where an 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.

B. Credit Accident and Health Insurance.

The total amount of indemnity payable by credit accident and health insurance in the event of disability as defined in the policy on any debtor, shall not exceed the total amount repayable under the contract of indebtedness and the amount of each periodic indemnity payment shall not exceed the scheduled periodic installment payment on the indebtedness.

Term of Credit Life Insurance and Credit Accident and Health Insurance

Sec. 5. The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy or the date of enrollment for coverage under the group policy, whichever is later. Where evidence of insurability is required and such evidence is furnished more than thirty (30) days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen (15) days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in Section 8.

Provisions of Policies and Certificates of Insurance; Disclosure to Debtors

Sec. 6. A. All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

B. Each individual policy or group certificate of credit life insurance, and/or credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor and, in the case of a certificate under a group policy, the identity by name or otherwise of the person or persons insured, the full amount of premium or the total identifiable insurance charge, if any, to the debtor, separately for credit life insurance and credit accident and health insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations and restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

C. Said individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as hereinafter provided.

D. If said individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the full amount of premium or the total identifiable insurance charge, if any, to the debtor, separately for credit life insurance and credit accident and health insurance, the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument or agreement, unless the information required by this Subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within forty-five (45) days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in Section 5.

E. If the named insurer does not accept the risk, then and in such event the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund shall be made.

Filing, Approval and Withdrawal of Forms

Sec. 7. A. All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders delivered or issued for delivery in this State and the schedules of premium rates pertaining thereto shall be filed with the Commissioner.

B. The Commissioner shall within sixty (60) days after the filing of any such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the benefits provided therein are not reasonable in relation to the premium charge, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the coverage, or are contrary to any provision of the Insurance Code or of any rule or regulation promulgated hereunder.

C. If the Commissioner notifies the insurer that the form is disapproved, it is unlawful thereafter for such insurer to issue or use such form. In such notice, the Commissioner shall specify the reason for his disapproval and state that a hearing will be granted within twenty (20) days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement or rider, shall be issued or used until the expiration of sixty (60) days after it has been so filed, unless the Commissioner shall give his prior written approval thereto.

D. The Commissioner may, at any time after a hearing held not less than twenty (20) days after written notice to the insurer, withdraw his approval of any such form on any ground set forth in Subsection B above. The written notice of such hearing shall state the reason for the proposed withdrawal.

E. It shall not be lawful for the insurer to issue such forms or use them after the effective date of such withdrawal.

F. If a group policy of credit life insurance or credit accident and health insurance

(i) has been delivered in this State before the effective date of this Act, or

(ii) has been or is delivered in another State before or after the effective date of this Act, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in Subsection B of Section 6 of this Act and such certificate shall be approved by the Commissioner if it conforms with the requirements specified in said Subsection and if the schedule of premium rates applicable to the insurance evidenced by such certificate or notice is not in excess of the presumptive premium rate established by the Board.

G. Any order or final determination of the Commissioner under the provisions of this Section shall be subject to the appeal and review provisions of Article 1.04, Insurance Code of Texas.

Premiums and Refunds

Sec. 8. A. (1) Any insurer may revise its schedules of premium rates from time to time, and shall file such revised schedules with the Commissioner. No insurer shall issue any credit life insurance policy or credit accident and health insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the Commissioner.

(2) The State Board of Insurance may, after notice and hearing, adopt and promulgate a presumptive premium rate which shall be presumed, subject to a rebuttal of such presumption, to be just, reasonable, adequate, and not excessive. Any hearing conducted pursuant to this section shall be held in accordance with the contested case provisions of the Administrative Procedure

and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(3) In determining the presumptive premium rate, the board shall determine reasonable acquisition costs, loss ratio, administrative expenses, loss settlement expenses, and other relevant data. The board may not set a presumptive premium rate that is unjust, unreasonable, inadequate, confiscatory, or excessive to the insurers, the insureds, or agents. The board may not fix or limit the amount of compensation actually paid by a company to an agent. The board may request information from any insurer or agent with respect to compensation paid for the sale of credit insurance and it is the duty of each insurer or agent to provide such information to the board in a timely manner.

(4) Any person aggrieved by the action of the board in the setting of a presumptive rate or any other action taken with regard to the setting of such presumptive rate may, within 30 days from the date the board took the action complained of, file a suit in a district court of Travis County to review the action. Such cases shall be tried de novo in the district court and shall be governed by the same rules of procedure and evidence as in other civil cases in such courts. The court may enter an order setting aside or affirming the action of the board.

Text of B as amended by Acts 1981, 67th Leg., p. 2110, ch. 493, § 2

B. Each individual policy, or group policy and group certificate shall provide that in the event of termination of the indebtedness or the insurance prior to the schedule maturity date of the indebtedness, any refund of an amount paid by or charged to the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided, however, no refund need be made if the amount thereof is less than Five Dollars (\$5). The formula to be used in computing such refund shall be filed with and approved by the Commissioner.

Text of B as amended by Acts 1981, 67th Leg., p. 3227, ch. 849, § 2

B. Each individual policy, or group policy and group certificate shall provide that in the event of termination of the indebtedness or the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by or charged to the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided, however, no refund need be made if the amount thereof is less than Three Dollars (\$3). The formula to be used in computing such refund shall be filed with and approved by the Commissioner.

C. If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or

group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

D. The amount charged to a debtor by the creditor for any credit life or credit accident and health insurance issued to the debtor shall not exceed the actual premium charged the creditor by the insurer for such insurance, as computed at the time the charge to the debtor is determined.

Issuance of Policies

Sec. 9. All policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses issued by the Commissioner. The premium or cost of such insurance allowed herein shall not be deemed interest, or charges, or consideration, or an amount in excess of permitted charges in connection with the loan or other credit transaction, and any benefit or return or other gain or advantage to the creditor arising out of the sale or provision of such insurance shall not be deemed a violation of any law, General or Special, of the State of Texas.

Claims

Sec. 10. A. All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

B. All claims shall be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.

C. No plan or arrangement shall be used whereby any person, firm or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in settling or adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

Existing Insurance—Choice of Insurer

Sec. 11. When credit life insurance or credit accident and health insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the

required coverage through any insurer authorized to transact an insurance business within this State.

Enforcement

Sec. 12. The State Board of Insurance may, after notice and hearing, issue such rules and regulations as it deems appropriate for the supervision of this Act. Whenever the Commissioner finds that there has been a violation of this Act or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the Commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the Commissioner on the date specified unless sooner withdrawn by the Commissioner or a review thereof and appeal therefrom has been taken to the State Board of Insurance or the Courts under Article 1.04, Insurance Code of Texas. The provisions of Sections 5, 6, 7 and 8 of this Act shall not be operative until ninety (90) days after the effective date of this Act, and the Commissioner in his discretion may extend by not more than an additional ninety (90) days the initial period within which the provisions of said Sections shall not be operative.

Judicial Review

Sec. 13. Any party to any proceeding affected by an order of the Commissioner or the State Board of Insurance shall be entitled to judicial review by following the procedure set forth in Article 1.04, Insurance Code of Texas.

Penalties

Sec. 14. In addition to any other penalty provided by law, any person, firm or corporation which violates an order of the Commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of Texas a sum not to exceed Two Hundred and Fifty Dollars (\$250) which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed One Thousand Dollars (\$1,000). The Commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm or corporation guilty of such violation. Such order for suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review as provided in Section 13 of this Act.

[Acts 1951, 52nd Leg., ch. 491. Amended by Acts 1963, 58th Leg., p. 981, ch. 405, eff. Aug. 23, 1963; Acts 1981, 67th Leg., p. 2109, ch. 493, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3227, ch. 849, §§ 1, 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 4013, ch. 625, § 1, eff. June 19, 1983.]

Section 2 of the 1963 amendatory act provided:

"Sec. 2. Saving Clause. The provisions of this Act shall be cumulative of, supplemental and in addition to the provisions of

Senate Bill 15, as passed by the Fifty-eighth Legislature, Regular Session, 1963, entitled 'Texas Regulatory Loan Act,' and the provisions of this Act shall not in any manner repeal, amend or modify said Senate Bill 15, nor shall it be so construed, but to the contrary, this Act shall be so construed as to be consistent with the provisions of said Senate Bill 15.

"Further, the provisions of this Act shall not repeal or broaden the provisions of Article 3.50, Texas Insurance Code, as amended, and the provisions of such Article 3.50 shall remain in full force and effect after the effective date hereof, but all credit insurance written under the authority of said Article 3.50 shall be subject to the provisions of this Act after the effective date hereof."

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

Art. 3.54. Limitation of Business

It shall be unlawful for any insurance company incorporated or licensed under the provisions of this chapter to take any kind of risks or issue any policies of insurance, except those of life, accident or health or those risks reinsured under Article 5.75-3 of this code; nor shall the business of life insurance in this State be in anywise conducted or transacted by any company which, in this or any other State or country, is engaged or concerned in writing any kinds of insurance other than life, health and accident insurance or reinsurance under Article 5.75-3 of this code by a domestic company as defined in Section 5 of Article 3.01 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 154, ch. 42, § 2, eff. Aug. 29, 1983.]

Art. 3.55. Board May Revoke Certificate

If any such insurance company, while holding a certificate of authority to transact business in this State, shall fail or refuse to comply with any of the provisions or requirements of this chapter, the Board of Insurance Commissioners upon ascertaining such fact, shall notify such company by actual notice in writing delivered to an executive officer of such company, of its intention to revoke its certificate of authority to transact business in this State at the expiration of thirty (30) days after the mailing of such registered letter, or the date upon which such actual notice is served. If such provisions or requirements are not fully complied with upon the expiration of said thirty (30) days, it shall be the duty of said Board to revoke the certificate of authority of such company. In case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one (1) year, and until it shall have fully and in good faith complied with all such provisions and requirements of this chapter. Any company feeling itself aggrieved by the action of the Board in revoking its certificate of authority to do business in this State may bring suit against said Board in Travis County to annul and vacate the order revoking such certificate.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.55-1. Hazardous Financial Condition

(1) Whenever the financial condition of any company transacting the kinds of business authorized in this Chapter, when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the company 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 continued operation of the company might be hazardous to its policyholders, creditors or the general public, then the Commissioner of Insurance may, after notice and hearing, order the company 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:

(a) to reduce the total amount of present and potential liability for policy benefits by reinsurance;

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

(c) to reduce general insurance and commission expenses by specified methods;

(d) to suspend or limit the writing of new business for a period of time; or

(e) to increase the company's capital and surplus by contribution.

(2) 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 policyholders, creditors, or the general public, and to fix standards for evaluating the financial condition of any company transacting the kinds of business authorized in this Chapter, which standards shall be consistent with the purposes expressed in paragraph (1) of this Article.

(3) The Commissioner of Insurance is authorized to enter into arrangements or agreements with the insurance regulatory authorities of other jurisdictions concerning the management, volume of business, type of risks to be insured, expenses of operation, plans for reinsurance, rehabilitation or reorganization, and method of operations of an insurance company that is licensed in such other jurisdictions and that is deemed to be in a hazardous financial condition or needful of specific remedies which may be imposed by the Commissioner of Insurance and insurance regulatory authorities of such other jurisdictions.

(4) The authority granted by the provisions of this article is in addition to other provisions of law and not in substitution, restriction or diminution thereof.

[Acts 1973, 63rd Leg., p. 1384, ch. 533, § 2, eff. Aug. 27, 1973.]

Art. 3.56. Failure to Report or Invest

If any such company shall intentionally fail or refuse to make the investments required by this chapter, or make any report required by this chapter, or to make any special report requested by the Board of Insurance Commissioners under authority of this chapter, or generally to comply with any provision or requirements of this chapter, while holding a certificate of authority to transact business in this State, or after it shall cease to write new business or cease to hold such certificate, such failure or refusal shall subject such company, in addition to the penalty provided in the preceding article, in cases to which said article may be applicable, to the payment of a penalty of Twenty-five (\$25.00) Dollars per day for each day that such company shall remain in default after the Board shall notify such company of such default, in the manner provided in the preceding article, to be recovered in a suit that may be brought by the Attorney General in behalf of the State in the District Court of Travis County. In any suit brought to recover such penalty, there shall be a prima facie presumption subject to rebuttal, that any default that may have occurred was intentional; that the notice required by this chapter was given, and the burden of proof shall be on the defendant company to prove that the investments required by this chapter were made as herein required whenever the question of whether or not such investments were thus made is in issue.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.56-1. False Statement by Officer of Foreign Company

Any officer of any insurance company not organized under the laws of this State, who shall file with the Commissioner of Insurance any statement, report or other paper required or provided for by law to be so filed, which shall contain any material statement or fact known to be false by the person filing the same, or any person who shall execute or cause to be executed any such false statement, report or other paper to be so filed, shall be imprisoned in the penitentiary for a term of not less than one year.

[1925 P.C.]

Art. 3.57. Must Have Certificate of Authority

No foreign or domestic 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. 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.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Repeal

This article was repealed, to the extent that it requires periodic renewal of certificates, by Acts 1959, 56th Leg., p. 434, ch. 194, § 2.

Art. 3.58. Failure to Renew Certificate

Any company which shall fail to renew its certificate of authority or continue to write new business in this State, shall, nevertheless, have the right to maintain agents in Texas for the purpose of collecting renewal premiums on outstanding business written by it under certificate of authority, and also for the purpose of making investments as provided by this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.59. Companies Renewing Business

Any life insurance company which has heretofore been, may now be, or may hereafter be, engaged in writing policies of insurance upon the lives of citizens of this State, which has heretofore ceased, or may hereafter cease writing such policies, and which does not now or may not hereafter have a certificate of authority to transact the business of life insurance in this State, but which has continued or may continue to collect renewal or other premiums upon such policies, shall, before it may again obtain a certificate of authority to transact the business of life insurance in this State, report under oath to the Board of Insurance Commissioners the gross amount of premiums so collected from citizens of this State upon policies of insurance during each calendar year since the end of the period covered by the last preceding report by such company of gross premium receipts upon which it paid an occupation tax, and shall pay to the State a sum equal to the percentage of its gross premium receipts for each such year that was required by law to be paid as occupation taxes by companies doing business in this State, during such year or years; and, upon the payment of such sum and securing a certificate of authority to do business in this State, the penalties provided for the failure to pay such taxes and make such report in the past shall be remitted.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.60. Impairment of Capital Stock

Any such insurance company transacting business within this State, whose capital stock shall become impaired to the extent of thirty-three and one-third (33⅓%) per cent thereof, computing its liabilities in the manner provided by the laws of this

State, shall make good such impairment within sixty (60) days by reduction of its capital stock (provided such capital stock shall in no case be less than the minimum amount required of such company by law), and failing to make good such impairment within said time shall forfeit its right to write new business in this State until said impairment shall have been made good. The Board of Insurance Commissioners may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty (50%) per cent thereof, computing its reserve liability in the manner provided by the laws of this State for the computation of such reserve liability. No company shall write new business unless it is possessed of the minimum capital required by this Chapter 3, except to the extent it may be otherwise expressly authorized by this Code to do so.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 14.]

Art. 3.61. Certificate Null and Void; When

If any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company fails to pay off and satisfy any execution that may lawfully issue on any final judgment against said company within thirty (30) days after the officer holding such execution has demanded payment thereof from any officer or attorney of record of such company, in this State, or out of it, such officer shall immediately certify such demand and failure to the Board of Insurance Commissioners; and thereupon the Board shall forthwith declare null and void the certificate of authority of such company; and such company shall be prohibited from transacting any business in this State until such execution shall be fully satisfied and discharged, and until such Board shall renew its certificate of authority to such company.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.62. Delay in Payment of Losses; Penalty For

In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve (12%) per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss. Such attorney fee shall be taxed as a part of the costs in the case. The Court in fixing such fees shall take into consideration all benefits to

the insured incident to the prosecution of the suit, accrued and to accrue on account of such policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.62-1. Delay in Payment of Losses on Policies Issued by Casualty and Other Companies; Penalty

In all cases where a loss occurs and the general casualty company, state-wide mutual assessment associations, local mutual aid associations, mutual casualty company, Lloyds organization, reciprocal exchange, liable therefor under a life, health, or accident policy issued by any such insurer shall fail to pay the same within sixty (60) days after filing written proof of loss thereof, such insurer shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve percent (12%) damages on the amount of such loss, together with reasonable attorneys fees for the prosecution and collection of such loss. Such attorneys fees shall be taxed as a part of the costs in the case. The court in fixing such fees shall take into consideration all benefits to the insured incident to the prosecution of the suit, accrued and to accrue on account of such policy.

Provided, however, where for any reason the holder of said policy is unable to furnish the insurer a certified copy of the death certificate of the insured within the sixty (60) day period, then the provisions of this Act relating to attorneys fees shall not apply.

[Acts 1957, 55th Leg., p. 1161, ch. 387, § 1. Amended by Acts 1961, 57th Leg., p. 862, ch. 381, § 1.]

Article 3.62-1 was not enacted as part of the Insurance Code of 1951.

Art. 3.63. To Sue and Be Sued

Actions may be maintained by a company organized under the laws of this State against any of its policyholders, stockholders, or other person for any cause relating to the business of such company. Suits may also be prosecuted and maintained by any policyholder or his heirs or his legal representatives against the company for losses which accrue on any policy. No action shall be brought or maintained by any person other than the Board of Insurance Commissioners for the enjoining, restraining or interfering with the prosecution of the business of the company.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.64. Service of Process on Domestic Companies

Process in any civil suit against any "domestic" company, may be served only on the president, or any active vice president, or secretary, or general counsel residing at the city of the home office of the

company, or by leaving a copy of same at the home office of such company during business hours.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.65. Shall File Power of Attorney

Each "foreign company" engaged in doing or desiring to do business in this State shall file with the Board of Insurance Commissioners an irrevocable power of attorney, duly executed, constituting and appointing the Chairman of the Board and his successors in office, or any officer or board which may hereafter be clothed with the powers and duties now devolving upon said Chairman of the Board, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this State, by any person, or by or to or for the use of the State of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service; and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this State or to collect premiums of insurance from citizens of this State, and so long as it shall have outstanding policies in this State, and until all claims of every character held by the citizens of this State, or by the State of Texas, against such company, shall have been settled. Said power of attorney shall be signed by the president or a vice president and the secretary of such company whose signature shall be attested by the seal of the company, and said officer signing the same shall acknowledge its execution before an officer authorized by the laws of this State to take acknowledgments. The said power of attorney shall be embodied in, and approved by, a resolution of the board of directors of such company, and a copy of such resolution, duly certified to by the proper officers of said company, shall be filed with the said power of attorney in the office of the Board, and shall be recorded by it in a book kept for that purpose, there to remain a permanent record of said department.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.66. Chairman's Duty in Accepting Service

Whenever the Chairman of the Board of Insurance Commissioners shall accept service or be served with citation in any suit pending against any "foreign company" in this State, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this State, and if not, then to the home office

of the company, and shall forward the same by registered mail, postage prepaid. No judgment by default shall be taken in any such cause until after the expiration of at least ten (10) days after the general agent or general manager of such company, or the company at its home office, as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or company in due course of mail after being deposited in the mail at Austin, Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.67. Director Not to Do Certain Things

No director or officer of any insurance company transacting business in or organized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan. Nothing in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. Provided, however, that nothing in this article shall prevent any transaction, purchase, sale or loan which is approved by the commissioner of insurance under the provisions of either Article 1.29 or Article 21.49-1 of this code, as amended.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1981, 67th Leg., p. 710, ch. 270, § 1, eff. Aug. 31, 1981.]

Art. 3.67-1. Repealed by Acts 1981, 67th Leg., p. 710, ch. 270, § 2, eff. Aug. 31, 1981

Art. 3.68. No Commissions Paid Officers

No life insurance company transacting business in this State shall pay, or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, actuary, medical director or other physician charged with the duty of examining risks or applications for insurance or to any officer of the company other than an agent or solicitor, any commission or other compensation contingent upon the writing or procuring of any policy of insurance in such company, or procuring an application therefor by any person whomsoever, or contingent upon the payment of any renewal premium, or upon the assumption of any life insurance risk by such company. Should any company violate any provision of this article, it shall be the duty of the Board of Insurance Commissioners to revoke its certificate of authority to transact business in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 3.69. Governed by Other Laws

The laws governing corporations in general shall apply to and govern insurance companies organized

or operating under this Chapter 3 in so far as same are not inconsistent with the provisions of this chapter.

[Acts 1955, 54th Leg., p. 916, ch. 363, § 15.]

SUBCHAPTER G. ACCIDENT AND SICKNESS INSURANCE

Subchapter G, Accident and Sickness Insurance, including Articles 3.70-1 to 3.70-11, was not enacted as part of the Insurance Code of 1951.

Art. 3.70-1. Purpose; Definitions; Scope of Act; Rules and Regulations; Standards for Policy Provisions; Minimum Standards; Outline of Coverage; Pre-Existing Conditions; Administrative Procedures

(A) Purpose. The purpose of this Act shall be to provide for reasonable standardization, readability, and simplification of terms and coverages contained in individual accident and sickness insurance policies; to facilitate public understanding of coverages; to eliminate provisions contained in individual accident and sickness insurance policies which may be unjust, unfair, misleading, or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims; and to provide for full and fair disclosure in the sale of accident and sickness coverages.

(B) Definitions. As used in this Act,

(1) "Board" shall mean the State Board of Insurance of the State of Texas.

(2) "Commissioner" shall mean the Commissioner of Insurance of the State of Texas.

(3) "Policy of accident and sickness insurance" as used herein, includes any policy or contract providing insurance against loss resulting from sickness or from bodily injury or death by accident or both.

(4) "Policy" means the entire contract between the insurer and the insured, including the policy, riders, endorsements, and the application, if attached.

(C) Scope of Act. This Act shall apply to and govern individual accident and sickness insurance policies delivered, or issued for delivery, in the State of Texas by life, health and accident companies, mutual life insurance companies, mutual assessment life insurance companies, mutual insurance companies, local mutual aid associations, mutual or natural premium life or casualty insurance companies, general casualty companies, Lloyds, reciprocal or inter-insurance exchanges, nonprofit hospital, medical, or dental service corporations including but not limited to companies subject to Chapter 20 of this code, as amended, stipulated premium insurance companies, or any other insurer which by law is required to be licensed by the Board; provided,

however, this Act shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the Board and which are entitled by statute to an exemption certificate from the Board in evidence of their exempt status, nor to fraternal benefit societies; nor to credit accident and sickness insurance policies written under Article 3.53 of this code, as amended; provided further, that this Act shall not be construed to enlarge the powers of any of the enumerated companies. Conversion policies issued pursuant to a contractual conversion privilege under a group accident and sickness insurance policy shall not be subject to Subsections (D) through (H) of this article.

(D) Rules and Regulations. The Board is authorized to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article.

(E) Standards for Policy Provisions. (1) The Board shall issue reasonable rules and regulations to establish specific standards including standards for readability of policies and for full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of accident and sickness insurance which shall be in addition to and in accordance with applicable laws of this state which may cover but shall not be limited to:

- (a) terms of renewability;
- (b) initial and subsequent conditions of eligibility;
- (c) nonduplication of coverage provisions;
- (d) coverage of dependents;
- (e) pre-existing conditions;
- (f) termination of insurance;
- (g) probationary periods;
- (h) limitations;
- (i) exceptions;
- (j) reductions;
- (k) elimination periods;
- (l) requirements for replacement;
- (m) recurrent conditions; and

(n) the definition of terms including but not limited to the following: hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable and noncancellable; provided that any definition of hospital so developed shall not be applicable to companies organized under Chapter 20 of this code, as amended.

(2) The Board may issue rules and regulations that specify prohibited policy provisions, not otherwise specifically authorized by statute, which in the opinion of the Board are unjust, unfair, or unfairly discriminatory to the policyholder, any person insured under the policy, or beneficiary.

(F) Minimum Standards for Benefits. (1) The Board shall issue rules and regulations to establish minimum standards for benefits under each of the following categories of coverage in individual policies of accident and sickness insurance:

- (a) basic hospital expense coverage;
- (b) basic medical-surgical expense coverage;
- (c) hospital confinement indemnity coverage;
- (d) major medical expense coverage;
- (e) disability income protection coverage;
- (f) accident only coverage;
- (g) specified disease or specified accident coverage; and
- (h) limited benefit coverage.

(2) Nothing in this section shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in Paragraphs (a) through (h) of Subsection (1) of this section.

(3) No policy shall be issued, or issued for delivery, in the State of Texas which does not meet the prescribed minimum standards for the categories of coverage listed in Paragraphs (a) through (h) of Subsection (1) of this section which are contained within the policy unless the Board finds such policy to be a supplemental policy, a policy experimental in nature or finds such policy will fulfill a reasonable public need and such policy meets the requirements set forth in Article 3.42 of the Insurance Code.

(4) The Board shall prescribe the method of identification of policies based on coverages provided.

(G) Outline of Coverage. (1) In order to provide for full and fair disclosure in the sale of individual accident and sickness insurance policies, no such policy shall be delivered, or issued for delivery, in the State of Texas unless: (i) in the case of a direct response insurance product, the outline of coverage described in Subsection (2) of this section accompanies the policy; (ii) in all other cases, the outline of coverage described in Subsection (2) of this section is delivered to the applicant at the time application is made and an acknowledgement of receipt or certificate of delivery of such outline is provided the insurer with the application. In the event the policy is issued on a basis other than that applied for, the outline of coverage properly describing the policy must accompany the policy when it is delivered and clearly state that it is not the policy for which application was made.

(2) The Board shall prescribe the format and content of the outline of coverage required by Subsection (1) of this section. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) a statement identifying the applicable category or categories of coverage provided by the policy as prescribed in Section (F) of this article;

(b) a description of the principal benefits and coverage provided in the policy;

(c) a statement of the exceptions, reductions, and limitations contained in the policy;

(d) a statement of the renewal provision including any reservation by the insurer of a right to change premiums;

(e) a statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions;

(f) a summary of such provisions required to be in the policy by Section 3, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), as the Board may determine to be necessary to carry out the purposes of this Act.

(g) Any other statements, descriptions, or outlines that the Board may determine to be reasonably necessary to carry out the purposes of this Act.

(H) Pre-existing Conditions. (1) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), if an insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy must cover any loss occurring after 12 months from any pre-existing condition not specifically excluded from coverage by terms of the policy. (2) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), or of Paragraph (1) of this subsection, no individual policy of accident and sickness insurance delivered or issued for delivery in this state to a person age 65 or over may contain a provision excluding from coverage any loss due to a pre-existing condition, not specifically excluded from coverage by name or specific description in an exclusion endorsement or rider effective on the date of the loss, for a period in excess of six months from the effective date of coverage under the policy; provided, however, that if the Board finds that the public interest would be served thereby, it may authorize a policy provision excluding coverage for pre-existing conditions for a period in excess of six months but in no event shall such period exceed one year. (3) Except as so provided, a policy issued under the provisions of this section may not include wording that would permit a defense based on pre-existing conditions.

(I) Administrative Procedures. Rules and regulations promulgated pursuant to this Article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-10, Vernon's Texas Insurance Code).

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 1. Amended by Acts 1975, 64th Leg., p. 2199, ch. 703, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1285, ch. 505, § 1, eff. June 15, 1977.]

Sections 2 and 3 of the 1975 amendatory act amended subsecs. (A) and (B) of art. 3.70-3; § 4 amended art. 3.42; § 5 amended art. 3.70-9; and § 6 thereof provided:

"This Act shall apply to all policies of accident and sickness insurance issued, or issued for delivery, in the State of Texas after June 1, 1976. This Act shall not apply to policies issued, or issued for delivery, in the State of Texas prior to such date."

Art. 3.70-2. Form of Policy; Designation of Practitioners of the Healing Arts; Dependent Children; Impairment of Speech or Hearing

(A) No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

(1) the entire money and other consideration therefor are expressed therein or in the application, if it is made a part of the policy; and

(2) the time at which the insurance takes effect and terminates is expressed therein; and

(3) it purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policy holder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed twenty-five years, and any other person dependent upon the policy holder; and

(4) the style, arrangement and over-all appearance of the policy gives no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers (except copies of applications and identification cards) are plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions); and

(5) the exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in Section 3 of this Act,¹ are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions"; provided that if an

exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and

(6) each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

(7) it contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or shortrate table filed with the Board.

(8) it shall have printed thereon or attached thereto a notice stating in substance that the person to whom the policy is issued shall be permitted to return the policy within ten (10) days of its delivery to such person and to have the premium paid refunded if, after examination of the policy, such person is not satisfied with it for any reason. If such person pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. This subdivision shall not apply to single premium nonrenewable policies.

Text of subsec. (B) as amended by Acts 1983, 68th Leg., p. 2065, ch. 380, § 1

(B) No policy of accident and sickness insurance shall make benefits contingent upon treatment or examination by a particular practitioner or by particular practitioners of the healing arts hereinafter designated unless such policy contains a provision designating the practitioner or practitioners who will be recognized by the insurer and those who will not be recognized by the insurer. Such provision may be located in the "Exceptions" or "Exceptions and Reductions" provisions, or elsewhere in the policy, or by endorsement attached to the policy, at the insurer's option. In designating the practitioners who will and will not be recognized, such provision shall use the following terms: Doctor of Medicine, Doctor of Osteopathy, Doctor of Dentistry, Doctor of Chiropractic, Doctor of Optometry, Doctor of Podiatry, Audiologist, and Speech-language Pathologist. For purposes of this Act, such designations shall have the following meanings:

Doctor of Medicine: One licensed by the Texas State Board of Medical Examiners on the basis of the degree "Doctor of Medicine";

Doctor of Osteopathy: One licensed by the Texas State Board of Medical Examiners on the basis of the degree of "Doctor of Osteopathy";

Doctor of Dentistry: One licensed by the State Board of Dental Examiners;

Doctor of Chiropractic: One licensed by the Texas Board of Chiropractic Examiners;

Doctor of Optometry: One licensed by the Texas State Board of Examiners in Optometry;

Doctor of Podiatry: One licensed by the State Board of Chiropody Examiners;

Audiologist: One with a master's or doctorate degree in audiology from an accredited college or university and who is certified by the American Speech-language and Hearing Association; and

Speech-language Pathologist: One with a master's or doctorate degree in speech pathology or speech-language pathology from an accredited college or university and who is certified by the American Speech-language and Hearing Association.

Text of subsec. (B) as amended by Acts 1983, 68th Leg., p. 2887, ch. 492, § 1

(B) No policy of accident and sickness insurance shall make benefits contingent upon treatment or examination by a particular practitioner or by particular practitioners of the healing arts hereinafter designated unless such policy contains a provision designating the practitioner or practitioners who will be recognized by the insurer and those who will not be recognized by the insurer. Such provision may be located in the "Exceptions" or "Exceptions and Reductions" provisions, or elsewhere in the policy, or by endorsement attached to the policy, at the insurer's option. In designating the practitioners who will and will not be recognized, such provision shall use the following terms: Doctor of Medicine, Doctor of Osteopathy, Doctor of Dentistry, Doctor of Chiropractic, Doctor of Optometry, Doctor of Podiatry, Doctor in Psychology. For purposes of this Act, such designations shall have the following meanings:

Doctor of Medicine: One licensed by the Texas State Board of Medical Examiners on the basis of the degree "Doctor of Medicine";

Doctor of Osteopathy: One licensed by the Texas State Board of Medical Examiners on the basis of the degree of "Doctor of Osteopathy";

Doctor of Dentistry: One licensed by the State Board of Dental Examiners;

Doctor of Chiropractic: One licensed by the Texas Board of Chiropractic Examiners;

Doctor of Optometry: One licensed by the Texas State Board of Examiners in Optometry;

Doctor of Podiatry: One licensed by the State Board of Chiropody Examiners; and

Doctor in Psychology: One licensed by the Texas State Board of Examiners of Psychologists and certified as a Health Service Provider.

(C) Any policy of accident and sickness insurance, including policies issued by companies subject to Chapter 20, Texas Insurance Code, as amended, delivered or issued for delivery in this state, which

provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the insured for support and maintenance. Proof of the incapacity and dependency shall be furnished to the insurer by the insured within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(D) No individual policy or group policy of accident and sickness insurance delivered or issued for delivery to any person in this state which provides coverage for mental illness or mental retardation or both mental illness and mental retardation shall exclude benefits for the support, maintenance and treatment of such mental illness or mental retardation provided by a tax supported institution of the State of Texas, including community centers for mental health and mental retardation services, provided charges for the care or treatment of such mental illness or mental retardation are regularly and customarily charged to non-indigent patients by such tax supported institution. In determining whether or not a patient is a non-indigent patient, as provided in Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), such tax supported institution shall consider any insurance policy (or policies) which provides coverage for mental illness or mental retardation or both mental illness and mental retardation to such patients.

(E) No individual policy or group policy of accident and sickness insurance, including policies issued by companies subject to Chapter 20, Texas Insurance Code, as amended, delivered or issued for delivery to any person in this state which provides for accident and sickness coverage of additional newborn children or maternity benefits, may be issued in this state if it contains any provisions excluding or limiting initial coverage of a newborn infant for a period of time, or limitations or exclusions for congenital defects of a newborn child.

Text of subsec. (F) as added by Acts 1983, 68th Leg., p. 1685, ch. 315, § 1

(F) A group policy of accident and sickness insurance delivered or issued for delivery to a person in this state including a group policy issued by a company subject to Chapter 20 or Chapter 20A, Texas Insurance Code, that provides coverage for treatment of mental or emotional illness or disorder for a person when confined in a hospital must also provide that coverage, which is not less favorable,

shall be applicable for treatment under the direction and continued medical supervision of a doctor of medicine or doctor of osteopathy in a psychiatric day treatment facility that provides organizational structure and individualized treatment plans separate from an in-patient program; subject to the same durational limits, deductibles, and coinsurance factors. Any benefits so provided shall be determined as if necessary care and treatment in a psychiatric day treatment facility were in-patient care and treatment in a hospital, and each full day of treatment in a psychiatric day treatment facility shall be considered equal to one-half of one day of treatment of mental or emotional illness or disorder in a hospital or in-patient program for the purpose of determining policy benefits and benefit maximums. An insurer shall offer and the policyholder shall have the right to reject such coverage for treatment of mental or emotional illness or disorder when confined in a hospital or in a psychiatric day treatment facility or may select an alternative level of benefits thereunder if such coverage is offered by or negotiated with such insurer, service plan corporation or health maintenance organization; provided, however, any such alternative level of benefits shall provide policy benefits and benefit maximums for treatment in psychiatric day treatment facilities equal to at least one half of that provided for treatment in hospital facilities, but not to exceed the usual and customary charge of the psychiatric day treatment facility. Any such policy may require that the treatment must be provided by a day treatment facility that treats a patient for not more than eight hours in any 24-hour period, that the attending physician certifies that such treatment is in lieu of hospitalization, and that the psychiatric treatment facility is accredited by the Program for Psychiatric Facilities, or its successor, of the Joint Commission on Accreditation of Hospitals. For the purpose of this subsection a psychiatric day treatment facility is a mental health facility which provides treatment for individuals suffering from acute, mental and nervous disorders in a structured psychiatric program utilizing individualized treatment plans with specific attainable goals and objectives appropriate both to the patient and the treatment modality of the program and that is clinically supervised by a doctor of medicine who is certified in psychiatry by the American Board of Psychiatry and Neurology.

Text of subsec. (F) as added by Acts 1983, 68th Leg., p. 2065, ch. 380, § 1

(F) Insurers, nonprofit hospital and medical service plan corporation subject to Chapter 20 of this code, and health maintenance organizations transacting health insurance or providing other health coverage in this state shall offer and make available, under group policies, contracts, and plans providing hospital and medical coverage on an expense incurred, service or prepaid basis, benefits for the

necessary care and treatment of loss or impairment of speech or hearing that are not less favorable than for physical illness generally, subject to the same durational limits, dollar limits, deductibles, and coinsurance factors. Such offer of benefits shall be subject to the right of the group policy or contract holder to reject the coverage or to select any alternative level of benefits if such right is offered by or negotiated with such insurer, service plan corporation, or health maintenance organization.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 2. Amended by Acts 1965, 59th Leg., p. 329, ch. 154, § 1, eff. Jan. 1, 1966; Acts 1967, 60th Leg., p. 57, ch. 32, § 1, eff. Jan. 1, 1968; Acts 1971, 62nd Leg., p. 1557, ch. 418, § 1, eff. Jan. 1, 1972; Acts 1973, 63rd Leg., p. 1038, ch. 402, § 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1076, ch. 413, § 1, eff. Aug. 27, 1973; Acts 1981, 67th Leg., p. 201, ch. 94, § 3, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 1685, ch. 315, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2065, ch. 380, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2887, ch. 492, § 1, eff. Aug. 29, 1983.]

1 Article 3.70-3.

Section 2 of the amendatory act of 1967 amended article 3.70-8; sections 3 to 5 thereof provided:

"Sec. 3. This Act shall take effect January 1, 1968, and shall apply to all accident and sickness policies issued and delivered in the State of Texas or issued for delivery in the State of Texas after such date, but shall not apply to any policies issued and delivered in the State of Texas or issued for delivery in the State of Texas prior to such date. With respect to any policy forms approved by the State Board of Insurance prior to the effective date hereof, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders, provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act.

"Sec. 4. All laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed to the extent of the conflict only.

"Sec. 5. If any Section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining Sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect."

The 1971 amendatory act, which by §§ 1 and 2 added subsec. (C) to this article and amended art. 3.70-8, respectively, in §§ 3 to 5 thereof provided:

"Sec. 3. This Act shall take effect January 1, 1972, and shall apply to all accident and sickness policies issued and delivered in the State of Texas or issued for delivery in the State of Texas after that date but shall not apply to any policies issued and delivered in the State of Texas or issued for delivery in the State of Texas prior to that date. With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this Act, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders, provided the endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act.

"Sec. 4. All laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of the conflict only.

"Sec. 5. If any section, paragraph, or provision of this Act is declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, and they shall remain in full force and effect."

Acts 1973, 63rd Leg., p. 1076, ch. 413, § 1, which added a subsec. (D) to this article, provided in §§ 2, 3:

"Sec. 2. This Act shall apply to all accident and sickness policies issued or issued for delivery, renewed, extended, or amended in the State of Texas on and after January 1, 1974. The insurer, upon a renewal, extension, or amendment, may charge such additional premiums as are just and reasonable for the additional risk incurred by compliance with this Act. With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this Act, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act and other provisions of the Texas Insurance Code.

"Sec. 3. If any provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining provisions of this Act, but the remaining provisions shall remain in full force and effect."

Section 2 of Acts 1983, 68th Leg., p. 1686, ch. 315, provides:

"This Act applies only to policies delivered or issued for delivery to a group policyholder in this state on or after January 1, 1984. A policy delivered to a group policyholder before January 1, 1984, is governed by the law in effect at the time the policy was delivered, and that law is continued in effect for that purpose."

Section 2 of Acts 1983, 68th Leg., p. 2888, ch. 492, provides:

"This Act applies to all policies of accident and sickness insurance, including policies issued by companies subject to Chapter 20, Insurance Code, delivered or issued for delivery or renewed, extended, or amended in this state on or after January 1, 1984. With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this Act, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act and other provisions of the Insurance Code."

Art. 3.70-3. Accident and Sickness Policy Provisions

(A) Required Provisions. Except as provided in paragraph (C) of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions, provisions of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which are in each instance not less favorable in any respect to the insured or the beneficiary; and provided further that Provisions 6, 8, and 9 shall not be required provisions under this Subsection A for companies organized under Chapter 20 of this code, as amended. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows:

Time Limit on Certain Defenses: (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of Section 3(B), (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestible":

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestible as to the statements contained in the application.)

(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

Grace Period: A grace period of (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

(4) A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every (insert a number not less than one nor more than six) months after having given notice

of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of (insert a number not less than one nor more than six) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of (insert a number not less than one nor more than six) months preceding the date on which such notice is actually given.)

(6) A provision as follows:

Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible; and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and

effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(B) Other Provisions.

Except as provided in paragraph (C) of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a provision of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision as follows:

Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows:

Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$. (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate;

or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows:

Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro-rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of Two Hundred Dollars (\$200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any prov-

ince of Canada, or to any other coverage the inclusion of which may be approved by the Board or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(5) A provision as follows:

Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(6) A provision as follows:

Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro-rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(7) A provision as follows:

Conformity With State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(8) A provision as follows:

Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(9) A provision as follows:

Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

(C) Inapplicable or Inconsistent Provisions.

If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the Board, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(D) Order of Certain Policy Provisions.

The provisions which are the subject of subsections (A) and (B) of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

(E) Third Party Ownership.

The word "insured" as used in this Act,¹ shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.

(F) Requirements of other Jurisdictions.

(1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this Act and which is prescribed or required by the law of the state under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

(G) Filing Procedure.

The Board may make such reasonable rules and regulations concerning the procedure for the filing or submission of policies subject to this Act as are necessary, proper or advisable to the administration of this Act. This provision shall not abridge any other authority granted the Board by law.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 3. Amended by Acts 1969, 61st Leg., 2nd C.S., p. 118, ch. 11, § 1, eff. Sept. 19, 1969; Acts 1975, 64th Leg., p. 2202, ch. 703, §§ 2, 3, eff. June 21, 1975.]

¹ Article 3.70-1 et seq.

Art. 3.70-4. Conforming to Statute**(A) Other Policy Provisions.**

No policy provision which is not subject to Section 3 of this Act¹ shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this Act.

(B) Policy Conflicting with this Act.²

A policy delivered or issued for delivery to any person in this state in violation of this Act shall be held valid but shall be construed as provided in this Act. When any provision in a policy subject to this Act is in conflict with any provision of this Act, the rights, duties and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this Act.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 4.]

¹ Article 3.70-3.

² Article 3.70-1 et seq.

Art. 3.70-5. Application

(A) The insured shall not be bound by any statement made in an application for a policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within fifteen days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.

(B) No alteration of any written application for any such policy shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

(C) The falsity of any statement in the application for any policy covered by this Act may not bar the right to recovery thereunder unless such false statement materially affected either the acceptance of the risk or the hazard assumed by the insurer.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 5.]

Art. 3.70-6. Notice; Waiver

The acknowledgment by any insurer of the receipt of notice given under any policy covered by this Act,¹ or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the

insurer in defense of any claim arising under such policy.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 6.]

¹ Article 3.70-1 et seq.

Art. 3.70-7. Age Limit

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 7.]

Art. 3.70-8. Non-application to Certain Policies

Nothing in this Act shall apply to or affect (1) any policy of workmen's compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance except as provided in Section 2, Subsections (B) and (C);¹ or (4) life insurance endowment or annuity contracts or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value, special benefit, or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract, or (5) any policy written under the provisions of Senate Bill No. 208, Acts of the 51st Legislature, 1949.²

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 8. Amended by Acts 1967, 60th Leg., p. 57, ch. 32, § 2, eff. Jan. 1, 1968; Acts 1971, 62nd Leg., p. 1557, ch. 418, § 2, eff. Jan. 1, 1972.]

¹ Article 3.70-2(B), (C).

² Article 3.53.

Art. 3.70-9. Violation

Any person, partnership, or corporation wilfully violating any provision of this Act or order of the Board made in accordance with this Act, shall forfeit to the people of the state a sum not to exceed Five Thousand Dollars (\$5,000.00) for each such

violation, which may be recovered by a civil action. The Board may also suspend or revoke the license of an insurer or agent for any such wilful violation.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 9. Amended by Acts 1975, 64th Leg., p. 2210, ch. 703, § 5, eff. June 21, 1975.]

Art. 3.70-10. Notice and Hearing; Judicial Review

No general rule, regulation or order shall be adopted by the Board relating to any matter covered by this Act, except after hearing upon at least ten days prior notice by mail to all insurers to whom this Act applies. If any insurer be dissatisfied with any decision, regulation, order, rule, act, or administrative ruling adopted by the Board under the provisions of this Act,¹ such dissatisfied insurer may file a petition setting forth the particular objection to such decision, regulation, order, rule, act or administrative ruling, or to either or all of them, in a District Court of Travis County, Texas, and not elsewhere, against the Board of Insurance Commissioners as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial *de novo* to the same extent as now provided for in the case of an appeal from the justice court to the county court. The filing of such suit shall operate as a stay of any such rule, regulation, decision or finding of the Board until the court directs otherwise. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 10.]

¹ Article 3.70-1 et seq.

Art. 3.70-11. Use of Previously Authorized Policies, Riders and Endorsements During Five Years After Effective Date of Act

A policy, rider or endorsement, which could have been lawfully used or delivered or issued for delivery to any person in this state immediately before the effective date of this Act may be used or delivered or issued for delivery to any such person during five years after the effective date of this Act without being subject to the provisions of Sections 2, 3, or 4 of this Act.¹

[Acts 1955, 54th Leg., p. 1044, ch. 397, § 13.]

¹ Article 3.70-2, 3.70-3, or 3.70-4.

Art. 3.71. Texas 65 Health Insurance Plans

Sec. 1. Notwithstanding any contrary or inconsistent provision of any law, two or more insurance companies authorized to separately do such an insurance business in this state, including stock companies, reciprocals, or inter-insurance exchanges, Lloyds' associations, fraternal benefit societies and mutual companies of all kinds, including state-wide mutual assessment corporations and local mutual aid associations, and stipulated premium companies, may join together to offer, sell and administer hospital, surgical and medical expense insurance plans under a group policy covering residents of this state who are sixty-five (65) years of age and older and their spouses on which policy each insurance carrier shall be severally liable, and such companies may agree with respect to premium rates, policy provisions, sales, administrative, technical and accounting procedures and other matters within the scope of this Article. Such companies may issue such insurance policies in their own names or in the name of an unincorporated association, trust, or other organization formed for the sole purposes of this Article and evidenced by a contract in writing executed by the participating insurance companies, and any unincorporated associations, trusts, or other organizations heretofore formed for the sole purpose of this Article and evidenced by a contract in writing executed by the participating insurance companies is hereby ratified, confirmed and approved and validated from the date of its formation. Any such policy may be executed on behalf of the insurance companies by a duly authorized person and need not be countersigned on behalf of any such company by a resident agent. Any person who is licensed as a life insurance agent or as a local recording agent or as a solicitor under the provisions of Articles 21.07, 21.07-1, or Article 21.14 of the Insurance Code of the State of Texas, may act as such agent in connection with policies of insurance or certificates of insurance issued by any unincorporated association, trust or other organization formed for the sole purposes of this Article without the necessity of notifying the State Board of Insurance that such person is appointed to so act.

Sec. 2. The insurance companies participating in the insurance plans authorized by this Article shall be subject to regulation under the laws of this state, and the forms of the applications, certificates, policies and other evidence of such insurance shall be subject to the requirements of Article 3.42 of this Insurance Code. There shall be filed with the State Board of Insurance by or on behalf of such companies a true copy of any contract of association or organization or trust agreement entered into by such companies pursuant to this Article, the schedule of premium rates to be charged for the insurance, and the plan for operating and marketing such insurance. No such contract, schedule or plan shall be effective unless and until approved by the State

Board of Insurance, provided, however, that at the expiration of thirty days after the filing of any such contract, schedule or plan, it shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of said Board. If after notice and public hearing the said Board shall at any time find that under reasonable assumptions the premium rates charged for such insurance, or the plan for operating and marketing same are excessive, inadequate or contrary to the public interest, or that any activity or practice in connection with such insurance is unfair, unreasonable or contrary to the public interest, it shall disapprove such premium rates or plan or such activity or practice and shall require the discontinuance thereof within not less than thirty days from the date of its order containing such finding.

Sec. 3. Any unincorporated association, trust or other organization formed under the authority of this Article may sue and be sued in its association, trust or organization name. Process in any civil suit against any such association, trust or organization may be served on the president, secretary or managing agent thereof or on the Chairman of the State Board of Insurance. Such service shall have the same force and effect as if such service had been made upon all members of the association, trust or other organization. In the event of such service on the Chairman of the State Board of Insurance he shall immediately forward the same by registered mail, postage prepaid, to the president, secretary or managing agent of such association, trust or other organization at the last known address thereof according to the records of the State Board of Insurance.

Sec. 4. Notwithstanding any contrary or inconsistent provision of any law of this state, all premiums received on account of the group insurance authorized by this Article are hereby expressly exempted and excluded from any and all premium taxes of any kind imposed by any other law of this state.

Sec. 5. No association, trust or other organization formed and operated in accordance with this Article and no insurance business conducted in accordance with this Article shall be deemed to be a combination in restraint of trade, or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily or to otherwise violate the anti-trust laws of this state.

[Acts 1963, 58th Leg., p. 443, ch. 157, § 1, eff. Aug. 23, 1963. Amended by Acts 1965, 59th Leg., p. 490, ch. 252, § 1, eff. May 24, 1965.]

Art. 3.72. Variable Annuity Contracts**Variable Annuity Contracts Defined**

Sec. 1. When used in this article the term "variable annuity contract" shall mean any annuity con-

tract issued by an insurance company providing for the dollar amount of annuity benefits or other contractual payments or values thereunder to vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account in which amounts received in connection with such contracts shall have been placed and accounted for separately and apart from other investments and accounts; provided, however, that "variable annuity contracts," issued under this Article 3.72 shall not be deemed to be a "security" or "securities" as defined in The Security Act (Acts 1957, 55th Legislature, page 575, Chapter 269)¹ nor subject to regulation under said Act.

¹ Civil Statutes, art. 581-1 et seq.

Qualification of Insurers

Sec. 2. No domestic insurance company shall issue, deliver or use any variable annuity contract and no foreign insurance company authorized to transact business in this state shall issue, deliver or sell any variable annuity contract in this state unless and until such company shall have satisfied the State Board of Insurance that its financial and general condition and its methods of operation, including the issue and sale of variable annuity contracts, are not and will not be hazardous to the public or to its policy and contract owners in this state. No foreign insurance company shall issue, deliver or sell any variable annuity contract in this state unless authorized to do so by the laws of its domicile. In determining the qualifications of a company requesting authority to issue, deliver or use variable annuity contracts pursuant to this article the State Board of Insurance shall consider the history of the company, its financial and general condition, the character, responsibility and general fitness and ability of its officers and directors, and the regulation of a foreign company by the state of its domicile. It is specifically provided that an insurer shall not qualify for authority to issue, deliver, or use variable annuity contracts in this State unless at the time of such issuance, delivery, or use it shall have at least the minimum capital and surplus, or in the case of a mutual insurer, the minimum free surplus, which would at such time be required by law for the incorporation of such a domestic insurer or the licensing in Texas of such a foreign insurer. If after notice and hearing the State Board of Insurance shall find that the company is qualified to issue, deliver and use variable annuity contracts in accordance with this article and the regulations and rules issued thereunder, it shall issue its official order of authorization, otherwise it shall issue its official order denying such authority and the request therefor and specifying the grounds for such denial.

Contracts Shall Contain Certain Provisions

Sec. 3. (a) Every variable annuity contract delivered or issued for delivery in this state, and every certificate evidencing variable benefits issued pursuant to any such contract on a group basis, shall contain a statement of the essential features of the procedure to be followed by the issuing company in determining the dollar amount of the variable annuity benefits or other contractual payments or values thereunder and shall state in clear terms that such amounts may decrease or increase according to such procedure. Every such contract delivered or issued for delivery in this state, and every such certificate, shall contain on its first page, in a prominent position, a clear statement that the benefits or other contractual payments or values thereunder are on a variable basis.

(b) Every individual variable annuity contract delivered or issued for delivery in this state shall stipulate the method of determining the variations in the dollar amount of variable annuity benefits or other contractual payments or values thereunder due to variations in investment experience, and shall guarantee that the expense and mortality results shall not adversely affect such dollar amounts. The first annuity payment to be made pursuant to such method shall not be in an amount in excess of the amount produced by the use of the Progressive Annuity Mortality Table or any other Annuity Mortality Table approved by the State Board of Insurance, and an annual interest assumption of three and one half percent (3½%).

(c) Every individual variable annuity contract delivered or issued for delivery in this state shall contain in substance the following provisions or other provisions more favorable or at least as favorable to the contract owner and approved by the State Board of Insurance:

(i) That, in the event of default in the payment of any consideration beyond the period of grace allowed by the contract for the payment thereof, the company will make payment of the value of the contract, as determined thereunder, in accordance with a plan provided by the contract or agreed upon by the contract owner and the company, such payments to commence not later than the date contractual payments were otherwise to have commenced in accordance with the contract;

(ii) That, upon written request of the contract owner and surrender of the contract the company will make payment of the value of the contract, as determined thereunder, in accordance with a plan provided by the contract and selected by the contract owner or as agreed upon by the contract owner and the company;

(iii) That, the company will mail to the contract owner not less than semiannually after the first contract year a report in a form approved by the State Board of Insurance which shall include a

statement of the number of units of uniform value credited to such contract and the dollar value of each such unit as of a date not more than four (4) months previous to the date of mailing, and a statement in a form and as of a date approved by the State Board of Insurance of the investments held in the segregated portfolio or portfolios of investments or separate account or accounts designated in such contract.

(d) Every group variable annuity contract delivered or issued for delivery in this state shall stipulate the method of determining the variations in the dollar amount payable with respect to a unit of variable annuity benefits purchased thereunder due to variations in investment experience, and shall guarantee that expense and mortality results shall not adversely affect such dollar amounts.

Optional Fixed Dollar Benefits and Payments

Sec. 4. Any domestic insurance company issuing variable annuity contracts pursuant to this article may in its discretion, but need not, issue annuity contracts providing a combination of fixed dollar amount and variable dollar amount benefits and for optional lump-sum payment of benefits.

Filing and Approval Requirements

Sec. 5. Every variable annuity contract form delivered or issued for delivery in this state, and every certificate form evidencing variable benefits issued pursuant to any such contract on a group basis, and the application, rider and endorsement forms applicable thereto and used in connection therewith, shall be and are hereby expressly made subject to the filing and approval requirements of Article 3.42 of this Insurance Code and any and all amendments thereof.

Certain Illustrations Prohibited

Sec. 6. Illustration of benefits payable under any variable annuity contract shall not include or involve projections of past investment experience into the future and shall conform with reasonable regulations promulgated by the State Board of Insurance.

Separate Accounts and Operation of Same

Sec. 7. Every insurance company authorized pursuant to this article to issue, deliver or use variable annuity contracts shall, in connection with same, establish one or more separate accounts to be known as separate variable annuity accounts. All amounts received by the company in connection with any such contract which are required by the terms thereof to be allocated or applied to one or more designated separate variable annuity accounts shall be placed in such designated account or accounts. The assets and liabilities of each such separate variable annuity account shall at all times be clearly identifiable and distinguishable from the

assets and liabilities in all other accounts of the company. The assets held in any such separate variable annuity account shall not be chargeable with liabilities arising out of any other business the company may conduct but shall be held and applied exclusively for the benefit of the owners or beneficiaries of the variable annuity contracts applicable thereto. In the event of the insolvency of the company the assets of each such separate variable annuity account shall be applied to the contractual claims of the owners or beneficiaries of the variable annuity contracts applicable thereto. Except as otherwise specifically provided by the contract, no sale, transfer or exchange of assets may be made between any such separate variable annuity account and any other account of the company, and no asset of a separate variable annuity account shall be pledged, transferred or in any manner encumbered as collateral for a loan. All amounts and assets allocated to any such separate variable annuity account shall be owned by the company and with respect to same the company shall not be nor hold itself out to be a trustee.

Investment of Separate Account Funds

Sec. 8. Any domestic insurance company which has established one or more separate variable annuity accounts pursuant to this article may invest and reinvest all or any part of the assets allocated to any such account in and only in the securities and investments authorized by Article 3.39 of this Insurance Code for any of the funds of a domestic life insurance company, free and clear of any and all limitations and restrictions in such Article 3.39, and in addition thereto in common capital stocks or other equities which are listed on or admitted to trading in a securities exchange located in the United States of America, or which are publicly held and traded in the "over-the-counter market" as defined by the State Board of Insurance and as to which market quotations have been available. None of the assets allocated to any such variable annuity account shall be invested in common stocks of corporations which shall have defaulted in the payment of any debt within five years next preceding such investment. No such company shall invest in excess of the greater of (a) Twenty-Five Thousand Dollars (\$25,000) or (b) five percent (5%) of the assets of any such separate variable annuity account in any one corporation issuing such common capital stock, except that subject to the approval of the State Board of Insurance all of the assets of a separate account may be invested in the shares of one or more open-end management companies registered under the Federal Investment Company Act of 1940¹ and qualifying as a diversified company thereunder. The assets and investments of such separate variable annuity accounts shall not be taken into account in applying the quantitative investment limitations applicable to other investments of

the company. In the purchase of common capital stock or other equities, the insurer shall designate to the broker, or to the seller if the purchase is not made through broker, the specific variable annuity account for which the investment is made.

¹ 15 U.S.C.A. § 80a-1 et seq.

Valuation of Assets

Sec. 9. Assets allocated to any separate variable annuity account shall be valued at their market value on the date of any valuation, or if there is no readily available market then in accordance with the terms of the variable annuity contract applicable to such assets, or if there are no such contract terms then in such manner as may be prescribed by reasonable rules and regulations of the State Board of Insurance.

Reserve Liability

Sec. 10. The reserve liability for variable annuity contracts shall be established by the State Board of Insurance pursuant to the requirements of the Standard Valuation Law as contained in this Insurance Code, and in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

Separate Annual Statements

Sec. 11. Every insurance company authorized pursuant to this article to issue, deliver or use variable annuity contracts shall annually file with the State Board of Insurance a separate annual statement of its separate variable annuity accounts. Such statement shall be on a form prescribed or approved by the State Board of Insurance and shall include details as to all of the income, disbursements, assets and liability items of and associated with the said separate variable annuity accounts. Said statement shall be under oath of two officers of the company and shall be filed simultaneously with the annual statement required by Article 3.07 and Article 11.06 of this Insurance Code.

Amendment of Domestic Company Charters

Sec. 12. Every domestic insurance company authorized pursuant to this article to issue variable annuity contracts and establish separate variable annuity accounts may amend its charter to provide for special voting rights and procedures for the owners of its variable annuity contracts to give them jurisdiction over matters relating to investment policies, investment advisory services and the selection of certified public accountants in relation to the administration of the assets in such separate variable annuity accounts, and in order to comply with the Investment Company Act of 1940 of the United States and such other requirements of federal law as shall be applicable to such separate variable annuity accounts.

Variable Annuity Agents' Licenses

Sec. 13. (a) Notwithstanding any other law of this State, no person shall, within this State, sell or offer for sale a variable annuity contract, or do or perform any act or thing in the sale, negotiation, making or consummating of any variable annuity contract other than for himself unless such person shall have a valid and current certificate from the State Board of Insurance authorizing such person to act within this State as a variable annuity insurance agent. No such certificate shall be issued unless and until the said Board is satisfied, after examination, that such person is by training, knowledge, ability and character qualified to act as such agent. Any such certificate may be withdrawn and cancelled by said Board, after notice and hearing, if it shall find that the holder thereof does not then have the qualifications required for issue of such certificate.

(b) The Commissioner of Insurance shall collect in advance from variable annuity agent applicants a license fee in an amount not to exceed \$50 and an examination fee in an amount not to exceed \$20. The State Board of Insurance shall determine the amount of the fees. A new examination fee shall be paid for each and every examination. The examination fee shall not be returned under any circumstance 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. All fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund to be used to administer the provisions of this section and Article 21.07-1, Insurance Code.

(c) Unless a system of staggered renewal is adopted under Subsection (f) of this section, each license issued to a variable annuity agent 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 insurer is terminated. The term of a license is two years.

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and payment of a renewal fee in an amount not to exceed \$50 as determined by the State Board of Insurance.

(e) Any agent licensed under this article may represent and act as an agent for more than one insurance carrier any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance

carrier or carriers which the agent is then licensed to represent and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment that said insurance carrier 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 or company shall be required to pay a 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.

(f) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

(g) An unexpired license may be renewed by paying the required renewal fee to the State Board of Insurance before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the State Board of Insurance the required renewal fee and a fee that is one-half of the original fee for the license. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the State Board of Insurance all unpaid renewal fees and a fee that is equal to the original fee for the license. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(h) Not later than the 30th day after the day on which a licensing examination is administered under this section, the commissioner of insurance shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commissioner of insurance shall send notice to the examinees of the results of the examination within two weeks after the date on which the commissioner of insurance receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commissioner of insurance shall

send notice to the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this section, the commissioner of insurance shall send to the person an analysis of the person's performance on the examination.

(i) The State Board of Insurance may adopt procedures for certifying and may certify continuing education programs for persons licensed under this section. Participation in the programs is voluntary.

(j) The State Board of Insurance may waive any license requirement for each applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Issuance of Variable Annuity Contracts by Nonprofit Corporations Not Domiciled in Texas

Sec. 14. An insurance company, including a corporation regulated by the insurance regulatory authority of its state of domicile, which is a nonprofit corporation, is hereby authorized to issue and deliver variable annuity contracts in this State pursuant to a license issued by the State Board of Insurance under such rules and regulations as may be promulgated from time to time by the State Board of Insurance. Any such company not domiciled in Texas must be authorized to issue and deliver variable annuity contracts under the law of its domicile. Variable annuity contracts issued and delivered in this State by such companies shall comply with the preceding and following sections hereof except that such variable annuity contracts may provide for payments which vary directly according to investment, mortality and expense experience. The State Board of Insurance shall pursuant to rules and regulations promulgated by it determine that the expenses of such company are not unfair, unjust, unreasonable or inequitable to the holders of such variable annuity contracts and approve the method of arriving at mortality and expense assumptions and the method of establishing reserve liability. No such company shall be authorized to issue any annuity or insurance contract other than the type of variable annuity contract authorized to be issued and delivered by this Act.

Rules and Regulations

Sec. 15. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article, and in augmentation thereof.

Provisions Cumulative and Conflicting Laws Repealed

Sec. 16. This article is cumulative of and in addition to the authority granted by any other law of this State relating to separate accounts for insurance companies or to annuity contracts on a variable basis, and shall not be deemed to repeal or affect

the provisions of Part III of Article 3.39 of this Code dealing with the group variable annuity contracts referred to in such article, or to affect such contracts, and all other laws and parts of laws in conflict with this Act are hereby repealed to the extent only of such conflict.

[Acts 1967, 60th Leg., p. 461, ch. 210, § 1, eff. Aug. 28, 1967. Amended by Acts 1975, 64th Leg., p. 1379, ch. 528, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 457, ch. 212, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 3932, ch. 622, §§ 20, 43, 44, eff. Sept. 1, 1983.]

Repeal

This article was repealed by Acts 1983, 68th Leg., p. 4131, ch. 648, § 3, effective September 1, 1984, without reference to the amendment of § 13(b) to (j) of this article by Acts 1983, 68th Leg., p. 3932, ch. 622, §§ 20, 43, 44.

Acts 1967, 60th Leg., p. 465, ch. 210, § 2 provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

The title of the 1983 repealing act stated that the Act repealed arts. 3.39, 3.72 and 3.73. Sec. 2 of said act provided:

"Part III, Articles 3.39, 3.72, and 3.73, Insurance Code, as amended, are repealed."

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 3.73. Variable Life Insurance or Annuity Contracts

Segregated Portfolios of Investments

Sec. 1. A domestic life insurance company, stock, mutual, or fraternal, may establish one or more segregated portfolios of investments for the purpose of meeting and complying with requirements arising from issuing individual and group life insurance and annuity contracts with variable benefits. Such portfolios of investments shall have such identity as is prescribed by the State Board of Insurance and other appropriate authority.

Separate Accounts; Establishment

Sec. 2. Domestic life insurance companies writing variable life insurance contracts may establish one or more separate accounts and create such divisions of any separate accounts as are appropriate to its operation. A segregated portfolio of investments established for the purpose of writing variable insurance or annuity contracts may be used in connection with one or more separate accounts, or it may be accounted for as a part of a separate account.

Allocations to Separate Accounts; Valuation of Assets; Ownership; Transfers

Sec. 3. Domestic life insurance companies establishing such separate accounts may allocate thereto amounts (including proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance (and benefits incidental thereto), payable in fixed or variable amounts or both, subject to the following:

(a) The income, gains and losses, realized or unrealized, attributable to a separate account shall be credited to or charged against the account, without regard to the other income, gains or losses of the company.

(b) To the extent of the reserves and other contract liabilities required to be held in the separate account, amounts allocated to any separate account and accumulations thereon may be invested and reinvested in and only in the securities and investments authorized by Parts I and II of Article 3.39 of this Code for any of the funds of a domestic life insurance company, free and clear of any and all limitations and restrictions in such Article 3.39, and in addition thereto in common capital stocks or other equities which are listed on or admitted to trading in a securities exchange located in the United States of America, or which are publicly held and traded in the "over-the-counter market" as defined by and meeting the standards of the State Board of Insurance and as to which reliable market quotations have been available. None of the assets allocated to any such separate account shall be invested in common stocks of corporations which shall have defaulted in the payment of any debt within five years next preceding such investment. No such company shall invest in excess of the greater of (i) Twenty-Five Thousand Dollars (\$25,000) or (ii) five per cent (5%) of the assets of any such separate account, or (iii) ten per cent (10%) of the assets of all such separate accounts in securities or common capital stock of any one corporation, except that subject to the approval of the State Board of Insurance all of the assets of a separate account may be invested in the shares of an open-end investment company or companies registered under the Federal Investment Company Act of 1940¹. The assets and investments of such separate accounts shall not be taken into account in applying the quantitative investment limitations applicable to other investments of the company. In the purchase of common capital stock or other equities, the insurer shall designate to the broker, or to the seller if the purchase is not made through a broker, and to the transfer agent, when necessary, the specific separate account for which the investment is made.

(c) Reserves for benefits guaranteed by variable life insurance contracts shall be maintained in either the general account or in a separate ac-

count, subject to requirements of the State Board of Insurance.

(d) Unless otherwise approved by or not contrary to regulations of the State Board of Insurance, assets allocated to a separate account shall be valued (1) at their market value on the date of valuation, or if there is no readily available market, (2) as provided under the terms of the contract or the rules or other written agreement applicable to such separate account and (3) in accordance with the rules or regulations prescribed by appropriate authority; provided, that unless otherwise specified by the State Board of Insurance, the portion, if any, of the assets of such separate account in excess of the reserves and other contract liabilities required to be held in the separate account shall be valued in accordance with the rules otherwise applicable to the company's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this Act shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts except under such circumstances as are otherwise provided by this article. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct. In the event of the insolvency of the company the net assets of each separate variable life insurance account shall be applied to the contractual claims of the owners or beneficiaries of the variable life insurance contracts applicable thereto.

(f) (1) All transfers made into or out of a separate account shall be made only as authorized by the provisions of this Act and shall be by a transfer in cash, except as otherwise provided herein.

(2) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made by a transfer of cash, or by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the State Board of Insurance. The State Board of Insurance may approve other transfers among such accounts if, in its opinion, such transfers would not be inequitable.

(g) To the extent such company deems it necessary to comply with any applicable federal or State laws, such company, with respect to any separate account, including any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

¹ 15 U.S.C.A. § 80a-1 et seq.

Statement of Variable Benefits

Sec. 4. Any life insurance contract providing benefits payable in variable amounts delivered or issued for delivery in this State shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar or unit amount of such variable benefits. Any such life insurance contract under which the benefits vary to reflect investment experience, including a group life insurance contract and any certificate in evidence of variable benefits issued thereunder, shall state that the dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

Qualification of Insurers

Sec. 5. No company shall deliver or issue for delivery within this State variable life insurance contracts unless it is licensed or organized to do a life insurance business in this State, and the State Board of Insurance is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this State. In this connection, the State Board of Insurance shall consider among other things:

- (a) The history and financial condition of the company;
- (b) The character, responsibility and fitness of the officers and directors of the company; and
- (c) The law and regulation under which the company is authorized in the state of domicile to issue variable contracts.

If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the State Board of Insurance to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements hereof.

The provisions of this article shall not be construed to prevent a domestic life insurance company from qualifying to do business in another state, and such companies are authorized to do a variable contract business in another state in accordance with the laws of that state, provided that any such business done and any transaction arising therefrom is capable of being identified separately.

No insurer may file a variable life insurance contract for approval by the State Board of Insurance unless it has complied with such advance clearance procedures as may be established by the State Board of Insurance.

Rules and Regulations

Sec. 6. Notwithstanding any other provision of law, the State Board of Insurance shall have sole authority to regulate the issuance and sale of variable life insurance contracts, and to issue such reasonable rules and regulations as may be appropriate to regulate and to carry out the purposes and provisions of this Act and in augmentation thereof. The State Board of Insurance may make such provision as is necessary to achieve conformity with federal law.

Construction of Act; Exceptions; Grace Provisions; Reserve Liability

Sec. 7. Except for Paragraphs 2, 6, 7, 8, 9, 11, and 12 of Article 3.44, Insurance Code, Article 3.44a, Insurance Code, Paragraph 3 of Article 3.45, Insurance Code, Section 2, Paragraph (1) of Article 3.50, Insurance Code, Article 11.12, Insurance Code, Article 11.13, Insurance Code, and Article 11.14, Insurance Code, and except as otherwise provided in this article, all pertinent provisions of this Code not conflicting with this article shall apply to such separate accounts and contracts relating thereto. The provisions of this article shall be considered and interpreted as being in conjunction with the provisions of Article 3.72 and other applicable statutes except that any conflict or ambiguity arising from such consideration shall be resolved on the basis of provisions in this article. Any individual variable life insurance contract, delivered or issued for delivery in this State, shall contain grace, reinstatement, and nonforfeiture provisions appropriate to such a contract. Any group variable life insurance contract, delivered or issued for delivery in this State, shall contain a grace provision appropriate to such a contract.

The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality or other contractual guarantees.

Use of Account or Portfolio

Sec. 8. No separate account or segregated portfolio of investments shall be used for both variable life insurance contracts and variable annuity contracts.

Effective Date

Sec. 9. The provisions of this Act shall take effect on September 1, 1971.

Agent's Licenses: Application, Issuance, Renewal, and Cancellation

Sec. 10. (a) No person or other legal entity may act as a variable life insurance agent within the State of Texas for any insurance company authorized to write variable life insurance, unless the person or entity receives a special license to write variable life insurance from the commissioner. Persons or entities applying shall file applications for licenses on forms provided by the commissioner.

(b) The Commissioner of Insurance shall collect in advance from variable life insurance agent applicants a license fee in an amount not to exceed \$50 and an examination fee in an amount not to exceed \$20. The State Board of Insurance shall determine the amount of the fees. A new examination fee shall be paid for each examination. The examination fee shall not be returned under any circumstance 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. The examination fee, license fee, and renewal fee shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

(c) Unless a system of staggered renewal is adopted under Subsection (f) of this section, each license issued to a variable life insurance agent 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 insurer is terminated. The term of a license is two years.

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and the payment of a renewal fee in an amount not to exceed \$50 as determined by the State Board of Insurance.

(e) An unexpired license may be renewed by paying the required renewal fee to the State Board of Insurance before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the State Board of Insurance the required renewal fee and a fee that is one-half of the original fee for the license. If a license has been expired for longer

than 90 days but less than two years, the license may be renewed by paying to the State Board of Insurance all unpaid renewal fees and a fee that is equal to the original fee for the license. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his or its last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(f) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

(g) The State Board of Insurance may adopt a procedure for certifying and may certify continuing education programs. Participation in the programs is voluntary.

(h) The State Board of Insurance may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Additional Appointments

Sec. 11. Any agent licensed under this article may represent and act as an agent for more than one insurance carrier any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment that said insurance carrier 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 or insurance carrier shall be required to pay a 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. All fees collected pursuant to this section and Section 10 of this article shall be deposited in the State Treasury to the credit of the State

Board of Insurance operating fund to be used to administer the provisions of this article and Article 21.07-1, Insurance Code.

[Acts 1971, 62nd Leg., p. 1792, ch. 529, § 1, eff. Sept. 1, 1971. Amended by Acts 1979, 66th Leg., p. 458, ch. 212, § 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 3933, ch. 622, §§ 21, 22, 45, 46, eff. Sept. 1, 1983.]

Repeal

This article was repealed by Acts 1983, 68th Leg., p. 4131, ch. 648, § 3, effective September 1, 1984, without reference to the amendment of §§ 10(b) to (d), (e) to (h), and 11 of this article by Acts 1983, 68th Leg., p. 3933, ch. 622, §§ 21, 22, 45, 46.

Sections 2 and 3 of the 1971 act provided:

"Sec. 2. This Act is cumulative of and in addition to the authority granted by any other law of this State relating to separate accounts for insurance companies and shall not be deemed to repeal any such laws but all other laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict only.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

The title of the 1983 repealing act stated that the Act repealed arts. 3.39, 3.72 and 3.73. Sec. 2 of said Act provided:

"Part III, Articles 3.39, 3.72, and 3.73, Insurance Code, as amended, are repealed."

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 3.74. Minimum Standards for Medicare Supplement Policies

Definitions and Scope

Sec. 1. (a) Scope of Article. This article applies to and governs group and individual medicare supplement policies delivered or issued for delivery in this state by capital stock companies, including but not limited to life, health and accident, and general casualty companies; mutual life insurance companies; mutual assessment life insurance companies, including but not limited to statewide mutual assessment corporations, local mutual aids, and burial associations; mutual and mutual assessment associations of all kinds and types, including but not limited to associations subject Article 14.17 of this code; mutual insurance companies other than life; mutual or natural premium life or casualty insurance companies; fraternal benefit societies; Lloyds; reciprocal or inter-insurance exchanges; nonprofit hospital, medical, or dental service corporations, including but not limited to companies subject to Chapter 20 of this code; stipulated premium insurance companies; or any other insurer which by law is required to be licensed by the State Board of Insurance; and health maintenance organizations subject to the Texas Health Maintenance Organization Act, as amended (Chapter 20A, Vernon's Texas

Insurance Code); provided, however, this article does not apply to any insurance coverage delivered or issued for delivery in this state pursuant to a group policy delivered or issued for delivery outside of this state; provided further, that this article shall not be construed to enlarge the powers of any of the enumerated companies.

(b) Definitions.

(1) "Applicant" means:

(A) in the case of an individual medicare supplement policy, the person who seeks to contract for insurance or other health benefits, and

(B) in the case of a group medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means, for the purposes of this article, any certificate issued under a group medicare supplement policy, which policy has been delivered or issued for delivery in this state.

(3) "Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of a hospital service corporation subject to Chapter 20 of this code or evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act, as amended (Chapter 20A, Vernon's Texas Insurance Code), which policy, subscriber contract, or evidence of coverage is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare; provided that the State Board of Insurance may by rule modify the definition of medicare supplement policy to the extent necessary for the State of Texas to qualify as a state with an approved regulatory program under the provisions of Public Law 96-265, Section 507(a), 94 Stat. 476 (42 U.S.C.A. Section 1395ss (1980)). Such term does not include:

(A) a policy, contract, subscriber contract, or evidence of coverage of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(B) a policy, contract, subscriber contract, or evidence of coverage of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association:

(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) has been maintained in good faith for purposes other than obtaining insurance; and

(iii) has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members;

(C) a policy, contract, subscriber contract, or evidence of coverage issued pursuant to a conversion privilege under a policy or contract of group insurance or group contract of a hospital service corporation subject to Chapter 20 of this code or group evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act, as amended (Chapter 20A, Vernon's Texas Insurance Code), when such group policy, subscriber contract, or evidence of coverage includes provisions which are inconsistent with the requirements of this article.

(4) "Medicare" means the Health Insurance for the Aged Act, Part 1 of Title I of the Social Security Amendments of 1965, as amended (Public Law 89-97).¹

¹ See 42 U.S.C.A. § 1395 et seq.

Standards for Contractual Provisions

Sec. 2. (a) The State Board of Insurance shall issue reasonable rules to establish specific standards for provisions of medicare supplement policies. Such standards shall be in addition to and in accordance with applicable laws of this state, including but not limited to Subchapter G of Chapter 3 and Chapter 20 of this code and the Texas Health Maintenance Organization Act, as amended (Chapter 20A, Vernon's Texas Insurance Code), and may cover but shall not be limited to:

- (1) terms of renewability;
- (2) initial and subsequent conditions of eligibility;
- (3) nonduplication of coverage;
- (4) probationary periods;
- (5) benefit limitations, exceptions, and reductions;
- (6) elimination periods;
- (7) requirements for replacement;
- (8) recurrent conditions; and
- (9) definitions of terms.

(b) The State Board of Insurance may issue reasonable rules that specify prohibited provisions not otherwise specifically authorized by statute which, in the opinion of the State Board of Insurance, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(c) Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. Such policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was

recommended by or received from a physician within six months before the effective date of coverage.

Minimum Standards for Benefits

Sec. 3. The State Board of Insurance shall issue reasonable rules to establish minimum standards for benefits under medicare supplement policies.

Loss Ratio Standards

Sec. 4. Medicare supplement policies shall be expected to return to holders of a medicare supplement policy benefits which are reasonable in relation to the premium charged. The State Board of Insurance shall issue reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules issued pursuant to this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual medicare supplement policies.

Disclosure Standards

Sec. 5. (a) In order to provide for full and fair disclosure in the sale of medicare supplement policies, no medicare supplement policy shall be delivered or issued for delivery in this state and no certificate shall be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time application is made.

(b) The State Board of Insurance shall prescribe the format and content of the outline of coverage required by Subsection (a) of this section. For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall, at a minimum, include:

- (1) a description of the principal benefits and coverage provided in the medicare supplement policy;
- (2) a statement of the exceptions, reductions, and limitations contained in the medicare supplement policy;
- (3) a statement of the renewal provisions, including any reservation by the insurer, group hospital service corporation, or health maintenance organization of a right to change the premiums;
- (4) a statement that the outline of coverage is a summary of the medicare supplement policy issued or applied for and that the medicare supplement

policy should be consulted to determine governing contractual provisions.

(c) The State Board of Insurance may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response medicare supplement policies, the State Board of Insurance may require by rule that the informational brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response medicare supplement policies, the State Board of Insurance may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare but in no event later than the time of policy delivery.

(d) The State Board of Insurance may promulgate reasonable rules for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds, subscribers, or enrollees that particular coverages are not medicare supplement coverages for all accident and sickness insurance policies or subscriber contracts or evidences of coverage sold to persons eligible for medicare, other than:

- (1) medicare supplement policies;
- (2) disability income policies;
- (3) basic, catastrophic, or major medical expense policies;
- (4) single premium nonrenewable policies; or
- (5) other policies, contracts, subscriber contracts, or evidences of coverage as specified in Paragraphs (A), (B), and (C) of Subsection (b) of Section 1 of this article.

(e) The State Board of Insurance may further promulgate reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, certificates, or evidences of coverage by persons eligible for medicare.

Notice of Free Examination

Sec. 6. Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of such policy or certificate or attached thereto stating in substance that the applicant shall have the right to return such policy or certificate within 10 days of its delivery and to have the premium refunded if, after examination of such policy or certificate, the applicant is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that

the applicant shall have the right to return such policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

Construction with Other Laws

Sec. 7. The provisions of this article are cumulative of all other law, but in the event of any conflict between the provisions of this article and any other provisions of the Insurance Code, the provisions of this article control to the extent of such conflict.

[Acts 1981, 67th Leg., p. 194, ch. 91, § 1, eff. Jan. 1, 1982.]

Sections 3 and 4 of the 1981 Act provide:

"Sec. 3. This Act does not apply to litigation pending before the effective date of this Act.

"Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

Art. 3.75. Separate Accounts

Text of article added effective September 1, 1984

Establishing Separate Accounts

Sec. 1. (a) A domestic life insurance company may establish one or more separate accounts and may allocate to each account amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities and benefits incidental to the insurance and annuities, payable in fixed or variable amounts or both, or to fund the benefits of a pension, retirement, or profit sharing plan payable in fixed or variable amounts or both fixed and variable amounts, subject to this section.

(b) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the company.

(c) Except as provided by Subsection (d) of this section, amount allocated to any separate account and accumulations on those amounts may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies, and the investments in a separate account may not be taken into account in applying the investment limitations otherwise applicable to the investments of the company.

(d) Reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account except with the approval of the Commissioner of Insurance and under conditions for investments, and other matters, that recognize the guaranteed nature of the benefits provided and that are prescribed by the State Board of Insurance.

(e) Unless the commissioner approves another method of valuation, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to the separate account. The portion, if any, of the assets of the separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds under Subsection (d) of this section shall be valued as provided by the rules otherwise applicable to the company's assets, unless the commissioner approves another method of valuation.

(f) Amounts allocated to a separate account under this article are owned by the company, and the company is not and may not represent itself as a trustee with respect to these amounts. To the extent provided under the applicable contracts, the portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to that account are not chargeable with liabilities arising out of any other business the company may conduct.

(g) Except as provided by Subsection (h) of this section, a sale, exchange, or other transfer of assets may not be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(1) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; and

(2) the transfer, whether into or from a separate account, is made:

(A) by a transfer of cash; or

(B) by a transfer of securities having a readily determinable market value, provided the transfer of securities is approved by the commissioner.

(h) The commissioner may approve other transfers among accounts if in his opinion the transfers would not be inequitable.

(i) To the extent the company considers it necessary to comply with any applicable federal or state laws, the company with respect to any separate account, including without limitation any separate account that is a management investment company or a unit investment trust, may provide for persons having an interest in the account appropriate voting and other rights and special procedures for the conduct of the business of the account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which

need not be affiliated with the company, to manage the business of such account.

Contract Statement Required

Sec. 2. A contract providing benefits payable in variable amounts delivered or issued for delivery in this state must contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of the variable benefits. A contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued under that contract, must state that the dollar amount will vary and must contain on its first page a statement that the benefits under the contract are on a variable basis.

License Required

Sec. 3. A company may not deliver or issue for delivery in this state variable contracts unless after notice and hearing, the commissioner shall find that the company is qualified to issue, deliver, and use variable contracts in accordance with this article and the regulations issued thereunder. The commissioner shall issue an official order of authorization relating to the company's authority to issue, deliver, and use variable contracts in this state.

(b)¹ In considering the condition or method of operation the commissioner shall consider among other things:

- (1) the history and financial condition of the company;
- (2) the character, responsibility, and fitness of the officers and directors of the company;
- (3) the law and rules under which the company is authorized to do business in the state of domicile to issue variable contracts; and
- (4) whether the condition or method of operation in connection with the issuance of these contracts will render its operation hazardous to the public or its policyholders in this state.

(c) For the purposes of Subdivision (3) of Subsection (b) of this section, the state of entry of a foreign company is its place of domicile.

(d) If a company is a subsidiary of an admitted life insurance company or affiliated with an admitted life insurance company through common management or ownership, the commissioner may after notice and hearing determine the company to have met the requirements of this section if either it or the parent or the affiliated company meets the requirements of this section.

¹ So in enrolled bill; there is no "(a)".

Reserve Liability

Sec. 4. The reserve liability for variable contracts must be established in accordance with actuarial procedures that recognize the variable nature

of the benefits provided and any mortality guarantees.

Other Provisions of Contracts

Sec. 5. Each individual variable life insurance or individual variable annuity contract delivered or issued for delivery in this state must contain grace, reinstatement, and nonforfeiture provisions appropriate to the contract. Any group variable contract delivered or issued for delivery in this state shall contain a grace period appropriate to such contract.

Separate Annual Statements

Sec. 6. Every insurance company authorized pursuant to this article to issue, deliver, or use variable annuity contracts, variable life contracts, or both shall annually file with the State Board of Insurance a separate annual statement of its separate variable contract accounts. Such statement shall be on a form prescribed or approved by the State Board of Insurance and shall include details as to all of the income, disbursements, assets, and liability items of and associated with the said separate variable contract accounts. Said statement shall be under oath of two officers of the company and shall be filed simultaneously with the annual statement required by Articles 3.07 and 11.06 of this code.

Variable Contract Agents License

Sec. 7. (a) Notwithstanding any other law of this state, no person shall sell or offer for sale within this state a variable contract or do or perform any act or thing in the sale, negotiation, making, or consummating of any variable contract other than for himself, unless such person shall have a valid and current certificate from the State Board of Insurance authorizing such person to act within this state as a variable agent. No such certificate shall be issued unless and until said board is satisfied, after examination, that such person is by training, knowledge, ability, and character qualified to act as such agent. Any such certificate may be withdrawn and cancelled by said board, after notice and hearing, if it shall find that the holder thereof does not then have the qualifications required for issue of such certificate.

(b) The Commissioner of Insurance shall collect in advance from variable agent applicants a license fee in an amount not to exceed \$50 and an examination fee in an amount not to exceed \$20. The State Board of Insurance shall determine the amount of the fees. A new examination fee shall be paid for each and every examination. The examination fee shall not be returned under any circumstance 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. All fees collected pursuant to this section

shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund to be used to administer the provisions of this section and Article 21.07-1, Insurance Code, as amended.

(c) Each license issued to a variable contract agent 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 insurer is terminated.

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and payment of a renewal fee in an amount not to exceed \$50.

(e) Any agent licensed under this article may represent and act as an agent for more than one insurance carrier any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set for the insurance carrier or carriers which the agent is then licensed to represent and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment that said insurance carrier 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 or company shall be required to pay a 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. All fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund to be used to administer the provisions of this article and Article 21.07-1, Insurance Code, as amended.

Regulatory Authority

Sec. 8. The State board of Insurance may establish such rules, regulations, or limitations which are fair and reasonable as may be appropriate for the augmentation and implementation of this article, including but not limited to requirements for licensing agents, standard policy provisions, and disclosure requirements. Notwithstanding any other law, the commissioner has sole authority to regulate the issuance and sale of variable contracts under this article and under such rules, regulations, standards, or limitations adopted by the State Board of Insurance.

Application of Code

Sec. 9. This code applies to separate accounts and contracts relating to separate accounts except

for Subdivisions 2, 6, 7, 8, 9, 11, and 12, Article 3.44, as amended; Article 3.44a, as amended; Subdivision 3, Article 3.45; Subdivision 1, Section 2, Article 3.50, as amended; Article 11.12, as amended; Article 11.13; and Article 11.14, Insurance Code.

[Acts 1983, 68th Leg., p. 4124, ch. 648, § 1, eff. Sept. 1, 1984.]

CHAPTER FOUR. TAXES AND FEES

Art.

- 4.01. Tax Other Than Premium Tax.
- 4.02. Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Non-Profit Group Hospital Service Plans; Tax on Gross Premiums.
- 4.03. Tax on Insurance Organizations Not Organized Under Laws of Texas.
- 4.04. Tax on Domestic Insurance Organizations.
- 4.05. Taxes to be Paid before Certificate is Issued.
- 4.06. Taxes Imposed Exclusive.
- 4.07. Fees of State Board of Insurance.
- 4.08. Unclaimed Funds Statute for Life Insurance Companies.
- 4.09. Fees for the Privilege of Writing Credit Life Insurance or Credit Accident and Health Insurance or Both Credit Life Insurance and Credit Accident and Health Insurance.
- 4.10. Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Nonprofit Group Hospital Service Plans; Tax on Gross Premiums.
- 4.11. Tax on Domestic Life, Accident and Health Insurance Organizations.
- 4.12. Disposition of Certain Revenue.
- 4.13. Penalty for Failure to Report.
- 4.14. Penalty for Failure to Pay Tax.
- 4.15. Permit Not Granted Until Tax Paid.

Art. 4.01. Tax Other Than Premium Tax

All insurance companies incorporated under the laws of this state shall hereafter be required to render for county and municipal taxation all of their real estate and all furniture, fixtures, automobiles, equipment, and data processing systems, as other such real estate and tangible personal property is rendered in the city and county where such property is located.

All other personal property owned by such insurance companies, except fire insurance companies and casualty insurance companies, shall be valued as other such property is valued for assessment by the taxing authority in the following manner:

From the total valuation of the entire assets of each insurance company shall be deducted:

- (a) All the debts of every kind and character owed by such insurance company;
- (b) All intangible personal property owned by such insurance company;
- (c) All reserves, being the amount of the debts of such insurance company by reason of its outstanding policies in gross.

From the remainder shall be deducted the assessed value of all real estate and the assessed value of all furniture, fixtures, automobiles, equipment, and data-processing systems, rendered for taxation, and the remainder, if any there be, shall be taxable as personal property by the city and county where the principal business office of any such company is fixed by its charter.

All other personal property of fire insurance companies and casualty insurance companies incorporated under the laws of this state shall be valued as other such property is valued for assessment by the taxing authority in the following manner:

From the total valuation of the entire assets of each insurance company shall be deducted:

- (a) All the debts of every kind and character owed by such insurance company;
- (b) All intangible personal property owned by such insurance company;
- (c) All reserves, which reserves shall be computed in such manner as may be prescribed by the rules and regulations of the State Board of Insurance, for unearned premiums and for all bona fide outstanding losses.

From the remainder shall be deducted the assessed value of all real estate and the assessed value of all furniture, fixtures, automobiles, equipment, and data-processing systems, rendered for taxation, and the remainder, if any there be, shall be taxable as personal property by the city and county where the principal business office of any company is fixed by its charter.

Domestic insurance companies shall not be required to pay any occupation or gross receipts tax except as otherwise provided by this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1957, 55th Leg., p. 812, ch. 344, § 2; Acts 1969, 61st Leg., p. 2470, ch. 831, § 1, eff. Jan. 1, 1970.]

Sections 2 to 5 of the amendatory act of 1969 provided:

"Sec. 2. If any part, section, subsection, paragraph, sentence, clause, phrase or word contained in this Act shall be held by the courts to be invalid, then, in that event, this Act, in its entirety, shall be invalid and of no force and effect and Art. 4.01 of the Insurance Code of Texas, 1951, as amended by Section 3 of Chapter 344, Acts of the 55th Legislature, Regular Session, 1957, shall remain in full force and effect, to the same extent as if this Act had not been enacted.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed.

"Sec. 4. Nothing in this Act shall be construed as amending or in any way changing the provisions, applicability or effect of Article 7166, Texas Civil Statutes.

"Sec. 5. This Act shall take effect on January 1, 1970."

Art. 4.02. Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Non-Profit Group Hospital Service Plans; Tax on Gross Premiums

Sec. 1. Each such insurance organization shall be subject to the provisions of Articles 4.13, 4.14, and 4.15 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(b), eff. Jan. 1, 1982.]

Art. 4.03. Tax on Insurance Organizations Not Organized Under Laws of Texas

Sec. 1. This article shall not in any manner affect the obligation of any such insurance organization to make investments in Texas securities in proportion to the amount of Texas reserves as required by Article 3.33 of Subchapter C, Chapter 3 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 4.04. Tax on Domestic Insurance Organizations

Sec. 1. This article shall not in any manner affect the obligation of any such insurance organization to make investments in Texas securities in proportion to the amount of Texas reserves as required by Article 3.33 of Subchapter C, Chapter 3 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 4.05. Taxes to be Paid before Certificate is Issued

Upon the receipt of sworn statements showing the gross premium receipts of any insurance organization, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by such insurance organization for the preceding year, which taxes shall be paid to the State Treasurer for the use of the State, by such company. Upon his receipt of such certificate and the payment of such tax, the Treasurer shall execute a receipt therefor, which receipt shall be evidence of the payment of such taxes. No such life insurance company shall receive a certificate of authority to do business in this State until such taxes are paid. If, upon the examination of any company, or in any other manner, the Board shall be informed that the gross premium receipts of any year exceed in amount those shown by the report thereof, theretofore made as above provided, it shall be the duty of such Board to file with the State Treasurer a supplemental certificate showing the additional amount of taxes due by such company, which shall be paid by such company upon notice thereof. The State Treasurer if, within fifteen (15) days after the receipt by him of any certificate or supplemental certificate provided for by this article, the taxes due as shown thereby have not been paid, shall report the facts to the Attorney General, who shall immediately institute suit in the proper court in Travis County to recover such taxes.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 4.06. Taxes Imposed Exclusive

No occupation tax other than herein imposed shall be levied by the State or any county, city or town, upon any insurance organization herein subject to the occupation tax in proportion to its gross premium receipts, or its agents. The occupation tax

imposed by this chapter shall be the sole occupation tax which any company doing business in this State under the provisions of this chapter shall be required to pay.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 4.07. Fees of State Board of Insurance

The State Board of Insurance shall charge and receive for the use of the State the following fees:

For filing each declaration or certified copy of charter of an insurance company	\$25.00
For filing the annual statement of an insurance company, or certificate in lieu thereof	\$20.00
For certificate of authority and certified copy thereof	\$1.00
For affixing the official seal and certifying to the same	\$1.00
For valuing policies of life insurance, and for each one million of insurance or fraction thereof	\$10.00

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

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

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1965, 59th Leg., p. 1260, ch. 578, § 1, eff. June 17, 1965; Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Art. 4.08. Unclaimed Funds Statute for Life Insurance Companies

Title

Sec. 1. This Article shall be known as the "Unclaimed Funds Statute for Life Insurance Companies."

Scope

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.

Definitions

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 seven 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.

Reports

Sec. 4. Every such life insurance company shall on or before the first day of May of each year make a report in writing to the State Treasurer of Texas of all unclaimed funds, as hereinbefore defined, held and owing by it on the 31st day of December next preceding, provided, however, such report shall not be required to include amounts of less than Five Dollars (\$5.00) which on the effective date of this Article shall have been unclaimed and unpaid for more than eleven years, or amounts which have been paid to another state or jurisdiction under any escheat or unclaimed funds law thereof. Such re-

port 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, his 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 State Treasurer may require; provided, however, that amounts of less than Ten Dollars (\$10.00) each may be reported in the aggregate without furnishing any of the information required in Clauses (1), (2), (3), (4), and (5) of this Section.

Notice: Publication

Sec. 5. (a) On or before the first day of September following the making of such reports under Section 4, the State Treasurer shall cause to be published notices based on the information contained in such reports and entitled: "NOTICE OF CERTAIN UNCLAIMED FUNDS HELD AND OWING BY LIFE INSURANCE COMPANIES." 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 where the last known address of the person appearing to be entitled to such funds is in the county of publication or general circulation, together with: (1) the amount reported due and the date it became payable; (2) the name and last known address of each beneficiary or other person who, according to the company's reports, may have an interest in such unclaimed funds; and (3) the name and address of the company. The notice shall also state that such unclaimed funds will be paid by the company to persons establishing to its satisfaction before the following December 1st their right to receive the same, and that not later than the following December 20th such unclaimed funds still remaining will be paid to the State Treasurer who shall thereafter be liable for the payment thereof.

(c) It shall not be obligatory upon the State Treasurer to publish any item of less than Fifty Dollars (\$50) in such notice, unless the State Treasurer deems such publication to be in the public interest. The expenses of publication shall be charged against the special trust fund provided for in Section 9.

Payment to State Treasurer

Sec. 6. All unclaimed funds contained in the report required to be filed by Section 4 of this Article, excepting those which have ceased to be unclaimed funds, shall be paid over to the State Treasurer on or before the following December 20th.

The State Treasurer shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurance company shall file any report and in such event the time for publication and payment required by this Article shall be extended for a like period.

Custody of Unclaimed Funds in State; Insurers Indemnified

Sec. 7. Upon the payment of such unclaimed funds to the State Treasurer 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.

Reimbursement for Claims Paid by Insurers

Sec. 8. (a) Any life insurance company which has paid monies to the State Treasurer pursuant to the provisions of this Article may make payment to any person appearing to such company to be entitled thereto and upon proof of such payment the State Treasurer shall forthwith reimburse such company for such payment.

(b) In the event legal proceedings are instituted by any other state, in this state or in any other state or federal court with respect to any of the unclaimed funds paid to the State Treasurer, the life insurance company making the payment shall notify the State Treasurer and the Attorney General of this state of such proceedings and the Attorney General may, in his discretion, intervene therein. If after the life insurance company making the payment has actively defended in such proceedings, or has been notified in writing by the Attorney General that no defense need be made in respect to such funds, a judgment is entered against such life insurance company for any amount paid to the State Treasurer under this Article (including any increment to the amount so paid resulting from the differential in time at which payments are made to this state and the other state involved), the State Treasurer shall, upon being furnished proof of payment in satisfaction of said judgment, immediately reimburse the life insurance company the amount so paid in satisfaction of the judgment. The State Treasurer shall also immediately reimburse the life

insurance company for any legal fees, costs and other expenses incurred in such legal proceedings.

(c) If, as to any claim for reimbursement made under this Section 8, the State Treasurer shall fail to make reimbursement within ninety days after the making of such claim, or if he shall notify the life insurance company prior to the expiration of the ninety days of his refusal to make reimbursement, the life insurance company making such claim for reimbursement may institute suit therefor in a court of competent jurisdiction in Travis County, Texas, naming the State Treasurer as defendant, and such court shall have jurisdiction of any such action to recover any amount for which the right to reimbursement is herein provided. Any action hereunder must be brought within one hundred eighty days after the making of a claim for reimbursement against the State Treasurer.

(d) The rights to reimbursement set forth in, and provided by, this Section shall be the obligation of the State of Texas and any amounts recoverable under this Section 8, whether or not due under any judgment against the State Treasurer, shall be paid from the special trust fund established by this Act, or if the special trust fund is insufficient from the general funds of the State of Texas.

Special Trust Fund; Administration

Sec. 9. Upon receipt of any unclaimed funds from such life insurance companies by the State Treasurer, he shall pay forthwith three-fourths of the amount thereof into the general funds of the state for the use of the state. The remaining one-fourth shall be administered by him as a special trust fund for the purposes of this Article, and deposited in the manner provided by law for the deposit of said funds. At the end of each calendar year, any unclaimed funds which shall have been a part of such special trust fund for a period of seven years or more shall be paid into the general funds of the state for the use of the state, provided that the special trust fund shall never be so reduced to less than One Hundred Thousand Dollars (\$100,000.00).

Determination and Review of Claims

Sec. 10. Any person claiming to be entitled to unclaimed funds paid to the State Treasurer may file a claim at any time with such official. The State Treasurer shall possess full and complete authority to accept or reject any such claim. 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 State Treasurer as defendant.

Payment of Allowed Claims

Sec. 11. Any claim which is accepted by the State Treasurer or ordered to be paid by him by a court of competent jurisdiction shall be paid out of the special trust fund in his custody, or in the event such special trust fund shall be insufficient, out of the general funds of the state.

Records Required

Sec. 12. The State Treasurer 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.

Other Acts Not Applicable

Sec. 13. No other Statute of this state relating to escheat or unclaimed funds now in force shall apply to life insurance companies, nor shall any such Statute hereafter enacted so apply unless specifically made applicable by its terms; provided that Article 3272a, House Bill No. 5, Acts of the 57th Legislature, First Called Session, shall be in force as to personal property subject to escheat reported or required to be reported by January 6, 1962, under the terms of said Act and the provisions of Section 8 hereof shall be applicable in such cases.

Penalty

Sec. 14. Any person who wilfully fails to file a report required by this Article, or who violates any of the other terms and provisions of this Article shall be punished by a fine not less than Five Hundred Dollars (\$500.00), nor more than One Thousand Dollars (\$1000.00), or by confinement for not more than six months in the county jail, or both, and in addition, shall be subject to civil penalties of not exceeding One Hundred Dollars (\$100.00) for each day of such wilful failure or refusal, said civil penalties to be collected by suit in a District Court of Travis County, Texas, by the Attorney General in the name of the State of Texas.

[Acts 1963, 58th Leg., p. 865, ch. 333, § 1, eff. Aug. 23, 1963.]

Art. 4.09. Fees for the Privilege of Writing Credit Life Insurance or Credit Accident and Health Insurance or Both Credit Life Insurance and Credit Accident and Health Insurance

Sec. 1. The State of Texas shall assess and collect from each credit insurer writing in Texas credit life insurance or credit accident and health insur-

ance or both credit life insurance and credit accident and health insurance, as defined in Article 3.53 of the Insurance Code, an annual fee for such privilege of Five Hundred Dollars (\$500), which shall be independent of and in addition to all other fees and taxes now imposed, or which may hereafter be imposed by law. Such fee shall be for the privilege of doing business from January 1 through December 31, and shall be due and payable at the time the insurer first engages during each calendar year in the writing of such credit insurance. The fee shall be for the privilege of writing such credit insurance for the remainder of the calendar year in which the fee becomes payable, and the amount of the fee shall not be reduced even though the privilege does not cover a full calendar year.

Sec. 2. All fees collected by virtue of this Article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and appropriated to the use and benefit of the State Board of Insurance to be used in the payment of salaries and other expenses arising out of and in connection with the examination of insurance companies and/or the licensing of insurance companies and investigations of violations of the insurance laws of this State.

[Acts 1965, 59th Leg., p. 1035, ch. 512, § 1, eff. June 16, 1965. Amended by Acts 1983, 68th Leg., p. 3934, ch. 622, § 23, eff. Sept. 1, 1983.]

Art. 4.10. Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Non-profit Group Hospital Service Plans; Tax on Gross Premiums

Payment of Tax

Sec. 1. Every insurance carrier, including Lloyd's and reciprocal exchanges and any other organization or concern receiving gross premiums from the business of fire, marine, marine inland, accident, credit, title, livestock, fidelity, guaranty, surety, casualty, workers' compensation, employers' liability, or any other kind or character of insurance, except as provided in Sections 2, 3, and 4 of this article, shall pay to the commissioner of insurance for transmittal to the state treasurer an annual tax upon such gross premium receipts as provided in this article. Any such insurance carrier doing other kinds of insurance business shall pay the tax levied upon its gross premiums received from such other kinds of business as provided in Article 4769 and Article 7064a, Revised Civil Statutes of Texas, 1925.¹

¹ Transferred; see, now, art. 4.11 of this Code.

Inapplicability of Article

Sec. 2. This article shall not apply to premium receipts received from the business of life insurance, personal accident insurance, life and accident

insurance, or health and accident insurance for profit, written by life insurance companies, life and accident insurance companies, health and accident insurance companies, or for mutual benefit or protection of this state.

Inapplicability of Article

Sec. 3. This article shall not apply to fraternal benefit associations or societies in this state, to nonprofit group hospital service plans, to stipulated premium companies nor to mutual assessment associations, companies, or corporations regulated by Chapter 14, Insurance Code, as amended.

Inapplicability of Article

Sec. 4. This article shall not apply to purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property and not for profit.

Gross Premium Receipts Defined

Sec. 5. Gross premium receipts referred to herein are the total gross amount of premiums received for the taxable year on each and every kind of insurance or risk written upon property or risks located in the State of Texas (except premium receipts under Section 2), except premiums received from other licensed companies for reinsurance, less return premiums and dividends paid policyholders with no deduction for premiums paid for reinsurance.

Time of Filing and Payment

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

(b) A quarterly prepayment of premium tax must be made on March 1st, May 15th, August 15th, and November 15th by all insurers with net tax liability for the previous calendar year in excess of \$1,000. The tax paid on each date must equal one-fourth of the total premium tax paid for the previous calendar year. Should no premium tax have been paid during the previous calendar year, the quarterly payment shall equal the tax which would be owed on the gross premium receipts during the previous calendar quarter ending March 31st, June 30th, September 30th, or December 31st at the minimum tax rate specified by law. The State Board of Insurance is authorized to certify for refund to the State Treasurer any overpayment of premium taxes that results from the quarterly prepayment system herein established.

(c) The State Board of Insurance may establish such rules, regulations, minimum standards, or limitations which are fair and reasonable as may be

appropriate for the augmentation and implementation of this article.

Amount of Tax

Sec. 7. The amount of tax imposed shall be determined on the basis of the amount that such insurance carrier owned on the 31st day of December preceding of Texas investments as defined herein, and the amount such insurance carrier owned on said date of similar investments in the comparison state. "Comparison state" is defined as the state (other than Texas) in which such insurance carrier owned the largest amount of such investments.

Texas Investments Defined

Sec. 8. For purposes of this article, Texas investments include only the following:

(a) Bonds, warrants, and interest-bearing indebtedness of any kind issued by the State of Texas, any county, city, school district, or any municipality or subdivision thereof which is now or may hereafter be constituted or organized and authorized to issue such bonds, warrants, and interest-bearing indebtedness by the constitution or statutes of the State of Texas. The value of such bonds, warrants, or interest-bearing indebtedness for purposes of this article shall be their amortized value.

(b) Notes and bonds secured by mortgage or deeds of trust on real property located solely in this state including deeds of trust on residential property located in the State of Texas. The value of such notes or bonds for purposes of this article shall be their unpaid principal balance.

(c) The average daily balance of cash on deposit, including both negotiable and non-negotiable certificates of deposit and accounts in state banks and national banks insured by the Federal Deposit Insurance Corporation and in state and federal savings and loan associations insured by the Federal Savings and Loan Insurance Corporation located in the State of Texas. The value of such deposits shall be determined on the basis of the sum of the balance in such accounts and such certificates of deposit as shown on the books of the insurance carrier on the close of each day including Saturdays, Sundays, and holidays divided by 365.

Similar Investments Defined

Sec. 9. For purposes of this article, "similar investments" is defined as the same character of property and investments described in Section 8 hereof, located in a state other than Texas and originating and existing with the same relationship to such state as the location and relationship of such property to the State of Texas.

Rate of Tax

Sec. 10. There is imposed on each such insurance carrier an annual tax equal to 3.5% of its premium receipts. Any insurance carrier may qualify for a tax rate lower than the 3.5% imposed by this article. Such qualification for a lower rate can be accomplished in the following two ways:

(a) If such insurance carrier as of December 31 preceding owns Texas investments in an amount in total value which is not less than 85% nor more than 90% of the amount such insurance carrier owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 2.4% of its gross premium receipts.

(b) If such insurance carrier as of December 31 preceding owns Texas investments in an amount in total value which is in excess of 90% of the amount such insurance carrier owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 1.2% of its gross premium receipts.

Annual Tax Return

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

Certification of Tax Payments; Transfer of Funds

Sec. 12. After receipt by the commissioner of insurance of each insurance carrier's tax return and tax payments, the commissioner shall certify to the state treasurer the amount of taxes paid by each insurance carrier. The commissioner's certification shall be authorization for the state treasurer to transfer such certified amounts from the insurance suspense account to the general revenue fund unless there is a lawful reason for maintaining the payment in the insurance suspense account.

Examination And Evaluation Fee Credits

Sec. 13. The amount of all examination and evaluation fees paid in each taxable year to or for the use of the State of Texas by an insurance carrier shall be allowed as a credit on the amount of premium taxes due under this article. Any credit allowed by the provisions of this section is in addition to any other credits allowable by statute.

No Other Taxes to be Levied or Collected; Exceptions

Sec. 14. No occupational tax shall be levied on insurance carriers or companies herein subjected to this premium receipts tax by any county, city, or town. The taxes in this article shall constitute all taxes collectible under the laws of Texas against any such insurance carrier, except maintenance taxes specifically levied under the laws of Texas and assessed by the State Board of Insurance to support

the various activities of the divisions of the State Board of Insurance.

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

Failure to Pay Taxes

Sec. 15. Any insurance carrier failing to pay all taxes imposed by this article shall, in addition, be subject to the provisions of Article 4.05, Insurance Code.

Certificate Showing Amount of Taxes Due; Time Period; Collection Proceedings

Sec. 16. (a) Except as otherwise provided in this article, the amount of any tax imposed by this article upon examination of any carrier or in any other manner shall be filed by the commissioner of insurance with the state treasurer by supplemental certificate showing the amount of any taxes due by such carrier within four years after the return was filed (whether or not such return was filed on or after the date due).

(b) When an administrative review or a judicial proceeding is pending in a court of competent jurisdiction prior to the expiration of the time presented in Subsection (a), the time period prescribed in Subsection (a) shall be suspended with respect to the amount of tax in issue in such proceeding until such matters are finally determined, whereupon the running of such period of time shall resume until finally expired.

(c) In the case of failure to file a return, the commissioner of insurance may notify the state treasurer of the taxes due and the commissioner of insurance may proceed in a court of competent jurisdiction for collection of such tax at any time.

Payment Under Protest

Sec. 17. Any insurance carrier which believes or contends that the premium tax under this article is being paid in error or under unlawful requirements shall, nevertheless, be required to pay such amount as deemed to be due under written protest as provided under Article 1.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended,¹ provided, however, nothing in this article limits the applicability of Article 1.04(d), Insurance Code.

¹ Repealed; see, now, Tax Code, § 112.001 et seq.

Statute of Limitation

Sec. 18. Any suit for refund must be filed in accordance with law within four years of the due date for taxes in question. Any claim for refund filed within any other time period shall be barred by

this statute of limitation except that on request of the insurance carrier, the four-year statute of limitation provided for in this article may be extended by written order of the State Board of Insurance for a period not to exceed 90 days from the expiration of the four-year period provided that such order is entered prior to the expiration of the four-year period.

[Transferred from Civil Statutes, Article 7064, and amended by Acts 1981, 67th Leg., p. 1780, ch. 389, § 36, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 3212, ch. 844, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 1367, ch. 283, §§ 1, 2, eff. Sept. 1, 1983.]

Sections 2 to 5 of Acts 1981, 67th Leg., ch. 844, add arts. 7064b to 7064e to Chapter 2, Title 122, of the Revised Civil Statutes, without reference to enactment of Title 2 of the Tax Code by chapter 389. As added these articles read:

"Art. 7064b. Any insurance carrier and any person, corporation, association, or entity or any receiver thereof to which Article 7064, Revised Civil Statutes of Texas, 1925 [now, this article], shall apply, which fails to pay the tax on or before March 1 as provided herein, shall pay interest to the State Board of Insurance to be deposited in the general revenue fund at an annual rate of nine percent for the period from March 1 of the taxable year until the date such taxes are paid in addition to the taxes due.

"Art. 7064c. Any insurance carrier which either fails to file a tax return as provided in Article 7064, Revised Civil Statutes of Texas, 1925 [now, this article], or fails to pay any taxes imposed by Article 7064, Revised Civil Statutes of Texas, 1925, on or before the due date of March 1 in the year following the taxable year, shall pay to the State Board of Insurance to be deposited in the general revenue fund a penalty equal to five percent of the amount of taxes due for each month or portion of a month for which such return or payment is late. Any penalty assessed under this article shall not exceed 20 percent of the amount of taxes due. Payment of such penalty is in addition to payment of the taxes due.

"Art. 7064d. All delinquent taxes under Article 7064, Revised Civil Statutes of Texas, 1925 [now, this article], including penalties, which are due and owing to the State of Texas shall be recovered by the attorney general in a suit brought by him in the name of the State Board of Insurance on behalf of the State of Texas. The venue and jurisdiction of all suits arising hereunder are hereby conferred upon the courts of Travis County, Texas. For delinquent taxes, penalties and interest herein provided for, the state shall have a prior and preferred lien on every Texas investment and other thing of value owned by the delinquent taxpayer which shall extend to and be enforceable against any property, either real or personal, or both, owned by the delinquent insurance carrier which property is not exempt from forced sale by reason of existing laws or the constitution of this state or the United States. In addition to the authority to file suit against an insurance organization for delinquent taxes, penalties, and interest, the attorney general, by a suit in the name of the State Board of Insurance, shall have the right to enjoin such delinquent insurance carrier from engaging in the business of insurance in the State of Texas until such delinquent taxes, penalties, and interest are paid in full. Venue for a suit of this nature is also fixed in Travis County, Texas.

"Art. 7064e. The State Board of Insurance shall have authority for the purpose of verifying reports and investigating the affairs of insurance carriers in order to determine whether the tax due under Article 7064, Revised Civil Statutes of Texas, 1925 [now, this article], is being properly reported and paid. Such authority shall include the power to enter upon the premises of any taxpayer liable for such a tax, and any other premises necessary, in determining the correct tax liability and to examine, or cause to be examined, any books or records of any person employed by the insurance carrier subject to such tax, and to secure any other information, directly or indirectly, concerned in the enforcement of Article 7064, Revised Civil Statutes of Texas, 1925. The State Board of Insurance shall further have the authority to promulgate

and enforce, according to law, rules and regulations pertinent to Article 7064, Revised Civil Statutes of Texas, 1925, and such rules and regulations shall have the full force and effect of law."

Sections 6 and 7 of Acts 1981, 67th Leg., ch. 844, provide: "Sec. 6. This Act takes effect January 1, 1982, and applies to taxes on all premiums collected by an insurance carrier after that date.

"Sec. 7. Nothing in this Act shall apply to any suit for refund of taxes paid in prior years, pending on the effective date of this Act."

Section 5 of the 1983 amendatory act provides:

"This bill shall be implemented as follows:

"On November 15, 1983, the estimated tax must be paid for the fourth quarter of 1983. On February 15, 1984, the estimated tax must be paid for the first quarter of 1984. On March 1, 1984, the remaining unpaid tax for 1983 must be paid. On May 15, August 15 and November 15, 1984, the estimated tax for the second, third, and fourth quarters of 1984, respectively, must be paid."

Art. 4.11. Tax on Domestic Life, Accident and Health Insurance Organizations

Annual Statement of Premiums Collected; Rate of Tax; Report of Investments

Sec. 1. Every group of individuals, society, association, group hospital service plan, or corporation (all of which shall be deemed included in the term "insurance organization" wherever used in this Article) organized under the laws of this State and transacting the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit or otherwise, or for mutual benefit, or protection in this State shall on or before the first day of March of each year file its annual statement showing the gross amount of premiums collected during the year ending December 31st, preceding, from persons residing or domiciled in this State on policies of insurance, and showing in separate columns the first-year premiums and the renewal premiums collected on such Texas policies, and each such insurance organization, except local mutual aid associations, fraternal benefit societies, and fraternal insurance associations or societies that limit their membership to one (1) occupation, shall pay an annual tax of 1.1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas on policies of insurance. Each such insurance organization shall also report to the State Board of Insurance on or before the first day of March of each year the amount that it had invested on the 31st day of December, preceding, in Texas securities as defined by Article 3.34, Texas Insurance Code, as amended; provided, however, that all such insurance companies whose gross premium receipts are less than Four Hundred and Fifty Thousand Dollars (\$450,000) for the preceding year ending December 31st, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax of $\frac{55}{80}$ of 1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas except as

to first-year premiums as provided herein; provided, however, that the gross premium taxes herein imposed shall not be applicable to first-year premiums; and provided further that where any policy is written on a term plan only the premium collected during the first year shall be deducted on such policy or any renewal, extension or substitution thereof by the company issuing such term policy, and provided further that the amount of all examination and valuation fees paid in such taxable year to or for the use of the State of Texas by any insurance organization hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance organization for such taxable year.

Exclusions

Sec. 2. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance of business in Texas and there shall be no deduction for premiums paid for reinsurance. Such gross premium receipts so reported shall not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act. The gross premium receipts so reported shall not include the amount of premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for municipal employees of this State. If any such insurance organization does more than one (1) kind of insurance business, then it shall pay the tax herein levied upon the gross premiums on each kind of insurance written. The report of the gross premium receipts and the invested assets shall be made upon the sworn statement of two (2) principal officers.

Payment of Tax

Sec. 3. Upon receipt by it of the sworn statement above provided, the State Board of Insurance shall certify to the State Treasurer the amount of taxes due by such insurance organization which shall be paid to the State Treasurer on or before the 15th day of March, following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this State during the calendar year ending December 31st, in which such premiums were collected, or for that portion of the year during which the insurance organization transacted business in this State.

Payments Under Protest; Refunds; Waiver of Defenses

Sec. 3A. (a) The premium tax imposed by this article may be paid under protest as provided by Subchapter B, Chapter 112, Tax Code.¹

(b) If no payment under protest is made, a suit for refund must be filed within four years from the date the tax is due and payable. This article may not be construed as a waiver of any defense, immunity, or jurisdictional bar available to the state or its officers or employees, including obtaining legislative authorization to sue.

¹ Tax Code, § 112.051 et seq.

Other Taxes

Sec. 4. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State from any such insurance organization, organized under the laws of this State, except, and only except unemployment compensation taxes levied under Chapter 482, Acts of the 44th Legislature, 3rd Called Session, 1936, as amended (Article 5221b-1 et seq., Vernon's Texas Civil Statutes); and the fees provided for under Article 4.07, Texas Insurance Code, the deposit fees prescribed by that Article and amendments thereto; and in case of companies writing workers' compensation insurance, the taxes otherwise provided by law on account of such business; and no other taxes shall be levied or collected by the State or any county, city or town except State, county, and municipal ad valorem taxes upon real or personal properties of such insurance organization.

Estimated Tax Returns and Payments

Sec. 5. (a) A quarterly prepayment of premium tax must be made on March 1st, May 15th, August 15th, and November 15th by all insurers with net tax liability for the previous calendar year in excess of \$1,000. The tax paid on each date must equal one-fourth of the total premium tax paid for the previous calendar year. Should no premium tax have been paid during the previous calendar year, the quarterly payment shall equal the tax which would be owed on the gross premium receipts during the previous calendar quarter ending March 31st, June 30th, September 30th, or December 31st at the minimum tax rate specified by law. The State Board of Insurance is authorized to certify for refund to the State Treasurer any overpayment of premium taxes that results from the quarterly prepayment system herein established.

(b) The State Board of Insurance may establish such rules, regulations, minimum standards, or limitations which are fair and reasonable as may be

appropriate for the augmentation and implementation of this article.

[Transferred from Civil Statutes, Article 7064a, and amended by Acts 1981, 67th Leg., p. 1780, ch. 389, § 36, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2731, ch. 746, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 1369, ch. 283, § 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 3996, ch. 622, § 86, eff. Sept. 1, 1983.]

Section 5 of Acts 1983, 68th Leg., p. 2775, ch. 283, provides:

"This bill shall be implemented as follows:

"On November 15, 1983, the estimated tax must be paid for the fourth quarter of 1983. On February 15, 1984, the estimated tax must be paid for the first quarter of 1984. On March 1, 1984, the remaining unpaid tax for 1983 must be paid. On May 15, August 15 and November 15, 1984, the estimated tax for the second, third, and fourth quarters of 1984, respectively, must be paid."

Art. 4.12. Disposition of Certain Revenue

Receipts from the taxes imposed by Articles 4.10 and 4.11 and Sections 11 and 12 of Article 1.14-1 of this code and by Article 4769, Revised Civil Statutes of Texas, 1925, as amended, shall be deposited in the general revenue fund. An amount equal to one-fourth (1/4) of this revenue shall be transferred to the available school fund, and an amount equal to three-fourths (3/4) of this revenue shall be credited to the general revenue fund.

[Acts 1981, 67th Leg., p. 1769, ch. 389, § 4, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2778, ch. 752, § 9(g), eff. Jan. 1, 1982.]

Art. 4.13. Penalty for Failure to Report

Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this chapter to be made, shall forfeit and pay to the State of Texas a penalty of not exceeding one thousand dollars.

[Transferred from Civil Statutes, Article 7074, by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(a), eff. Jan. 1, 1982.]

Art. 4.14. Penalty for Failure to Pay Tax

Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this chapter to be paid, shall forfeit and pay to the State of Texas a penalty of ten per cent upon the amount of such tax.

[Transferred from Civil Statutes, Article 7075, by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(a), eff. Jan. 1, 1982.]

Art. 4.15. Permit Not Granted Until Tax Paid

No individual, company, corporation or association, failing to pay all taxes imposed by this chapter, shall receive a permit to do business in this State, or continue to do business in the State; until the tax hereby imposed is paid. The receipt of the State

Treasurer shall be evidence of the payment of such tax.

[Transferred from Civil Statutes, Article 7077, by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(a), eff. Jan. 1, 1982.]

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SUBCHAPTER A. MOTOR VEHICLE OR AUTOMOBILE INSURANCE

Art. 5.01. Fixing Rate of Automobile Insurance

Every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyd's or other insurer, hereinafter called insurer, writing any form of motor vehicle insurance in this State, shall annually file with the Board of Insurance Commissioners, hereinafter called Board, on forms prescribed by the Board, a report showing its premiums and losses on each classification of motor vehicle risks written in this State.

The Board shall have the sole and exclusive power and authority, and it shall be its duty to determine, fix, prescribe, and promulgate just, reasonable and adequate rates of premiums to be charged and collected by all insurers writing any form of insurance on motor vehicles in this State, including fleet or other rating plans designed to discourage losses from fire and theft and similar hazards and

any rating plans designed to encourage the prevention of accidents. In promulgating any such rating plans the Board shall give due consideration to the peculiar hazards and experience of individual risks, past and prospective, within and outside the State and to all other relevant factors, within and outside the State. The Board shall have the authority also to alter or amend any and all of such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same or any part thereof.

Said Board shall have authority to employ clerical help, inspectors, experts, and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law; provided, however, that the number of employees and salary of each shall be fixed in the General Appropriation Bill passed by the Legislature. The Board shall ascertain as soon as practicable the annual insurance losses incurred under all policies on motor vehicles in this State, make and maintain a record thereof, and collect such data as will enable said Board to classify the various motor vehicles of the State according to the risk and usage made thereof, and to classify and assign the losses according to the various classes of risks to which they are applicable; the Board shall also ascertain the amount of premiums on all such policies for each class of risks, and maintain a permanent record thereof in such manner as will aid in determining just, reasonable and adequate rates of premiums.

Motor vehicle or automobile insurance as referred to in this subchapter shall be taken and construed to mean every form of insurance on any automobile or other vehicle hereinafter enumerated and its operating equipment or necessitated by reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use in this State of any automobile, motorcycle, motorbicycle, truck, truck-tractor, tractor, traction engine, or any other self-propelled vehicle, and including also every vehicle, trailer or semi-trailer pulled or towed by a motor vehicle, but excluding every motor vehicle running only upon fixed rails or tracks. Workmen's Compensation Insurance is excluded from the foregoing definition.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 64, ch. 50, § 2.]

Art. 5.01-1. Premium Rating Plans

A rating plan promulgated by the State Board of Insurance respecting the writing of motor vehicle insurance, other than insurance written pursuant to Section 35 of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), may not assign any rate consequence to a charge or conviction, or otherwise cause premiums for motor vehicle insurance to be increased because of a charge or conviction for a violation of the

Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

[Acts 1979, 66th Leg., p. 1769, ch. 717, § 1, eff. June 13, 1979.]

Art. 5.02. Authority to Assign Certain Types or Classes to Appropriate Rating Laws

There shall be excluded from regulation under the provisions of this subchapter any insurance against liability for damages arising out of the ownership, operation, maintenance or use of or against loss of or damage to motor vehicles described in the foregoing section which may, in the judgment of the Board, be a type or class of insurance which is also the subject of or may be more properly regulated under the terms or provisions of other insurance rating laws heretofore or hereafter enacted covering such insurance. If such situation shall be found to exist, then the Board shall make an order declaring which of the said rating laws shall be applicable to such type or class of insurance, and to any motor vehicle equipment mentioned in Article 5.01 of this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.03. Promulgated Rates as Controlling

(a) On and after the filing and effective date of such classification of such risks and rates, no such insurer, except as otherwise provided herein, shall issue or renew any such insurance at premium rates which are greater or lesser than those promulgated by the Board as just, reasonable, adequate and not excessive for the risks to which they respectively apply, and not confiscatory as to any class of insurance carriers authorized by law to write such insurance after taking into consideration the deviation provisions of this Article. Any insurer desiring to write insurance at rates different from those promulgated by the Board shall make a written application to the Board for permission to file a uniform percentage deviation for a lesser or greater rate, on a statewide basis unless otherwise ordered by the Board, from the class rates or classes of rates promulgated by the Board. Any insurer desiring to write insurance under a classification plan different from that promulgated by the Board shall make written application to the Board for permission to do so; provided, however, the Board shall approve the use of only such additions or refinements in its classification plan as will produce subclassifications which, when combined, will enable consideration of the insurer's experience under both the Board classification plan and its own classification plan. Such application shall be approved in whole or in part by the Board, provided the Board finds that the resulting premiums will be just, adequate, reasonable, not excessive and not unfairly discriminatory, taking into consideration the following:

- (1) the financial condition of the insurer;

- (2) the method of operation and expenses of such insurer;

- (3) the actual paid and incurred loss experience of the insurer;

- (4) earnings of the insurer from investments together with a projection of prospective earnings from investments during the period for which the application is made; and

- (5) such application meets the reasonable conditions, limitations, and restrictions deemed necessary by the Board.

In considering all matters set forth in such application the Board shall give consideration to the composite effect of items (2), (3), and (4) above and the Board shall deny such application if it finds that the resulting premiums would be inadequate, excessive, or unfairly discriminatory. Any original or renewal policy of insurance issued pursuant to an approved plan of deviation shall have attached to or imprinted on the face of such policy the following notice: "The premium charged for this policy is greater than the premium rates promulgated by the State Board of Insurance." The notice shall be in 10-point or larger prominent typesize.

Except as the Board may authorize, the deviation provisions in this Article shall not apply to insurance written pursuant to other provisions of this Chapter in which a deviation from standard rates is authorized, including, but not limited to, automobile liability experience rating and fleet rating plans.

(b) The Board shall issue its order in writing setting forth the terms of approval or reasons for denial of each application filed for deviation. On January 1, 1974 and thereafter if the Board has not issued its order within 30 days after the filing of an application, the application shall be "deemed approved" by the Board. Provided, however, that the Board may thereafter require the applicant insurer to furnish proof to the Board that the matters set out in the application are true and correct and that such application meets the requirements of this Article. If after notice and hearing the Board determines that any application "deemed to have been approved" by the Board contains false or erroneous information or the Board determines that the application does not meet the requirements of this Article the Board may suspend or revoke the approval "deemed to have been granted."

An insurer that has received approval, or is "deemed to have received approval" for the use of a deviation may apply for an amendment to such deviation or by notice to the Board withdraw the deviation.

(c) From and after the effective date of an application approved by the Board, or "deemed to have been approved" by the Board, such insurer may write insurance in accordance with such approval. Provided, however, that the right to write insurance at a lesser or greater rate as approved may be

suspended or revoked by the Board, after notice and hearing, if upon examination or at any time it appears to or is the opinion of the Board that such insurer:

(1) has had a change in its financial condition since the granting of the application; or

(2) the actual paid and incurred losses of the insurer have materially changed since the granting of the application; or

(3) there has been a material increase in expenses of such insurer since the granting of the application; or

(4) there has been a material reduction in earnings from investments by the insurer since the granting of the application; or

(5) the insurer has failed or refused to furnish information required by the Board; or

(6) the insurer has failed to abide by or follow its rate deviation previously approved by the Board. The Board may suspend the right of an insurer to write insurance at the rates approved under such application, pending hearing, provided that the Board in or accompanying the order suspending such right, sets such hearing within not less than 10 nor more than 30 days following the issuance of its order. The Board shall conduct the hearing within not less than 10 nor more than 30 days following the issuance of its order suspending such right, unless the insurer subject to the order requests the Board to delay the hearing beyond 30 days. The right to write insurance at the lesser or greater rate previously approved by the Board shall automatically terminate, except as herein provided, upon the promulgation by the Board of new or different rates as provided for in the first sentence of "Section (a)" of this Article, and as further provided in paragraphs one and two of Article 5.01, Insurance Code, as amended. After the effective date of the Board's promulgation or authorization of new or different rates, the insurer may not thereafter write insurance at a lesser or greater rate, except that an insurer may continue to write insurance at a deviated rate by applying the percentage of the previously approved deviation applicable to the prior rates as the percentage of deviation applicable to the new or different rates promulgated by the Board, limited, however, to a period of 60 days after the effective date of the new or different rates, and not thereafter, and only if such insurer within 30 days following promulgation by the Board of new or different rates, shall make a written application to the Board for permission to deviate from the new or different rates promulgated by the Board. The Board by order may extend the use of prior approved deviations beyond the 60 day period hereinabove set out.

(d) It is expressly provided, however, that notwithstanding any other provision of this chapter to the contrary, a rate or premium for such insurance

greater than the standard rate or premium that has been promulgated by the Board may be used on any specific risk if:

(1) a written application is made to the Board naming the insurer and stating the coverage and rate proposed;

(2) the person to be insured or person authorized to act in relation to the risk to be insured consents to such rate;

(3) the reasons for requiring such greater rate or premium are stated in or attached to the application;

(4) the person to be insured or person authorized to act for such person signs the application; and

(5) the Board approves the application by order or by stamping.

(e) In the administration of this Act the Board shall resolve by rules and regulations, to the extent permitted by law, any conflicts or ambiguities as may be necessary to accomplish the purposes of this Act.

(f) This Article, as amended, is effective September 1, 1973.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1971, 62nd Leg., p. 864, ch. 104, § 1, eff. April 30, 1971; Acts 1973, 63rd Leg., p. 1118, ch. 425, § 1, eff. Sept. 1, 1973; Acts 1977, 65th Leg., p. 1981, ch. 792, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the act of 1971 provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

"Sec. 3. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 5.03-1. Premium Surcharge

Sec. 1. A premium surcharge in an amount to be prescribed by the State Board of Insurance shall be assessed by an insurer defined in Article 5.01, Texas Insurance Code, against an insured for no more than three years immediately following the date of conviction of the insured of an offense under Article 67011-1, Revised Statutes, or an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code. The premium surcharge shall be applied only to private passenger automobile policies as defined by the State Board of Insurance.

Sec. 2. If an insured assessed a premium surcharge as a result of a conviction of an offense as set out in Section 1 of this article is subsequently convicted of a violation of one of those statutes during the period he is assessed the premium surcharge, the period for which the premium surcharge shall be imposed is increased by three additional consecutive years for each conviction.

[Acts 1983, 68th Leg., p. 1606, ch. 303, § 26, eff. Jan. 1, 1984.]

Section 23(c) and (d) of the 1983 Act provides:

"(c) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

"(d) Article 5.03-1, Insurance Code, applies only for convictions of offense that occur after the effective date of this Act."

Art. 5.04. Experience as Factor

To insure the adequacy and reasonableness of rates the Board may take into consideration past and prospective experience, within and outside the State, and all other relevant factors, within and outside the State, gathered from a territory sufficiently broad to include the varying conditions of the risks involved and the hazards and liabilities assumed, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable and adequate, and to that end the Board may consult any rate making organization or association that may now or hereafter exist.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 64, ch. 50, § 3.]

Art. 5.05. Reports on Experience

(a) Recording and Reporting of Loss Experience and Other Data.

The Board shall, after due consideration, promulgate reasonable rules and statistical plans, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers may be made available at least biennially in such form and detail as may be necessary to aid in determining whether rates comply with the standards set forth in Article 5.04. In promulgating such rules and plans, the Board shall have due regard for the rates approved by it, and in order that such rules and plans may be as uniform as is practicable, to the rules and to the form of the plans used in other states. The Board may designate one or more rating organizations or other agencies to gather and compile such experience.

(b) Interchange of Rating Plan Data.

Reasonable rules and plans may be promulgated by the Board after due consideration, requiring the interchange of loss experience necessary for the application of rating plans.

(c) Consultation with other States.

In order to further uniform administration of rating laws, the Board and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult and cooperate with them with respect to rate-making and the application of rating systems.

(d) The Commissioner is hereby authorized and empowered to require sworn statements from any insurer affected by this Act, showing its experience on any classification or classifications of risks and such other information which may be necessary or helpful in determining proper classification and rates or other duties or authority imposed by law. The Commissioner shall prescribe the necessary forms for such statements and reports, having due regard to the rules, methods and forms in use in other states for similar purposes in order that uniformity of statistics may not be disturbed.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 64, ch. 50, § 4.]

Art. 5.06. Policy Forms and Endorsements

(1) In addition to the duty of approving classifications and rates, the Board shall prescribe certificates in lieu of a policy and policy forms for each kind of insurance uniform in all respects except as necessitated by the different plans on which the various kinds of insurers operate, and no insurer shall thereafter use any other form in writing automobile insurance in this State; provided, however, that any insurer may use any form of endorsement appropriate to its plan of operation, provided such endorsement shall be first submitted to and approved by the Board; and any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this subchapter, and shall be sufficient cause for revocation of license of such insurer to write automobile insurance within this State.

(2) An insurer, if in compliance with applicable requirements and conditions, may issue and deliver a certificate of insurance as a substitute for the entire policy of insurance. The certificate of insurance shall make reference to and identify the Board prescribed policy or policy form for which the substitution of certificate is made. The certificate shall be in such form as is prescribed by the State Board of Insurance. The certificate will represent the policy of insurance, and when issued, shall be evidence that the certificate holder is insured under such identified policy and policy form prescribed by the Board. The certificate is subject to the same limitations, conditions, coverages, selection of options, and other provisions of the policy as are provided in the policy, and that insurance policy information is to be shown on and adequately referenced by the certificate of insurance issued by the insurer to the insured. Policy forms include endorsements, whether those endorsements are attached initially with the issuance of an insurance agreement or subsequent thereto. Reference shall be made in such certificate, or in subsequent attachments, to all endorsements to the policy of insurance. The certificate shall be executed in the same manner as though a policy were issued. When such a certificate is substituted for the policy of insur-

ance by an insurer, such insurer shall simultaneously furnish to the insured receiving such certificate an "outline of coverages", the form and content of which has been approved by the Board. At the request of an insured at any time, an insurer which has substituted a certificate for a policy of insurance shall provide a copy of its uniform policy of insurance as prescribed by the Board.

(3) The Board may promulgate such rules as are necessary to implement the certificate in lieu of policy provision herein, including a rule limiting the application thereof to private passenger automobile policies.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1981, 67th Leg., p. 2700, ch. 736, § 1, eff. Jan. 1, 1982.]

Art. 5.06-1. Uninsured or Underinsured Motorist Coverage

(1) No automobile liability insurance (including insurance issued pursuant to an Assigned Risk Plan established under authority of Section 35 of the Texas Motor Vehicle Safety-Responsibility Act),¹ covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless coverage is provided therein or supplemental thereto, in at least the limits described in the Texas Motor Vehicle Safety-Responsibility Act, under provisions prescribed by the Board, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness, or disease, including death, or property damage resulting therefrom. The coverages required under this Article shall not be applicable where any insured named in the policy shall reject the coverage in writing; provided that unless the named insured thereafter requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer or by an affiliated insurer.

(2) For the purpose of these coverages: (a) the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(b) The term "underinsured motor vehicle" means an insured motor vehicle on which there is valid and collectible liability insurance coverage with limits of liability for the owner or operator which were originally lower than, or have been reduced by payment of claims arising from the same accident to, an amount less than the limit of liability stated in the underinsured coverage of the insured's policy.

(c) The State Board of Insurance is hereby authorized to promulgate the forms of the uninsured and underinsured motorist coverages. The Board may also, in such forms, define "uninsured motor vehicle" to exclude certain motor vehicles whose operators are in fact uninsured.

(d) The forms promulgated under the authority of this section shall include provisions that, regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total aggregate limit of liability to any one person who sustains bodily injury or property damage as the result of any one occurrence shall not exceed the limit of liability for these coverages as stated in the policy and the total aggregate limit of liability to all claimants, if more than one, shall not exceed the total limit of liability per occurrence as stated in the policy; and shall provide for the exclusion of the recovery of damages for bodily injury or property damage or both resulting from the intentional acts of the insured. The forms promulgated under the authority of this section shall require that in order for the insured to recover under the uninsured motorist coverages where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured.

(3) The limits of liability for bodily injury, sickness, or disease, including death, shall be offered to the insured in amounts not less than those prescribed in the Texas Motor Vehicle Safety-Responsibility Act and such higher available limits as may be desired by the insured, but not greater than the limits of liability specified in the bodily injury liability provisions of the insured's policy.

(4) (a) Coverage for property damage shall be offered to the insured in amounts not less than those prescribed in the Texas Motor Vehicle Safety-Responsibility Act and such higher available limits as may be desired by the insured, but not greater than limits of liability specified in the property damage liability provisions of the insured's policy, subject to a deductible amount of \$250.

(b) If the insured has collision coverage and uninsured or underinsured property damage liability coverage, the insured may recover under the policy coverage chosen by the insured. In the event neither coverage is sufficient alone to cover all damage resulting from a single occurrence, the insured may recover under both coverages. When recovering under both coverages, the insured shall designate one coverage as the primary coverage and pay the deductible applicable to that coverage. The primary coverage must be exhausted before any recovery is made under the secondary coverage. If both coverages are utilized in the payment of damages from a single occurrence, the insured shall not be required

to pay the deductible applicable to the secondary coverage when the amount of the deductible otherwise applicable to the secondary coverage is the same as or less than the amount of the deductible applicable to the primary coverage. If both coverages are utilized in the payment of damages from a single occurrence and the amount of the deductible otherwise applicable to the secondary coverage is greater than the amount of the deductible applicable to the primary coverage, the insured shall be required to pay in respect of the secondary coverage only the difference between the amount of the two deductibles. In no event shall the insured recover under both coverages more than the actual damages suffered.

(5) The underinsured motorist coverage shall provide for payment to the insured of all sums which he shall be legally entitled to recover as damages from owners or operators of underinsured motor vehicles because of bodily injury or property damage in an amount up to the limit specified in the policy, reduced by the amount recovered or recoverable from the insurer of the underinsured motor vehicle.

(6) In the event of payment to any person under any coverage required by this Section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury, sickness or disease, or death for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer; provided, however, whenever an insurer shall make payment under a policy of insurance issued pursuant to this Act, which payment is occasioned by the insolvency of an insurer, the insured of said insolvent insurer shall be given credit in any judgment obtained against him; with respect to his legal liability for such damages, to the extent of such payment, but such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had if the insured of the insolvent insurer had made the payment.

(7) If a dispute exists as to whether a motor vehicle is uninsured, the burden of proof as to that issue shall be upon the insurer.

[Acts 1967, 60th Leg., p. 448, ch. 202, § 1, eff. Oct. 1, 1967. Amended by Acts 1977, 65th Leg., p. 370, ch. 182, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1418, ch. 626, § 1, eff. Jan. 1, 1980; Acts 1981, 67th Leg., p. 1002, ch. 380, § 1, eff. Aug. 31, 1981.]

¹ Civil Statutes, art. 6701h, § 35.

Art. 5.06-2. Garage Insurance

(1) Definitions. As used in this Act:

(a) "Garage Insurance" means motor vehicle or automobile insurance as defined in Article 5.01 hereof issued to a named insured engaged in the business of selling, servicing or repairing motor vehicles as now or hereafter defined by rules regulations or orders of the State Board of Insurance;

(b) "Garage Customer" means any person or organization other than the named insured, or an employee, director, officer, stockholder, partner, or agent of the named insured; or a resident of the same household as the named insured, such employee, director, officer, stockholder, partner, or agent;

(c) "Financial Responsibility Limits" means the minimum limits specified by the Texas Motor Vehicle Safety-Responsibility Act.¹

(2) A policy of garage insurance may contain a provision to the effect that garage customers are not insureds under the garage insurance policy and that the garage insurance shall not apply to garage customers, except to the extent that other valid and collectible insurance, if any, available to the garage customer is not equal to the financial responsibility limits. Notwithstanding any provision to the contrary in such other policy or policies of insurance as to whether such insurance is primary, excess, or contingent insurance, or otherwise, such other valid and collectible insurance shall be primary insurance as to the garage customer. Any garage insurance policy containing such a provision shall not cover garage customers except to such extent, notwithstanding the terms and provisions of such other policy or policies of insurance.

(3) This Act shall apply only to insurance policies issued or renewed or made subject to this Act by endorsement after the effective date hereof.

[Acts 1969, 61st Leg., 2nd C.S., p. 193, ch. 35, § 1, eff. Sept. 19, 1969.]

¹ Civil Statutes, art. 6701h.

Art. 5.06-3. Personal Injury Protection Coverage

(a) No automobile liability insurance policy, including insurance issued pursuant to an assigned risk plan established under authority of Section 35 of the Texas Motor Vehicle Safety-Responsibility Act,¹ covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless personal injury protection coverage is provided therein or supplemental thereto. The coverage required by this article shall not be applicable if any insured named in the policy shall reject the coverage in writing; provided, unless the named insured thereafter requests such coverage in writing, such coverage need not be provided in or supplemental to

a renewal policy if the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer or by an affiliated insurer.

(b) "Personal injury protection" consists of provisions of a motor vehicle liability policy which provide for payment to the named insured in the motor vehicle liability policy and members of the insured's household, any authorized operator or passenger of the named insured's motor vehicle including a guest occupant, up to an amount of \$2,500 for each such person for payment of all reasonable expenses arising from the accident and incurred within three years from the date thereof for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services, and in the case of an income producer, payment of benefits for loss of income as the result of the accident; and where the person injured in the accident was not an income or wage producer at the time of the accident, payments of benefits must be made in reimbursement of necessary and reasonable expenses incurred for essential services ordinarily performed by the injured person for care and maintenance of the family or family household. The insurer providing loss of income benefits may require, as a condition of receiving such benefits, that the insured person furnish the insurer reasonable medical proof of his injury causing loss of income. The personal injury protection in this paragraph specified shall not exceed \$2,500 for all benefits, in the aggregate, for each person.

(c) The benefits required by this Act shall be payable without regard to the fault or non-fault of the named insured or the recipient in causing or contributing to the accident, and without regard to any collateral source of medical, hospital, or wage continuation benefits. An insurer paying benefits pursuant to this Act shall have no right of subrogation and no claim against any other person or insurer to recover any such benefits by reason of the alleged fault of such other person in causing or contributing to the accident.

(d) All payments of benefits prescribed under this Act shall be made periodically as the claims therefor arise and within thirty (30) days after satisfactory proof thereof is received by the insurer subject to the following limitations:

(1) The coverage described in this Act may prescribe a period of not less than six months after the date of accident within which the original proof of loss with respect to a claim for benefits must be presented to the insurer.

(2) The coverage described in this Act may provide that in any instance where a lapse occurs in the period of total disability or in the medical treatment of an injured person who has received benefits under such coverage and such person

subsequently claims additional benefits based upon an alleged recurrence of the injury for which the original claim for benefits was made, the insurer may require reasonable medical proof of such alleged recurrence; provided, that in no event shall the aggregate benefits payable to any person exceed the maximum limits prescribed in the policy.

(3) In the event the insurer fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover the same; and, in the event the insurer is required to pay such benefits, the person entitled to such benefits shall be entitled to recover reasonable attorneys fees plus 12% penalty, plus interest thereon at the legal rate from the date such sums became overdue.

(e) An insurer shall exclude benefits to any insured, or his personal representative, under a policy required by Section 1, when the insured's conduct contributed to the injury he sustained in any of the following ways:

(1) Causing injury to himself intentionally.

(2) While in the commission of a felony, or while seeking to elude lawful apprehension or arrest by a law enforcement official.

(f) The State Board of Insurance is hereby authorized to prescribe the form, or forms, of insurance policies, including riders and endorsements, to provide the coverage described in this article. The Board shall also prescribe the premium rates under the provisions of this Subchapter A, Chapter 5, Texas Insurance Code. Provided, however, the foregoing provisions relative to forms and rates shall apply only to coverage written to comply with this article; such provisions shall not apply to other accident or health policies even though they promise indemnity against automobile-connected injuries. Provided further, County Mutual Insurance Companies shall not be subject to the rate making authority herein conferred on the board.

(g) Nothing contained in this Act shall affect the offering of medical payments coverage, disability benefits, and accidental death benefits, as presently prescribed by the State Board of Insurance; and nothing contained in this Act shall be construed to prevent an insurer from providing broader benefits than the minimum benefits enumerated in this Act subject to the rules and forms prescribed by the State Board of Insurance.

(h) When any liability claim is made by any guest or passenger described in paragraph (b) hereof against the owner or operator of the motor vehicle in which he was riding or the owner's or operator's liability insurance carrier, the owner or operator of such motor vehicle or his liability insurance carrier shall be entitled to an offset, credit or deduction against any award made to such guest or passenger in an amount of money equal to the amounts paid

by the owner, operator or his automobile liability insurance carrier under "personal injury protection" as defined in this Act to such guests or passengers; provided, however, that nothing herein shall be construed to authorize a direct action against a liability insurance company if such right does not presently exist at law.

[Acts 1973, 63rd Leg., p. 90, ch. 52, § 1, eff. Aug. 27, 1973. Amended by Acts 1981, 67th Leg., p. 100, ch. 51, § 1, eff. Aug. 31, 1981.]

¹ Civil Statutes, art. 6701h, § 35.

Section 2 of the 1973 Act provided:

"If any portion of this Act, any part thereof, any paragraph, sentence, or other part shall be declared illegal or unconstitutional for any reason, such declaration shall not affect the validity of the remaining portions hereof; and in that connection the legislature hereby specifically declares that all portions hereof shall be severable and that the remaining portions hereof would have been enacted notwithstanding the absence of any such portion as may be declared illegal and unconstitutional."

Art. 5.07. Participating Policies

Nothing in this subchapter shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or interinsurance exchange or Lloyd's association or to prohibit any stock company, mutual company, reciprocal or interinsurance exchange or Lloyd's association issuing participating policies; provided no distribution of profit or dividends to insured shall take effect or be paid until the same shall have been approved by the Board; and provided further that no such distribution shall be approved until adequate reserves shall have been provided, such reserves to be computed on the same basis for all classes of insurers operating under this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.08. Special Favors and Profit Sharing

It shall be unlawful for any insurer, as defined in this subchapter, or its officers, directors, general agent, state agents, special agents, local agents or other representatives, to grant to or contract with insured for any special favor or advantage in dividends or other profits, or any commissions or dividends of commissions or profits to accrue thereon, or any compensation or any valuable consideration not specified in the policy contract, or any inducement not specified in the policy contract, for the purpose of writing the insurance of any insured. Nothing in this article, however, shall be construed to prohibit an insurer from sharing its profits after the same have been earned with its policyholders under and in accordance with an agreement as to such profit sharing contained in its policy contract. Any profit sharing under any policy with insured shall be uniform as between such insured, and shall consist only and solely of an equitable distribution under and in accordance with the terms of the policy of earnings between such insured, and no such

insurer shall discriminate in any distribution of profits between insured of a class, and no classes for such distribution shall be made or established except on the approval of the Board. No part of any profit shall be distributed to any insured under any such policy until the expiration of the policy contract. Any violation of the terms of this section shall constitute unjust discrimination and shall constitute rebating, and shall be sufficient grounds for the revocation of the permit of the insurer or of the license of the agent being guilty of such unjust discrimination and rebating.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.09. Discriminations or Distinctions

No insurer coming within the terms of this subchapter shall, in its business in this State, make or permit any distinction or discrimination in favor of the insured having a like hazard, in the matter of the charge of premiums for insurance, or in dividends or other benefits payable under any policy, nor shall any such insurer or agent make any contract of insurance, or agreement as to such insurance, other than expressed in the policy, nor shall any such insurer or its agents or representatives pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insured, any rebate payable upon the policy or any special favor or advantage in dividends or other benefits to accrue, or anything of value whatsoever, not specified in the policy; provided that nothing in this subchapter shall be construed to prohibit the modification of rates by rating plans designed to encourage the prevention of accidents, and to take account of the peculiar hazards and experience of individual risks, past and prospective, within and outside the State, and of all other relevant factors, within and outside the State, provided such plan shall have been approved by the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 64, ch. 50, § 5.]

Art. 5.10. Rules and Regulations

The Board is hereby empowered to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of this subchapter as are necessary to carry out its provisions, including full power and control over any administrative agencies and/or stamping office which may be organized or established by insurer with the Board's approval to carry into effect the provisions of this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.11. Hearing on Grievances

Any policyholder or insurer shall have the right to a hearing before the Board on any grievance occasioned by the approval or disapproval by the Board of any classification, rate, rating plan, endorsement

or policy form, or any rule or regulation established under the terms hereof, such hearing to be held in conformity with rules prescribed by the Board. Upon receipt of request that such hearing is desired, the Board shall forthwith set a date for the hearing, at the same time notifying all interested parties in writing of the place and date thereof, which date, unless otherwise agreed to by the parties at interest, shall not be less than ten (10) nor more than thirty (30) days after the date of said notice. Any party aggrieved shall have the right to apply to any court of competent jurisdiction to obtain redress.

No hearing shall suspend the operation of any classification, rate, rating plan or policy form unless the Board shall so order.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 64, ch. 50, § 6.]

Art. 5.12. Maintenance Tax on Gross Premiums

The State of Texas by and through the State Board of Insurance shall annually determine the rate of assessment and collect on an annual or semiannual basis, as determined by the Board, a maintenance tax in an amount not to exceed one-fifth of one percent of the correctly reported gross motor vehicle insurance premiums of all authorized insurers writing motor vehicle insurance in this state. The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article. The State Board of Insurance, after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating motor vehicle insurance during the succeeding year. The taxes collected shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance. The State Board of Insurance may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5013, ch. 902, § 1, eff. Sept. 1, 1983.]

Art. 5.12-1. Penalty for Violation of Act

Any insurer or officer or representative thereof which shall violate any provision of this Act¹ shall be subject to a revocation of his or its license by the

Board of Insurance Commissioners and in addition shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred (\$100.00) Dollars nor more than Five Hundred (\$500.00) Dollars for each such offense.

[Acts 1927, 40th Leg., p. 373, ch. 253, § 12. Amended by Acts 1937, 45th Leg., p. 671, ch. 335, § 3.]

¹ Formerly Civil Statutes, art. 4682b (now arts. 5.01 to 5.12).

SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

Art. 5.13. Scope of Sub-chapter

This Sub-chapter applies to every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyds or other organization or insurer writing any of the characters of insurance business herein set forth, hereinafter called "Insurer"; provided that nothing in this entire Sub-chapter shall ever be construed to apply to any county or farm mutual insurance company or association, as regulated under Chapters 16 and 17 of this Code.

This Sub-chapter applies to the writing of casualty insurance and the writing of fidelity, surety, and guaranty bonds, on risks or operations in this State except as herein stated.

This Sub-chapter does not apply to the writing of motor vehicle, life, health, accident, professional liability, reinsurance, aircraft, fraternal benefit, fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or opening in buildings or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or container, workmen's compensation, inland marine, ocean marine, marine, or title insurance; nor does this Sub-chapter apply to the writing of explosion insurance, except insurance against loss from injury to person or property which results accidentally from steam boilers, heaters or pressure vessels, electrical devices, engines and all machinery and appliances used in connection therewith or operation thereby.

This Sub-chapter shall not be construed as limiting in any manner the types or classes of insurance which may be written by the several types of insurers under appropriate statutes or their charters or permits.

The regulatory power herein conferred is vested in the Board of Insurance Commissioners of the State of Texas. Within the Board, the Casualty Insurance Commissioner shall have primary supervision of regulation herein provided, subject however to the final authority of the entire Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 359, ch. 76, § 1.]

Art. 5.13-1. Legal Service Contracts

(a) Every insurer governed by Subchapter B of Chapter 5 of the Insurance Code, as amended,¹ and every life, health, and accident insurer governed by Chapter 3 of the Insurance Code, as amended,² is authorized to issue prepaid legal services contracts. Every such insurer or rating organization authorized under Article 5.16 of the Insurance Code shall file with the State Board of Insurance all rules and forms applicable to prepaid legal service contracts in a manner to be established by the State Board of Insurance. All rates, rating plans, and charges shall be established in accordance with actuarial principles for various categories of insureds. Rates, rating plans, and charges shall not be excessive, inadequate, unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. Certification, by a qualified actuary, to the appropriateness of the charges, rates, or rating plans, based upon reasonable assumptions, shall accompany the filing along with adequate supporting information.

(b) The State Board of Insurance shall, within a reasonable period, approve any form if the requirements of this section are met. It shall be unlawful to issue such forms until approved or to use such schedules of charges, rates, or rating plans until filed and approved. If the State Board of Insurance has good cause to believe such rates and rating plans do not comply with the standards of this article, it shall give notice in writing to every insurer or rating organization which filed such rates or rating plans, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 30 days thereafter, in which such noncompliance may be corrected. If the board has not acted on any form, rate, rating plan, or charges within 30 days after the filing of same, they shall be deemed approved. The board may require the submission of whatever relevant information is deemed necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(c) The right of such insurers to issue prepaid legal services contracts on individual, group, or

franchise bases is hereby recognized, and qualified agents of such insurers who are licensed under Articles 21.07 and 21.14 of the Insurance Code, as amended, and Chapter 213, Acts of the 54th Legislature, 1955, as amended (Article 21.07-1, Vernon's Texas Insurance Code), shall be authorized to write such coverages under such rules and regulations as the State Board of Insurance may prescribe.

(d) The State Board of Insurance is hereby vested with power and authority under this article to promulgate, after notice of hearing, and to enforce, rules and regulations concerning the application to the designated insurers of this article and for such clarification, amplification, and augmentation as in the discretion of the State Board of Insurance are deemed necessary to accomplish the purposes of this article.

(e) This article shall be construed as a specific exception to Article 3.54 of the Texas Insurance Code.

(f) Nothing in this Act shall be construed as compelling the State Board of Insurance to establish standard or absolute rates and the board is specifically authorized, in its discretion, to approve different rates for different insurers for the same risk or risks on the types of insurance covered by this article; nor shall this article be construed as to require the State Board of Insurance to establish a single or uniform rate for each risk or risks or to compel all insurers to adhere to such rates previously filed by other insurers; and the board is empowered to approve such different rates for different insurers, and is required to approve such rates as filed by any insurer unless it finds that such filing does not meet the requirements of this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 2, eff. Sept. 1, 1975.]

¹ Article 5.13 et seq.

² Article 3.01 et seq.

Limitations. Section 3 of the 1975 Act provided:

"An insurer operating under the requirements of Section 2 shall not contract itself to practice law in any manner, nor shall it control or attempt to control the relations existing between an insured and his or her attorney. These attorneys shall never be employees of the insurer but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the insured. Such insurer must agree to pay any attorney licensed by the Supreme Court to practice law in Texas for such services rendered."

Art. 5.14. Making of Rates

All rates shall be made in accordance with the following provisions:

1. Due consideration shall be given to the past and prospective loss experience within and outside the State, to catastrophe hazards, if any, to expenses of operation, to a reasonable margin for profit and contingencies, and to all other relevant factors, within and outside the State.

2. Risks may be grouped by classifications for the establishment of rates and minimum premi-

ums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in such risks on the basis of any or all of the factors mentioned in the preceding paragraph.

3. Rates shall be reasonable, adequate, not unfairly discriminatory, and non-confiscatory as to any class of insurer.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.15. Filing of Rates and Rating Information; Approval

(a) Every insurer shall file with the Board every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the character and extent of the coverage contemplated and shall be accompanied by the policies and endorsement forms proposed to be used, and the information upon which the insurer supports the filing.

(b) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the Board to accept such filings on its behalf.

(c) Any filing made pursuant to this article shall be approved by the Board unless it finds that such filing does not meet the requirements of this subchapter. As soon as reasonably possible after the filing has been made the Board shall in writing approve or disapprove the same; provided, that any filing shall be deemed approved unless disapproved within thirty (30) days; provided, that the Board may by official order postpone action for such further time not exceeding thirty (30) days as it deems necessary for proper consideration.

(d) It is expressly provided, however, that notwithstanding any other provision of this subchapter to the contrary, a rate or premium for such insurance greater than the standard rate or premium that has been approved by the Board may be used on any specific risk if:

- (1) a written application is made to the Board naming the insurer and stating the coverage and rate proposed;
- (2) the person to be insured or person authorized to act in relation to the risk to be insured consents to such rate;
- (3) the reasons for requiring such greater rate or premium are stated in or attached to the application;
- (4) the person to be insured or person authorized to act for such person signs the application; and
- (5) the Board approves the application by order or by stamping.

(e) Any filing for which there is no approved rate shall be deemed approved from the date of filing to the date of such formal approval or disapproval.

(f) If at any time the Board finds that a filing so approved no longer meets the requirements of this subchapter, it may, after a hearing held on not less than twenty (20) days' notice specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the Board finds that such filing no longer meets the requirements of this subchapter and shall be effective not less than thirty (30) days after its issuance. Copies of such order shall be sent to every such insurer and rating organization.

(g) Any person or organization aggrieved by the action of the Board with respect to any filing may, within thirty (30) days after such action, make written request to the Board for a hearing thereon. The Board shall hear such aggrieved party within thirty (30) days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing to the insurer or rating organization which made the filing and to any other aggrieved party. Within thirty (30) days after such hearings the Board shall affirm, reverse or modify its previous action. Pending such hearing and decision thereon the Board may suspend or postpone the effective date of its previous action.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1977, 65th Leg., p. 225, ch. 108, § 1, eff. May 4, 1977.]

Art. 5.15-1. Professional Liability Insurance for Physicians and Health Care Providers

Scope of Article

Sec. 1. This article shall apply to the making and use of insurance rates by every insurer licensed to write or engaged in writing professional liability insurance for any physician or any health care provider including rating organizations, acting on behalf of insurers.

Definitions

Sec. 2. In this article:

- (1) "Physician" means a person licensed to practice medicine in this state.
- (2) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, chiropractor, optometrist, blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, or not-for-profit nursing home, or an officer, employee, or agent of any of

them acting in the course and scope of his employment.

(3) "Hospital" means a licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

Rate Standards

Sec. 3. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience inside this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

Filing Rates

Sec. 4. (a) The provisions of Article 5.15, Insurance Code, shall apply to the filing of rates and rating information required under this article.

(b) Nothing contained in this article or other provisions of this subchapter concerning the regulation of rates, rating plans, and rating classifications shall, as applies to the writing of professional liability insurance for health care providers and physi-

cians, give the board the power to prescribe uniform or absolute rates; nor shall anything therein be construed as preventing the filing of different rates for risks in a given classification or modified rates for individual risks made in accordance with rating plans, as filed by different insurers or organizations authorized to file such rates. As used in this subsection, "absolute rates" means rates, rating classifications, or rating plans filed by an insurer or authorized rating organization in accordance with this subchapter and the rates, rating classifications, or rating plans so filed are required to be used, to the exclusion of all others, by each insurer lawfully engaged in writing policies.

(c) The State Board of Insurance shall prescribe standardized policy forms for occurrence, claims-made and claims-paid policies of professional liability insurance covering health care providers and physicians, and no insurer may use any other forms in writing professional liability insurance for health care providers and physicians without the prior approval of the State Board of Insurance. However, an insurer writing professional liability insurance for health care providers and physicians may use any form of endorsement if the endorsement is first submitted to and approved by the board.

Reporting of Claims and Claims Information

Sec. 5. Each insurer who issues policies of professional liability insurance covering physicians and health care providers shall file annually with the State Board of Insurance a report of all claims and amount of claims, amounts of claims reserves, investment income of the company derived from medical professional liability premiums, information relating to amounts of judgments and settlements paid on claims, and other information required by the board. The board may formulate and promulgate a form on which this information shall be reported. The form shall be so devised as to require the information to be reported in an accurate manner, reasonably calculated to facilitate interpretation and to protect the confidentiality of the health care provider or physician.

Annual Premiums

Sec. 6. Policies of professional liability insurance under this article shall be written on not less than an annual premium basis.

Notice of Cancellation or Nonrenewal

Sec. 7. An insurer who issues a policy of professional liability insurance covered by this article shall give at least 90 days' written notice to an insured if premiums on the insurance are to be increased or the policy is to be cancelled or is not to be renewed other than for nonpayment of premiums or because the insured is no longer licensed. If the premiums are to be increased, the notice shall state the amount of the increase, and if the policy is to be

cancelled or is not to be renewed, the insurer shall state in the notice the reason for cancellation or nonrenewal. Notice of cancellation under this section may only be given within the first 90 days from the effective date of the policy.

Punitive Damages under Medical Professional Liability Insurance

Sec. 8. No policy of medical professional liability insurance issued to or renewed for a health care provider or physician in this state may include coverage for punitive damages that may be assessed against the health care provider or physician.

Claim Surcharges

Sec. 9. A claim surcharge assessed by an insurer against a health care provider or physician under a professional liability insurance policy may be based only on claims actually paid by an insurer as a result of a settlement or an adverse judgment or an adverse decision of a court.

[Acts 1977, 65th Leg., p. 2054, ch. 817, § 31.01, eff. Aug. 29, 1977.]

Art. 5.15-2. Accident Prevention Services

(a) Any insurer desiring to write professional liability insurance for hospitals in Texas shall maintain or provide accident prevention facilities as a prerequisite for a license to write such insurance. Such facilities shall be adequate to furnish accident prevention services required by the nature of its policyholder's operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes and hospital risk control management, to implement the program of accident prevention services. Each field safety representative shall be either a college graduate who shall have a bachelor's degree in science or engineering, a registered professional engineer, a certified safety professional, or an individual who shall have completed a course of training in accident prevention services approved by the State Board of Insurance.

(b) The insurer shall render accident prevention services to its policyholders reasonably commensurate with the risks and exposures and experience of the subscriber's business. To provide such facilities, the insurer may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of the methods enumerated in this subsection. Such personnel shall have the qualification required for field safety representatives as provided in Subsection (a) of this article.

(c) If the Commissioner of Insurance shall determine that reasonable accident prevention services are not being maintained or provided by the insurer or are not being used by the insurer in a reasonable manner to prevent injury to patients of its policy-

holders, the fact shall be reported to the State Board of Insurance, and the board shall order a hearing to determine if the insurer is not in compliance with this article. If it is determined that the insurer is not in compliance, its authority to write professional liability insurance for hospitals in Texas shall be revoked.

(d) The State Board of Insurance may promulgate reasonable rules and regulations for the enforcement of this article after holding a public hearing on the proposed rules and regulations.

(e) In this article, "hospital" means a licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

(f) The provisions of this section shall become effective on January 1, 1978.

[Acts 1977, 65th Leg., p. 2057, ch. 817, § 31.02, eff. Jan. 1, 1978.]

Art. 5.16. Rating Organizations

(a) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside the State, may make application for license as a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application and shall file therewith (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by-laws and rules governing the conduct of its business; (2) a list of its members and subscribers; (3) the name and address of a resident of the State upon whom notices or orders of the Board affecting such rating organizations may be served and (4) a statement of its qualification as a rating organization. If the Board finds that the applicant is qualified, it shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the Board within sixty (60) days of the date of its filing with it. Licenses issued pursuant to this Article shall remain in effect until suspended or revoked by the Board. The fee for said license shall be Twenty-five (\$25.00) Dollars.

A rating organization shall not be granted a license as to any class of insurance unless and until two or more insurers have designated it to act for them as to such class of insurance in the manner prescribed herein.

(b) Each rating organization shall, subject to reasonable rules and regulations, permit any insurer, not a member, to become a subscriber to its rating services, and shall furnish such services without discrimination to its members and subscribers. The

refusal of any rating organization to admit an insurer as a subscriber shall, at the request of such insurer, be reviewed by the Board at a hearing held upon at least ten (10) days' written notice to such rating organization and such insurer. Every rating organization shall notify the Board promptly of every change in the list of its members and subscribers.

(c) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends to policyholders.

(d) The Board shall, at least once in five (5) years, make or cause to be made an examination of each rating organization licensed in this State. The reasonable costs of such examination shall be paid by the rating organization examined upon presentation to it of a detailed account of such cost. The officers, managers, agents and employees of such rating organization may be examined under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The Board may waive such examination upon proof that such rating organization has, within a reasonably recent period, been examined by the insurance supervisory official of another state, pursuant to the laws of such state, and upon the filing with the Board of a copy of the report of such examination.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.17. Appeal by Minority

Any member of or subscriber to a rating organization may appeal to the Board from the decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization; and the Board shall, after a hearing held on not less than ten (10) days' written notice to the appellant and to such rating organization, issue an order approving the decision of such rating organization or directing it to give further consideration to such proposal.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.18. Information to be Furnished Insureds; Hearings and Appeals of Insureds

Every insurer which files its own rates and every rating organization shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charges as it may make, furnish to any person then or thereafter affected by such rate or any modification thereof properly made, or to the authorized representative of such person, all information pertinent thereto.

Every insurer which files its own rates and every rating organization shall provide within this State reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such

rating system has been applied in connection with the insurance afforded him. Any party affected by the action of such rating organization or such insurer on such request may, within ten (10) days after written notice of such action, appeal to the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.19. Rate Administration

(a) Recording and Reporting of Loss Experience and Other Data.—The Board shall, after due consideration, promulgate reasonable rules and statistical plans which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers may be made available at least biennially in such form and detail as may be necessary to aid in determining whether rating plans comply with the standards set forth in Article 5.14 of this subchapter. In promulgating such rules and plans, the Board shall have due regard for the rating plans approved by it, and in order that such rules and plans may be as uniform as is practicable, to the rules and to the form of the plans used in other states. The Board may designate one or more rating organizations or other agencies to gather and compile such experience.

(b) Interchange of Rating Plan Data.—Reasonable rules and plans may be promulgated by the Board after due consideration, requiring the interchange of loss experience necessary for the application of rating plans.

(c) Consultation with Other States.—In order to further uniform administration of rating laws, the Board and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult and cooperate with them with respect to rate making and the application of rating systems.

(d) Rules and Regulations.—The Board may make reasonable rules and regulations necessary to effect the purposes of this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.20. Rebates Prohibited

No insurer or employee thereof, and no broker or agent shall knowingly issue any policy of insurance nor charge, demand or receive a premium thereon except in accordance with the applicable filing which has been approved by the Board. No insurer or employee thereof, and no broker or agent shall pay, allow or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special

favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in such applicable filing. No insured named in a policy of insurance, nor any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatements, or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing in this article, however, shall be construed to prohibit an insurer from sharing its profits after the same have been earned with its policyholders under and in accordance with an agreement as to such profit sharing contained in its policy contract. Any profit sharing under any policy with insured shall be uniform as between such insured, and shall consist only and solely of the equitable distribution under and in accordance with the terms of the policy of earnings between such insured, and no such insurer shall discriminate in any distribution of profits between insured of a class, and no classes for such distribution shall be made or established except on the approval of the Board. No part of any profit shall be distributed to any insured under any such policy until the expiration of the policy contract, provided no distribution of profits or dividends to insured shall take effect or be paid until the same shall have been approved by the Board; and provided further, that no such distribution shall be approved until adequate reserves shall have been provided, such reserves to be computed on the same basis for all classes of insurers operating under this subchapter. Any violation of the terms of this article shall constitute unjust discrimination and shall constitute rebating, and shall be sufficient grounds for the revocation of the permit of the insurer or of the license of the agent being guilty of such unjust discrimination and rebating; provided further, that nothing in this subchapter shall be construed to prohibit the modification of rates by any rating plan approved by the Board as hereinbefore provided.

As used in this article the word "insurance" includes suretyship, and the word "policy" includes bond.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.21. False or Misleading Information

No person or organization shall knowingly give false or misleading information to the Board, to any insurer, or to any rating organization, which will in any manner affect the proper determination of rates or premiums.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.22. Penalties

The Board may suspend the license of any rating organization or insurer which fails to comply with

an order of the Board within the time limited by such order, or any extension thereof which the Board may grant. The Board shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The Board may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by it, unless it modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded or reversed.

No license shall be suspended except upon a written order of the Board, stating its findings, made after a hearing held upon not less than ten (10) days' notice to such person or organization specifying the alleged violation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.23. Judicial Review

Any order or decision of the Board shall be subject to review, which shall be on the basis of the record of the proceedings before the Board and shall not be limited to questions of law, by direct action in the District Court of Travis County, instituted by any party aggrieved by any action taken under this subchapter.

Pending final disposition of any proceedings which attack the correctness of a rate, any insurer affected by such order may continue to charge the rate which obtained prior to such order of decrease or may charge the rate resulting from such order of increase, on condition that the difference in the premiums be deposited in a special account by said insurer, to be held in trust by said insurer, and to be retained by said insurer or paid to the holders of policies issued after the order of the Board, as the court may determine.

In all other cases, the court shall determine whether the filing of the appeal shall operate as a stay. The court may, in disposing of the issue before it, modify, affirm or reverse the order or decision of the Board in whole or in part.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.24. Maintenance Tax on Gross Premiums

The State of Texas by and through the State Board of Insurance shall annually determine the rate of assessment and collect on an annual or semiannual basis, as determined by the Board, a maintenance tax in an amount not to exceed two-fifths of one percent of the correctly reported gross premiums of all classes of insurance covered by this subchapter of all authorized insurers writing those classes of insurance in this state. The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and

that are not in conflict with this article. The State Board of Insurance, after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating all classes of insurance covered by this subchapter during the succeeding year. The taxes collected shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance. The State Board of Insurance may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5013, ch. 902, § 1, eff. Sept. 1, 1983.]

SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES

Art. 5.25. Board Shall Fix Rates

The Board of Insurance Commissioners shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. Said Board shall also have authority to alter or amend any and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same, or any part thereof, as herein provided. Said Board shall have authority to employ clerical help, inspectors, experts and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law. Such expenses, including the salaries of the members of the Board, shall not exceed in the aggregate, for any fiscal year, the sum of One Hundred and Thirty Thousand (\$130,000.00) Dollars. Said Board shall ascertain as soon as practicable the annual fire loss in this State; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable said Board to classify the fire losses of this State, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates of the State, or subdivisions of the State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.25-1. Reserved for future legislation

Art. 5.25-2. City Fire Loss Lists

Sec. 1. In this article,

(1) "list" means the list of fire and lightning losses in excess of \$100 paid under the Texas Standard Policy in a particular city or town prepared by the State Board of Insurance for distribution to the city or town;

(2) "board" means the State Board of Insurance.

Sec. 2. (a) The board shall compile for each city or town in Texas a list of the insured fire losses paid under the Texas Standard Policy in that city or town for the preceding statistical year.

(b) The list shall include

(1) the names of persons recovering losses under Texas Standard Policies;

(2) the addresses or locations where the losses occurred;

(3) the amount paid by the insurance company on each loss.

(c) The board shall obtain the information to make the lists from insurance company reports of individual losses during the statistical year.

Sec. 3. Upon the request of any city or town, or its duly authorized agent or fire marshal, the board shall provide that city and town with a copy of the list for its particular area.

Sec. 4. Each city or town shall investigate its list to determine the losses actually occurring in its limits and shall make a report to the board which report shall include

(1) a list of the losses that actually occurred in the limits of the city or town;

(2) a list of any losses not occurring in the limits of the city or town; and

(3) other evidence essential to establishing the losses in the city or town.

Sec. 5. The board shall make such changes or corrections as to it shall seem appropriate in order to correct the list of insured fire and lightning losses paid under the Texas Standard Policy in a particular city or town and said list of losses, as changed or corrected, shall be used to determine the fire record credit or debit for each particular city or town for the next year.

Sec. 6. The board shall set and collect a charge for compiling and providing a list of fire and lightning losses paid under the Texas Standard Policy in a particular city or town and as the board shall deem appropriate to administer the fire record system.

Sec. 7. The board is authorized to require each and every city or town in the State of Texas and each and every insurance company or carrier of every type and character whatsoever doing business

in the State of Texas to furnish to it a complete and accurate list of all fire and lightning losses occurring within the State of Texas and reflected in their records for the purpose of accumulating statistical information for the control and prevention of fires.

Sec. 8. The board may, at its discretion, furnish such list only during such time as the fire record system remains in force and effect.

[Acts 1967, 60th Leg., p. 2063, ch. 765, § 1, eff. Aug. 28, 1967.]

Acts 1967, 60th Leg., p. 2063, ch. 765, § 2 provided:

"All laws and parts of laws in conflict with the provisions of this Act are hereby repealed."

Art. 5.26. Maximum Rate Fixed, and Deviations Therefrom

(a) A maximum rate of premiums to be charged or collected by all companies transacting in this state the business of fire insurance, as herein defined, shall be exclusively fixed and determined and promulgated by the Board, and no such fire insurance company shall charge or collect any premium or other compensation for or on account of any policy or contract of fire insurance as herein defined in excess of the maximum rate as herein provided for; provided, however, upon the written application of the insured stating his reasons therefor, filed with and approved by the Board, a rate in excess of the maximum rate promulgated by the Board may be used on any specific risk.

(b) Any insurer desiring to write insurance at a less rate than the maximum rate provided for in paragraph (a) above shall make a written application to the Board for permission to file a uniform percentage deviation for a lesser rate than the maximum rate, on a state-wide basis or by reasonable territories as approved by the Board, from the class rates or schedules or rating plans respecting fire insurance and its allied lines of insurance or class of risk within such kind of insurance or a combination thereof promulgated by the Board. Such application shall specify the basis of the deviation, and shall be accompanied by the data upon which the applicant relies; provided, however, such application, data and all other information filed in connection with such deviation shall be public records open to inspection at any reasonable time. The provisions of this paragraph shall not be construed to prohibit the application of a uniform scale of percentage deviations from the maximum rate provided the general standards fixed in paragraph (d) hereof are met.

(c) Provided further, that any insurer desiring to write insurance at a lesser net rate than the maximum rate provided for in paragraph (a) above, either individually or as a member of a group or association, said lesser net rate being obtained by the application of a rating plan or procedure in use by it or by a group or association of which it is a

member, which said rating plan or procedure shall apply only to special types or classes of risk in connection with which an inspection or engineering service and set of standards all acceptable to the Board are used, and which inspection or engineering services and set of standards have been and will continue to be maintained, shall make a written application to the Board for permission to file its said rating plan or procedure, the application of which would produce such lesser net rate. Said application shall specify the basis of the modification and shall be accompanied by the data on which applicant relies. Every insurer or group or association which avails itself of the provisions of this paragraph shall thereafter follow in the conduct of its business as to such classes or types of risks, only such rating plan or procedure ordered as permitted by the Board for its use as to said special types or classes of risks. If the Board shall issue an order permitting such deviation, such insurer or such group or association for it shall file with the Board all rates of premium or deposit for individual risks underwritten by it, which rates shall be considered as deviations from the rates that would have been promulgated by the Board on such risks.

(d) In considering any application provided for in (b) or (c) above, the Board shall give consideration to the factors applied by insurers or rating organizations generally used by such insurers or rating organizations in determining the bases for rates; the financial condition of the insurer; the method of operation and expenses of such insurer; the loss experience of the insurer, past and prospective, including where pertinent the conflagration and catastrophe hazards, if any, both within and without this state; to all factors reasonably related to the kind of insurance involved; to a reasonable margin for an underwriting profit for the insurer, and, in the case of participating insurers, to policyholders' dividends. The Board shall issue an order permitting the deviation for such insurer to be filed if it is found to be justified upon the applicant's showing that the resulting premiums would be adequate and not unfairly discriminatory. The Board shall issue an order denying such application if it finds that the resulting premiums would be inadequate or unfairly discriminatory. As soon as reasonably possible after such application has been made the Board shall in writing permit or deny the same; provided, that any such application shall be deemed permitted unless denied within thirty (30) days; provided, that the Board may by official order postpone action for one additional period not exceeding thirty (30) days if deemed necessary for proper consideration; except that deviations in effect at the time this Act becomes effective shall be controlled by subdivision (f) hereof. Each deviation permitted to be filed shall be effective for a period of one (1) year from the date of final granting of such permission whether by the Board in the first instance or upon di-

rection of the court. However, a deviation may be withdrawn at any time with the approval of the Board or terminated by order of the Board, which order must specify the reasons for such termination. From and after the effective date of this Act all deviations from maximum rates shall be governed by this Article.

(e) No policy of insurance in force prior to the taking effect of any changes in rate that result from the provisions of this Act shall be affected thereby, unless there shall be a change in the hazard of the risk necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to new rates developed under the provisions hereof.

(f) Any deviations from maximum rates on file with the Board and in effect until the effective time of this Act shall remain in effect for a period of thirty (30) days after such effective time, and if during such thirty (30) day period a written application to the Board is made for permission to file such deviations under this Act, same shall remain in effect until the Board has entered its order either permitting or denying the application and during the full course of any hearings on and appeal from any such order.

(g) The Board may call a public hearing on any application for permission to file a deviation or a hearing on a permitted deviation and shall call a hearing upon the request of any aggrieved policyholder of the company filing the deviation made within thirty (30) days after the granting or denying of any deviation. The Board shall give reasonable notice of such hearings and shall hear witnesses respecting such matters. Any applicant dissatisfied with any order of the Board made without a hearing under this Article may within thirty (30) days after entry of such order make written request of the Board for a hearing thereon. The Board shall hear such applicant within twenty (20) days after receiving such request and shall give not less than ten (10) days written notice of the time and place of the hearing. Within fifteen (15) days after such hearing the Board shall affirm, reverse or modify by order its previous action, specifying in such order its reasons therefor. Any applicant who may be dissatisfied with any order of the Board respecting its application may appeal to the District Court of Travis County, Texas, and not elsewhere, by filing a petition within thirty (30) days after the rendition or entry of such order setting forth its grounds of objection thereto, in which said action the appealing applicant shall be plaintiff and the Board shall be defendant. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided in the case of an appeal from the Justice Court to the County Court. The judgment

of the District Court shall be appealable as in any other civil case. Such action shall have precedence over other civil cases on the dockets of the appellate courts. Should the Board terminate or refuse to renew a permitted deviation or refuse permission for filing of a deviation under subdivision (f) hereof, then such deviation shall remain in effect during the course of any hearing thereon and thirty (30) days thereafter, and during the course of any appeal taken from such order and until final judgment of the courts. The Board shall not be required to give any appeal or supersedeas bond in any cause arising hereunder. All hearings before the Board and appeals to the District Courts under this Article shall be governed exclusively by this Article.

(h) This Article shall not apply to any companies now operating under Chapters 12 and 13 of Title 78 of the Revised Civil Statutes of 1925, as amended, which have heretofore been repealed, or to Farm Mutual Insurance Companies operating under Chapter 16 of this Code; County Mutual Insurance Companies operating under Chapter 17 of this Code; Underwriters at a Lloyd's operating under Chapter 18 of this Code; Reciprocal and inter-insurance exchanges operating under Chapter 19 of this Code; nor shall it apply to other purely mutual or to other purely profit-sharing fire insurance companies incorporated or unincorporated under the laws of this state, and carried on by the members thereof solely for the protection of their property and not for profit.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1957, 55th Leg., p. 1443, ch. 497, § 1; Acts 1981, 67th Leg., p. 2637, ch. 707, § 4(23), eff. Aug. 31, 1981.]

Art. 5.27. No Company Exempt

Every fire insurance company, every marine insurance company, every fire and marine insurance company, every fire and tornado insurance company, and each and every insurance company of every kind and name issuing a contract or policy of insurance, or contracts or policies of insurance against loss by fire on property within this State, whether such property be fixed or movable, stationary or in transit, or whether such property is consigned or billed for shipment within or beyond the boundary of this State or to some foreign county,¹ whether such company is organized under the laws of this State or under the laws of any other state, territory or possession of the United States, or foreign country, or by authority of the Federal Government, now holding certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact business thereunder, upon condition that it consents to the terms and provisions of this subchapter and that it agrees to transact business in this State, subject thereto; it being intended that every contract or policy of insurance against the hazard of fire shall be issued in accordance with the terms and provisions of this

subchapter, and the company issuing the same governed thereby, regardless of the kind and character of such property and whether the same is fixed or movable, stationary or in transit, including the shore end of all marine risks insured against loss by fire.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

¹ Probably should read "country".

Art. 5.28. Statements and Books

Said Board is authorized and empowered to require sworn statements for any period of time from any insurance company affected by this law and from any of its directors, officers, representatives, general agents, state agents, special agents, and local agents of the rates and premiums collected for fire insurance on each class of risks, on all property in this State and of the causes of fire, if such be known, if they are in possession of such data, and information, or can obtain it at a reasonable expense; and said Board is empowered to require such statements showing all necessary facts and information to enable said Board to make, amend and maintain the general basis schedules provided for in this law and the rules and regulations for applying same and to determine reasonable and proper maximum specific rates and to determine and assist in the enforcement of the provisions of this law. The said Board shall also have the right, at its discretion, either personally, or by someone duly authorized by it, to visit the office whether general, local or otherwise, of any insurance company doing business in this State, and the home office of said company outside of this State, if there be such, and the office of any officers, directors, general agents, state agents, local agents or representatives of such company, and there require such company, its officers, agents or representatives, to produce for inspection by said Board or any of its duly authorized representatives all books, records and papers of such company or such agents and representatives; and the said Board or its duly authorized agents or representatives shall have the right to examine such books and papers and make or cause to be made copies thereof; and shall have the right to take testimony under oath with reference thereto, and to compel the attendance of witnesses for such purpose. Said Board shall be further empowered to require the fire insurance companies transacting business in this State or any of them, to furnish said Board with any and all data which may be in their possession, either jointly or severally, including maps, tariffs, inspection reports and any and all data affecting fire insurance risks in this State, or in any portion thereof, and said Board shall be empowered to require any (2) or more of said companies, or any joint agent or representative of them, to turn over any and all such data in their posses-

sion, or any part thereof, to said Board for its use in carrying out the provisions of this law.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.29. Schedule and Report

The rates of premium fixed by said Board in pursuance of the provision of this subchapter shall be at all times reasonable and the schedules thereof made and promulgated by said Board shall be in such forms as will in the judgment of the Board most clearly and in detail disclose the rate so fixed and determined by said Board to be charged and collected for policies of fire insurance. Said Board may employ and use any facts obtainable from and concerning fire insurance companies transacting business in this State, showing their expense and charges for fire insurance premiums for any period or periods said Board may deem advisable, which in their opinion will enable them to devise and fix and determine reasonable rates of premiums for fire insurance. The said Board in making and publishing schedules of the rates fixed and determined by it shall show all charges, credits, terms, privileges and conditions which in anywise affect such rates, and copies of all such schedules shall be furnished by said Board to any and all companies affected by this subchapter applying therefor, and the same shall be furnished to any citizens of this State applying therefor, upon the payment of the actual cost thereof. No rate or rates fixed or determined by the Board shall take effect until it shall have entered an order or orders fixing and determining same, and shall give notice thereof to all fire insurance companies affected by this subchapter, authorized to transact business in the State. The Board, and any inspector or other agent or employee thereof, who shall inspect any risk for the purpose of enabling the Board to fix and determine the reasonable rate to be charged thereon, shall furnish to the owner of such risk at the date of such inspection a copy of the inspection report, showing all defects that may operate as charges to increase the insurance rate.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.30. Analysis of Rate

When a policy of fire insurance shall be issued by any company transacting the business of fire insurance in this State, such company shall furnish the policyholder with a written or printed analysis of the rate or premium charged for such policy, showing the items of charge and credit which determine the rate, unless such policyholder has theretofore been furnished with such analysis of such rate. All schedules of rates promulgated by said Board shall be open to the public, and every local agent of such fire insurance company shall have and exhibit to the

public copies of such schedules covering all risks upon which he is authorized to write insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.31. Change or Limit of Rate

Said Board shall have full power and authority to alter, amend, modify or change any rate fixed and determined by it on thirty (30) days' notice, or to prescribe that any such rate or rates shall be in effect for a limited time, and said Board shall also have full power and authority to prescribe reasonable rules whereby in cases where no rate of premium shall have been fixed and determined by the Board, for certain risks or classes of risks, policies may be written thereon at rates to be determined by the company. Such company or companies shall immediately report to said Board such risk so written, and the rates collected therefor, and such rates shall always be subject to review by the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.32. Petition for Change

Any such fire insurance company shall have the right at any time to petition the Board for an order changing or modifying any rate or rates fixed and determined by the Board, and the Board shall consider such petition in the manner provided in this subchapter and enter such order thereon as it may deem just and equitable.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.33. Reducing Hazard

The Board shall have full authority and power to give each city, town, village or locality credit for each and every hazard they may reduce or entirely remove, and also for all added fire fighting equipment, increased police protection, or any other equipment or improvement that has a tendency to reduce the fire hazard of any such city, town, village or locality, and also to give credit for a good fire record made by any city, town, village or locality. Said Board shall also have the power and authority to compel any company to give any or all policy holders credit for any and all hazards said policy holder or holders may reduce or remove. For the purposes of this Article, the installation of a new standard fire hydrant approved by the State Board of Insurance within the required distance of a risk as prescribed by the State Board of Insurance shall constitute a reduction in hazard by the policy holder or holders. Said credit shall be in proportion to such reduction or removal of such hazard and said company or companies shall return to such policy holder or holders such proportional part of the unearned premium charged for such hazard that may be reduced or removed.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1971, 62nd Leg., p. 3005, ch. 992, § 1, eff. June 15, 1971.]

Art. 5.33A. Reduction in Homeowners Insurance Premiums

Definitions

Sec. 1. In this article:

(1) "Institute" means the Texas Crime Prevention Institute.

(2) "Inspector" means a person certified by the institute to be an inspector under this article.

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

Qualification for Premium Reduction

Sec. 2. A person is entitled to a premium reduction for homeowners insurance coverage if that person is found by an inspector to be in compliance with the specifications in Section 6 of this article.

Procedure for Certification

Sec. 3. (a) A person who desires a premium reduction on homeowners insurance shall apply to the institute for a premium reduction certification inspection. Application for the inspection shall be made in writing and in the form required by the institute.

(b) On receiving an application for an inspection, the institute shall assign an inspector to inspect the property to be covered by the applicant's homeowners policy.

(c) The inspector who is assigned by the institute shall inspect the property and shall file a written report with the board stating the inspector's findings and whether or not the property qualifies for a premium reduction.

Premium Reduction Certificate

Sec. 4. (a) If the inspector's report states that the applicant's property qualifies for a premium reduction, the board shall issue to the applicant a premium reduction certificate entitling him or her to a premium reduction on the homeowners insurance.

(b) The premium reduction certificate must be signed by the person to whom the certificate is issued, the inspector, and the insurer issuing the policy or the insurer's agent.

(c) A certificate is valid for a term of three years and may be renewed for an additional three-year period at the request of the insured.

Amount of Premium Reduction

Sec. 5. The board shall establish by rule the amount of premium reduction applicable under this article to homeowners insurance.

Specifications for Qualifying for a Premium Reduction

Sec. 6. (a) A person's property qualifies for a homeowners insurance premium reduction if the property meets the following specifications:

(1) exterior doors must be solid core doors that are 1 3/8 inches thick and must be secured by dead-bolt locks;

(2) metal doors must be secured by dead-bolt locks;

(3) double doors must meet the specifications provided by Subdivision (1) of this subsection, must have the inactive door secured by header and threshold bolts that penetrate metal strike plates, and in the case of glass located within 40 inches of header and threshold bolts, must have the bolts flush-mounted in the edge of the door;

(4) sliding glass doors must be secured by secondary locking devices to prevent lifting and prying;

(5) dutch doors must have concealed flush-bolt locking devices to interlock upper and lower halves and must be secured by a dead-bolt lock;

(6) garage doors must be equipped with key-operated locking devices; and

(7) windows must be secured by auxiliary locking devices.

(b) A dead-bolt lock required by Subsection (a) of this section must lock with a minimum bolt throw of one inch that penetrates a metal strike plate. If a door secured by a dead-bolt lock has breakable glass within 40 inches of the lock, the lock must be key-operated from both sides unless prohibited by life safety codes.

(c) An auxiliary locking device required by Subsection (a) of this section must include screws, wooden dowels, pinning devices, and key-operated locks. In areas in which life safety codes permit, metal bars or grating, if mounted to prevent easy removal, may be substituted for auxiliary locking devices.

(d) Jalousie or louvered windows do not meet the specifications of this section unless they have metal grating mounted as provided by Subsection (c) of this section.

Duties of the Institute

Sec. 7. The institute shall administer the inspection program under this article, shall adopt rules to carry out the inspection program, and shall certify and supervise inspectors who do the inspections.

Inspectors

Sec. 8. (a) Before a person may act as an inspector, that person must apply for and receive certification from the institute and must meet the qualifications stated in Subsection (b) of this section.

- (b) To be qualified as an inspector, a person must:
- (1) be a city or county employee;
 - (2) be of high moral integrity; and

(3) have a minimum of 20 hours classroom instruction from the institute or from an agent of the institute.

(c) A person approved under this section to act as an inspector must register annually with the institute to maintain the certification as an inspector under this article.

(d) The institute shall adopt rules and procedures for certification and for registering to maintain certification as an inspector.

(e) The institute may deny in inspector's annual registration if it finds on application for registration that the inspector has failed or refused to carry out his or her duties in the manner provided by this article and rules adopted by the institute.

Assumption of Powers, Duties, and Responsibilities by Board

Sec. 9. If for any reason the institute is unable to assume the powers, duties, and responsibilities given to it under this article, the board shall designate a successor to exercise those powers, duties, and responsibilities.

[Acts 1981, 67th Leg., p. 3071, ch. 809, § 1, eff. June 17, 1981.]

Art. 5.34. Revising Rates

The Board shall have authority after having given reasonable notice, not exceeding thirty (30) days, of its intention to do so, to alter, amend or revise any rates of premium fixed and determined by it in any schedules of such rates promulgated by it, and to give reasonable notice of such alteration, amendment or revision to the public, or to any company or companies affected thereby. Such altered, amended or revised rates shall be the rates thereafter to be charged and collected by all fire insurance companies affected by this subchapter. No policy in force prior to the taking effect of such changes or amendments shall be affected thereby, unless there shall be a change in the hazard of the risk, necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to the new rates.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.35. Uniform Policies

The Board shall make, promulgate and establish uniform policies of insurance applicable to the various risks of this State, copies of which uniform policies shall be furnished each company now or hereafter doing business in this State. After such uniform policies shall have been established and promulgated and furnished the respective companies doing business in this State, such companies shall, within sixty (60) days after the receipt of such forms of policies, adopt and use said form or forms and no other; also all companies which may commence business in this State after the adoption and

promulgation of such forms of policies, shall adopt and use the same and no other forms of policies.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.36. Standard Forms

The Board shall prescribe all standard forms, clauses and endorsements used on or in connection with insurance policies. All other forms, clauses and endorsements placed upon insurance policies shall be placed thereon subject to the approval of the Board. The Board shall have authority in its discretion to change, alter or amend such form or forms of policy or policies, and such clauses and endorsements used in connection therewith, upon giving notice.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.37. Lien on Insured Property

Any provision in any policy of insurance issued by any company subject to the provisions of this subchapter to the effect that if said property is encumbered by a lien of any character or shall after the issuance of such policy become encumbered by a lien of any character, then such encumbrance shall render such policy void, shall be of no force and effect. Any such provision within or placed upon any such policy shall be null and void.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.38. Co-insurance Clauses

No company subject to the provisions of this subchapter may issue any policy or contract of insurance covering property in this State, which shall contain any clause or provision requiring the assured to take out or maintain a larger amount of insurance than expressed in such policy, nor in any way providing that the assured shall be liable as a co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any such clause or provisions, except as herein provided, shall be null and void, and of no effect; provided, co-insurance clauses and provisions may be inserted in policies written upon cotton, grain, or other products in process of marketing, shipping, storing or manufacturing.

Provided, further, it shall be optional with an insured to accept a policy or contract of insurance containing such clause or provision covering other classes of property, except private dwellings, and except stocks of merchandise offered for sale at retail when of a value less than Ten Thousand (\$10,000.00) Dollars, when a reduction in the rate is allowed for such policy, and said clause in such policy shall be valid and binding; and the Board of Insurance Commissioners shall have power to name the rates to apply when such co-insurance clause or provision shall be used.

Provided, further, that by appropriate order the Board of Insurance Commissioners may authorize, and in its discretion require the use of any form of co-insurance clauses on or in connection with insurance policies covering against the hazards of tornado, windstorm and hail, on any or all classes of property; the Board to make such rules and regulations with reference to such clauses and the use thereof, as well as credits in premium rates for the use thereof on policies covering against the hazards mentioned as it may deem proper.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.39. Complaint of Rates or Orders

Any citizen or number of citizens of this State or any policyholder or policyholders, or any insurance company affected by this subchapter, or any board of trade, chamber of commerce, or other civic organization, or the civil authorities of any town, city, or village, shall have the right to file a petition with the Board, setting forth any cause of complaint that they may have as to any order made by this Board, or any rate fixed and determined by the Board, and they shall have the right to offer evidence in support of the allegations of such petition by witnesses, or by depositions, or by affidavits; upon the filing of such petition, the party complained of, if other than the Board, shall be notified by the Board of the filing of such petition and a copy thereof furnished the party or parties, company or companies, of whom complaint is made, and the said petition shall be set down for a hearing at a time not exceeding thirty (30) days after the filing of such petition and the Board shall hear and determine said petition; but it shall not be necessary for the petitioners or any one of them to be present to present the cause to the Board, but they shall consider the testimony of all witnesses, whether such witnesses testify in person or by depositions, or by affidavits, and if it be found that the complaint made in such petition is a just one, then the matter complained of shall be corrected or required to be corrected by said Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.40. Hearing of Protests

The Board shall give the public and all insurance companies to be affected by its orders or decisions, reasonable notice thereof, not exceeding thirty (30) days, and an opportunity to appear and be heard with respect to the same; which notice to the public shall be published in one or more daily papers of the State, and such notice to any insurance company to be affected thereby shall be mailed addressed to the State or general agent of such company, if such address be known to the Board, or if not known, then such letter shall be addressed to some local agent of such company, or if the address of a local agent be unknown to the Board, then by publication in one or more of the daily papers of the State, and the Board shall hear all protests or complaints from

any insurance company or any citizen or any city, or town, or village or any commercial or civic organization as to the inadequacy or unreasonableness of any rates fixed by it or approved by it, or as to the inadequacy or unreasonableness of any general basis schedules promulgated by it or the injustice of any order or decision by it, and if any insurance company, or other person, or commercial or civic organization, or any city, town or village, which shall be interested in any such order or decision shall be dissatisfied with any regulation, schedule or rate adopted by such Board, such company or person, commercial or civic organization, city, town or village shall have the right, within thirty (30) days after the making of such regulation or order, or rate, or schedule or within thirty (30) days after hearing above provided for, to bring an action against said Board in the District Court of Travis County to have such regulation or order or schedule or rate vacated or modified; and shall set forth in a petition therefor the principal grounds of objection to any or all of such regulations, schedules, rates or orders. In any such suit the issue shall be formed and the controversy tried and determined as in other civil cases. The court may set aside and vacate or annul any or all or any part of any regulation, schedule, order or rate promulgated or adopted by said Board, which shall be found by the court to be unreasonable, unjust, excessive or inadequate, without disturbing others. No injunction, interlocutory order or decree suspending or restraining, directly or indirectly, the enforcement of any schedule, rate, order or regulation of said Board shall be granted. In such suit, the court, by interlocutory order, may authorize the writing and acceptance of fire insurance policies at any rate which in the judgment of court is fair and reasonable, during the pending of such suit, upon condition that the party to such suit in whose favor the said interlocutory order of said court may be, shall execute and file with the Board a good and sufficient bond to be first approved by said court, conditioned that the party giving said bond will abide the final judgment of said court and will pay to the Board whatever difference in the rate of insurance, it may be finally determined to exist between the rates as fixed by the Board complained of in such suit, and the rate finally determined to be fair and reasonable by the court in said suit, and the said Board, when it receives such difference in money, shall transmit the same to the parties entitled thereto.

Whenever any action shall be brought by any company under any provision of this article within said period of thirty (30) days, no penalties nor forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the orders, schedules, rates or regulations sought to be vacated in such action until the final determination of the same.

Either party to any such action, if dissatisfied with the judgment or decree of said court, may appeal therefrom as in other civil cases. No action shall be brought in any court of the United States to set aside any orders, rates, schedules or regulations made by said Board under the provisions of this law until all of the remedies provided herein shall have been exhausted by the party complaining.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.41. Rebating or Discrimination

No company shall engage or participate in the insuring or reinsuring of any property in this State against loss or damage by fire except in compliance with the terms and provisions of this law; nor shall any such company knowingly write insurance at any lesser rate than the rates herein provided for, and it shall be unlawful for any company so to do, unless it shall thereafter file an analysis of same with the Board, and it shall be unlawful for any company, or its officers, directors, general agents, state agents, special agents, local agents, or its representatives, to grant or contract for any special favor or advantages in the dividends or other profits to come thereon, or in commissions in the dividends or other profits to accrue thereon, or in commissions or division of commission, or any position or any valuable consideration or any inducement not specified in the policy contract of insurance; nor shall such company give, sell or purchase, offer to give, sell or purchase, directly or indirectly, as an inducement to insure or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, partnership or individual, or any dividends or profits accrued or to accrue thereon, or anything of value whatsoever, not specified in the policy. Nothing in this law shall be construed to prohibit a company from sharing its profits with its policyholders, if such agreement as to profit sharing shall be placed on or in the face of the policy, and such profit sharing shall be uniform and shall not discriminate between individuals or between classes. No part of the profit shall be paid until the expiration of the policy. Any company, or any of its officers, directors, general agents, state agents, special agents, local agents or its representatives, doing any of the acts in this article prohibited, shall be deemed guilty of unjust discrimination. If any agent or company shall issue a policy without authority, and any policyholder holding such policy shall sustain a loss or damage thereunder, said company or companies shall be liable to the policyholder thereunder, in the same manner and to the same extent as if said company had been authorized to issue said policies, although the company issued said policy in violation of the provisions of this subchapter. But this shall not be construed to give any company the right to issue any contract or

policy of insurance other than as provided in this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.41-1. Penalty for Accepting Rebates

Whoever shall knowingly receive or accept from any insurance company or from any of its agents, sub-agents, brokers, solicitors, employés, intermediaries or representatives, or any other person, any rebate of premium payable on policy, or any special favor or advantage in the dividends or other financial profits accrued or to accrue thereon, or any valuable consideration, position or inducement not specified in the policy of insurance, shall be fined not exceeding one hundred dollars or be imprisoned in jail not exceeding ninety days, or both.

[1925 P.C.]

Art. 5.42. Not Retroactive

The provisions of this subchapter shall not deal with the collection of premiums, but each company shall be permitted to make such rules and regulations as it may deem just between the company, its agents, and its policyholders; and no bona fide extension of credit shall be construed as a discrimination, or in violation of the provisions of this subchapter. All policies heretofore issued which provide that said policies shall be void for non-payment of premiums at a certain specified time, shall be and the same are in full force and effect, provided, that the company or any of its agents have accepted the premium on said policies after the expiration of the dates named in said provisions fixing the date of payment.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.43. Duty of Fire Marshal

The State Fire Marshal, at the discretion of the Board, and upon the request of the mayor of any city or village, or the chief of a fire department of any city or village, or any fire marshal where a fire occurs within such city or village, or of a county or a district judge, or of a sheriff or county attorney of any county where a fire occurs within the district or county of the officers making such request, or of any fire insurance company, or its general, State or special agent, interested in a loss, or of a policyholder sustaining a loss, or upon the direction of the Board, shall forthwith investigate at the place of such fire before loss can be paid, the origin, cause and circumstances of any fire occurring within this State, whereby property has been destroyed or damaged, and shall ascertain if possible whether the same was the result of any accident, carelessness or design, and shall make a written report thereof to the Board. The State Fire Marshal shall have the power to administer oaths, take testimony, compel the attendance of witnesses and the production of documents. When, in his opinion, further investiga-

tion is necessary, he shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing, and if he shall be of the opinion that there is evidence sufficient to charge any person with arson, or with attempt to commit arson, or of conspiracy to defraud or criminal conduct in connection with such, he shall arrest or cause to be arrested such person, and shall furnish to the proper prosecuting attorney all evidence secured, together with the names of witnesses and all information obtained by him, including a copy of all material testimony taken in the case, and it shall be the duty of the State Fire Marshal to assist in the prosecution of all such complaints filed by him. All investigations held by or under the direction of the State Fire Marshal may, in his discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and the witnesses may be kept separate from each other and not allowed to communicate with such others until they have been examined; and all testimony taken in an investigation under the provisions of this law may, at the election of the State Fire Marshal, be withheld from the public.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.43-1. Fire Extinguishers

Purpose

Sec. 1. The purpose of this article is to regulate the leasing, renting, selling, and servicing of portable fire extinguishers and the installing and servicing of fixed fire extinguisher systems, in the interest of safeguarding lives and property.

Administration

Sec. 2. The State Board of Insurance shall administer this article and it may issue rules and regulations which it considers necessary to its administration through the State Fire Marshal. The board, in adopting necessary rules and regulations, may use recognized standards such as, but not limited to, those of the National Fire Protection Association, those recognized by federal law or regulation, and those published by any nationally recognized standards-making organization, or the manufacturer's installation manuals.

Definitions

Sec. 3. As used in this article the following terms have the meanings specified in this section.

(a) "Firm" means any person, partnership, corporation, or association.

(b) "Hydrostatic testing" means pressure testing by hydrostatic methods.

(c) "Portable fire extinguisher" means any device that contains within it chemical fluids, powder, or gases for extinguishing fires and has a label of approval attached by a nationally recognized testing laboratory, such as, but not limited to, the Underwriters Laboratories Inc. and Factory Mutual Research Corporation.

(d) "Service and servicing" means servicing portable fire extinguishers or fixed fire extinguisher systems by charging, filling, maintaining, recharging, refilling, repairing, or testing.

(e) "Fixed fire extinguisher system" means those listed or approved fire extinguisher systems installed in compliance with the manufacturer's installation manuals or the applicable National Fire Protection Association Standard and its references as follows:

(1) the National Fire Protection Association Standards Foam Extinguisher Systems, No. 11, 1978 edition;

(2) the National Fire Protection Association Standards on Carbon Dioxide Extinguisher Systems, No. 12, 1977 edition;

(3) the National Fire Protection Association Standards for Halogenated Fire Extinguishing Agents Systems—Halon 1301, No. 12A, 1977 edition;

(4) the National Fire Protection Association Standards for Dry Chemical Extinguisher Systems, No. 17, 1980 edition;

(5) the National Fire Protection Association Standards for the Installation of Equipment for the Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment, No. 96, 1978 edition; and

(6) additional or updated National Fire Protection Association Standards as adopted by the State Board of Insurance.

Registration, Licensing, and Fees

Sec. 4. (a) Each firm engaged in the business of installing or servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems must have a certificate of registration issued by the State Board of Insurance. The initial fee for the certificate of registration must be in an amount not to exceed \$450 and the renewal fee for each year thereafter must be in an amount not to exceed \$300. Each separate office location of a firm engaged in the business of installing or servicing portable fire extinguishers or installing or servicing fixed extinguisher systems, other than the location identified on the certificate of registration, must have a branch office registration certificate issued by the board. The initial fee for a branch office registration certificate must be in an amount not to exceed \$100, and the renewal fee for each year thereafter must be in an amount not to exceed \$100. The board shall identify each branch office location

as a part of a registered firm before a branch office registration certificate may be issued.

(b) A fee in an amount not to exceed \$20 shall be charged for a duplicate certificate of registration, license, or apprentice permit issued under this article or for any request requiring changes to a certificate of registration, license, or permit. A new certificate of registration with a new number shall be issued to a registered firm on a change of ownership for a fee in an amount not to exceed \$450. A fee in an amount not to exceed \$100 shall be charged for a change of ownership of a branch office.

(c) Each employee, other than an apprentice, of firms engaged in the business of installing or servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems who services extinguishers or fixed systems, must have a license issued by the State Board of Insurance. The initial fee for the license, including the initial examination, must be in an amount not to exceed \$50 and the license renewal fee for each year thereafter must be in an amount not to exceed \$50. A fee in an amount not to exceed \$20 shall be charged for each reexamination.

(d) Each person servicing portable fire extinguishers or fixed fire extinguisher systems as an apprentice shall, before servicing any portable fire extinguisher or servicing any fixed fire extinguisher system, apply to the State Board of Insurance for an apprentice permit. The fee for the apprentice permit must be in an amount not to exceed \$30. An apprentice may perform the services only under direct supervision of a person holding a valid license under this article who works for the same firm as the apprentice. An apprentice permit is valid for one year from the date of issuance.

(e) Each firm performing hydrostatic testing of fire extinguishers manufactured in accordance with the specifications and procedures of the United States Department of Transportation shall do so in accordance with the procedures specified by that department for compressed gas cylinders and shall be required to have a hydrostatic testing certificate of registration authorizing such testing issued by the state fire marshal. Persons qualified to do this work shall be given such authority on their licenses. The initial fee must be in an amount not to exceed \$250 and the renewal fee for each year thereafter must be in an amount not to exceed \$150. Hydrostatic testing of fire extinguishers not performed pursuant to the United States Department of Transportation specifications shall be performed as recommended by the National Fire Protection Association.

(f) The State Board of Insurance shall, within the limits fixed by this section, prescribe the fees to be charged under this section.

Selling or Leasing of Portable Fire Extinguishers or Fixed Fire Extinguisher Systems

Sec. 5. (a) No portable fire extinguisher or fixed fire extinguisher system may be leased, sold, rented, or installed in this state unless it carries a label of approval of a nationally recognized testing laboratory or a testing laboratory approved by the State Board of Insurance.

(b) Except as provided in Section 6 of this article, only the holder of a current and valid license or an apprentice permit issued pursuant to this article may service portable fire extinguishers or install and maintain fixed fire extinguisher systems.

(c) A person who has been issued a license pursuant to this article to service portable fire extinguishers or install and service fixed fire extinguisher systems must be an employee, agent, or servant of a firm that holds a certificate of registration issued pursuant to this article.

(d) A certificate of registration, license, or permit issued under this article is not transferable.

Exceptions

Sec. 6. The provisions of this article do not apply to the following:

(a) the filling or charging of a portable fire extinguisher by the manufacturer prior to its initial sale;

(b) the servicing by a firm of its own portable fire extinguishers and/or fixed systems by its own personnel specially trained for such servicing;

(c) the installation or servicing of water sprinkler systems installed in compliance with the National Fire Protection Association's Standards for the Installation of Sprinkler Systems, No. 13;

(d) firms engaged in the retailing or wholesaling of portable fire extinguishers as defined in Section 3, but not engaged in the installation or recharging of them;

(e) fire departments recharging portable fire extinguishers as a public service where no charge is made, provided, however, that the members of the fire department are trained in the proper filling and recharging of the fire extinguishers.

Applications and Hearings on Licenses, Permits and Certificates

Sec. 7. (a) Applications and qualifications for licenses, permits, and certificates issued hereunder shall be made pursuant to regulations adopted by the State Board of Insurance.

(b) The State Board of Insurance may through the State Fire Marshal conduct hearings or proceedings concerning the suspension, revocation, or refusal of the issuance or renewal of licenses, apprentice permits, hydrostatic testing certificates, certificates of registration, or approvals of testing labora-

tories issued under this article or the application to suspend, revoke, refuse to renew, or refuse to issue the same.

(c) An applicant, registrant, licensee, or permit holder whose certificate of registration, license, or permit has been refused or revoked under this article, except for failure to pass a required written examination, may not file another application for a certificate of registration, license, or permit within one year from the effective date of the refusal or revocation. After one year from that date, the applicant may reapply and in a public hearing show good cause why the issuance of his certificate of registration, license, or permit is not against the public safety and welfare.

(d) A person whose license to service portable fire extinguishers or to install or service fixed fire extinguisher systems has been revoked must retake and pass the required written examination before a new license may be issued.

(e) An unexpired license or registration may be renewed by paying the required renewal fee to the State Board of Insurance before the expiration date of the license or registration. If a license or registration has been expired for not longer than 90 days, the license or registration may be renewed by paying to the State Board of Insurance the required renewal fee and a fee that is one-half of the original fee for the license or registration. If a license or registration has been expired for longer than 90 days but less than two years, the license or registration may be renewed by paying to the State Board of Insurance all unpaid renewal fees and a fee that is equal to the original fee for the license or registration. If a license or registration has been expired for two years or longer, the license or registration may not be renewed. A new license or certificate of registration may be obtained by complying with the requirements and procedures for obtaining an original license or registration. At least 30 days before the expiration of a license or registration, the State Fire Marshal shall send written notice of the impending license or registration expiration to the licensee or registrant at his or its last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(f) The State Board of Insurance by rule may adopt a system under which certificates of registration, licenses, and permits expire on various dates during the year. For the year in which the certificate of registration, license, or permit expiration date is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each registrant, licensee, or permittee shall pay only that portion of the fee that is allocable to the number of months during which the certificate of registration, license, or permit is

valid. On each subsequent renewal, the total renewal fee is payable.

(g) Not later than the 30th day after the day on which a licensing examination is administered under this Act, the State Fire Marshal shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the State Fire Marshal shall send notice to the examinees of the results of the examination within two weeks after the date on which the State Fire Marshal receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the State Fire Marshal shall send notice to the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the State Fire Marshal shall send to the person an analysis of the person's performance on the examination.

(h) The State Board of Insurance may adopt procedures for certifying and may certify continuing education programs for persons licensed under this Act. Participation in the programs is voluntary.

(i) The State Board of Insurance may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Powers and Duties of State Board of Insurance

Sec. 8. The State Board of Insurance shall:

(a) formulate and administer such rules and regulations as may be determined essentially necessary for the protection and preservation of life and property, in controlling:

(1) the registration of firms engaging in the business of servicing portable fire extinguishers or installing and maintaining fixed fire extinguisher systems;

(2) the registration of firms engaged in the business of hydrostatic testing of portable fire extinguishers;

(3) the examination of persons applying for a license to service portable fire extinguishers;

(4) the licensing of persons to service portable fire extinguishers and install fixed fire extinguisher systems; and

(5) the requirements for the servicing of portable fire extinguishers and the maintenance of fixed fire extinguisher systems;

(b) evaluate the qualifications of firms or individuals for a certificate of registration to engage in the business of servicing portable fire extinguishers or installing fixed fire extinguisher systems;

(c) conduct examinations to ascertain the qualifications and fitness of applicants for a license to service portable fire extinguishers or install fixed fire extinguisher systems;

(d) issue certificates of registration for those firms that qualify under the rules and regulations to engage in the business of servicing portable fire extinguishers or installing and servicing fixed fire extinguisher systems, and issue licenses, apprentice permits, and authorizations to perform hydrostatic testing to the firms or individuals who qualify; and

(e) evaluate the qualifications of firms seeking approval as testing laboratories for portable fire extinguishers.

Delegation of Power by State Board of Insurance

Sec. 9. The State Board of Insurance may delegate the exercise of all or part of its functions, powers, and duties under this article, except for the issuance of licenses, certificates, and permits, and the formulation of rules and regulations, to a Fire Extinguisher Advisory Council whose members shall be appointed by the State Board of Insurance. The members shall be experienced and knowledgeable in one or more of the following areas: fire services, fire extinguisher manufacturing, fire insurance inspection or underwriting, fire extinguisher servicing, or be a member of a fire protection association or industrial safety association.

Certain Acts Prohibited

Sec. 10. No person may do any of the following:

(1) engage in the business of servicing portable fire extinguishers without a current certificate of registration;

(2) engage in the business of installing or servicing fixed fire extinguisher systems without a current certificate of registration;

(3) service portable fire extinguishers or service or install fixed fire extinguisher systems without a current license;

(4) perform hydrostatic testing of portable fire extinguishers manufactured in accordance with the specifications and requirements of the United States Department of Transportation without a current hydrostatic testing certificate of registration;

(5) obtain or attempt to obtain a certificate of registration or license by fraudulent representation;

(6) service portable fire extinguishers or service or install fixed fire extinguisher systems contrary to the provisions of this article or the rules and regulations formulated and administered under the authority of this article;

(7) service or hydrostatic test a fire extinguisher that does not have the proper identifying labels;

(8) sell, service, or recharge a carbon tetrachloride fire extinguisher; or

(9) sell, rent, or lease a portable fire extinguisher that has not been approved as provided by Subsection (a) of Section 5 of this article.

Use of Funds

Sec. 11. All funds collected through the licensing and other provisions of this article, excepting penalties and monetary forfeitures, shall be paid to the State Board of Insurance and be deposited in the State Treasury to the credit of the State Board of Insurance operating fund for use in carrying out the administration of this article.

Penalties

Sec. 12. (a) The State Fire Marshal may refuse the issuance or renewal of, suspend, or revoke a certificate of registration, license, or permit if, after notice and hearing, he finds that the applicant, registrant, licensee, or permit holder has violated this article.

(b) A person commits an offense if the person knowingly or intentionally violates Section 10 of this article.

(c) An offense under Subsection (b) of this section is a Class B misdemeanor. Venue for the offense is in Travis County.

[Acts 1971, 62nd Leg., p. 1993, ch. 616, eff. June 4, 1971. Amended by Acts 1975, 64th Leg., p. 899, ch. 335, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 903, ch. 412, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 416, ch. 175, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1091, ch. 245, §§ 1 to 3, eff. May 27, 1983; Acts 1983, 68th Leg., p. 3934, ch. 622, §§ 24, 47, eff. Sept. 1, 1983.]

Section 4 of the 1981 amendatory act provides:

"Section 12, Article 5.43-1, Insurance Code, and Section 11, Article 5.43-2, Insurance Code, as those laws are amended by this Act, apply to offenses committed on or after the effective date of this Act. Offenses committed before the effective date of this Act are covered by the law as it existed at the time the offense was committed, and the prior law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurred before that date."

Section 94 of Acts 1983, 68th Leg., p. 4002, ch. 622, provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 5.43-2. Fire Detection and Alarm Devices

Purpose

Sec. 1. The purpose of this article is to regulate the sales, servicing, installation, and maintenance of fire detection and fire alarm devices and systems in the interest of safeguarding lives and property.

Definitions

Sec. 2. As used in this article:

(1) "Person" means a natural person, including an owner, manager, officer, employee, occupant, or individual.

(2) "Organization" means a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, firm or association, two or more persons having a

joint or common interest, or any other legal or commercial entity.

(3) "Advisory council" means a group of five individuals experienced and knowledgeable in one or more of the following areas: sale, installation, maintenance, or manufacturing of fire alarm or detection systems, electrical engineering, fire services or be a member of a fire protection association which is to be appointed by the State Board of Insurance.

(4) "Board" means the State Board of Insurance.

(5) "Sale" means sale or offering for sale, lease, or rent any merchandise, equipment, or service at wholesale or retail, to the public or any person, for an agreed sum of money or other consideration.

(6) "Installation" means the initial placement of equipment and/or the extension, modification, or alteration of equipment already in place.

(7) "Approval, approved" means that equipment which has been tested or listed by a nationally recognized testing laboratory such as but not limited to Underwriters' Laboratories, Incorporated, or Factory Mutual Research Corporation, or has gained specific written approval for the use intended by the state marshal.

(8) "Maintenance" means to maintain in a condition of repair that will allow performance as originally designed or intended.

(9) "Service, servicing" means any charging, recharging, maintaining, repairing, testing, or installing.

(10) "Fire detection device" means any arrangement of materials, the sole function of which is to provide indication of fire, smoke, or combustion in its incipient stages.

(11) "Fire alarm device" means any device capable, through audible and/or visible means, of sounding a warning that fire or combustion has taken or is taking place.

(12) "Fire alarm installation superintendent" means an individual or individuals who shall be designated by each company that sells, services, installs, or maintains a fire alarm or detection system to inspect and certify that each fire alarm or detection system as installed meets the standards as provided for by law.

Exceptions

Sec. 3. (a) The provisions of this article and the rules and regulations promulgated under this article shall have uniform force and effect throughout the state and no municipality or county shall hereinafter enact any ordinances, rules, or regulations inconsistent with the provisions of this article or rules and regulations promulgated pursuant to this article. Provided, however, that any municipality or county ordinances, rules, or regulations in force or effect

on the effective date of this article shall not be invalidated because of any provision of this article.

(b) This article shall not apply to:

(1) the sale, offer for sale, or installation of fire detection devices or fire alarm devices that are not specifically required by Chapters 8 through 30, Life Safety Code, National Fire Protection Association Standard, No. 101, 1981 edition or the corresponding provisions of the updated edition of that standard most recently adopted by the State Board of Insurance;

(2) a person or organization in the business of building construction that installs electrical wiring and devices that may include in part the installation of a fire alarm or detection system if:

(A) the person or organization is a party to a contract that provides that the installation will be performed under the direct supervision of and inspected and certified by a person or organization licensed to install and certify such an alarm or detection device and that the licensee assumes full responsibility for the installation of the alarm or detection device; and

(B) the person or organization does not sell, service, or maintain fire alarms or detection devices or systems;

(3) a person or organization that owns and installs fire detection or fire alarm devices on the person's or organization's own property or, if the person or organization does not charge for the device or its installation, installs it for the protection of the person's or organization's personal property located on another's property and does not install the devices as a normal business practice on the property of another;

(4) a person who holds a license or other form of permission issued by an incorporated city or town to practice as an electrician and who installs fire or smoke detection and alarm devices in no building other than a single family or multifamily residence if:

(A) the devices installed are single station detectors; and

(B) all installations comply with provisions of the adopted editions of Life Safety Code, National Fire Protection Association Standard No. 101 and Household Fire Warning Equipment, National Fire Protection Standard No. 74.

(5) a person or organization that sells fire detection or fire alarm devices if the sales are exclusively over-the-counter or by mail order and if the person or organization does not install, service, or maintain this equipment; or

(6) response to a fire alarm or detection device by a law enforcement agency or fire department or by a law enforcement officer or fireman acting in an official capacity.

Administration

Sec. 4. The board shall administer this article and it may issue rules and regulations which it considers necessary to its administration through the state fire marshal. The board, in promulgating necessary rules and regulations, may utilize recognized standards such as, but not limited to, those of the National Fire Protection Association, the National Electrical Code, those recognized by federal law or regulation, those published by any nationally recognized standards-making organization, or any information furnished by individual manufacturers.

Registration and Licensing

Sec. 5. (a) Each organization engaged in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices shall have a certificate of registration issued by the board. The initial fee for the certificate of registration must be in an amount not to exceed \$500 and the renewal fee for each year thereafter must be in an amount not to exceed \$500.

(b) Each separate office location of an organization engaged in the act of selling, leasing, servicing, maintaining, or installing fire detection or fire alarm devices or systems, other than the location identified on the certificate of registration, shall have a branch office registration certificate, issued by the board. The initial fee for this branch office registration certificate must be in an amount not to exceed \$150 and the renewal fee for each year thereafter must be in an amount not to exceed \$150. The board shall identify each branch office location as a part of a registered organization before a branch office registration certificate may be issued.

(c) Each fire alarm installation superintendent must obtain a license issued by the board. The initial fee for the license including the initial examination fee must be in an amount not to exceed \$100 and the renewal fee for each year thereafter must be in an amount not to exceed \$100. A \$10 fee shall be charged for each reexamination.

(d) A fee in an amount not to exceed \$20 shall be charged for a duplicate certificate of registration or license issued by the board and for any requested change to a certificate of registration or license.

(e) No person may inspect with the intention of certifying any fire alarm or fire detection system or device unless he is the holder of a valid and current license issued pursuant to this article.

(f) A person licensed pursuant to this article to inspect and certify a fire alarm or fire detection system or device shall be an employee or agent of an organization that holds a valid and current certificate of registration issued pursuant to this article.

(g) A person who sells, services, installs, or maintains fire alarm systems or fire detection devices shall be an employee or agent of an organization

that holds a valid certificate of registration issued pursuant to this article.

(h) A certificate of registration or license issued under this article is not transferable.

(i) The board shall, within the limits fixed by this section, prescribe the fees to be charged under this section.

Expiration Dates of Licenses

Sec. 5A. (a) Each renewal of a license issued under this article is valid for a period of two years. The total license fee for both years is payable on renewal.

(b) Deleted by Acts 1983, 68th Leg., p. 3957, ch. 622, § 50, eff. Sept. 1, 1983.

Required Bond and Insurance

Sec. 5B. (a) The board may not issue a certificate of registration under this article unless the applicant files with the board:

(1) a surety bond executed by a surety company authorized to do business in this state in the sum of \$10,000 conditioned to compensate for damages caused by wrongful or illegal acts of the principal or the principal's servant, officer, agent, or employee in conducting the business registered or licensed under this article, or instead of the surety bond, the applicant may deposit with the state a sum of \$10,000 in cash; and

(2) proof of a policy of public liability insurance conditioned to pay on behalf of the principal all sums that the principal becomes legally obligated to pay as damages because of injury caused by an occurrence involving the principal or the principal's servant, officer, agent, or employee in the conduct of any business registered or licensed under this article.

(b) The limits of insurance coverage required by Subdivision (3) of Subsection (a) of this section may not be less than:

- (1) \$50,000 for bodily injury;
- (2) \$25,000 for property damage; and
- (3) \$50,000 for personal injury.

(c) The policies of public liability insurance required by this section must be in the form of a certificate of insurance executed by an insurer authorized to do business in the state and countersigned by a local recording agent licensed in the state. Insurance certificates executed and filed with the board under this section remain in force until the insurer has terminated future liability by a 10-day notice to the board.

(d) The applicant shall make the required surety bond payable to the state. Anyone injured by the principal or by the principal's servant, officer, agent, or employee may sue directly on the bond. The bond is subject to successive suits for recovery until the face amount of the bond is completely exhausted. Bonds executed and filed with the

board under this section remain in force until the surety has terminated future liability by a 30-day notice to the board.

(e) Each holder of a certificate of registration shall at all times maintain in force and on file with the board the surety bond and certificates of insurance required by this section. If the holder of a certificate of registration fails to do so, the board shall immediately suspend the certificate of registration and may not reinstate it until an application in the form prescribed by the board is filed with a proper bond and proper insurance certificates. The board may deny such an application if:

(1) the board finds a reason that justifies:

(A) refusal to issue a certificate of registration; or

(B) suspension or revocation of a certificate of registration; or

(2) while under suspension for failure to keep the bond or insurance certificate in force, the applicant performs a practice for which a certificate of registration under this article is required.

(f) For a person who is licensed to install or service burglar alarms under the Private Investigators and Private Security Agencies Act, as amended (Article 4413(29bb), Vernon's Texas Civil Statutes), compliance with the bond and insurance requirements of that Act constitutes compliance with the bond and insurance requirements of this section.

Renewal

Sec. 5C. (a) An unexpired license or registration may be renewed by paying the required renewal fee to the board before the expiration date of the license or registration. If a license or registration has been expired for not longer than 90 days, the license or registration may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original fee for the license or registration. If a license or registration has been expired for longer than 90 days but less than two years, the license or registration may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original fee for the license or registration. If a license or registration has been expired for two years or longer, the license or registration may not be renewed. A new license or registration may be obtained by complying with the requirements and procedures for obtaining an original license or registration. At least 30 days before the expiration of a license or registration, the State Fire Marshal shall send written notice of the impending license or registration expiration to the licensee or registrant at his or its last known address. This section may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(b) The State Board of Insurance by rule may adopt a system under which licenses and registrations expire on various dates during the year. For the year in which the license or registration expiration date is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each licensee or registrant shall pay only that portion of the fee that is allocable to the number of months during which the license or registration is valid. On each subsequent renewal, the total renewal fee is payable.

Examination

Sec. 5D. Not later than the 30th day after the day on which an examination is administered under this article, the State Fire Marshal shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the State Fire Marshal shall send notice to the examinees of the results of the examination within two weeks after the date on which the State Fire Marshal receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the State Fire Marshal shall send notice to the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the examination administered under this article, the State Fire Marshal shall send to the person an analysis of the person's performance on the examination.

Continuing Education

Sec. 5E. The State Board of Insurance may adopt procedures for certifying and may certify continuing education programs. Participation in the programs is voluntary.

License by Reciprocity

Sec. 5F. The board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Powers and Duties of the State Board of Insurance

Sec. 6. The board shall delegate authority to exercise all or part of its functions, powers, and duties under this article, including the issuance of certificates and licenses, to the state fire marshal, and the state fire marshal along with assistance of a nonbinding advisory council to be appointed by the board shall implement such rules and regulations as may be determined by the board to be essentially necessary for the protection and preservation of life and property in controlling:

(1) the registration of organizations engaging in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(2) the requirements for the sale, service, installation, or maintenance of fire alarm or fire detection devices or systems by:

(A) conducting examinations and evaluating the qualifications of applicants for a certificate of registration to engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(B) conducting examinations and evaluating the qualifications of applicants for fire alarm installation superintendent licenses to engage in certifying fire alarm or fire detection devices or systems;

(C) evaluating and determining which organizations shall be approved as testing laboratories for fire alarm and fire detection devices and systems; and

(D) evaluating and approving a required training program for all persons who engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems.

Certain Acts Prohibited

Sec. 7. No organization pursuant to this article may do any of the following:

(1) sell, service, install, or maintain fire alarm or fire detection devices and systems without a valid and current certificate of registration;

(2) obtain or attempt to obtain a certificate of registration by fraudulent representation; or

(3) sell, service, install, or maintain fire alarm or fire detection devices or systems contrary to the provisions of this article or the rules and regulations formulated by the board under the authority of this article.

Fees Collected

Sec. 8. The fees herein provided for, when collected, shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

Selling or Leasing Fire Alarm or Fire Detection Devices

Sec. 9. (a) No device or alarm, the sole intended purpose of which is to detect and/or give alarm of fire, may be sold, offered for sale, leased, or installed in this state unless it carries a label of approval of a nationally recognized testing laboratory or a laboratory approved by the fire marshal.

(b) No fire detection or fire alarm device may be sold or installed in this state unless accompanied by printed information supplied to the owner by the supplier or installing contractor concerning:

(1) instructions describing the installation, operation, testing, and proper maintenance of the device;

(2) information which will aid in establishing an emergency evacuation plan for the protected premises; and

(3) the telephone number and location, including notification procedures, of the nearest fire department.

Applications and Hearings on Licenses and Certificates

Sec. 10. (a) Applications and qualifications for certificates and licenses issued hereunder shall be made pursuant to rules and regulations adopted by the board.

(b) The board may, through the State Fire Marshal, conduct hearings or proceedings concerning the suspension, revocation, or refusal of the issuance or renewal of certificates of registration, licenses, or approvals of testing laboratories issued under this article or the application to suspend, revoke, refuse to renew, or refuse to issue the same.

(c) A certificate of registration, license, or testing laboratory approval may be denied, or same duly issued may be suspended or revoked, or the renewal thereof refused, if after notice and public hearing, the board, through the State Fire Marshal, finds from the evidence presented at said hearing that one or more provisions of this article or of any rule or regulation promulgated under this article has been violated.

(d) A person or organization that has had a certificate of registration, license, or testing laboratory approval revoked may not reapply for the certificate, license, or approval within one year from the date of revocation. A person reapplying under this subsection must request a public hearing to show cause why a certificate of registration, license, or testing laboratory approval should not be denied.

Penalties

Sec. 11. In addition to any other penalties, any person of an organization who performs a function that requires a certificate of registration or license as described herein without first obtaining such certificate of registration or license commits a Class B misdemeanor, venue for which is in Travis County.

[Acts 1975, 64th Leg., p. 853, ch. 326, § 1, eff. May 30, 1975. Amended by Acts 1977, 65th Leg., p. 363, ch. 178, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2173, ch. 830, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 421, ch. 175, §§ 2, 3, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1093, ch. 245, §§ 4, 5, eff. May 27, 1983; Acts 1983, 68th Leg., p. 3935, ch. 622, §§ 25, 48 to 50, eff. Sept. 1, 1983.]

Section 4 of the 1981 amendatory act provides:

"Section 12, Article 5.43-1, Insurance Code, and Section 11, Article 5.43-2, Insurance Code, as those laws are amended by this Act, apply to offenses committed on or after the effective date of this Act. Offenses committed before the effective date of this Act are covered by the law as it existed at the time the offense was committed, and the prior law is continued in effect for that purpose. For purposes of this section, an offense is committed

before the effective date of this Act if any element of the offense occurred before that date."

Section 94 of Acts 1983, 68th Leg., p. 4002, ch. 622, provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 5.43-3. Fire Protection Sprinkler Systems

Definitions

Sec. 1. In this article:

(1) "Person" means a natural person, including an owner, manager, officer, employee, or occupant.

(2) "Organization" means a corporation, a partnership or other business association, a governmental entity, or any other legal or commercial entity.

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

(4) "Advisory Council" means the Fire Protection Advisory Council consisting of seven members appointed by the State Board of Insurance.

(5) "Installation" means the initial placement of equipment or the extension, modification, or alteration of equipment after the initial placement.

(6) "Maintenance" means to maintain in the condition of repair that provides performance as originally planned.

(7) "Service" means to maintain, repair, or test.

(8) "Fire protection sprinkler system contractor" means a person or organization that offers to undertake, represents itself as being able to undertake, or does undertake the plan, sale, installation, maintenance, or servicing of a fire protection sprinkler system or any part of such a system.

(9) "Fire protection sprinkler system" means an assembly of underground or overhead piping or conduits that conveys water with or without other agents to dispersal openings or devices to extinguish, control, or contain fire and to provide protection from exposure to fire or the products of combustion.

(10) "Responsible managing employee" means an individual or individuals who shall be designated by each company that plans, sells, installs, maintains, or services a fire protection sprinkler system to assure that each fire protection sprinkler system as installed, maintained, or serviced meets the standards as provided for by law.

(11) "Certificate of Registration" means the document issued to a fire protection sprinkler system contractor authorizing same to conduct business in this state.

(12) "License" means the document issued to a responsible managing employee authorizing same to engage in the fire protection sprinkler system business in this state.

Exceptions

Sec. 2. (a) The provisions of this article and the rules and regulations promulgated under this article shall have uniform force and effect throughout the state. A municipality or county may not enact an order, ordinance, rule, or regulation requiring a fire protection sprinkler system contractor to obtain a certificate of registration from the municipality or county. Notwithstanding any other provisions of this Act, a municipality or county may require a fire protection sprinkler system contractor to obtain a permit and pay a fee therefor for the installation of a fire protection sprinkler system and require the installation of such system in conformance with the building code or other construction requirements of the municipality or county, but may not impose qualification or financial responsibility requirements other than proof of a valid certificate of registration. A municipal or county order, ordinance, rule, or regulation that is in effect on the effective date of this article is not invalidated because of any provisions of this article.

(b) This article does not apply to:

(1) an employee of the United States, this state, or any political subdivision of this state who acts as a fire protection sprinkler system contractor for the employing governmental entity;

(2) the plan, sale, installation, maintenance, or servicing of a fire protection sprinkler system in any property owned by the United States or this state;

(3) a person or organization acting under court order as authorization;

(4) a person or organization that sells or supplies products or materials to a registered fire protection sprinkler system contractor;

(5) an installation, maintenance, or service project for which the total contract price for labor, materials, and all other services is less than \$100, if:

(A) the project is not a part of a complete or more costly project, whether the complete project is to be undertaken by one or more fire protection sprinkler system contractors; or

(B) the project is not divided into contracts of less than \$100 for the purpose of evading this article;

(6) a registered professional engineer acting solely in such professional capacity;

(7) a regular employee of a registered fire protection sprinkler system contractor; or

(8) an owner or lessee of property that installs a fire protection sprinkler system on the owned or leased property for its own use or for the use by family members and does not offer such property for sale or lease within one year after installation of a fire protection sprinkler system.

Administration

Sec. 3. (a) The board shall administer this article and may issue rules necessary to its administration through the State Fire Marshal.

(b) The board, in adopting necessary rules, may utilize recognized standards such as those adopted by a federal law or regulation, those published by nationally recognized standards-making organizations, or those developed by individual manufacturers.

Registration; Licensing; Fees

Sec. 4. (a) A fire protection sprinkler system contractor must apply to the board for a certificate of registration on a form prescribed by the board. If the contractor is a partnership or joint venture, it need not register in its own name if each partner or joint venturer is registered. The application fee for the certificate of registration must be in an amount not to exceed \$100, and the fee for issuance of either the initial or the renewal certificate of registration must be in an amount not to exceed \$1,200.

(b) Each fire protection sprinkler system contractor must employ at least one licensed responsible managing employee on a full-time basis.

(c) Each responsible managing employee must obtain a license issued by the board and conditioned on the successful completion of the examination requirement and other requirements prescribed by the rules adopted under this article. The examination fee must be in an amount not to exceed \$100 per examination, and the fee for the issuance of either the initial or the renewal responsible managing employee license must be in an amount not to exceed \$200.

(d) A certificate of registration and a license are valid for a period of one year from the date of issue and are renewable annually on payment of the annual fee; provided, however, that the initial certificates of registration or licenses issued on or after September 1, 1983, may be issued for periods of less than one year and the annual fee shall be prorated proportionally.

(e) The fee charged by the board for any request for a duplicate certificate of registration or license or any request requiring change to a certificate of registration or license must be in an amount not to exceed \$70.

(f) Each certificate of registration and license issued under this article must be posted in a conspicuous place in the fire protection sprinkler system contractor's place of business.

(g) All bids, proposals, offers, and installation drawings for fire protection sprinkler systems must prominently display the fire protection sprinkler system contractor's certificate of registration number.

(h) A certificate of registration or license issued under this article is not transferable.

(i) The board shall, within the limits fixed by this section, prescribe the fees to be charged under this section. All fees collected under the provisions of this article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund for use in carrying out the administration of this article.

Required Bond and Insurance

Sec. 5. (a) The board may not issue a certificate of registration under this article unless the applicant files with the board:

(1) a surety bond executed by a surety company authorized to do business in this state in the sum of \$10,000 conditioned to compensate third party losses caused by the acts of the principal or the principal's servant, officer, agent, or employee in conducting the business registered or licensed under this article; and

(2) proof of comprehensive general liability insurance with coverage in an amount not less than \$50,000 for bodily injury, \$25,000 for property damage, and \$50,000 for personal injury, which insurance shall be conditioned to pay all amounts that the principal is legally obligated to pay as damages because of injury caused by the principal or the principal's servant, officer, agent, or employee in the conduct of any business registered under this article.

(b) The liability insurance required by this section must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state and countersigned by a local recording agent licensed in this state. Insurance certificates executed and filed with the board under this section remain in force until the insurer has terminated future liability by 30-day notice to the board.

(c) The applicant shall make the required surety bond payable to the state. A person who is damaged or injured by the principal or by the principal's servant, officer, agent, or employee may sue directly on the bond. The bond is subject to successive suits for recovery until the face amount of the bond is exhausted. A bond executed and filed with the board under this section remains in force until the surety has terminated future liability by a 30-day notice to the board.

(d) Failure to maintain the surety bond or the liability insurance required under this section constitutes grounds for the denial, suspension, or revocation of a certificate of registration issued under this article after notice and a public hearing to consider same.

Renewal

Sec. 5A. (a) An unexpired license or registration may be renewed by paying the required renewal fee

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to the board before the expiration date of the license or registration. If a license or registration has been expired for not longer than 90 days, the license or registration may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original fee for the license or registration. If a license or registration has been expired for longer than 90 days but less than two years, the license or registration may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original fee for the license or registration. If a license or registration has been expired for two years or longer, the license or registration may not be renewed. A new license or registration may be obtained by complying with the requirements and procedures for obtaining an initial license or registration. At least 30 days before the expiration of a license or registration, the board shall send written notice of the impending license or registration expiration to the licensee or registrant at his or its last known address. This section may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the board.

(b) The board by rule may adopt a system under which licenses and registrations expire on various dates during the year. For the year in which the license or registration expiration date is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each licensee or registrant shall pay only that portion of the fee that is allocable to the number of months during which the license or registration is valid. On each subsequent renewal, the total renewal fee is payable.

Examination

Sec. 5B. Not later than the 30th day after the day on which an examination is administered under this article, the board shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the board shall send notice to each examinee of the results of the examination within two weeks after the date on which the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall send notice to each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the examination administered under this article, the board shall send to the person an analysis of the person's performance on the examination.

Continuing Education

Sec. 5C. The board may adopt procedures for certifying and may certify continuing education programs. Participation in the programs is voluntary.

License by Reciprocity

Sec. 5D. The board may waive any examination requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Advisory Council

Sec. 6. (a) The Fire Protection Advisory Council is created. The board shall appoint the members of the advisory council, who shall serve at the pleasure of the board.

(b) The advisory council, in addition to other duties delegated by the board, may:

(1) advise the State Fire Marshal concerning practices in the fire protection sprinkler system industry and the rules necessary to implement and administer this article;

(2) make recommendations to the State Fire Marshal regarding forms and procedures for certificates of registration and licenses.

(c) The advisory council shall have seven members as follows:

(1) three individuals who have been actively engaged in the management of a fire protection sprinkler system business for not less than five years preceding their appointment;

(2) one representative of the engineering section of the board's property division;

(3) one member of the State Firemen's and Fire Marshal's Association of Texas; and

(4) one member from each of two fire departments of incorporated cities of this state.

Powers and Duties of Board

Sec. 7. (a) The board may delegate authority to exercise all or part of its functions, powers, and duties under this article, including the issuance of licenses and certificates of registration, to the State Fire Marshal, who shall implement the rules adopted by the board for the protection and preservation of life and property in controlling:

(1) the registration of a person or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and

(2) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by:

(A) determining the criteria and qualifications for certificates of registration holders;

(B) evaluating the qualifications of an applicant for a certificate of registration to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems and issuing certificates to qualified applicants;

(C) determining the criteria and qualifications for licenses; and

(D) conducting examinations and evaluating the qualifications of applicants for licenses and issuing licenses to qualified applicants.

(b) The board shall establish a procedure for reporting and processing complaints relating to the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems in Texas.

Prohibited Acts

Sec. 8. A person or organization may not:

(1) plan, sell, install, maintain, or service a fire protection sprinkler system without a valid certificate of registration;

(2) act as a fire protection sprinkler system contractor under a certificate of registration without having at least one full-time employee who holds a valid responsible managing employee license; provided, however, that a person or organization with a current certificate of registration may act as a fire protection sprinkler system contractor for 30 days after the death or dissociation of its licensed responsible managing employee or for such longer period as may be approved by the board pursuant to the rules adopted hereunder;

(3) act as a responsible managing employee for a fire protection sprinkler system contractor without a valid license;

(4) obtain or attempt to obtain a certificate of registration or license by fraudulent representation; or

(5) plan, sell, install, maintain, or service a fire protection sprinkler system in violation of this article or the rules adopted under this article.

Denial, Suspension, or Revocation of Certificate of Registration or License

Sec. 9. (a) A violation of this article or a rule adopted under this article is a ground for the denial, suspension, or revocation of a certificate of registration or a license issued under this article.

(b) Proceedings for the denial, suspension, or revocation of a certificate of registration or license and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) No applicant, certificate of registration holder, or licensee whose certificate of registration or license has been denied, refused, or revoked hereunder (except for the failure to pass a required written examination) shall be entitled to file another application for a certificate of registration or license in the fire protection sprinkler system business in this state within one year from the effective date of such denial, refusal, or revocation or, if judicial review of such denial, refusal, or revocation is sought, within one year from the date of final court

order or decree affirming such action. Such application, when filed after one year, may be denied unless the applicant shows good cause why the denial, refusal, or revocation of the certificate of registration or license shall not be deemed a bar to the issuance of a new certificate of registration or license.

Penalties

Sec. 10. (a) A person commits an offense if the person knowingly or intentionally violates Section 8 of this article.

(b) An offense under this section is a Class B misdemeanor.

(c) Venue for the offense is in Travis County.

Prohibited Practice

Sec. 11. Nothing in this article shall authorize a person or organization to practice professional engineering except in compliance with The Texas Engineering Practice Act, as amended (Article 3271a, Vernon's Texas Civil Statutes).

[Acts 1983, 68th Leg., p. 534, ch. 113, § 1, eff. Sept. 1, 1983.]

Sections 2 and 3 of the 1983 Act provide:

"Sec. 2. Nothing in this Act shall be construed to grant the State Board of Insurance the authority to adopt any rule that supersedes or invalidates an ordinance, building code, or other enactment adopted by the governing body of a municipality requiring a fire protection sprinkler system contractor to obtain a permit and pay a fee therefor for the installation of a fire protection sprinkler system and requiring the installation of such system in conformance with the building code or other instruction requirements of the municipality.

"Sec. 3. A person is not required to be registered or licensed under this Act to engage in the fire protection sprinkler system business until September 1, 1984."

Art. 5.44. Authority of Fire Marshal

The State Fire Marshal is hereby authorized to enter at any time any buildings or premises where fire occurred or is in progress, or any place contiguous thereto, for the purpose of investigating the cause, origin and circumstances of such fire. The State Fire Marshal, upon complaint of any person, shall, at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within this State, and it shall be his duty to enter upon and make or cause to be entered upon and made, at any time, a thorough examination of mercantile, manufacturing and public buildings, and all places of public amusement, or where public gatherings are held, together with the premises belonging thereto. Whenever he shall find any building or other structure which for want of repair or by reason of age or dilapidated condition, or which for any cause is liable to fire, and which is so situated as to endanger other buildings or property, or is so occupied that fire would endanger persons or property therein, and whenever he shall find an improper or dangerous arrangement of stoves,

ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues and pipes with which the same may be connected, or dangerous arrangement or lighting systems or devices, or dangerous storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse materials, or other conditions which may be dangerous in character, or liable to cause or promote fire, or create conditions dangerous to firemen or occupants, he shall order the same to be removed or remedied, and such order shall be forthwith complied with by the occupant or owner of such building or premises, and the State Fire Marshal is hereby authorized, when necessary, to apply to a court of competent jurisdiction for the necessary writs or orders to enforce the provisions of this article and in such case he shall not be required to give bond.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.45. Acting Fire Marshal

If for any reason the State Fire Marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the Board may allow.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts, 1977, 65th Leg., p. 2002, ch. 800, § 1, eff. Aug. 29, 1977.]

Art. 5.46. Report of Information

(A) The State Fire Marshal, any fire marshal of a political subdivision in Texas, or the chief of any established fire department in Texas, or any peace officer in Texas, may request any insurance company investigating a fire loss of real or personal property in which damages or losses exceed \$1,000 to release information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information may include but not exceed:

(1) any insurance policy relevant to a fire loss under investigation and any application for such a policy;

(2) policy premium payment records;

(3) history of previous claims made by the insured for fire loss;

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, or other relevant evidence.

(5) The provisions of this section shall not be construed to authorize a public official or agency to promulgate or require any type or form of periodic report by an insurer.

(B) If an insurance company has reason to suspect that a fire loss to its insured's real or personal property was caused by incendiary means and if it receives a request for information pursuant to Section (A) of this article, the company shall notify the requesting official and furnish him with all relevant material acquired during its investigation of the fire loss, cooperate with and take such action as may be requested of it by any law enforcement agency, and permit any person ordered by a court to inspect any of its records pertaining to the policy and the loss.

(C) In the absence of fraud or malice no insurance company or person who furnished information on its behalf is liable for damages in a civil action or subject to criminal prosecution for oral or written statement made or any other action taken that is necessary to supply information required pursuant to this section.

(D) The officials and departmental and agency personnel receiving any information furnished pursuant to this section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

(E) Any official referred to in Section (A) of this article may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss.

(F)(1) No person shall purposely refuse to release any information requested pursuant to Section (A) of this article.

(2) No person shall purposely refuse to notify the fire marshal of a fire loss required to be reported pursuant to Section (B) of this article.

(3) No person shall purposely refuse to supply the fire marshal with pertinent information required to be furnished pursuant to Section (B) of this article.

(4) No person shall purposely fail to hold in confidence information required to be held in confidence by Section (D) of this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1977, 65th Leg., p. 2003, ch. 800, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1099, ch. 515, § 1, eff. June 11, 1979.]

Section 3 of the 1977 Act provides as follows:

"For the purpose of paying the expenditures authorized for the enforcement and administration of this Act, the state comptroller shall place in the Insurance Board Operating Fund from current revenues and balances on hand the amounts designated by the Commissioner of Insurance from the following sources:

"Fireworks License Fund 119;

"Fire Extinguisher Fund 110;

"Fire Alarms and Detection System Fund 181."

Art. 5.47. To Cancel Authority

If any insurance company affected by the provisions of this subchapter shall violate any provision of this subchapter, the Board shall, by and with the

consent of the Attorney General, cancel its certificate of authority to transact business in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.48. Revocation of Certificate

The Board, upon ascertaining that any insurance company or officer, agent or representative thereof, has violated any provision of this subchapter, may, at its discretion, and with the consent and approval of the Attorney General, revoke the certificate of authority of such company, officer, agent, or representative but such revocation of any certificate shall in no manner affect the liability of such company, officer, agent, or representative to the infliction of any other penalty provided by law. Any action, decision or determination of the Board and the Attorney General in such cases shall be subject to the review of the courts of this State as herein provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.48-1. Penalty for Violation of Fire Insurance Law

Any officer or director of any fire insurance company affected by the statutes of this State creating the State Insurance Commission,¹ or any agent, or any one acting or employed by such company who alone or in conjunction with any corporation, company or person, shall wilfully do or cause to be done any act prohibited or declared to be unlawful by such statutes, or who wilfully fails to do any act required to be done by such statutes, or who shall wilfully permit any act directed not to be done, or who shall be guilty of any wilful infraction of such statutes, shall be fined not less than three hundred nor more than one thousand dollars.

[1925 P.C.]

¹ Now State Board of Insurance (see art. 1.02).

Art. 5.48-2. Witness Must Testify

No person shall be excused from giving testimony or producing evidence when legally called upon to do so at the trial of another charged with violating any provision of the laws relating to fire insurance on the ground that it may incriminate him under the laws of this State; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may testify or produce evidence under this law.

[Acts 1925, S.B. 84.]

Art. 5.49. Maintenance Tax on Gross Premiums

The State of Texas by and through the State Board of Insurance shall annually determine the rate of assessment on an annual or semiannual basis, as determined by the Board, and collect a maintenance tax in an amount not to exceed one and

one-fourth percent of the correctly reported gross premiums of fire, lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe, vandalism or malicious mischief, strike or lockout, explosion as defined in Article 5.52 of this code, water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers insurance coverage collected by all authorized insurers writing those types of insurance in this state. The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article. The State Board of Insurance, after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating all classes of insurance specified by this subchapter during the succeeding year. The taxes collected shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance. The State Board of Insurance may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5013, ch. 902, § 1, eff. Sept. 1, 1983.]

Art. 5.50. Exceptions

This subchapter shall not apply to farm mutual insurance companies operating under Chapter 16 of this Code or to any company now operating under Chapter 12 of Title 78 which has heretofore been repealed, and none of the Articles of this subchapter, except Articles 5.35, 5.36, 5.37, 5.38, 5.39, 5.40 and 5.49 shall apply to other purely mutual or to other purely profit sharing fire insurance companies incorporated or unincorporated under the laws of this State, and carried on by the members thereof solely for the protection of their property and not for profit, or to a purely cooperative inter-insurance

and reciprocal exchange carried on by the members thereof solely for the protection of their property and not for profit.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 13.]

Art. 5.51. Compensation of Board

The necessary compensation of experts, clerical force, and other persons employed by said Board, and all necessary traveling expenses, and such other expenses as may be necessary, incurred in carrying out the provisions of this subchapter, shall be paid by warrants drawn by the Comptroller upon the State Treasurer upon the order of said Board. The total amount of all salaries and said other expenses shall not exceed the sum produced by the assessments on the gross premiums of all fire insurance companies doing business in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.52. Provisions Governing Lightning, Windstorm, Hail, Invasion, Riot, Vandalism, Strikes, Lockouts and Other Insurance; "Explosion" Defined

The writing of insurance against loss by lightning, tornado, windstorm, hail, smoke or smudge, cyclone, earthquake, volcanic eruption, rain, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism or malicious mischief, strike or lockout, explosion, water or other fluid or substance, resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings, or by seepage through building walls, including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers, and the rates to be collected therefor in this State, and all matters pertaining to such insurance except as hereinafter set out as to inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed and controlled by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D of this Chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles of this code.

The term "explosion" as used above shall not include insurance against loss of or damage to any property of the insured, resulting from the explo-

sion of or injury to (a) any boiler, heater, or other fired pressure vessel; (b) any unfired pressure vessel; (c) pipes or containers connected with any of said boilers or vessels; (d) any engine, turbine, compressor, pump, or wheel; (e) any apparatus generating, transmitting or using electricity; (f) any other machinery or apparatus connected with or operating by any of the previously named boilers, vessels or machines; nor shall same include the making of inspections and issuance of certificates of inspections upon any such boiler, apparatus or machinery, whether insured or otherwise. Said term shall include, but shall not be limited to (1) the explosion of pressure vessels (except steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four (4) families; (2) explosion of any kind originating outside of the insured buildings or outside of the building containing the property insured; (3) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jets; (4) electric disturbance causing or concomitant with an explosion in public service or public utility property.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.53. Application to Inland Marine Insurance, Rain Insurance, or Hail Insurance on Farm Crops; Definitions; Rates and Rating Plans Filed; Policy Forms; Checking Offices

The provisions of this article shall apply to all insurance which is now or hereafter defined by statute, by ruling of the Board of Insurance Commissioners, or by lawful custom, as inland marine insurance, rain insurance, or insurance against loss by hail on farm crops. None of the terms contained in this article and Article 5.52 shall be deemed to include insurance of vessels or craft, their cargoes, marine builder's risk, marine protection and indemnity, or other risk commonly insured under marine as distinguished from inland marine insurance policies.

Whenever used in this article the term "Marine Insurance" shall mean and include insurance and reinsurance against any and all kinds of loss or damage to the following subject matters of insurance interest therein:

Marine Insurance. Hulls, vessels and craft of every kind, aids to navigation, dry docks and marine railways, including marine builders' and repairers' risks, and whether complete or in process of or awaiting construction; also all marine protection and indemnity risks; also all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to or in con-

nection with any and all risks or perils of navigation, transit or transportation on or under any seas, lakes, rivers, or other waters or in the air, or on land in connection with or incident to export, import or waterborne risks, or while being assembled, packed, crated, baled, compressed or similarly prepared for such shipment or while awaiting the same, or during any delays, storage, transshipment or reshipment incident thereto, including the insurance of war risks in respect to any or all of the aforesaid subject matters of insurance.

(a) As to all classes of insurance contained in this article, for which class rates or rating plans are customarily fixed by rating bureaus or associations of underwriters, rates or rating plans, together with applicable policy forms and endorsements, shall be filed by all authorized insurers writing such classes with the Board in such manner and form as it shall direct; and all rates on risks not falling within a recognized class fixed by any such bureau or association, together with applicable policy forms and endorsements, shall be similarly filed. Due consideration shall be given to past and prospective loss experience within and outside the State, including catastrophe hazard, to a reasonable margin for profit and contingencies, and to all other relevant factors within and outside the State.

(b) As soon as reasonably possible after the filing has been made, the Board shall in writing approve or disapprove the same; provided that any filing of class rates or rating plans, together with applicable policies and endorsements, shall be deemed approved unless disapproved within thirty (30) days; provided the Board may by official order postpone action for such further time not exceeding thirty (30) days, as it deems necessary for proper consideration; and provided further that rates on risks not falling within a recognized class fixed by a rating bureau or association of underwriters, together with applicable policies and endorsements, shall be deemed approved from the date of filing to the date of formal approval or disapproval. The Board may investigate rates not required to be filed under the provisions of this article and may require the filing of any particular rate, together with applicable policies and endorsements, not otherwise required to be filed.

(c) Any filing by an insurer of a rate less than an approved rate relative to any of the rates mentioned in sub-division (a) of this article may be used by such insurer after same shall have been approved by the Board, or after same shall have been on file with the Board without action for thirty (30) days.

(d) If at any time the Board finds that an approved filing no longer meets the require-

ments of this article, it may after hearing issue an order withdrawing its approval thereof.

(e) An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the Board to accept such filings on its behalf. A corporation, an un-incorporated association, a partnership, or an individual, whether located within or outside the State, may be licensed as a rating organization in connection with any of the sorts of insurance mentioned in this article, subject to the conditions, not inconsistent herewith, prescribed by law for such organizations in connection with other kinds of insurance, provided two or more insurers have designated it to act for them as to any such class or classes of insurance in the manner prescribed herein. An insurer may belong or subscribe to rating bureaus or associations for other types of insurance.

(f) Insurers may, subject to the supervision of the Board, operate any checking office or offices deemed necessary or advisable.

(g) The writing of inland marine insurance, rain insurance and insurance against loss by hail on farm crops, shall be governed by the provisions of Articles 5.25 to 5.48, inclusive, and also Articles 5.50 to 5.51, inclusive, of this subchapter and Article 5.67 of Subchapter D. of this chapter, in the same manner and to the same extent as fire insurance and fire insurance rates are now affected by the provisions of said articles, except that wherever in any of said articles reference is made to making, fixing, prescribing, determination or promulgation by the Board of rates or policy forms or endorsements, the provisions of this article shall control.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.53-A. Home Warranty Insurance

Sec. 1. Any company licensed to engage in the business of fire insurance and its allied lines, or marine insurance, or both, is authorized to write home warranty insurance in Texas. Home warranty insurance is not inland marine insurance, but shall be governed in the same manner and to the same extent as inland marine insurance.

Sec. 2. As used in this Code, the term "home warranty insurance" means insurance assuring either

(1) performance by builders of residential property of their warranty obligations to purchasers of such property; or

(2) against named defects arising from failure of the builder to construct residential property in accordance with specified construction standards.

[Acts 1975, 64th Leg., p. 56, ch. 32, § 1, eff. April 3, 1975.]

Art. 5.54. Associations Excepted

Nothing in Articles 5.49, 5.52 and 5.53 of this subchapter shall ever be construed to apply to any farm mutual insurance company operating under Chapter 16 of this Code or to any company now operating under Chapter 12, of Title 78, which has heretofore been repealed. Nothing in Articles 5.52 and 5.53 of this subchapter shall ever be construed to apply to any county mutual insurance company operating under Chapter 17 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 14.]

SUBCHAPTER D. WORKERS' COMPENSATION INSURANCE

Art. 5.55. Workmen's Compensation Rates

The Board shall make, establish and promulgate all classifications of hazards, rates of premiums and rating plans respectively applicable to each, contemplated and provided for by Title 130, known as the Workmen's Compensation Law¹ and/or by the "Longshoremen's and Harbor Workers' Compensation Act"² as enacted by the Congress of the United States. Said Board shall publish all rates and rating plans promulgated by it as affecting Compensation Insurance in this State, and said rates and rating plans, or any change therein, shall be published fifteen (15) days before they become effective and in force.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 64, ch. 50, § 7.]

¹ Civil Statutes, art. 8306 et seq.

² 33 U.S.C.A § 901 et seq.

Art. 5.56. To Prescribe Standard Forms

The Board shall prescribe standard policy forms to be used by all companies or associations writing workmen's compensation insurance in this State. No company or association authorized to write workmen's compensation insurance in this State shall, except as hereinafter provided for, use any classifications of hazards, rates of premium, or policy forms other than those made, established and promulgated and prescribed by the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.57. Uniform Policy

The Board shall prescribe a uniform policy for workmen's compensation insurance and no company or association shall thereafter use any other form in writing workmen's compensation insurance in this State, provided that any company or association may use any form of endorsement appropriate to its plan of operation, if such endorsement shall be first submitted to and approved by the Board, and any contract or agreement not written into the application and policy shall be void and of no effect and in

violation of the provisions of this subchapter, and shall be sufficient cause for revocation of license to write workmen's compensation insurance within this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.58. Rate Administration

(a) Recording and Reporting of Loss Experience and Other Data. The Board shall, after due consideration, promulgate reasonable rules and statistical plans, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers may be made available at least biennially in such form and detail as may be necessary to aid in determining whether rates comply with the standards set forth in Article 5.60. In promulgating such rules and plans, the Board shall have due regard for the rates approved by it, and in order that such rules and plans may be as uniform as is practicable, to the rules and to the form of the plans used in other states. The Board may designate one or more rating organizations or other agencies to gather and compile such experience.

(b) Interchange of Rating Plan Data. Reasonable rules and plans may be promulgated by the Board after due consideration, requiring the interchange of loss experience necessary for the application of rating plans.

(c) Consultation with other States. In order to further uniform administration of rating laws, the Board and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult and cooperate with them with respect to rate-making and the application of rating systems.

(d) Rules and Regulations. The Board may make reasonable rules and regulations necessary to effect the purposes of this subchapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 64, ch. 50, § 8.]

Art. 5.59. May Require Statements

The Board may require sworn statements from any insurance company or association affected by this law showing the pay roll reported to it and incurred losses by classifications and such other information which in the judgment of the Board may be necessary in determining proper classifications, rates and forms. The Board shall prescribe the necessary forms for such statements and reports, having due regard to the methods and forms in use in other states for similar purpose in order that uniformity of statistics may not be disturbed.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.60. Rating

The Board shall determine hazards by classes and fix such rates of premium applicable to the payroll in each of such classes as shall be adequate to the risks to which they apply and consistent with the maintenance of solvency and the creation of adequate reserves and a reasonable surplus, and for such purpose may adopt rating plans designed to encourage the prevention of accidents and to take account of the peculiar hazard and experience of individual risks, past and prospective, within and outside the State, and all other relevant factors, within and outside the State, provided such rate shall be fair and reasonable and not confiscatory as to any class of insurance carriers authorized by law to write Workmen's Compensation Insurance in this State. To insure the adequacy and reasonableness of rates, the Board shall take into consideration the experience, past and prospective, within and outside the State, and all other relevant factors, within and outside the State, gathered from a territory sufficiently broad to include the varying conditions of the industries in which the classifications are involved, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable, and adequate rates.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 64, ch. 50, § 9.]

Art. 5.61. Adequate Reserves

Nothing in this subchapter shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or interinsurance exchange, or Lloyd's association, to prohibit any stock company, mutual company, reciprocal or interinsurance exchange, or Lloyd's association, issuing participating policies, provided no dividend to subscribers under the Workmen's Compensation Act shall take effect until the same has been approved by the Board. No such dividend shall be approved until adequate reserve has been provided, said reserves to be computed on the same basis for all classes of companies or associations operating under this subchapter as prescribed under the applicable provisions of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.62. Board to Make Rules

The Board is hereby empowered to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of this subchapter as are necessary to carry out its provisions.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.63. Definitions

The words "Company" and "Association" used in this subchapter mean the Texas Employers Insurance Association, or any stock company, or any mutual company, or any reciprocal, or any interinsu-

rance exchange, or Lloyd's association authorized to write Workmen's Compensation Insurance in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.64. Cancellation of License

The Board shall cancel the license of any insurance company or association of persons to transact workmen's compensation insurance business in this State upon a second conviction of any officer or representative of such company or association for a violation of any provision of this subchapter relating to such business.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.65. Hearing Before Board

Any policyholder, applicant for insurance, insurance company or association shall have the right to a hearing before the Board on any grievance occasioned by the promulgation of any classification, rate, policy form, rule, regulation, order or other action by the Board under this Sub-chapter; such hearing to be held in conformity with rules to be prescribed by the Board. No hearing shall suspend the operation of any classification, rate, policy form, rule, regulation, order or other action by the Board under this Sub-chapter unless the Board shall so order. Provided that any party aggrieved shall have the right to apply to any court of competent jurisdiction to obtain redress.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 64, ch. 50, § 10; Acts 1953, 53rd Leg., p. 716, ch. 279, § 2; Acts 1983, 68th Leg., p. 3121, ch. 534, § 2, eff. Aug. 29, 1983.]

Art. 5.66. Scope of Law

No provision of Chapter 5, subchapter C of this code, with regard to the fixing and promulgation of rates for fire insurance or the prescribing of fire insurance policies and forms shall be applicable to the fixing of compensation insurance classifications or the making of compensation insurance rates or the prescribing of compensation insurance policy forms; but the provisions of this subchapter shall be construed and applied independently of any other law or laws, or parts of laws, having to do with the matter of insurance rates and forms or of fixing the duties of the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.67. Additional Compensation

The necessary compensation of experts, the clerical force and other persons employed by the Board to carry out the purposes of this subchapter, and all necessary traveling expenses and such other expenses as may be necessarily incurred in carrying out such provisions shall be paid by warrants drawn by the Comptroller upon the State Treasurer upon the order of said Board. The total amount of all

salaries and said other expenses shall not exceed the sum assessed and collected from companies and associations writing workmen's compensation insurance in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.68. Maintenance Tax on Gross Premiums

The State of Texas by and through the State Board of Insurance shall, as determined by the Board, annually determine the rate of assessment and collect on an annual or semiannual basis, from each stock company, mutual company, reciprocal or interinsurance exchange, and Lloyd's association a maintenance tax in an amount not to exceed three-fifths of one percent of the correctly reported gross workers' compensation insurance premiums of all authorized insurers writing workers' compensation insurance in this state. The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article. The State Board of Insurance, after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating workers' compensation insurance during the succeeding year. The taxes collected shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance. The State Board of Insurance may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5013, ch. 902, § 1, eff. Sept. 1, 1983.]

Art. 5.68-1. Penalty for Violation of Act

Any officer or representative of any insurance company or association authorized to write workmen's compensation insurance in this State, who shall violate any provision of the laws relating to such business contained in chapter 10, Title "Insurance" of the Revised Statutes,¹ relating to the State Insurance Commission and such business, shall be fined not less than one hundred nor more than five hundred dollars.

[1925 P.C.]

¹ Civil Statutes, arts. 4878 to 4918 (now arts. 5.25 to 5.67).

SUBCHAPTER E. NATIONAL DEFENSE
PROJECTS**Art. 5.69. National Defense Projects; Special Rates and Rating Plans for Workmen's Compensation, Motor Vehicle, and Other Casualty Insurance**

The Board of Insurance Commissioners of Texas is hereby authorized and empowered to make and promulgate special rates and special rating plans for Workmen's Compensation, Motor Vehicle and other lines of Casualty insurance to be applicable only to the construction or operation of National Defense Projects in Texas, and to make such special rates and special rating plans separately for each class of insurance, or in combination of all such classes. The Board shall also have authority to make and promulgate such rules and regulations as may be necessary, proper or advisable in placing such rates and plans in effect.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.70. Special Rates and Forms for Fire, Windstorm, Other Types of Material Damage Insurance

The Board of Insurance Commissioners is hereby authorized and empowered to promulgate special rates and forms for fire and windstorm insurance, and other types of material damage insurance required or used upon such National Defense Projects, and the Board may also promulgate rules and regulations incidental to said business and necessary to place its special rates and forms in effect.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.71. Cumulative; Exception to Existing Laws

This subchapter shall be cumulative of existing laws and applicable only to rates upon insurance in relation to National Defense Projects, and to the extent of such subject constitutes an exception to existing laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

SUBCHAPTER F. JOINT UNDERWRITING
AND REINSURANCE; ADVISORY
ORGANIZATIONS**Art. 5.72. Joint Underwriting or Joint Reinsurance**

(a) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided.

(b) If, after a hearing, the Board of Insurance Commissioners finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent

with the provisions of this subchapter or with the laws applicable thereto, it may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of the applicable laws, and requiring the discontinuance of such activity or practice.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.73. Advisory Organizations

(a) Every group, association or other organization of insurers, whether located within or outside this State, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations but which does not make filings under any of the laws referred to in Article 5.75 of this subchapter, or which assists the Board of Insurance Commissioners in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, shall be known as an advisory organization.

(b) Every advisory organization shall file with the Board:

(1) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation and of its by-laws, rules and regulations governing its activities;

(2) a list of its members;

(3) the name and address of a resident of this State upon whom notices or orders of the Board or process issued at its direction may be served; and

(4) an agreement that the Board may examine such advisory organization in accordance with the provisions of Article 5.74 of this subchapter.

(c) If, after a hearing, the Board finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this subchapter or with the applicable laws referred to in Article 5.75 of this subchapter, it may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this subchapter, or with the applicable laws referred to in Article 5.75 of this subchapter, and requiring the discontinuance of such act or practice.

(d) No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this section or with an order of the Board involving such statistics or recommendations issued under sub-section (c) of this article. If the Board finds such insurer or rating organization to be in violation of this sub-section it may

issue an order requiring the discontinuance of such violation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.74. Examinations

The said Board may, as often as it may deem it expedient, make or cause to be made an examination of each group, association, or other organization referred to in Articles 5.72 and 5.73 of this subchapter. The reasonable costs of any such examination shall be paid by the group, association or other organization examined upon presentation to it of a detailed account of such costs. The officer, manager, agents and employees of such group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. In lieu of any such examination the Board may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.75. Scope of Subchapter

This subchapter applies to the kinds of insurance and to the insurers subject to Subchapters A, B, C, and D of Chapter 5 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 5.75-1. Reinsurance

(a) Every company authorized to do business in Texas, writing any line of insurance regulated by Chapter 5 of this Code, and while in compliance with all laws applicable to it, will be eligible to reinsure its liability or any part of its liability which it may assume as a direct writer under authority of law. No such company shall have the power to reinsure its entire outstanding business until the contract therefor shall be submitted to the State Board of Insurance, and be by it approved, as protecting fully the interests of all the policyholders. This Article shall be cumulative of other provisions of this Code pertaining to reinsurance.

(b) Credit for the reserve liability on any reinsurance may not be taken by a domestic ceding insurer unless the assuming insurer is licensed to do business in this state or the reinsurance and the ceding insurer and assuming insurer comply with Article 5.75-2 of this Code.

(c) A person does not have any rights against a reinsurer that are not specifically set forth in the contract of reinsurance or in a specific agreement between the reinsurer and the person.

(d) The State Board of Insurance shall require schedules of reinsurance to be filed by every insurer at the time of making the annual report and at such other times as the board may direct.

(e) Credit may not be given in the accounting and financial statements, either as an asset or a deduction from liability, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer, and is payable directly to the ceding insurer or to its domiciliary liquidator or receiver, except:

(1) where the contract of reinsurance specifically provides another payee of the reinsurance in the event of insolvency of the ceding insurer; or

(2) where the assuming insurer with the consent of the direct insured has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payee under the policies and in substitution for the obligations of the ceding insurer to the payee.

(f) "Assuming insurer" means the insurer who under a contract of reinsurance incurs to the ceding insurer an obligation of which the performance is contingent on incurring of liability or loss by the ceding insurer under its contract or contracts of insurance made with third persons.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 15. Renumbered from art. 5.76 by Acts 1981, 67th Leg., p. 201, ch. 94, § 5, eff. Aug. 31, 1981; amended by Acts 1983, 68th Leg., p. 429, ch. 88, § 1, eff. May 10, 1983.]

Art. 5.75-2. Reinsurance Ceded to Nonadmitted Reinsurers

(a) Credit for the reserve liability may not be taken by any domestic ceding insurer on account of any reinsurance of insurance policies or reinsurance reserve ceded to an assuming insurer that is not licensed to do business in this state, unless:

(1) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on the reinsured business are deposited by or are withheld from the assuming insurer and are in the custody of the ceding insurer as security for the payment of the assuming insurer's obligations under the reinsurance agreement and the assets are held subject to withdrawal by and under the control of the ceding insurer;

(2) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on the reinsurance business are either placed in a trust account for that purpose with a bank that is a member of the Federal Reserve System or are represented by an irrevocable letter of credit to the benefit of the ceding insurer from a bank that is a member of the Federal Reserve System; provided withdrawals from the trust account or reduction in the amount of the letter of credit cannot be made without the consent of the ceding insurer;

(3) the assuming insurer has given a bond with an admitted insurer as surety payable to the ceding insurer in an amount at least equal to the reserves required to be established by the ceding insurer on account of any reinsurance ceded to the assuming insurer, and the bond is conditioned that the assuming insurer will well and truly perform its obligations to the ceding insurer and will continue in full force and effect until any and all obligations of the assuming insurer are met; or

(4) the assuming insurer:

(A) is a group of alien individual unincorporated insurers writing insurance on the so-called Lloyd's plan;

(B) is licensed to do business in a state of the United States;

(C) maintains funds held in trust for the protection of United States policyholders and beneficiaries in a bank or trust company that is organized under the laws of the United States or any state of the United States and that is a member of the Federal Reserve System; and

(D) has trust funds that amount to at least \$50,000,000, invested in assets provided by Article 2.08 of this code.

(b) The commissioner of insurance may examine any of the reinsurance agreements, deposit arrangements, surety bonds, or letters of credit at any time under his authority to make examinations of insurance companies as provided by this code.

(c) In this article, "assets" means any asset or investment authorized by this code to be counted for reserve fund purposes in the financial statements of domestic insurance companies.

[Acts 1983, 68th Leg., p. 431, ch. 88, § 2, eff. May 10, 1983.]

Art. 5.75-3. Reinsurance of Aircraft and Space Equipment Risks

(a) In this article, "aircraft" means an object capable of moving through the atmosphere, whether powered or unpowered, tethered or untethered, which is capable of lifting the weight of the object and a payload in addition thereto, and "space equipment" means spacecraft, satellites, rockets, or other manmade objects that may be launched from earth into orbit around a celestial body or for space travel or may be placed into orbit around a celestial body.

(b) A domestic company as defined by Section 5 of Article 3.01 of this code, either by itself or together with other insurance companies, may, subject to such just and reasonable limitations as may be imposed by the State Board of Insurance, reinsure any liability, property, casualty, collision, personal injury, death, or other risks relating to, arising from, or incident to the manufacture, ownership, custody, or operation of an aircraft or any space equipment. Any limitations imposed by the

State Board of Insurance shall be consistent with the purposes underlying this article.

(c) The ceding insurer in a reinsurance agreement entered into under Section (b) of this article must be licensed to do business in this state.

[Acts 1983, 68th Leg., p. 153, ch. 42, § 1, eff. Aug. 29, 1983.]

SUBCHAPTER G. WORKERS' COMPENSATION AND LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION INSURANCE

Art. 5.76. Prevention of Injuries and Assignment of Rejected Risks

(a) In this subchapter:

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

(2) "Good faith" means honesty in fact in any conduct or transaction.

(3) "Insurance" means those types of insurance described in Section (c) of this Article.

(4) "Insurer" means a stock company, mutual company, reciprocal, interinsurance exchange, or Lloyds association authorized in this State to write the types of insurance described in Section (c) of this Article.

(5) "Member" means an insurer that is a member of the Texas Workers' Compensation Assigned Risk Pool.

(6) "Pool" means the Texas Workers' Compensation Assigned Risk Pool established under this Article.

(7) "Rejected risk" means an insurance risk in good faith entitled to insurance but unable to procure or retain insurance through ordinary methods in the private market. The term includes any and all legal entities that may be combined for experience rating purposes according to rules of the Board, but to prevent injustice, the pool may insure an individual entity without insuring the entities that may be combined.

(8) "Servicing company" means a member of the pool that is designated to issue a policy that evidences the insurance coverages provided by the pool to a rejected risk and to service the risk as provided by this Article.

(b) For the purpose of carrying into effect the provisions of this Article, and with the approval of the Board, there shall be organized and maintained in this State by insurers as defined herein, a non-profit unincorporated association of insurers to be known as "The Texas Workers' Compensation Assigned Risk Pool" (hereinafter referred to as "pool"), and every such insurer shall be a member of the pool. Provided, that any insurer not engaged in writing such insurance for members of the public generally shall, upon being so certified by the Board

and under such conditions and for such time as the Board may determine, be exempt from the provisions of this Article during the period of any such certification. The pool shall be governed by a governing committee of twelve (12) members elected annually by the members of the pool. Their qualifications, terms of office, duties, and responsibilities shall be provided in the bylaws, rules, or regulations of the pool adopted by the membership of the pool and approved by the Board as provide by Section (e) of this Article. Not more than eight members of the governing committee at any one time shall act as servicing companies unless it shall be determined by the Board that additional members of the governing committee need to act as servicing companies in order to adequately carry out the purposes of this Act.

(c) It shall be the duty of the pool to provide insurance, in the manner herein provided, for any risk under the Workers' Compensation Law of Texas,¹ the Longshoremen's and Harbor Workers' Compensation Act,² and/or the Federal Coal Mine Health and Safety Act of 1969, as amended,³ or for any city, county or any other political subdivision, agency or department of the State authorized to provide workers' compensation insurance for its employees under any laws of the State of Texas, heretofore or hereafter enacted, which risk shall have been tendered to and rejected by any of its members. It shall be the further duty of the pool to provide insurance in the manner herein provided on all policies and claims in existence for any insurance company which has been declared insolvent by the courts of this State or any other state in the same manner as if said policies had been written by its servicing companies. With respect to said claims in existence at the time of said declaration of insolvency and paid by the pool, the pool shall have the same rights against the receiver of said insolvent company as are provided by the laws of this State for workers' compensation loss claimants of the insolvent insurance company. From and after the date the rules made and adopted under Section (e) of this Article have been approved by the Board the procedures and remedies established under this article shall be the sole and exclusive procedure and remedies, either at law or in equity, of any applicant for such insurance whose insurance has been rejected or cancelled by any member.

(d) When any such rejected risk is called to the attention of the pool and it appears that said risk is in good faith entitled to insurance, the pool shall calculate the deposit premium therefor in accordance with the classifications and rates promulgated by the Board and upon payment thereof, the pool shall designate a member whose duty it shall be to issue a policy on such form and for such limits of liability as shall be prescribed by the Board as provided in Section (g) of this Article, but the undertakings of said policy shall be entirely reinsured by

all members of the pool, and the liability of the member issuing said policy shall be limited to its liability as a reinsurer. On all such policies all members of the pool shall be reinsurers as among themselves in proportion to the amount which the premiums on such insurance written in this State during the preceding calendar year by such member bears to the total such premiums written in this State during the preceding calendar year by all members of the pool, and each said policy may be endorsed to reflect the plan of reinsurance hereinabove provided.

(e) Subject to the approval of the Board, the pool may adopt, amend, and repeal bylaws, rules, and regulations necessary to implement this Article. All bylaws, rules, regulations, practices, policies, and procedures of the pool shall provide for the economic, fair, efficient, and nondiscriminatory administration of this Article. The pool may adopt, amend, or repeal bylaws, rules, and regulations at any regular meeting of the members of the pool or at any special meeting called for that purpose by a three-fourths vote of those members present in person or voting by proxy. Notice of such proposed adoption, amendment, or repeal shall be mailed to all members not less than the 20th day before the day of the meeting at which adoption, amendment, or repeal is to be considered. The adoption, amendment, or repeal shall become effective on approval by the State Board of Insurance. The pool shall pay all costs and expenses of operating and maintaining the pool, including any fees paid to members for servicing rejected risks. Funds of this State shall not be appropriated or expended for payment of any costs or expenses incurred in the operation or maintenance of the pool. All bylaws, rules, and regulations of the pool shall be subject to the continuing jurisdiction of the Board. Should the Board at any time have reason to believe that any bylaw, rule, or regulation is not in keeping with the purposes of this Article, it shall notify the governing committee of the pool in writing so that corrective action may be taken.

(f) As a prerequisite to the writing of such insurance in this State every member of the pool shall file with the Board written authority permitting the pool to act in its behalf, as provided in this Article.

(g) The Board, in addition to the provisions prescribed by Subchapter D⁴ is hereby authorized and empowered to determine, fix, prescribe, promulgate, change, or amend policy forms, endorsements, rates, rating plans or minimum premiums normally applicable to a risk so as to apply to any and every risk assigned by the pool such policy forms, endorsements, rates, rating plans and minimum premiums as are commensurate with the greater hazard of the risk, considering in connection therewith, the experience, physical, financial or other conditions of such risk. In promulgating a rate or rates for any

risk or risks assigned by the pool the Board shall give due consideration to an appropriate allowable for losses, claims expense, audit expenses, taxes, general administration expense, acquisition expense, inspection expense, an allowance for profit and contingencies, and any other relevant factors in connection with insuring and servicing such risk or risks. The Board shall promulgate a special form of All States Endorsement, in keeping with the purposes of this subchapter, which may be used in connection with any risk insured by the pool and shall establish premiums for the use of such endorsement.

(h) The pool or any of its members may make and enforce reasonable rules for the prevention of injuries to employees of its policyholders or applicants for insurance under this Article. For this purpose, representatives of the pool, any of its members and representatives of the Board, shall be granted free access to the premises of each such policyholder or applicant during regular working hours. Failure or refusal by any such policyholder or applicant to comply with any such reasonable rule for the prevention of injuries as shall be prescribed by the pool, or failure or refusal to make full disclosure of all information pertinent to the insuring or servicing of the policyholder or applicant shall determine the issue of whether said policyholder or applicant in good faith is entitled to such insurance.

(i) No rejected risk or applicant as a rejected risk shall be considered in good faith entitled to the remedies and benefits of this Act if such risk is in violation of rules or regulations of the Industrial Accident Board, the State Board of Insurance, or any other administrative agency of this State having jurisdiction over such risk or any of its business practices or operations. Failure of or refusal by any rejected risk to make a full disclosure of all its remuneration on all of its employees at any audit of books and records shall be sufficient ground for the pool to terminate the insurance of such risk as one not in good faith entitled thereto.

(j) An applicant for insurance, insured, or insurer aggrieved by any act of the pool may appeal to the Board not later than the 30th day after the day the act occurred. If the pool is aggrieved by an act of the Board, it may make a written request to the Board for a hearing not later than the 30th day after the act occurred. The Board shall hear the pool or the appeal from an act of the pool, not later than the 30th day after the receipt of the request or appeal. The Board shall notify the pool or the appellant in writing of the time and place of the hearing not later than the 10th day before the date of the hearing. Not later than the 30th day after the last day of the hearing, the Board shall affirm, reverse, or modify its previous action or the act appealed to the Board. A hearing does not suspend the operation of any classification, rate, policy form, rule, regulation, order, or other action by the Board

under this Subchapter or the operation of any act, ruling, decision, or order of the pool, unless the Board specifically so orders. The pool or the aggrieved party may appeal as provided by Section (f) of Article 1.04 of this code.

(k) The pool shall invest its funds only in interest-bearing time deposits or certificates of deposit on any bank or banks doing business in the State of Texas which are members of the Federal Deposit Insurance Corporation, treasury bills, notes or any other treasury obligations of the United States of America, or in such other investments as may be proposed by the governing committee and approved by the State Board of Insurance.

(l) The pool shall file annually with the Board a report containing information with respect to its transactions, conditions, operations, and investments during the preceding year. Such report shall contain such matters and information as prescribed by and in such form as approved by the Board. The Board may at any time require the pool to furnish additional information with respect to its transactions, conditions, investments, or any matter connected therewith considered to be material in evaluating the economic, efficient, fair, and nondiscriminatory administration of this Act.

[Acts 1953, 53rd Leg., p. 716, ch. 279, § 1. Amended by Acts 1971, 62nd Leg., p. 1080, ch. 230, § 1, eff. Aug. 30, 1971; Amended by Acts 1975, 64th Leg., p. 1164, ch. 436, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 154, ch. 77, § 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 912, ch. 323, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2395, ch. 602, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3114, ch. 534, § 1, eff. Aug. 29, 1983.]

¹ Civil Statutes, art. 8306 et seq.

² 33 U.S.C.A. § 901 et seq.

³ 30 U.S.C.A. § 801 et seq.

⁴ Article 5.55 et seq.

Sections 2 to 4 of the 1971 amendatory act provided:

"Sec. 2. As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments or repeals herein made to the original law hereby amended or repealed, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments or repeals hereby adopted had never been made, and to that end it is hereby declared that as respects such injuries occurring prior to the effective date of this Act, said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties, and authority; and further this Act insofar as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment.

"Sec. 3. If any word, phrase, clause, paragraph, sentence, part, portion or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and to all other persons and circumstances shall be valid and of full force and effect, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion or provision and to this end the provisions of this Act are declared to be severable.

"Sec. 4. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only."

Section 2 of the 1975 amendatory act provided:

"As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing, or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made."

Section 3 of Acts 1981, 67th Leg., p. 2395, ch. 602, provides:

"As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the board, or of the association, or of any other person shall be in any way affected by any of the amendments or repeals herein made to the original law hereby amended or repealed, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments or repeals hereby adopted had never been made, and to that end it is hereby declared that as respects such injuries occurring prior to the effective date of this Act, said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties, and authority; and further this Act insofar as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment."

Art. 5.76-1. Accident Prevention Services

(a) Any insurer desiring to write workmen's compensation insurance in Texas shall maintain or provide accident prevention facilities as a prerequisite for a license to write such insurance. Such facilities shall be adequate to furnish accident prevention services required by the nature of its policyholder's operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services, to implement the program of accident prevention services. Each field safety representative shall be either a college graduate who shall have a bachelor's degree in science or engineering, a registered professional engineer, a certified safety professional, a certified industrial hygienist, an individual with ten (10) years experience in occupational safety and health, or an individual who shall have completed a course of training in accident prevention services approved by the State Board of Insurance.

(b) The insurer shall render accident prevention services to its policyholders reasonably commensurate with the risks and exposures and experience of the subscriber's business. To provide such facilities, the insurer may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of the methods enumerated in this subsection. Such personnel shall have the qualification required for field safety representatives as provided in Subsection (a).

(c) If the Commissioner of Insurance shall determine that reasonable accident prevention services

are not being maintained or provided by the insurer or are not being used by the insurer in a reasonable manner to prevent injury to employees of its policyholders, the fact shall be reported to the State Board of Insurance, and the Board shall order a hearing to determine if the insurer is not in compliance with this Article. If it is determined that the insurer is not in compliance, its license to write workmen's compensation insurance in Texas shall be revoked.

(d) The State Board of Insurance may promulgate reasonable rules and regulations for the enforcement of this Article after holding a public hearing on the proposed rules and regulations.

[Acts 1973, 63rd Leg., p. 192, ch. 88, § 9, eff. Sept. 1, 1973.]

SUBCHAPTER H. PREMIUM RATING PLANS

Subchapter H, Premium Rating Plans, consisting of arts. 5.77 to 5.79, was not enacted as part of the Insurance Code of 1951.

Art. 5.77. Premium Rating Plans; Powers of Board

The Board of Insurance Commissioners is hereby authorized and empowered to make or approve and promulgate premium rating plans designed to encourage the prevention of accidents, to recognize the peculiar hazards of individual risks and to give due consideration to interstate as well as intrastate experience of such risks for Workmen's Compensation, Motor Vehicle and other lines of Casualty Insurance to be applicable separately for each class of insurance, or in combination of two or more of such classes. Such plans may be approved on an optional basis to apply prospectively, or retrospectively and may include premium discount plans, retrospective rating plans or other systems, plans or formulas, however named, if the rates thereby provided are not excessive, inadequate or unfairly discriminatory. The Board shall also have authority to make or approve and promulgate such reasonable rules and regulations as may be necessary, not in conflict with provisions of this Act.

[Acts 1953, 53rd Leg., p. 64, ch. 50, § 1.]

Art. 5.78. Consideration of All Relevant Factors

Before the Board of Insurance Commissioners approves class rates or rating plans, due consideration shall be given to all relevant factors to the end that no unfair discrimination shall exist in class rates or rating plans as they may affect risks of various size.

[Acts 1953, 53rd Leg., p. 64, ch. 50, § 1a.]

Art. 5.79. Optional Selection and Application

If for any form of casualty insurance affected by this Act more than one rating plan is approved for

optional selection and application, the selection of the plan shall rest with the applicant.

[Acts 1953, 53rd Leg., p. 64, ch. 50, § 1b.]

SUBCHAPTER I. MULTI-PERIL POLICIES

Art. 5.81. Multi-Peril Policies; Premium and Rate Adjustment Plans; Powers of Board

The State Board of Insurance is hereby authorized and empowered to make, approve, promulgate, and prescribe policy forms and rates for multi-peril policies of insurance. Such multi-peril policies and rates may be in respect to one or more of the perils that are otherwise separately and differently subject to regulation under the provisions of one or more of the other subchapters of Chapter 5 of this Code. In prescribing, promulgating, or approving policy forms and rates the board shall have the authority to designate the rating procedure which will be used in making the rates and forms and may choose the procedure under any of the subchapters of Chapter 5 for the purpose of determining forms and rates. In making rates on multi-peril policies the board may make a cumulative rate or premium or it may rate such multi-peril policies on the basis of the experience resulting from the experience under the multi-peril policy alone or the separate experience as respects each peril and coverage. The board may permit discounts from what the rates would otherwise be based on the actual savings in expense as is effected by the combining of coverages otherwise regulated under separate subchapters of this chapter and as respects any multi-coverage policy or "multi-peril" policy or any like combination of forms and rates. No such form shall include unnecessary coverages as determined by the board and no rate or premium authorized by this article shall be excessive, inadequate, or unfairly discriminatory. The board may authorize rate filings and such further discounts as may be warranted by provisions for inspection, premises operation standards, loss prevention requirements, or any other considerations and requisites as will improve the loss experience of the risk insured.

To provide for multi-peril policies and in order to preserve normal and accepted rating procedures, included as necessary level rating methods, and to provide mathematical consistency in rate making, any deductible provision and any rate or premium reduction shall be made as may be appropriate after first arriving at a base rate or premium without the deductible. In arriving at base rates and premiums and in determining and evaluating the reported loss experience in the rate-making process, the method shall include provision that the amount of the deductible shall be added to any losses paid on policies containing such deductible as a proper and necessary function of calculating the base rate or premium, and as indicated, or in the event statistics are

not available and adequate, there shall be added to the loss experience an amount which in the judgment of the board represents those losses occurring to the insureds which were less than the deductible and for which no insured loss was paid but which would have been paid except for the deductible provision.

Additionally, any deductible provision, or any provision to pay the excess of loss over a stated amount, or any percentage deductible shall be applied so as to determine the amount of loss as is calculated after deducting the amount of the deductible from the loss and after deducting the amount of the deductible from the policy limit, and the amount of loss payable under such deductible multi-peril policy shall be the lesser amount established by such calculations notwithstanding any other provision of the Insurance Code requiring certain policy language or any provision of an insurance contract to the contrary.

In carrying out the provisions of this article, the State Board of Insurance shall make, approve, and enforce such rules and regulations as in the best judgment of the board are necessary and desirable in carrying out the purposes of this article and in achieving the objectives hereof.

[Acts 1973, 63rd Leg., p. 162, ch. 83, § 1, eff. Aug. 27, 1973.]

Sections 2 and 3 of the 1973 Act provided:

"Sec. 2. If any portion of this Act, any part thereof, any paragraph, sentence, or other part shall be declared illegal or unconstitutional for any reason, such declaration shall not affect the validity of the remaining portions hereof; and in that connection the legislature hereby specifically declares that all portions hereof shall be severable and that the remaining portions hereof would have been enacted notwithstanding the absence of any such portion as may be declared illegal and unconstitutional.

"Sec. 3. All laws or parts of laws in conflict herewith are hereby modified or repealed to the extent of such conflict, and in the event of such conflict, the provisions hereof shall prevail."

SUBCHAPTER J. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS, PODIATRISTS, AND HOSPITALS [REPEALED]

Art. 5.82. Repealed by Acts 1977, 65th Leg., p. 2064, ch. 817, § 41.03, eff. Aug. 29, 1977

See, now, art. 5.15-1.

SUBCHAPTER K. POLICY FORMS AND ENDORSEMENTS FOR CERTAIN AIRCRAFT

Art. 5.90. Policy Forms and Endorsements

When the State Board of Insurance finds that a public need exists for the regulation of aircraft hull and aircraft liability insurance, it may, by board order, require all insurers issuing any form of aircraft hull and aircraft liability insurance in Texas to file with the board all policy forms and endorsements used by each insurer in the writing of such insurance. The board may disapprove the use of any form or endorsement so filed and no insurer

may thereafter use such disapproved form or endorsement. Any contract or agreement not written into the application, if any, or policy shall be void and of no effect and in violation of the provisions of this subchapter and shall be sufficient cause for revocation of license of the insurer to write aircraft insurance within this state.

[Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1070, ch. 501, § 1, eff. June 7, 1979.]

Art. 5.91. Maintenance Tax on Gross Premiums

The State of Texas by and through the State Board of Insurance shall annually determine the rate of assessment on an annual or semiannual basis, as determined by the Board, and collect a maintenance tax in an amount not to exceed two-fifths of one percent of the correctly reported gross premiums on all classes of insurance covered by this subchapter of all authorized insurers writing those classes of insurance in this state. The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article. The State Board of Insurance, after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating all classes of insurance specified by this subchapter during the succeeding year. The taxes collected shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance. The State Board of Insurance may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.

[Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1070, ch. 501, § 1, eff. June 7, 1979; Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5013, ch. 902, § 1, eff. Sept. 1, 1983.]

Art. 5.92. Rules

When the State Board of Insurance acts under Article 5.90, it shall have authority to make any rules that are necessary to carry out the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1070, ch. 501, § 1, eff. June 7, 1979.]

SUBCHAPTER L. ADMINISTRATIVE PROCEDURE FOR CHANGES IN MANUAL RULES, CLASSIFICATION PLANS, STATISTICAL PLANS, AND POLICY AND ENDORSEMENT FORMS AND FOR CERTAIN RATES AND RATING PLANS

Art. 5.96. Promulgated Lines

(a) The State Board of Insurance may prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for motor vehicle insurance, fire and allied lines insurance, workers' compensation insurance, and multiperil insurance under the procedure specified in this article.

(b) Any interested person may initiate proceedings before the board with respect to any matter specified in Section (a) of this article by filing a written petition with the chief clerk of the board that includes the following:

(1) specific identification of the matter that is proposed to be prescribed, promulgated, adopted, approved, amended, or repealed;

(2) the wording of the matter proposed to be prescribed, promulgated, adopted, approved, amended, or repealed; and

(3) justification for the proposed action in sufficient particularity to inform the board and any interested person of the petitioner's reasons and arguments.

(c) A copy of each petition initiating a proceeding shall be marked with the date it was received by the chief clerk of the board and shall be made available for public inspection at the office of the chief clerk of the board during the period the petition is pending. Except for emergency matters acted on under Section (i) of this article, the board may not act on a petition until it has been available for public inspection for at least 15 days after the date of filing.

(d) Any interested person may request the board to hold a hearing before it acts on a pending petition. The board has discretion whether or not to hold such a hearing.

(e) Within 60 days after the receipt of a petition, the board shall hold a hearing to consider the proposal or shall enter an order implementing or denying the proposal. If the board denies the proposal, it shall specify the reasons for the denial in its order.

(f) On its own motion, the board may initiate a proceeding with respect to any matter specified in Section (a) of this article.

(g) If a hearing is scheduled to consider a proposal, the board shall publish notice in the Texas Register not less than 10 days before the hearing and shall state the time, place, legal authority for the hearing, and the matters to be considered.

(h) After entering an order with respect to any matter specified in Section (a) of this article, the board shall file a notice of its action for publication in the adopted rule section of the Texas Register. In addition, before the effective date of the action, the board shall cause notice of the order to be mailed to the applicant, to all insurers writing the affected line of insurance in this state, and to all other persons who have made timely written request for notification. Failure to mail this notice does not invalidate any action taken.

(i) The board's action takes effect 15 days after notice of that action appears in the Texas Register or on a later specified date. If the board finds that a clear and compelling necessity requires its action to be effective before the end of the 15-day period, it may take emergency action to be effective at an earlier time. The board's action on an emergency matter may be effective for 120 days, and renewable one time for a period not exceeding 60 days immediately following the 120-day period. The permanent adoption of an identical change is not precluded.

(j) Any person aggrieved by an order of the board is entitled to redress as provided by Article 5.11, Article 5.39, or Article 5.65 of this code, whichever is applicable to the line of insurance covered by the order.

(k) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), does not apply to board action taken under this article.

[Acts 1983, 68th Leg., p. 1252, ch. 272, § 1, eff. May 28, 1983.]

Art. 5.97. Lines of Insurance for Which Filing is Required

(a) The State Board of Insurance may take action on filings for standard and uniform rates, rating plans, manual rules, classification plans, statistical plans, and policy and endorsement forms, or any modification of any of these for the lines of insurance regulated in Subchapter B, Chapter 5, of this code¹ and for the regulated lines of insurance in Article 5.53 and Article 5.53-A of this code under the procedure specified in this article.

(b) Any interested person may initiate proceedings before the board with respect to any matter specified in Section (a) of this article by filing a petition with the State Board of Insurance that includes the following:

- (1) specific identification of the matter that is proposed to be adopted, approved, amended, or repealed;
- (2) the wording of the matter proposed to be adopted, approved, amended, or repealed; and
- (3) justification for the proposed action in sufficient particularity to inform the board and any

interested person of the petitioner's reasons and arguments.

(c) A copy of each petition initiating a proceeding shall be marked with the date it was received by the State Board of Insurance and shall be made available for public inspection at the office of the chief clerk of the board throughout the period the petition is pending. Except for emergency matters acted on under Section (j) of this article, the board may not act on a petition until it has been available for public inspection for at least 15 days after the date of filing.

(d) Any interested person may request the board to hold a hearing before it acts on a pending petition. The board has discretion whether or not to hold such a hearing.

(e) The board shall consider each proposal as provided by the procedures specified in Article 5.15, Article 5.53, or Article 5.53-A of this code, whichever is applicable to the line of insurance addressed.

(f) The board shall hold a hearing to consider the proposal or shall enter an order implementing or denying the proposal. If the board denies a proposal, it shall specify the reasons for the denial in its order.

(g) On its own motion, the board may initiate a proceeding with respect to any matter specified in Section (a) of this article.

(h) If a hearing is scheduled to consider a proposal, the board shall publish notice in the Texas Register not less than 10 days before the hearing and shall state the time, place, and legal authority for the hearing and the matters to be considered.

(i) After entering an order with respect to any matter specified in Section (a) of this article, the board shall file a notice of its action for publication in the adopted rule section of the Texas Register. In addition, before the effective date of the action, the board shall cause notice of the order to be mailed to the applicant, to all insurers writing the affected line of insurance in this state, and to all other persons who have made timely written request for notification. Failure to mail this notice will not invalidate any action taken.

(j) The board's action takes effect 15 days after the date that notice of the action is published in the Texas Register or on a later specified date. If the board finds that a clear and compelling necessity requires its action to be effective before the end of the 15-day period, it may take emergency action to be effective at an earlier time. The board's action on an emergency matter may be effective for 120 days, and renewable once for a period not exceeding 60 days immediately following the 120-day period. The permanent adoption of an identical change is not precluded.

(k) Any person aggrieved by an order of the board is entitled to redress as provided by Article 5.15, Article 5.23, Article 5.53, or Article 5.53-A of this code, whichever is applicable to the line of insurance addressed in the order.

(l) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), does not apply to board action taken under this article.

[Acts 1983, 68th Leg., p. 1252, ch. 272, § 1, eff. May 28, 1983.]

¹ Article 5.13 et seq.

Art. 5.98. Rulemaking

The State Board of Insurance may adopt reasonable rules that are appropriate to accomplish the purposes of this subchapter.

[Acts 1983, 68th Leg., p. 1252, ch. 272, § 1, eff. May 28, 1983.]

CHAPTER SIX. FIRE AND MARINE COMPANIES

Art.

- 6.01. Board Shall Calculate Reserve on Fire Insurance.
- 6.01-A. Reserving Home Warranty Insurance.
- 6.02. Reserve for Ocean and Inland Marine Trip Insurance.
- 6.03. What May Be Insured.
- 6.04. Reduction of Capital Stock to Make Good Impairment of Surplus.
- 6.05. Capital and Surplus to Be Made Good.
- 6.06. Stockholder Failing to Pay.
- 6.07. New Stock and Minimum Surplus Made Up.
- 6.08. Holding Real Estate.
- 6.09, 6.10. Repealed.
- 6.11. Annual Statement.
- 6.12. Details of Annual Statement.
- 6.13. Policy a Liquidated Demand.
- 6.14. Breach by Insured.
- 6.15. Interest of Mortgagee or Trustee.
- 6.16. Reinsurance.

Art. 6.01. Board Shall Calculate Reserve on Fire Insurance

(1) Every company doing fire insurance business in this state shall maintain a re-insurance or unearned premium reserve on all policies in force.

(2) The Board may require that such reserves shall be equal to the unearned portions of the gross premiums in force after deducting re-insurance in accordance with the provisions of Article 6.16 of the Texas Insurance Code as computed on each respective risk from the policy's date of issue. If the Board does not so require, the portions of the gross premium in force, less re-insurance in accordance with the provisions of Article 6.16 of the Texas Insurance Code, to be held as a re-insurance or unearned premium reserve, shall be computed according to the following table:

Term for Which Policy Was Written	Reserve for Unearned Premium
1 year or less	$\frac{1}{2}$
2 years	1st year $\frac{3}{4}$
	2nd year $\frac{1}{4}$
3 years	1st year $\frac{5}{6}$
	2nd year $\frac{1}{2}$
	3rd year $\frac{1}{6}$
4 years	1st year $\frac{7}{8}$
	2nd year $\frac{5}{8}$
	3rd year $\frac{3}{8}$
	4th year $\frac{1}{8}$
5 years	1st year $\frac{9}{10}$
	2nd year $\frac{7}{10}$
	3rd year $\frac{1}{2}$
	4th year $\frac{3}{10}$
	5th year $\frac{1}{10}$
Over 5 years	pro-rata

(3) In lieu of computation according to the foregoing table, the Board may require or the insurer at its option may compute all of such reserves on a quarterly, monthly or more frequent pro-rata basis.

(4) After adopting a method for computing such reserve, an insurer shall not change methods without approval of the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 637, ch. 291, § 1.]

Art. 6.01-A. Reserving Home Warranty Insurance

Sec. 1. Every company writing home warranty insurance in Texas shall maintain reinsurance or unearned premium reserves on all policies in force.

Sec. 2. The reserves on home warranty insurance shall be computed in the same manner and to the same extent as fire insurance is reserved in accordance with Article 6.01 of this Code.

[Acts 1975, 64th Leg., p. 56, ch. 32, § 2, eff. April 3, 1975.]

Art. 6.02. Reserve for Ocean and Inland Marine Trip Insurance

The entire amount of premiums on ocean and inland marine trip risks not terminated shall be deemed unearned, and the insurer shall carry a reserve equal to one hundred percent of such premiums.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 637, ch. 291, § 1.]

Art. 6.03. What May Be Insured

It shall be lawful for any insurance company doing business in this State under the proper certificate of authority, except a life insurance company, to insure houses, buildings and all other kinds of property against loss or damage by fire; to take all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on

land or water, or any vessel afloat, wherever the same may be; to lend money on bottomry or respondentia; to cause itself to be insured against any loss or risk it may have incurred in the course of its business and upon the interest which it may have in any property by means of any loan or loans which it may have on bottomry or respondentia; and generally to do and perform all other matters and things proper to promote these objects; to insure automobiles or other motor vehicles, whether stationary or being operated under their own power, against all or any of the risks of fire, lightning, windstorms, hail storms, tornadoes, cyclones, explosions, transportation by land or water, theft and collisions, upon filing with the Board notification of their purpose to do so.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 6.04. Reduction of Capital Stock to Make Good Impairment of Surplus

Whenever the minimum surplus of any fire, fire and marine, or marine insurance company of this State becomes impaired to a greater extent than that provided by Section 5 of Article 1.10, the Board may, in its discretion, permit the said company by amendment to charter as provided by Article 2.03, to reduce its capital stock and par value of its shares in proportion to the extent of permitted impairment; provided that the par value of said shares shall not be reduced below the sum provided by Section 1 of Article 2.07. In fixing such reduced capital, no sum exceeding \$125,000.00 shall be deducted from the assets and property on hand, which shall be retained as surplus assets. No part of such assets and property shall be distributed to the stockholders, nor shall the capital stock of a company or its surplus in any case be reduced to an amount less than the minimum capital and the minimum surplus provided by Article 2.02 of this Code, subject to the provisions of Section 5 of Article 1.10 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 16.]

Art. 6.05. Capital and Surplus to be Made Good

Any fire, marine or inland insurance company having received notice from the Board to make good any impairment of its required capital or to make good its surplus within 60 days as provided by Section 5 of Article 1.10 shall forthwith call upon its stockholders for such amounts as shall make its capital and its surplus equal to the amount required by Article 2.02, subject to the provisions of said Section 5 of Article 1.10 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 17.]

Art. 6.06. Stockholder Failing to Pay

If any stockholder of such company shall neglect or fail to pay the amount so called for, after notice

personally given, or by advertisement for such time and in such manner as said Board shall approve, it shall be lawful for said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue a new certificate for such number of shares as such defaulting stockholder may be entitled to in the proportion that the ascertained value of the funds of said company, calculated without inclusion of any money or property paid by stockholders in response to such call, may be found to bear to the total of the original capital and the minimum surplus of said company as required by Article 2.02; as qualified by the provisions of Section 5 of Article 1.10 of this Code, the value of such shares for which new certificates are issued shall be ascertained under the direction of said Board and the company shall pay for the fractional parts of shares.

Any interested person may pay part or all of the amount of the deficit resulting from such default and the company shall issue to each such person a stock certificate for the number of shares to which he is entitled, such certificate to be for the number of shares in proportion to the whole number of forfeited shares which the payment made by the recipient of the new stock certificate bears to the deficit which resulted from such forfeited shares.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 18.]

Art. 6.07. New Stock and Minimum Surplus Made Up

It shall be lawful for such company upon compliance with Article 2.03 of this Code to create new stock and dispose of the same according to law and to issue new certificates therefor. Said new stock shall be sold for an amount sufficient to make up any impairments of its required minimum capital and to make up the surplus of the company as provided in Article 2.02 of this Code as qualified by Section 5 of Article 1.10, without impairment of the capital of the company.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 19.]

Art. 6.08. Holding Real Estate

No such company shall be permitted to purchase, hold or convey real estate, except for the purpose and in the manner herein set forth:

1. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business;
2. Such as shall have been mortgaged to it in good faith by way of security of loans previously contracted or for money due;
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due;

4. Such as shall have been purchased at sales under judgments, decrees or mortgages obtained or made for such debts;

5. Mineral and royalty interests reserved upon the sale of land acquired under Subdivisions 2, 3, and 4 of this Article 6.08 of this Code before January 1, 1942.

All real estate acquired under authority of the above paragraphs of this Article numbered 2, 3, and 4, or either of them, shall be subject to the provisions of Article 8.19 of this Code.

No more than thirty-three and one-third per cent (33 $\frac{1}{3}$) of its admitted assets shall be invested by such company in real estate, and none of its capital and minimum surplus may be so invested, except to the extent that the foregoing limitation shall not apply to real estate held under authority of the above paragraphs of this Article numbered 2, 3, 4, and 5, or either of them.

The value of real estate mentioned in paragraph numbered 1 above shall be appraised by two (2) or more competent and disinterested citizens of Texas appointed by the Board of Insurance Commissioners of Texas, when such real estate is hereafter acquired or when amendment to charter is applied for, the reasonable cost and expense of such appraisal to be paid by the insurance company to the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 20; Acts 1961, 57th Leg., p. 1049, ch. 467, § 1.]

Arts. 6.09, 6.10. Repealed by Acts 1963, 58th Leg., p. 976, ch. 399, § 1, eff. Aug. 23, 1963

Art. 6.11. Annual Statement

The president or vice-president and secretary of each fire, marine or inland insurance company doing business in this State, annually, on the first day of each year, or within sixty days thereafter, shall prepare under oath and deposit with the Board a full, true and complete statement of the condition of such company on the last day of the month of December preceding.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 6.12. Details of Annual Statement

Such annual statement shall exhibit the following items and facts:

1. The name of the company and where located.
2. The names and residence of the officers.
3. The amount of the capital stock of the company.
4. The amount of capital stock paid up.
5. The property or assets held by the company, viz: the real estate owned by such company, its location, description and value as near as may be, and if said company be one organized under the laws of this State, shall accompany such

statement with an abstract of the title to the same; the amount of cash on hand and deposited in banks to the credit of the company, and in what bank or banks the same is deposited; the amount of cash in the hands of agents, naming such agents; the amount of cash in course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, its value and the name of the mortgagor; the amount of all bonds and other loans, with the rate of interest thereon and how secured; the amount due the company in which judgments have been obtained, describing such judgments; the amount of any stock owned by the company, describing the same and specifying the amount and number of shares, and the par and market value of each kind of stock; the amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of interest actually due to the company and unpaid; all other securities, their description and value; the value of all electronic machines, constituting a data processing system or systems, and all other office equipment, furniture, machines and labor-saving devices heretofore or hereafter purchased for and used in connection with the business of an insurance company to the extent that the total actual cash market value of all of such systems, equipment, furniture, machines and devices constitute less than five per cent (5%) of the otherwise admitted assets of such company; and provided further, that the total value of all such property of a company must exceed Two Thousand Dollars (\$2,000), to qualify hereunder. The Commissioner of Insurance may adopt regulations defining electronic machines and systems, office equipment, furniture, machines and labor-saving devices as used herein, and provide for the maximum period for which each such class of equipment may be amortized; the value of all such property as determined hereunder and under the regulations herein provided for shall be deemed to be an admitted asset for all purposes.

6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; dividends, either in scrip or cash, specifying the amount of each declared but not due; dividends declared and due; the amount required as the lawful reserve on all unexpired risks computed in the manner provided elsewhere in this Code; the amount due banks or other creditors, naming such banks or other creditors and the amount due to each; the amount of money borrowed by the company, of whom borrowed, the rate of interest thereon and how secured; all other claims against the company, describing the same.

7. The income of the company during the preceding year, stating the amount received for premiums, specifying separately fire, marine and inland transportation premiums, deducting reinsurance; the amount received for interest, and from all other sources.

8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid for return premiums, commissions, salaries, expenses, and other charges of officers, agents, clerks, and other employees; the amount paid for local, state, national, internal revenue and other taxes and duties; the amount paid for all other expenses, such as fees, printing, stationery, rents, furniture, etc.

9. The largest amount insured in any one (1) risk, naming the risk.

10. The amount of risks written during the preceding year.

11. The amount of risks in force having less than one (1) year to run.

12. The amount of risks in force having more than one (1) and not over three (3) years to run.

13. The amount of risks having more than three (3) years to run.

14. Whether or not dividends are declared on premiums received for risks not terminated.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 637, ch. 291, § 1; Acts 1965, 59th Leg., p. 1615, ch. 691, § 1.]

Art. 6.13. Policy a Liquidated Demand

A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. The provisions of this article shall not apply to personal property.

On and after January 1, 1951, the provisions of the preceding paragraph of this article shall be incorporated verbatim in each and every fire insurance policy hereafter issued as coverage on any real property in this State; and it shall be the duty of the Board of Insurance Commissioners, by proper order and procedure, to compel compliance with this statute.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 6.14. Breach by Insured

No breach or violation by the insured of any warranty, condition or provision of any fire insurance policy, contract of insurance, or applications therefor, upon personal property, shall render void the policy or contract, or constitute a defense to a

suit for loss thereon, unless such breach or violation contributed to bring about the destruction of the property.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 6.15. Interest of Mortgagee or Trustee

The interest of a mortgagee or trustee under any fire insurance contract hereafter issued covering any property situated in this State shall not be invalidated by any act or neglect of the mortgagor or owner of said described property or the happening of any condition beyond his control, and any stipulation in any contract in conflict herewith shall be null and void.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 6.16. Reinsurance

1. No insurance company incorporated under the laws of the United States or of any State thereof and authorized to do business in this State in the writing of fire and allied lines of insurance as those terms may be defined by statute, by ruling of the State Board of Insurance, hereinafter called the "Board," or by lawful custom, shall expose itself to any loss or hazard on any one (1) risk, except when insuring cotton in bales, and grain, to an amount exceeding ten (10%) per cent of its paid-up capital stock and surplus, unless the excess shall be reinsured by such company in another solvent insurer. Similarly, no insurance company incorporated under a jurisdiction other than that of the United States or a state thereof and authorized to do business in this State in the writing of said lines of insurance shall expose itself to any loss or hazard on any one (1) risk, except when insuring cotton in bales, and grain, to an amount exceeding ten (10%) per cent of the company's deposit with the statutory officer in the state through which the company gains admission to the United States, together with ten (10%) per cent of the other surplus to policyholders of the company's United States Branch, unless the excess shall be reinsured by such company in another solvent insurer.

2. Any insurance or reinsurance company authorized to transact insurance or reinsurance within this State as to lines of insurance defined in Section 1 hereof, may reinsure the whole or any part of an individual risk in another solvent insurer.

3. Any reinsurance required or permitted by this article must comply with Article 5.75-1 or Article 5.75-2 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1967, 60th Leg., p. 278, ch. 130, § 1, eff. May 5, 1967; Acts 1983, 68th Leg., p. 432, ch. 88, § 3, eff. May 10, 1983.]

**CHAPTER SEVEN. SURETY AND
TRUST COMPANIES**

Art.

- 7.01. Venue of Suit on Bond; Service.
7.02. Withdrawal of Unnecessary Deposits.
7.03 to 7.18. Repealed.
7.19-1. Bond of Surety Company.
7.20. [Blank].
7.20-1. Bail Bond Certificates Issued by Automobile Clubs; Sureties.

Art. 7.01. Venue of Suit on Bond; Service

If any suit shall be instituted upon any bond or obligation of any insurance company licensed in this State and having authority to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians or others appointed to, or assuming the performance of any trust, public or private, under appointment of any court or tribunal, or under contract between private individuals or corporations, or upon any bond or bonds that may be required to be filed in any judicial proceedings, or to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private corporations and the State and municipal corporations or counties or between corporations and individuals, or on any bond or bonds that may be required of any state official, district official, county official or official of any school district or of any municipality, the proper court of the county wherein said bond is filed shall have jurisdiction of said cause. Service therein shall be had, either upon the attorney of said company, by law required to be appointed, or upon the Chairman of the State Board of Insurance, and such service shall be to all intents valid and effectual as service upon said company. Such guaranty, fidelity and surety companies shall be deemed resident of the counties wherever they may do business, and the doing or performing of any business in any county shall be deemed an acceptance of the provisions of this Act.

[Acts 1959, 56th Leg., 2nd C.S., p. 159, ch. 39, § 1.]

Art. 7.02. Withdrawal of Unnecessary Deposits

When two or more companies authorized to write fidelity, guaranty and surety insurance in the State of Texas merge or consolidate, and, incident to such merger or consolidation, enter into a total reinsurance contract by which the merged or ceding company is dissolved, and its assets acquired and liabilities assumed by the new or surviving company, the Commissioner of Insurance, upon finding that the contracting companies have on deposit with the State Treasurer two or more deposits made for the same or similar purposes under either former Article 7.03 (repealed by Acts 1957, 55th Legislature, Regular Session, Chapter 388, p. 1162) or Article 8.05 of the Insurance Code of Texas, shall authorize the State Treasurer to retain for a single purpose only the deposit of greater or greatest amount and

value and to permit the new or surviving reinsuring company, upon proper showing that there is such duplication of deposits and that the new or surviving company is the owner thereof, to withdraw any or all duplicate or excessive deposits.

[Acts 1971, 62nd Leg., p. 1904, ch. 569, § 1, eff. June 1, 1971.]

Former article 7.02 was repealed by Acts 1957, 55th Leg., p. 1162, ch. 388, § 1.

Arts. 7.03 to 7.18. Repealed by Acts 1957, 55th Leg., p. 1162, ch. 388, § 1

Art. 7.19-1. Bond of Surety Company

Whenever any bond, undertaking, recognizance or other obligation is, by law or the charter, ordinances, rules and regulations of a municipality, board, body, organization, court, judge or public officer, required or permitted to be made, given, tendered or filed, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company duly qualified to do business in this state; and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every law, charter, rule or regulation that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one surety or by one or more sureties, or that such sureties shall be residents, or householders, or freeholders, or either, or both, or possess any other qualification and all courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat such bond, undertaking, obligation, recognizance or guarantee when so executed by such company, as conforming to, and fully and completely complying with, every requirement of every such law, charter, ordinance, rule or regulation.

Provided, however, that any municipality may require in any specifications for work or supplies, on which sealed bids are required, that any corporate surety tender shall designate, in a manner satisfactory to it, an agent resident in the county of such municipality to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

[Acts 1959, 56th Leg., p. 146, ch. 87, § 1.]

Art. 7.20. [Blank]**Art. 7.20-1. Bail Bond Certificates Issued by Automobile Clubs; Sureties**

Any insurance company which has qualified to transact fidelity and surety insurance business in this state may, in any year, become surety in an amount not to exceed \$200 with respect to each bail bond certificate issued in such year by an automobile club, duly licensed to transact business within

this state, or by any truck and bus association incorporated in this state. Bail bond certificate means a printed card or other certificate issued by an automobile club, authorized to transact business within this state, or by any truck and bus association incorporated in this state to any of its members, which is signed by such member, and contains a printed statement that a fidelity and surety company authorized to do business in this state guarantees the appearance of the person whose signature appears on the card or certificate, and that such company will, in the event of the failure of said person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed \$200.

[Acts 1969, 61st Leg., p. 2033, ch. 697, § 1, eff. Sept. 1, 1969.]

CHAPTER EIGHT. GENERAL CASUALTY COMPANIES

Art.

- 8.01. May Incorporate.
- 8.02. Articles of Incorporation.
- 8.03. Organization.
- 8.04. Officers and Records.
- 8.05. Capital and Deposits.
- 8.06. Powers.
- 8.07. Annual Statement.
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- 8.11. Revoking Certificate.
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- 8.17. Suits for Penalties.
- 8.18. Real Estate.
- 8.19. Sale of Real Estate.
- 8.20. Certificate of Authority.
- 8.21. Fees.
- 8.22. Service of Process.
- 8.23. Decrease of Stock.
- 8.24. Mexican Casualty Insurance Companies; Policies in Force While Insured Persons or Property are in Mexico; Requirements for Issuance in State; Premium Tax; Rates; Enforcement.

Art. 8.01. May Incorporate

Any three or more persons, a majority of whom are residents of this State, may associate in accordance with the provisions of this chapter and form an incorporated company for any one or more of the following purposes:

1. To insure any person against bodily injury, disablement or death resulting from accident and against disablement resulting from disease.
2. To insure against loss or damage resulting from accident to or injury sustained by an employee or other person for which accident or injury the assured is liable.

3. To insure against loss or damage by burglary, theft or housebreaking.

4. To insure glass against breakage.

5. To insure against loss from injury to person or property which results accidentally from steam boilers, elevators, electrical devices, engines and all machinery and appliances used in connection therewith or operated thereby; and to insure boilers, elevators, electrical devices, engines, machinery and appliances.

6. To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water pipes.

7. To insure against loss resulting from accidental damage to automobiles or caused accidentally by automobiles.

8. To insure against loss or damages resulting from accident to or injury suffered by any person for which loss and damage the insured is liable; excepting employers liability insurance as authorized under Subdivision 2 of this article.

9. To insure persons, associations or corporations against loss or damage by reason of giving or extending of credit.

10. To insure against loss or damage on account of circumstances upon, or defects in the title to, real estate, and against loss by reason of the nonpayment of the principal or interest of bonds, mortgages or other evidences of indebtedness.

11. To write marine insurance in which may be included the hazards and perils incident to war.

12. To insure against any other casualty or insurance risk specified in the articles of incorporation which may be lawfully made the subject of insurance, and the formation of a corporation for issuing against which is not otherwise provided for by this article, excepting fire and life insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.02. Articles of Incorporation

Such persons shall associate themselves together by written articles of incorporation for the purpose of forming an accident or casualty insurance company, which articles shall specify the general object of the company, and the proposed duration of the same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.03. Organization

When such articles of incorporation are filed with the Board of Insurance Commissioners, together with an affidavit made by two or more of its incorporators, that all the stock has been subscribed in good faith and fully paid for, together with a charter fee of Twenty-five (\$25.00) Dollars, the Board shall record the same in a book kept for that purpose, and upon receipt of a fee of One (\$1.00) Dollar

it shall furnish a certified copy of the same to the incorporators, upon which they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt by-laws for the government of the company and elect a board of directors composed of stockholders, which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.04. Officers and Records

The subscribers to said articles of incorporation shall choose from their number a president, a secretary, a treasurer and such number of directors not less than three who shall continue in office for the period of one year from the date of filing articles of incorporation, and until their successors shall be duly chosen and qualified. They shall open books for the subscriptions of stock in the company at such times and places as they shall deem convenient and proper, and shall keep them open until the full amount specified in the certificate is subscribed.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.05. Capital and Deposits

Only companies organized and doing business under the provisions of this Chapter shall be subject to its provisions. Such companies shall have not less than the minimum capital and the minimum surplus applicable to casualty, fidelity, guaranty, surety and trust companies as set out in Article 2.02 of this Code. Such a company shall be authorized to transact all and every kind of insurance specified in the first Article of this Chapter. At the time of incorporation all of said capital and surplus shall be in cash. The capital and minimum surplus required of said company as provided in Article 2.02 of this Code shall, following incorporation and the issuance by the Board to said company of a certificate authorizing it to do business, be invested as provided in Article 2.08 of this Code. All other funds of said corporation in excess of its capital and minimum surplus shall be invested by such company as provided in Article 2.10 and in Article 6.08 of this Code. Upon the granting of the charter to said corporation in the mode and manner provided in Article 2.01 and Article 2.02 of this Code, and upon the deposit of the sum of \$50,000.00 of securities of the kind described in Article 2.10 of this Code or in cash with the State Treasurer, the Board shall issue to said company a certificate authorizing it to do business.

No part of the capital or surplus paid in shall be loaned to any officer of said company.

In the event any such company shall be required by the law of any other State, country or province

as a requirement prior to doing an insurance business therein to deposit with the duly appointed officer of such other State, country or province, or with the State Treasurer of this State, any securities or cash in excess of the said deposit of \$50,000.00 hereinbefore mentioned, such company, at its discretion, may deposit with the State Treasurer securities of the character authorized by law, or cash sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and to hold it exclusively for the protection of policyholders of the company. Any deposit so made to meet the requirements of any other State, country or province shall not be withdrawn by the company except upon filing with the Board evidence satisfactory to it that the company has withdrawn from business, and has no unsecured liabilities outstanding in any such other State, country or province by which such additional deposit was required, and upon the filing of such evidence the company may withdraw such additional deposit at any time.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 21.]

Art. 8.06. Powers

A corporation organized or doing business under the provisions of this law shall, by the name adopted by such corporation, in law, be capable of suing or being sued, and may make or enforce contracts in relation to the business of such corporation; may have and use a common seal, and in the name of the corporation or by a trustee chosen by the board of directors, shall, in law, be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of their organization; and may by their board of directors, trustees, or managers, make by-laws and amendments thereto not inconsistent with the laws or the Constitution of this State or of the United States, which by-laws shall define the manner of electing directors, trustees or managers and officers of such corporation, together with the qualifications and duties of the same and fixing the term of office.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.07. Annual Statement

The president, vice president and secretary or a majority of directors or trustees of any such company shall annually, on the first day of January or within sixty (60) days thereafter, prepare and deposit in the office of the Board a verified statement of the condition of such company on the 31st day of December of the preceding year, showing:

1. Name and where located, (a) names of officers, (b) the amount of capital stock, (c) the amount of capital stock paid in.
2. Assets, (a) the value of real estate owned by said company, (b) the amount of cash on hand,

(c) the amount of cash deposited in bank or trust company, (d) the amount of bonds of the United States, and all other bonds, giving names and amounts with par and market values of each kind, (e) the amount of loans secured by first mortgage on real estate, (f) the amount of all other bonds, loans and how secured, with rate of interest, (g) the amount of notes given for unpaid stock and how secured, (h) the amount of interest due and unpaid, (i) the value of all electronic machines, constituting a data processing system or systems, and all other office equipment, furniture, machines and labor-saving devices heretofore or hereafter purchased for and used in connection with the business of an insurance company to the extent that the total actual cash market value of all of such systems, equipment, furniture, machines and devices constitute less than five per cent (5%) of the otherwise admitted assets of such company; and provided further, that the total value of all such property of a company must exceed Two Thousand Dollars (\$2,000), to qualify hereunder, (j) all other credits or assets. The Commissioner of Insurance may adopt regulations defining electronic machines and systems, office equipment, furniture, machines and labor-saving devices as used in (i) above, and provide for the maximum period for which each such class of equipment may be amortized; the value of all such property as determined hereunder and under the regulations herein provided for shall be deemed to be an admitted asset for all purposes.

3. Liabilities, (a) the amount of losses due and unpaid, (b) the amount of claims for losses unadjusted, (c) the amount of claims for losses resisted.

4. Income during the year, (a) the amount of fees received during the year, (b) the amount of interest received from all sources, (c) the amount of receipts from all other sources.

5. Expenditures during the year, (a) the amount paid for losses, (b) the amount of dividends paid to stockholders, (c) the amount of commissions and salaries paid to agents, (d) the amount paid to officers for salaries, (e) the amount paid for taxes, (f) the amount of all other payments or expenditures.

6. Miscellaneous, (a) the amount paid in fees during the year, (b) the amount paid for losses during the year, (c) the whole amount of insurance issued and in force on the 31st day of December of the previous year.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1965, 59th Leg., p. 1615, ch. 691, § 2.]

Art. 8.08. Additional Information

The Board is authorized to amend the form of statement and to exact such additional information

as it may think necessary in order that a full exhibit of the standing of such companies may be shown.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.09. Failure of Duty

Upon the failure of any company to make such deposit or to file the statement in time, the Board shall notify such company to issue no new insurance until the law is complied with, and it shall be unlawful for any such company to thereafter issue any policy of insurance until such requirements shall be complied with.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.10. Examination

All of the provisions of Article 1.15 and Article 1.16 relative to the examination of companies shall apply to companies formed under this Chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 22.]

Art. 8.11. Revoking Certificate

If the Board shall at any time from the report of examination determine that such company has not complied with any provision of this law, said Board shall revoke its certificate of authority to do business in this State, and shall refer the facts to the Attorney General, who shall proceed to ask the proper court to appoint a receiver for said company, who shall, under the direction of the court, wind up the affairs of said company. In no other way can the Board or any other person restrain or interfere with the prosecution of business of any company doing business under the provisions of this chapter, except in actions by judgment creditor or in proceedings supplementary to execution.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.12. Change of Securities

Such companies shall have the right at any time to change their securities on deposit with the State Treasurer by substituting for those withdrawn a like amount in other securities of the character provided for in this law.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.13. Increase of Capital

Any such company may increase its capital stock at any time after the intention to so increase the capital stock shall have been ratified by a two-thirds vote of the stockholders, and after notice of the purpose to so increase the capital stock has been given by publication in some newspaper of general circulation for four (4) consecutive weeks. No increase of capital stock in less amount than Fifty Thousand (\$50,000.00) Dollars is hereby authorized.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.14. Dividends

The directors of any such company shall not make any dividends except in compliance with Article 21.31 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 642, ch. 295, § 1.]

Art. 8.15. Interest on Deposits

The State Treasurer shall permit companies having securities on deposit with him under the provisions of this law to collect the interest as the same may become due, and shall deliver to such companies, respectively, the coupons or other evidences of interest pertaining to such deposits. Upon failure of any company to deposit additional security as called for by the Board, or pending any proceedings to close up or enjoin it, the State Treasurer shall collect the interest as it becomes due and hold the same as additional security in his hands belonging to such company.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.16. Penalty

Any such company organized or doing business under this code without a certificate as provided for in this chapter shall forfeit One Hundred (\$100.00) Dollars for every day it continues to write new business in this State without such certificate.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.17. Suits for Penalties

Suits to recover any penalty provided for in this chapter shall be instituted in the name of the State of Texas, by the Attorney General or by a district or county attorney under his direction, either in the county where the principal office is situated, or in Travis County, Texas. Such penalties, when recovered, shall be paid into the State Treasury for the use of the school fund.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.18. Real Estate

Such company shall be subject to the provisions of Article 6.08 of this Code; and no such company shall be permitted to purchase, hold or convey real estate, except for the purposes and in the manner set forth in said Article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 23; Acts 1961, 57th Leg., p. 1049, ch. 467, § 3.]

Art. 8.19. Sale of Real Estate

All real estate so acquired, except as is occupied by buildings used in whole or in part for the accommodation of such companies in the transaction of their business and except interests in minerals and royalty reserved upon the sale of land acquired under Subdivisions 2, 3, and 4 of Article 6.08 of this

Code prior to January 1, 1942, shall, except as hereinafter provided, be sold and disposed of within ten (10) years after such company shall have acquired title to the same. No such company shall have such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the Board that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the Board shall direct in said certificate.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1961, 57th Leg., p. 1049, ch. 467, § 2.]

Art. 8.20. Certificate of Authority

The Board upon due proof by a company organized under the provisions of this law, of its possessing the qualifications required, shall issue a certificate setting forth that it has qualified and is authorized for the ensuing year to do business under the law, which certificate or a copy thereof shall be evidence of such qualifications and of such company's authority to transact business authorized by this chapter, and of its solvency and credits.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Repeal

This article was repealed, to the extent that it requires periodic renewal of certificates, by Acts 1959, 56th Leg., p. 434, ch. 194, § 2.

Art. 8.21. Fees

The Board shall charge for filing the annual statement required by this chapter, a fee of Twenty (\$20.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.22. Service of Process

Process in any civil suit against any such company organized under the laws of this State may be served only on the president, or any active vice president or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company, during business hours.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.23. Decrease of Stock

Any such company may decrease its capital stock at any time after the intention to so decrease the capital stock shall have been ratified by a majority vote of the stockholders, and after notice of such purpose has been published in some newspaper of general circulation for a period of four consecutive weeks.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 8.24. Mexican Casualty Insurance Companies; Policies in Force While Insured Persons or Property are in Mexico; Requirements for Issuance in State; Premium Tax; Rates; Enforcement

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, under license of the Board of Insurance Commissioners 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:

(a) Such insurance carrier shall file with the Board of Insurance Commissioners of the State of Texas (called Board) 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, and of all of its policy forms, application forms, claim forms, and other forms of every nature which it uses or expects to use in underwriting the coverage hereby authorized to be written in Texas, all of which shall be subject to the approval of such Board.

(b) Before admission, and annually thereafter, such carrier shall also file with such Board 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.

(c) Such carrier shall deposit with the Treasurer of the State of Texas 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 Board, 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. Such deposit or the unincumbered balance thereof shall be returned to such carrier with approval of such Board upon withdrawing from the business authorized hereby and upon a showing to such Board that all of its policies written in Texas hereunder have expired or have been cancelled 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.

(d) Such carrier shall file with the Board a power of attorney, in a form designated by the Board, designating an agent or attorney in fact upon whom legal process may be served within this State, which appointment shall continue until revoked and a successor duly appointed by the carrier, and further authorizing service of legal process upon the Chairman of the Board of Insurance Commissioners of Texas and his successors in office as alternate attorney in fact for such carrier upon whom service of process may be had in event such process cannot be served upon the designated agent or attorney in fact for service as herein provided, upon suits for any alleged liability incurred in operations of the carrier pursuant to this law, with like effect as if such process had been served personally upon the appropriate persons, representatives or officials of such carrier within its home jurisdiction in the Republic of Mexico. In event process shall be served upon the Chairman of the Board, as provided above, he shall immediately give written notice thereof to such carrier and shall forward such process by registered mail, postage prepaid, and properly addressed to the president of such carrier at its home office as furnished to the Board; and no judgment by default shall be taken in any such cause until after the expiration of forty (40) days after said process and notice shall have been received at the home office of such carrier. Until rebutted, the presumption shall obtain that such notice and process was received at the home office of the carrier on the fifth (5th) day after being deposited in the mail at Austin, Texas, as herein provided. The State Treasurer, upon the approval of the Board, 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 herein.

(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 Board each year, upon the same percentage rate, and in the same manner, as other licensed insurance carriers in Texas writing accident and casualty coverage.

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 shall make the same reports as are required of such other insurance carriers, but in such adapted forms as may be prescribed by the Board of Insurance Commissioners for such purposes.

(f) The coverage hereby authorized shall be underwritten only at rates prescribed or approved from time to time by such Board.

(g) Such Board 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.

(h) Such carrier shall file in English a document executed by its officials expressly accepting the terms of this article and agreeing that such Board may at any time in its lawful discretion revoke, suspend or refuse to grant or renew the license of such Board to such carrier to conduct in Texas the business hereby authorized, upon a determination by such Board that it is insolvent or in dangerous financial condition, or that it has violated any applicable law of this State or of its home jurisdiction.

(i) It shall underwrite business in Texas only through its resident Texas agents thereunto duly authorized by it in writing and duly licensed by such Board 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.

(j) The State Board of Insurance 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 Board, after notice and opportunity for hearing, shall find that such carrier has systematically, with neglect and with willful disregard, failed to comply with its obligations derived from the contracts of insurance, and the laws applicable thereto, as contained in policies issued in the State of Texas.

Any carrier aggrieved by an order of the Board hereunder shall be entitled to appeal therefrom pursuant to the provisions of Article 1.04(f) of the Insurance Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1969, 61st Leg., p. 1637, ch. 509, § 1, eff. June 10, 1969; Acts 1971, 62nd Leg., p. 3039, ch. 1003, § 1, eff. June 15, 1971.]

CHAPTER NINE. TEXAS TITLE INSURANCE ACT

- Art.
- 9.01. Short Title and Legislative Purpose and Intent.
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Chapter 9, Texas Insurance Code, relating to title insurance companies, was amended and revised by Acts 1967, 60th Leg., p. 490, ch. 219, § 1, effective October 1, 1967.

Art. 9.01. Short Title and Legislative Purpose and Intent

A. This Act shall be known and may be cited as the "Texas Title Insurance Act."

B. The Legislature of the State of Texas finds that the business of title insurance, both the direct issuance of policies and the reinsurance of any assumed risks, of every type, shall in all respects be totally regulated by the State of Texas so as to provide for the protection of every consumer and purchaser of a title insurance policy. It is the express legislative intent that this Chapter 9 accomplish such a result.

[Acts 1967, 60th Leg., p. 490, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 1, eff. Sept. 1, 1975.]

Acts 1967, 60th Leg., p. 490, ch. 219, which amended and revised Chapter 9 of the Texas Insurance Code in § 1 thereof, provides in § 2:

"Sec. 2. Severability Provision. If any part, section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity."

Art. 9.02. Definitions

(a) "Title Insurance" means insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(b) The "business of title insurance" shall be deemed to be (1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title

insurance; (2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(c) "Title Insurance Company" means any domestic company organized under the provisions of this Act for the purpose of insuring titles to real property, any title insurance company organized under the laws of another state or foreign government meeting the requirements of this Act and holding a certificate of authority to transact business in Texas and any domestic or foreign company having a certificate of authority to insure titles to real estate within this state and which meet the requirements of this Act.

(d) "Commissioner" means the Commissioner of Insurance of the State of Texas.

(e) "Board" means the State Board of Insurance of the State of Texas.

(f) "Title Insurance Agent" means a person, firm, association, or corporation owning or leasing and controlling an abstract plant as defined by the Board, or as a participant in a bona fide joint abstract plant operation as defined by the Board, and authorized in writing by a title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf.

(g) "Escrow Officer" means an officer or employee of a title insurance agent whose duties include any or all of the following: (1) countersigning title insurance policies, commitments and binders; or (2) supervising the preparation and delivery of title insurance policies, commitments and binders; or (3) receiving, handling, or disbursing escrow funds; provided that no clerical employees who perform any of the above duties under the direction and control of an escrow officer shall be included in this definition.

(h) "Foreign Title Insurance Company" means a title insurance company organized under the laws of any jurisdiction other than the State of Texas.

(i) "Abstract plant" as used herein shall mean a geographical abstract plant such as is defined by the Board from time to time and the Board, in defining an abstract plant, shall require a geographically arranged plant, currently kept to date, that is found by the Board to be adequate for use in insuring titles, so as to provide for the safety and protection of the policyholders.

(j) "Residential real property" means any real property which has improvements thereon and is designed principally for the occupancy of from one

to four families (including individual units of condominiums and cooperatives).

(k) "Thing of value" includes any payment, advance, funds, loan, service, or other consideration.

(l) "Person" includes individuals, corporations, associations, partnerships and trusts.

[Acts 1967, 60th Leg., p. 490, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1064, ch. 409, § 2, eff. Sept. 1, 1975.]

Art. 9.03. May Incorporate

Private corporations may be created for the following named purposes:

(1) To compile and own, or to acquire and own, records or abstracts of title to lands and interests in land; and to insure titles to lands or interests therein, both in Texas and other states of the United States, and indemnify the owners of such lands, or the holders of interests in or liens on such lands, against loss or damage on account of incumbrances upon or defects in the title to such lands or interests therein; and in transactions in which title insurance is to be or is being issued, to supervise or approve the signing of legal instruments (but not the preparation of such instruments) affecting land titles, disbursement of funds, prorations, delivery of legal instruments, closing of deals, issuance of commitments for title insurance specifying the requirements for title insurance and the defects in title necessary to be cured or corrected; provided, however, that nothing herein contained shall authorize such corporation to practice law, as that term is defined by the courts of this state, and in the event of any conflict herein, this clause shall be controlling.

Such corporations may also exercise the following powers by including same in the charter when filed originally, or by amendment:

(2) To make and sell abstracts of title in any counties of Texas or other states;

(3) To accumulate and lend money, to purchase, sell or deal in notes, bonds, and securities, but without banking privileges;

(4) To act as trustee under any lawful trust committed to it by contract or will, appointment by any court having jurisdiction of the subject matter as trustee, receiver or guardian and as executor or guardian under the terms of any will and as any administrator of the estates of decedents under the appointment of the court.

[Acts 1967, 60th Leg., p. 491, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.04. Governed by Other Laws

The laws governing corporations in general shall apply to and govern title insurance companies insofar as same are not inconsistent with the provisions of this Act.

[Acts 1967, 60th Leg., p. 492, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.05. Transfer and Assignment of Fiduciary Business to State Banks or Trust Companies

Sec. 1. Any corporation heretofore chartered under the provisions of Article 9.03 of this Act, or its antecedents, Article 9.01, Texas Insurance Code, or Chapter 40, Acts, 41st Legislature, 1929 (codified as Article 1302a, Vernon's Texas Civil Statutes), having as one of its powers "to act as trustee under any lawful trust committed to it by contract or will, appointment by any court having jurisdiction of the subject matter, as trustee, receiver or guardian and as executor or guardian under the terms of any will and as any administrator of the estates of decedents under the appointment of the court" may transfer and assign to a state bank or trust company created under the provisions of the Texas Banking Code of 1943, as amended, all of its fiduciary business in which such corporation is named or acting as guardian, trustee, executor, administrator or in any other fiduciary capacity, whereupon said state bank or trust company shall, without the necessity of any judicial action in the courts of the State of Texas or any action by the creator or beneficiary of such trust or estate, continue the guardianship, trusteeship, executorship, administration or other fiduciary relationship, and perform all of the duties and obligations of such corporation, and exercise all of the powers and authority relative thereto now being exercised by such corporation, and provided further that the transfer or assignment by such corporation of such fiduciary business being conducted by it under the powers granted in its original charter, as amended, shall not constitute or be deemed a resignation or refusal to act upon the part of such corporation as to any such guardianship, trust, executorship, administration, or any other fiduciary capacity; and provided further that the naming or designation by a testator or the creator of a living trust of such corporation to act as trustee, guardian, executor, or in any other fiduciary capacity, shall be considered the naming or designation of the state bank or trust company and authorizing such state bank or trust company to act in said fiduciary capacity. All transfers and assignments of fiduciary business by such corporations to a state bank or trust company consistent with the provisions of this Act are hereby validated.

Sec. 2. The power and authority of such corporation to transfer and assign its fiduciary business to a state bank or trust company as provided in Section 1 hereof shall expire on April 30, 1962.

[Acts 1967, 60th Leg., p. 492, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.06. Capital Stock and Surplus Required

Except as provided by Article 9.56, Section 4A of this Chapter 9, all title insurance companies created and operating under the provisions of this Chapter must have a paid up capital of not less than One

Million Dollars (\$1,000,000) and a surplus of not less than Four Hundred Thousand Dollars (\$400,000), provided, however, that the minimum unimpaired capital and surplus for a corporation which was authorized to transact title insurance business on the effective date of this Chapter and which on that date had an unimpaired capital of less than One Million Dollars (\$1,000,000) and a surplus of less than Four Hundred Thousand Dollars (\$400,000) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars (\$250,000) capital and One Hundred Thousand Dollars (\$100,000) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-Five Thousand Dollars (\$525,000) capital and One Hundred Sixty Thousand Dollars (\$160,000) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000) capital and Two Hundred Twenty Thousand Dollars (\$220,000) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-Five Thousand Dollars (\$775,000) capital and Two Hundred Eighty Thousand Dollars (\$280,000) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000) capital and Three Hundred Forty Thousand Dollars (\$340,000) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000) and surplus of not less than Four Hundred Thousand Dollars (\$400,000) as otherwise required by this Chapter.

[Acts 1967, 60th Leg., p. 493, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1065, ch. 409, § 3, eff. Sept. 1, 1975.]

Art. 9.07. Policy Forms and Premiums

Corporations organized under this Chapter, as well as foreign corporations and those created under Subdivision 57, Article 1302, of the Revised Civil Statutes of 1925, or under Chapter 8 of this Code, or any other law insofar as the business of either may be the business of title insurance, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, and such underwriting standards and practices as may be from time to time prescribed by the Board; and no Texas or foreign corporation, whether incorporated under this Chapter or any other law of the State of Texas, shall be permitted to issue any title policy of any character, or underwriting contract, or reinsure any portion of the risk assumed by any title policy, on Texas real property other than under this Chapter and under such rules and regulations. No policy of title insurance, reinsurance of any risk assumed under any policy of

title insurance, or any guarantee of any character on Texas titles shall be issued or valid unless written by a corporation complying with all provisions of and authorized or qualified under this Chapter, except as is provided in Article 9.19D. Before any premium rate provided for herein shall be fixed or charged, reasonable notice shall issue, and a hearing afforded to the title insurance companies and title insurance agents authorized or qualified under this Chapter and the public. Under no circumstances may any title insurance company or title insurance agent use any form which is required under the provisions of this Chapter 9 to be promulgated or approved until the same shall have been so promulgated or approved by the Board.

The Board shall have the duty to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents created or operating under this Chapter for policies of title insurance or other promulgated or approved forms, and the premiums therefor shall be paid in the due and ordinary course of business. Premium rates for reinsurance as between title insurance companies qualified under this Chapter shall not be fixed or promulgated by the Board, and title insurance companies may set such premium rates for reinsurance as such title insurance companies shall agree upon. Under no circumstance shall any premium be charged for any policy of title insurance or other promulgated or approved forms different from those fixed and promulgated by the Board, except for premiums charged for reinsurance. The premium rates fixed by the Board shall be reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall require all title insurance companies and all title insurance agents operating in Texas to submit such information in such form as it may deem proper, all information as to loss experience, expense of operation, and other material matter for the Board's consideration.

The Board shall hold an annual hearing during November of each calendar year, commencing in 1975, to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any title insurance company, any title insurance agent, any member of the public, or as the Board may determine necessary to consider. Proper notice of such public hearing and the items to be considered shall be made to the public and shall be sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter for at least four (4) weeks in advance of such hearing.

Premium rates when once fixed shall not be changed until after a public hearing shall be had by

the Board, after proper notice sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter, and after public notice in such manner as to give fair publicity thereto for at least four (4) weeks in advance. The Board must call such additional hearing to consider premium rate changes at the request of a title insurance company.

The Board may, on its own motion, following notice as required for the annual hearing hold at any time a public hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as the Board shall determine necessary or proper.

Any title insurance company, any title insurance agent, or other person interested, feeling injured by any action of the Board with regard to premium rates or other action taken by the Board, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made such order, to review the action. Such cases shall be tried de novo in the District Court in accordance with the provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of evidence and procedure as other civil cases in said court; in which suit the court may enter a judgment setting aside the Board's order, or affirming, the action of the Board.

[Acts 1967, 60th Leg., p. 493, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1065, ch. 409, § 4, eff. Sept. 1, 1975.]

Art. 9.08. Prohibiting Guarantee of Payment of Obligations of Others—and "Insuring Around"

Title insurance companies, domestic or foreign, operating under this chapter shall not have the right to guarantee the payment of mortgages which cover real estate, and if any such corporation shall do so it shall forthwith forfeit and surrender its permit to do business.

"Insuring around" is defined as the willful issuance of a title binder or title insurance policy showing no outstanding enforceable recorded liens while the issuer knows that in fact a lien or liens are of record against the real property, and shall be prohibited, except under circumstances as the State Board of Insurance under its rule-making powers shall approve.

Any person who willfully violates the provisions of this Article 9.08, or who disobeys an order of the Board refusing to approve an application to insure around, shall, upon proof thereof to the satisfaction of the District Court of Travis County, Texas, forfeit and pay to the State of Texas a sum not to exceed \$5,000, which may be recovered in a civil action.

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The Board, upon giving thirty (30) days' notice by registered mail, and upon hearing had for that purpose, may forfeit the Certificate of Authority to do business of any company violating the provisions of this Article 9.08.

[Acts 1967, 60th Leg., p. 494, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.09. Prohibiting Transacting of Other Kinds of Insurance by Title Insurance Companies or the Transacting of Title Insurance by Other Types of Insurance Companies

Corporations, domestic or foreign, operating under this Chapter shall not transact, underwrite or issue any kind of insurance other than title insurance on real property; nor shall title insurance be transacted, underwritten or issued by any company transacting any other kinds of insurance; provided, however, that the above prohibitions shall not apply as to any corporation, domestic or foreign, which on October 1, 1967 was transacting, underwriting and issuing within the State of Texas title insurance and any other kind of insurance. Any corporation now organized and doing business under the provisions of Chapter 8 and actively writing title insurance shall be subject to all the provisions of this Chapter except Article 9.18 relating to investments.

[Acts 1967, 60th Leg., p. 494, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1067, ch. 409, § 5, eff. Sept. 1, 1975.]

Art. 9.10. Foreign Corporations

Corporations organized under the laws of any other state shall be permitted to do business in this state on exactly the same basis and subject to the same rules, regulations and prices and supervision as fixed for Texas corporations doing business under this Act.

[Acts 1967, 60th Leg., p. 495, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.11. Revocation of Right to Do Business

Any foreign or domestic corporations issuing any form of title insurance policy or other promulgated or approved forms, or charging any premium rates on an owner, mortgagee, or other title insurance policy, or on other promulgated or approved forms, except for the premium rates charged for reinsurance, on Texas real property other than forms and premium rates prescribed by the Board, under the provisions of this Chapter shall forfeit its right to do business in this state. The provisions of this Article 9.11 shall not, however, be applicable to premium rates charged in connection with reinsurance transactions between or among title insurance companies doing business under the provisions of this Chapter, provided any such reinsurance con-

tract complies with the provisions of Article 9.19 of this Chapter.

[Acts 1967, 60th Leg., p. 495, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1067, ch. 409, § 6, eff. Sept. 1, 1975.]

Art. 9.12. Deposits

All title insurance companies, domestic and foreign, engaged in the title insurance business must at all times have and keep on deposit with the State Treasury or such other depository in the State of Texas as may be named by such corporation and approved by the Board, either cash or such securities as are listed in Article 9.18 of this Act as approved investments for title insurance companies, to an amount equal to one-fourth of the authorized capital of such corporation; provided, however, that such deposit shall in no event exceed the sum of One Hundred Thousand Dollars (\$100,000). Such corporation, at its option may withdraw from time to time such securities or any part thereof, first having deposited in such depository in lieu thereof other securities of sufficient value to maintain the required deposit. Funds deposited under this provision shall never be used for the payment of any obligation other than those connected with title insurance, and in the event of the insolvency or dissolution of a corporation, the fund hereby provided shall be used to protect title insurance policyholders even though there be no accrued title insurance claims and even though there be unpaid obligations of other sorts; provided, however, that same shall be applied to the payment of other obligations and liabilities of said corporation and/or distribution to stockholders after complete payment of the obligations and liabilities of the corporation connected with title insurance business and the establishment of adequate reserves or reinsurance for the protection of any subsequently accruing or maturing title insurance obligations and liabilities, the amount of such reserves and the handling and distribution of same to be subject to the control and discretion of the Board, same to be reviewable in judicial proceedings to be governed by like rules as are applicable to review of rates under Article 9.07 of this Act. This deposit shall be for the benefit of all policyholders.

If a foreign title insurance company has on deposit with insurance regulatory bodies in the United States sums aggregating the amount of deposit required by this Article in such manner as to secure all policyholders wherever located, then no deposit shall be required in this state, but a certificate of deposit under the hand and seal of such insurance regulatory body or bodies with whom the deposits have been made shall be filed with the Board.

[Acts 1967, 60th Leg., p. 495, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.13. Fees

The general laws applicable to payment of filing fees of corporations having capital stock are hereby made applicable to corporations coming under the provisions of this Chapter.

[Acts 1967, 60th Leg., p. 495, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1067, ch. 409, § 7, eff. Sept. 1, 1975.]

Art. 9.14. Charter and Amendments

The original charter of corporations doing the business of title insurance and incorporated under the provisions of this Chapter, or under Subdivision 57, Article 1302, Revised Civil Statutes of 1925, or under Article 1302a, Texas Civil Statutes (Acts 1929, 41st Legislature, page 383, Chapter 245, Section 1) or under any other law regardless of the nature of such amendment, shall be certified only to and filed only with the Board, and only the Board shall collect from the said companies filing fees required under the law. All other laws or parts of laws, to the extent that the same are in conflict with the provisions of this Article, shall not hereafter apply to such corporations.

[Acts 1967, 60th Leg., p. 496, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1068, ch. 409, § 8, eff. Sept. 1, 1975.]

Art. 9.15. Certificate of Authority

The Board after having satisfied itself by such investigation as it may deem proper with reference to the payment of capital stock and surplus as required by this Chapter 9, and the value of the assets offered in payment thereof (the expense of which examination shall be borne by the title insurance company), shall issue to such title insurance company a certificate of authority to transact the characters of business provided for in this Chapter on either an annual or a continuing basis. No title insurance company, domestic or foreign, shall transact business under this Chapter unless it shall hold a valid certificate of authority.

[Acts 1967, 60th Leg., p. 496, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1068, ch. 409, § 9, eff. Sept. 1, 1975.]

Art. 9.16. Reserves

(1) Every domestic title insurance company doing a title insurance business under the provisions of this Chapter shall establish and maintain an unearned premium reserve during the period and for the uses and purposes hereafter provided, which shall at all times and for all purposes be deemed and shall constitute unearned portions of the original premium, and shall be charged as a reserve liability of such company in determining its financial condition.

(2) Such reserve shall be cumulative and shall be established and shall consist of the following:

(a) The reserve which has been established as has been required to be established by such companies up to the effective date of this Act, pursuant to Article 9.11 of the Insurance Code, Acts of the 52nd Legislature, Regular Session, 1951, Chapter 491 as amended by the Acts of the 54th Legislature, Regular Session, 1955, Chapter 489, and the Acts of the 56th Legislature, 1959, Chapter 219; and

(b) Beginning on January 1, 1959, each insurer which has accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000) required by Article 9.11, Chapter 9 of the Insurance Code, as amended by Acts of the 54th Legislature, Regular Session, 1955, and Acts of the 56th Legislature, 1959, shall reserve a sum equal to three (3%) percent of the premiums charged for title insurance contracts; and

(c) Beginning on January 1, 1959, each insurer which has not accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000) required by Article 9.11, Chapter 9 of the Insurance Code, as amended by Acts of the 54th Legislature, Regular Session, 1955, and Acts of the 56th Legislature, 1959, shall reserve a sum equal to five (5%) percent of the premiums charged for title insurance contracts until the unearned premium reserve shall have reached a total of One Hundred Thousand Dollars (\$100,000) and thereafter such insurer shall reserve a sum equal to three (3%) percent of the premium charged for title insurance contracts; and

(d) Beginning on January 1, 1959, each domestic insurer shall reserve a sum equal to ten (10%) percent of the risk rate charged for title insurance contracts on property outside the State of Texas. This requirement shall be cumulative of, and not in addition to, the reserve requirement that might be imposed upon such insurer in such other state or states.

(3) The term "premium" as used herein means the total amount of premium as fixed and promulgated by the State Board of Insurance in accordance with Article 9.07 of this Code for title insurance contracts covering property in this state.

(4) The reserves as provided in Subdivision (2) of this Article shall be reduced in the following manner, which reduction may be used for any corporate purpose:

(a) As to insurers which have accumulated the maximum unearned premium reserve of One Hundred Thousand Dollars (\$100,000) under the provisions of (2)(a) above, as of the effective date of this Act, such unearned premium shall be reduced at the rate of one-twentieth ($\frac{1}{20}$) thereof per year beginning at the end of calendar year 1959 and a like amount at the end of each calendar year thereafter for nineteen (19) consecutive years.

(b) As to insurers which have accumulated reserves as provided in (2)(b) and (2)(d) above, such unearned premium shall be reduced at the end of each calendar year in which the title insurance contract was issued at the rate of one-twentieth ($\frac{1}{20}$) of such sum for the first year and a like amount at the end of each calendar year thereafter for nineteen (19) consecutive years.

(c) As to insurers which have accumulated reserves as provided in (2)(c) above, such unearned premium shall be reduced at the rate of one-twentieth ($\frac{1}{20}$) of such sum per year beginning at the end of the calendar year in which such One Hundred Thousand Dollars (\$100,000) shall have been accumulated and a like amount at the end of each calendar year thereafter for nineteen (19) consecutive years.

(5) Any foreign title insurance company doing business in this state shall be required to comply with the provisions of this Article unless by the laws of its state of domicile, it is required to set aside and maintain unearned premium reserve in substantially the same amount as required by this Article.

(6) Such reserve fund shall be held in cash or invested in first mortgage notes or such securities as are admissible for investment by life insurance companies under the laws of this state.

(7) In the event of the insolvency or dissolution of any such insurer, such reserve fund shall be used to protect title insurance contract holders, even though there be no accrued title insurance claims and even though there be unpaid obligations of other sorts. [Acts 1967, 60th Leg., p. 496, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.17. Reserve for Unpaid Losses and Loss Expenses

(a) All title insurance companies operating under the provisions of this Act shall at all times establish and maintain, in addition to other reserves, a reserve against (1) unpaid losses, and (2) loss expense, and shall calculate such reserves by making a careful estimate in each case of the loss and loss expense likely to be incurred, by reason of every claim presented, pursuant to notice from or on behalf of the insured, of a title defect in or lien or adverse claim against the title insured, that may result in a loss or cause expense to be incurred for the proper disposition of the claim. The sums of items so estimated shall be the total expenses of such title insurance company.

(b) The amounts so estimated may be revised from time to time as circumstances warrant, but shall be redetermined at least once each year.

(c) The amounts set aside in such reserve in any year shall be deducted in determining the net profits for such year of any title insurance company. [Acts 1967, 60th Leg., p. 497, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.18. Admissible Investments for Title Insurance Companies

Investments of all title insurance companies operating under the provisions of this Act shall be held in cash or may be invested in the following:

(a) Any corporation organized under this Act having the right to do a title insurance business may invest as much as fifty (50%) percent of its capital stock in an abstract plant or plants, provided that the valuation to be placed upon such plant or plants shall be approved by the Board; provided, however, that if such corporation maintains with the Board the deposit of One Hundred Thousand Dollars (\$100,000) in securities as provided in Article 9.12 of this Act, such of its capital in excess of fifty (50%) percent, as deemed necessary to its business by its board of directors may be invested in abstract plants; and provided further, that no such corporation created or operating under the provisions of this Act may either directly or through ownership of a portion of the capital stock of another corporation, or otherwise, hereafter own or acquire more than one abstract plant in any one county.

(b) Those securities set forth in Article 3.39, Insurance Code, as authorized investments for life insurance companies and in authorized investments for title insurance companies under the laws of any other state in which the affected company may be authorized to do business from time to time.

(c) Real estate or any interest therein which may be:

(1) required for its convenient accommodation in the transaction of its business with reasonable regard to future needs;

(2) acquired in connection with a claim under a policy of title insurance;

(3) acquired in satisfaction or on account of loans, mortgages, liens, judgments or decrees, previously owing to it in the course of its business;

(4) acquired in part payment of the consideration of the sale of real property owned by it if the transaction shall result in a net reduction in the company's investment in real estate;

(5) reasonably necessary for the purpose of maintaining or enhancing the sale value of real property previously acquired or held by it under Subparagraphs (1), (2), (3) or (4) of this Section; provided, however, that no title insurance company shall hold any real estate acquired under Subparagraphs (2), (3) or (4) for more than ten (10) years without written approval of the Board.

(d) First mortgage notes secured by:

- (1) abstract plants and connected personalty;
- (2) stock of title insurance agents;

(3) construction contract or contracts for the purpose of building an abstract plant and connected personalty;

(4) any combination of two or more of items (1), (2), and (3).

In no event shall the amount of any first mortgage note exceed eighty (80%) percent of the appraised value of the security for such note as set out above.

Any investments which do not now qualify under the provisions of Subsections (a), (b), (c), or (d) above and which are owned as of the effective date of this Act shall continue to qualify.

If any otherwise valid investment which qualifies under the provisions of this Article shall exceed in amount any of the limitations on investment contained in this Article, it shall be inadmissible only to the extent that it exceeds such limitation.

[Acts 1967, 60th Leg., p. 498, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.19. Maximum Liability

A. No title insurance company operating under the provisions of this Chapter shall issue any policy of title insurance on any real property located within the State of Texas involving a potential liability by virtue of such policy of more than fifty (50%) percent of the capital stock and surplus as stated in the most recent annual statement of the company unless the excess shall in due course be reinsured in some other title insurance company authorized to do business in Texas under this Chapter. Each title insurance company authorized to do business under the provisions of this Chapter may reinsure any or all of its policies and contracts issued on real property situated within the State of Texas, provided:

(i) the reinsuring title insurance company shall be licensed to do business in the State of Texas under the provisions of this Chapter; and

(ii) the form of the reinsurance contract shall be approved in advance by the Board.

B. If the Board has first approved one or more forms of reinsurance contracts for a title insurance company, such title insurance company may thereafter continue using such form or forms without submitting individual reinsurance contracts to the Board. Authority is reserved to the Board, however, to alter the required form so previously approved by it after first giving written notice to the title insurance company or title insurance companies affected by such required change.

C. No title insurance company authorized to do business in Texas under the provisions of this Chapter may accept reinsurance risks on real property situated within the State of Texas except from other title insurance companies holding a certificate of authority to do business in the State of Texas under the provisions of this Chapter.

D. The Board may, however, upon application and hearing permit any title insurance company licensed to do business in this State under this Chapter to acquire reinsurance upon an individual policy or facultative basis from title insurance companies not licensed to do business in this State, provided: (i) any such non-admitted foreign title insurance company has a combined capital and surplus of at least \$1,400,000 evidenced by its annual statement last preceding the acceptance of such reinsurance; and (ii) any such title insurance company so authorized to do business under this Chapter has exhausted the opportunity to acquire such reinsurance from all other title insurance companies so authorized to do business under the provisions of this Chapter.

E. The board may, however, upon application and hearing, permit any title insurance company licensed to do business in this state under this chapter and any title insurance company authorized to reinsure pursuant to the provisions of this chapter to retain an additional potential liability of not more than 40 percent of the capital stock and surplus as stated in the most recent annual statement of the company, provided: (i) the title insurance company so authorized to do business under this chapter has exhausted the opportunity to acquire reinsurance pursuant to Section D of this article; and (ii) the additional potential liability is incurred only if the loss suffered by the insured or insureds under the policy or policies, and for which the insurer becomes liable, exceeds the amount of insurance and reinsurance authorized and accepted by the insurer and other title insurance companies pursuant to the provisions of Sections A, B, C, and D of this article.

[Acts 1967, 60th Leg., p. 498, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1068, ch. 409, § 10, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 1113, ch. 253, § 1, eff. Aug. 29, 1983.]

Art. 9.20. Capital Stock and Minimum Surplus Impairment

The capital stock and minimum surplus requirement of every title insurance company, domestic or foreign, operating under the provisions of the Act must be maintained intact over and above all its outstanding liabilities, except contingent liabilities on policies of title insurance, and if such company shall suffer the impairment of its capital stock, or minimum surplus requirements it shall report such impairment forthwith to the Board.

[Acts 1967, 60th Leg., p. 499, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.21. Authority of Board of Insurance of the State of Texas

If any company operating under the provisions of this Act shall engage in the characters of business described in Subdivisions (2) and (3) of Article 9.03 of this Act, in such manner as might bring it within

the provision of any other regulatory statute now or hereafter to be in force within the State of Texas, all examination and regulation shall be exercised by the Board rather than any other state agency which may be named in such other laws, so long as such corporation engages in the title guaranty or insurance business.

The Board is hereby vested with power and authority under this Act to promulgate and enforce rules and regulations prescribing underwriting standards and practices upon which title insurance contracts are to be issued, and is hereby further vested with the power and authority to define risks which may not be assumed under title insurance contracts. In addition, the Board is hereby vested with power and authority to promulgate and enforce all other such rules and regulations which in the discretion of the Board are deemed necessary to accomplish the purposes of this Act.

[Acts 1967, 60th Leg., p. 499, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.22. Annual Statement of Title Insurance Companies; Examination

Every title insurance company, domestic and foreign, operating under the provisions of this Act shall, on or before the first of March every year, file with the Board a verified statement, in such form as the Board may require, setting forth the statement of the business done by it during the preceding year, and the condition of its affairs as of December 31st preceding. It shall be the duty of the Board, biennially, or oftener if it shall be deemed advisable, in person or through a duly appointed representative, to make a thorough examination of the company's books and affairs and the transactions in which it is engaged at the expense of said company, for which purpose the Board or its representatives shall have access to the books and records of the said company, and shall have the right to interrogate and require answer under oath from any officer, agent or employee of the said company concerning any matters pertaining to the business thereof.

[Acts 1967, 60th Leg., p. 499, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.23. Regulating of Names

Corporations chartered or operating under the provisions of this Act may use in their corporate name the words "Title and Trust Company" but they shall not use the word "Trust" alone, and where the word "Trust" appears, when in letterheads and literature used by them, they shall print the words "Without Banking Privileges."

[Acts 1967, 60th Leg., p. 500, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.24. Foreign Corporations; Permits

Any foreign corporations desiring to transact the character of business provided for in this Act in this state shall make an application for permit or certificate of authority to the Board in such form as the

Board shall prescribe and shall submit a financial statement showing its condition in such form as the Board shall prescribe.

[Acts 1967, 60th Leg., p. 500, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.25. Capital and Surplus Required; Foreign Corporations

No foreign corporation shall conduct the business of title insurance in this state unless it shall show from its financial statement and such other examination as the Board may desire to make, an unimpaired capital of not less than One Million Dollars (\$1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars (\$400,000.00), provided, however, that the minimum unimpaired capital and surplus requirements for a foreign corporation operating under a certificate of authority on the effective date of this Chapter, which corporation on such date had an unimpaired capital of less than One Million Dollars (\$1,000,000.00) and surplus of less than Four Hundred Thousand Dollars (\$400,000.00) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars (\$250,000.00) capital and One Hundred Thousand Dollars (\$100,000.00) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-five Thousand Dollars (\$525,000.00) capital and One Hundred Sixty Thousand Dollars (\$160,000.00) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000.00) capital and Two Hundred Twenty Thousand Dollars (\$220,000.00) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-five Thousand Dollars (\$775,000.00) capital and Two Hundred Eighty Thousand Dollars (\$280,000.00) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000.00) capital and Three Hundred Forty Thousand Dollars (\$340,000.00) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars (\$400,000.00) as otherwise required by this Chapter.

[Acts 1967, 60th Leg., p. 500, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1069, ch. 409, § 11, eff. Sept. 1, 1975.]

Art. 9.26. Power of Attorney

Each such foreign corporation engaged in doing or desiring to do business in this state shall file with the Board an irrevocable power of attorney, duly executed, constituting and appointing the Chairman of the Board and his successors in office, or any officer or Board which may hereafter be clothed with the powers and duties now devolving upon said

Chairman of the Board, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this state, by any person, or by or to or for the use of the State of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service, and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this state or to collect premiums of insurance from citizens of this state, and so long as it shall have outstanding policies in this state, and until all claims of every character held by the citizens of this state, or by the State of Texas, against such company, shall have been settled. Said power of attorney shall be signed by the president or by a vice president and the secretary of such company, whose signature shall be attested by the seal of the company; and said officer signing the same acknowledge its execution before an officer authorized by the laws of this state to take acknowledgements. The said power of attorney shall be embodied in, and approved by, a resolution of the board of directors of such company, and a copy of such resolution duly certified to by the proper officer of said company, shall be filed with the said power of attorney in the office of the Chairman of the Board and shall be recorded by him in a book kept for that purpose, there to remain a permanent record of the Board.

[Acts 1967, 60th Leg., p. 500, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.27. Service of Process

Whenever the Chairman of the Board shall accept service or be served with citation in any suit pending against any title insurance company in this state, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this state, and, if not, then to the home office of the company, and shall forward the same by registered mail, postage prepaid. No judgment by default shall be taken in any such cause until after the expiration of at least ten (10) days after the general agent or general manager of such company, or the company at its home office, as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or company in due course of mail after being deposited in the mail in Austin, Texas.

[Acts 1967, 60th Leg., p. 501, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.28. Authority Revoked; When

If any corporation, domestic or foreign, while holding a certificate of authority to transact business in this state, shall fail or refuse to comply with any of the provisions or requirements of this Chapter, the Board, upon ascertaining this fact, shall notify such company by actual notice in writing delivered to an executive officer of such company, of his intention to revoke its certificate of authority to transact business in this state at the expiration of thirty (30) days after the mailing of such registered letter, or the date upon which such actual notice is served. If such provisions or requirements are not fully complied with upon the expiration of said thirty (30) days, it shall be the duty of the Board to revoke the certificate of authority of such company. In case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one year, and until it shall have fully and in good faith complied with all such provisions and requirements of this Chapter. Any company feeling itself aggrieved by the action of the Board in revoking its certificate of authority to do business in this state may bring suit against it in Travis County, Texas, to annul and vacate the order revoking such certificate.

[Acts 1967, 60th Leg., p. 501, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.29. Supervision, Conservation and Liquidation of Title Insurance Companies**Part I**

Sec. A. If, upon examination or at any other time, it shall appear to the Board that any of the following conditions exist relative to any company organized under the laws of this state and doing a title insurance business in this state:

- (1) the minimum surplus requirements of said company are impaired to the extent of fifty (50%) percent and have remained in such state of impairment continuously for at least sixty (60) days; or
- (2) the capital stock of said company is impaired; or
- (3) the company is issuing policies of title insurance contrary to law or regulations promulgated by the Board; or
- (4) the company has refused to permit the examination of its books and records by the Board or by its duly commissioned examiners, and has failed and refused to answer inquiries made by the commissioner; or
- (5) in the opinion of the Board, the condition of the company is such as to render the continuance of its business hazardous to the public or to its policyholders; or
- (6) the business of a company is being conducted fraudulently;

then the Board shall notify the company of its determination that such condition or conditions exist, and such company shall have thirty (30) days under the supervision of the Board in which to correct such condition in accordance with the requirements of the Board.

During the period of supervision, the Board may appoint a supervisor to supervise such company and may provide that the company shall not do any or all of the following things during the period of supervision without the prior approval of the Board or its supervisor:

- (1) Dispose of, convey or encumber any of its assets;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation or liability; or
- (7) Merge or consolidate with another company.

Sec. B.

1. The Board after hearing and notice to any company organized under the laws of this state and doing a title insurance business in this state, may appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any such company if it finds, based upon substantial evidence, any of the following:

- (a) The company has failed within the thirty-day time set out in any notice provided under this Article to correct any aforesaid condition set out in the notice in accordance with the requirements of the Board.
- (b) The company has had its certificate of authority to do business in the State of Texas revoked or suspended or has voluntarily surrendered such certificate of authority.

2. The Board may without notice and hearing appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any company organized under the laws of this state and doing a title insurance business in this state when requested to do so by the board of directors of said company. The board of directors of any such company shall also have the right to waive any notice provision provided in this Article by filing with the Board a written instrument in the form of a resolution passed by them or by an instrument signed by a majority of them specifically stating such waiver of notice.

Sec. C. After appointment, the conservator shall immediately take charge of such company and all of the property, books, records and effects thereof, and conduct the business thereof, and take such steps toward the removal of the causes and conditions, which have necessitated such order, as the Board may direct. During the pendency of conser-

vatorship, the conservator shall make such reports to the Board from time to time as may be required by the Board, and shall be empowered to take all necessary measures to preserve, protect and recover any assets or property of such title insurance company, and to deal with the same in his own name as conservator including claims or causes of action belonging to or which may be asserted by such title insurance company, and shall be empowered to file, prosecute and defend any suit or suits which have been filed or which may thereafter be filed by or against such title insurance company which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. If, at the time of appointment of a conservator or at any time during the pendency of such conservatorship, it appears that the interest of the policyholders or certificate holders of such title insurance company can best be protected by reinsuring the same, the conservator may, with the approval of or at the direction of the Board, reinsure all or any part of such company's policies or certificates of insurance with some solvent title insurance company or association authorized to transact title insurance business in this state, and to the extent that such title insurance company in conservatorship is possessed of funds and assets, including reserves and deposits, the conservator may transfer to the reinsuring title company such funds and assets or any portion thereof as may be required to consummate the reinsurance of such policies, and any such funds and assets so transferred shall not be deemed a preference of creditors.

If, upon the appointment of a conservator or at any time during the pendency of conservatorship, the Board finds that such title insurance company is not in condition to satisfactorily continue business in the interest of its policyholders or certificate holders under a conservatorship as above provided, the Board may proceed to liquidate such title insurance company through such conservator or request the Attorney General of Texas to institute proceedings to liquidate and dissolve the title insurance company.

Sec. D. The cost incident to the supervisor's or conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the company to be allowed and paid as the Board may determine.

Part II

Sec. A. If, upon examination or at any other time, it shall appear to the Board that any of the conditions enumerated in Section A of Part I of this Article exist relative to any company not organized under the laws of this state and conducting a title insurance business in this state, then the Board shall notify the company of its determination that such condition or conditions exist, and such compa-

ny shall have thirty (30) days under the supervision of the Board in which to correct such condition in accordance with the requirements of the Board.

During the period of supervision, the Board may appoint a supervisor to supervise the assets in the State of Texas, and the policy liabilities owed to residents of the State of Texas and may provide, with reference to any of such assets and liabilities that such company shall not do any or all of the following things during the period of supervision without the prior approval of the Board or its supervisor:

- (1) Dispose of, convey or encumber any of its assets;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation or liability; or
- (7) Merge or consolidate with another company.

Sec. B.

1. The Board, after hearing and notice to any company not organized under the laws of this state or any person or noncorporate firm doing a title insurance business in this state, may appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any such company if it finds, based upon substantial evidence, any of the following:

- (a) The company has failed within the thirty-day time set out in any notice provided under this Article to correct any aforesaid condition set out in the notice in accordance with the requirements of the Board.
- (b) The company has had its certificate of authority to do business in the State of Texas or the state of its domicile revoked or suspended or has voluntarily surrendered either of such certificates.
- (c) The company, person or noncorporate firm does not have a certificate of authority to do business in this state.

2. The Board may without notice and hearing appoint the liquidator designated under the provisions of Article 21.28 of the Texas Insurance Code as conservator of any such company, person or noncorporate firm doing a title insurance business in this state when requested to do so by the Board of Directors or the governing body of such noncorporate firm or by the person conducting the business or at the request of any receiver or conservator of such company, noncorporate firm or person.

Sec. C. The conservator as to records and assets in the State of Texas of such company, noncorporate firm and person and policyholder liabilities owed to residents of this state shall have the same rights, obligations and duties as provided to a con-

servator appointed under the provisions of Part I of this Article.

Sec. D. The cost incident to the supervisor's or conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds in the State of Texas of the company to be allowed and paid as the Board may determine.

Part III

Sec. A. In all actions and proceedings brought by or against the supervisor or conservator because of or as the result of his being appointed under the provisions of this Article or against assets in his possession or under his control as the result of his being appointed conservator under the provisions of this Article or brought by or against a company while subject to an order of conservatorship, venue shall be in Travis County, Texas.

Sec. B. The provisions of this Article shall be cumulative of all other laws, general and special, relating to the subject matter hereof.

Sec. C. The provisions of Article 21.28 of the Texas Insurance Code shall apply to all companies subject to Chapter Nine of the Texas Insurance Code and the same shall not be deemed to be restricted in any way by the provisions of this Article.

[Acts 1967, 60th Leg., p. 501, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.30. Rebates and Discounts

A. No commission, rebate, discount, or other thing of value shall be paid, allowed or permitted by any title insurance company, domestic or foreign, or by any title insurance agent doing the business of title insurance provided for in this Chapter, relating to title policies or underwriting contracts and no portion of any premium shall be paid to any person for soliciting or referring title insurance business; provided this Article 9.30 shall not prevent any title insurance company, domestic or foreign, doing business under this Chapter, from appointing as its title insurance agent in any county any person, firm, or corporation owning and operating an abstract plant of such county as its title insurance agent and making such arrangements for division of premiums as may be approved by the Board.

B. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement or closing in connection with a transaction involving the conveyance or mortgaging of real estate located in the State of Texas other than for services actually performed.

C. Nothing in this Article 9.30 shall, however, be construed as prohibiting (a) the payment of a fee to attorneys at law for services actually rendered or (b) the payment to any person of a bona fide salary,

compensation or other payment for goods or facilities actually furnished or for services actually performed.

[Acts 1967, 60th Leg., p. 504, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1069, ch. 409, § 12, eff. Sept. 1, 1975.]

Art. 9.31. Fees and Occupation Tax on Foreign Corporations

Any corporation organized and incorporated under the laws of any other state, territory or country for the purpose of transacting a title insurance or title guaranty business shall be required to pay the same filing fees and occupation tax as any foreign casualty company is required to pay in order to procure a permit to do business in Texas. Such foreign title companies will not be required to pay a franchise tax.

[Acts 1967, 60th Leg., p. 505, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.32. Prohibiting Further Chartering of Corporations Under Article 1302

No corporation shall be chartered under Subdivision 57, Article 1302, Revised Statutes of Texas, 1925, but all corporations heretofore incorporated and now doing business in Texas shall be permitted to continue in business and shall be subject to all the provisions of this Act, and such companies shall be required to comply with the requirements of this Act with reference to investments and deposits.

Stockholders in a company acting under this Act shall not be liable in the event of default in the payment of any debt or liability of such company beyond their subscription for such stock.

[Acts 1967, 60th Leg., p. 505, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.33. To Cancel License; Appeals by Companies

The terms and provisions of this Act are conditions upon which corporations doing the business provided for in this Act may continue to exist, and failure to comply with any of them or a violation of any of the terms of this Act shall be proper cause for revocation of the permit and forfeiture of charter of a domestic corporation or the permit of a foreign corporation.

Any company qualified or seeking to qualify under this Act, feeling aggrieved by any action of the Board, especially, but not limited to, any action against such company, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made its order or ruling; provided, however, that if the order or ruling is directed against such company, whether or not directed against other companies, such company shall have thirty (30) days after receipt of official notice of such ruling from the Board to review such action of the Board. Such cases shall be tried de novo in such District Court in accordance with the

provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of pleading, including rights of amendments thereof, evidence, and procedure as are applicable to other civil cases in the original jurisdiction of a District Court. [Acts 1967, 60th Leg., p. 505, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.34. Determination of Insurability

No policy or contract of title insurance shall be written unless and until the title insurance company (a) has caused a search of title to be made from the title evidence prepared from an abstract plant as herein defined, or if no such abstract plant of the county exists, or the owner of such plant refuses to furnish the title insurance company desiring to insure, such title evidence at its regular charge and within a reasonable period of time, then such policy or contract of title insurance shall be based upon the best title evidence available, and (b) has caused to be made a determination of insurability of title in accordance with sound title underwriting practices. Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than fifteen (15) years after the policy or contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company or the agent of the title insurance company, may in the regular course of business establish a system whereby all or part of these writings are recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original. This Article shall not apply to (a) a company assuming no primary liability in a contract of reinsurance, or (b) a company acting as a co-insurer if one of the other co-insuring companies has complied with this Article.

[Acts 1967, 60th Leg., p. 505, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.35. Requirements for Agents

No person, firm, association or corporation shall act within this state as agent for any title insurance company, domestic or foreign, without first having been (1) licensed as an agent by the Board and (2) filing a bond or cash deposit in lieu thereof as required in Article 9.38; and no title insurance company shall allow or permit any person, firm, association or corporation to act as its agent within the state unless said person, firm, association or corporation shall first have obtained a license, and filed a bond as required by this Act.

[Acts 1967, 60th Leg., p. 506, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.36. Agent's License: Application, Issuance, Renewal, and Cancellation

A. Before an initial license is issued to any person, firm, association or corporation to act as agent

within the State of Texas for any title insurance company, there shall first be filed by the title insurance company with the Board an application for agent's license, on forms to be provided by the Board, accompanied by a license fee in an amount not to exceed Fifty Dollars (\$50) as determined by the Board, which fee including license renewal fees shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund to be used by the State Board of Insurance to enforce the provisions of this article and all laws of this state governing and regulating title agents for such insurance companies. On initial application if an applicant fails to qualify for, or is refused a license, the license fee shall be refunded. The application shall be signed and duly sworn to by the title insurance company and the proposed agent. Such application shall contain the following:

(1) That the proposed agent, if an individual, is a bona fide resident of Texas; or if a firm or association, that it is composed wholly of Texas residents; or if a corporation, that it is a Texas corporation or a foreign corporation which has been authorized to do business in Texas; and

(2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance; and

(3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust and said title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) That the proposed agent qualified as a title insurance agent as defined in this Act.

The Board shall grant such license if it determines from the application and its own investigation that the foregoing requirements have been met.

B. Unless a staggered renewal system is adopted under Section E of this article, on or before the first day of June of each year, every title insurance company, domestic or foreign, operating under the provisions of this Act, shall certify to the Board, on forms provided by the Board, the names and addresses of every title insurance agent of said company within the state whose license is to be renewed, and shall apply for and pay a license renewal fee in an amount not to exceed \$50 as determined by the Board for a license in the name of each such agent included in said list; if any such company shall terminate any licensed agent, it shall immediately notify the Board in writing of such act and request cancellation of such license, notifying the agent of such action. No such title insurance company shall permit any agent appointed by it to write, sign, or deliver title insurance within the state until the foregoing conditions have been complied with, and the Board has granted said license.

The Board shall deliver such license to the title insurance company for transmittal to the Agent.

Unless a staggered renewal system is adopted under Section E of this article, a license shall continue in force until the second June first following its issuance, unless previously cancelled; provided, however, that if any title insurance company surrenders or has its certificate of authority revoked by the Board, all existing licenses of its title insurance agents shall automatically terminate without notice.

Any title insurance agent may be licensed to represent one or more such title insurance companies, with a separate license granted for each.

The Board shall keep a record of the names and addresses of all licensed agents in such manner that the agents appointed by any company authorized to transact title insurance business within the State of Texas may be conveniently ascertained and inspected by any person upon request.

C. A licensed title insurance agent may be licensed to represent additional title insurance companies upon application by such additional title insurance company for agent's license, on forms to be provided by the Board, and upon payment of a license fee. The application shall be signed and duly sworn to by such additional title insurance company. Such application shall contain the following:

- (1) That the proposed agent, if an individual, is a bona fide resident of Texas; or if a firm or association, that it is composed wholly of Texas residents; or if a corporation, that it is a Texas corporation or a foreign corporation which has been authorized to do business in Texas; and
- (2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance; and
- (3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust and said title insurance company knows of no fact or condition which would disqualify him from receiving a license; and
- (4) That the proposed agent qualified as a title insurance agent as defined in this Act; and
- (5) That the proposed agent is currently licensed by a title insurance company.

D. If a title insurance company terminates its contract with a title insurance agent or gives notice of termination to the title insurance agent, then any such agent may, within thirty (30) days after either occurrence apply to the Board for continuation of his license with an amendment thereto showing the name of another title insurance company for whom he is or will be authorized to act.

E. The board by rule may adopt a system under which licenses expire on various dates during the

year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that only that portion of the license fee that is allocable to the number of months during which the license is valid will be paid. On each subsequent renewal of the license, the total license renewal fee is payable.

F. An unexpired license may be renewed by paying the required renewal fee to the board before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original fee for the license. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original fee for the license. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his last known address. This section may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

G. The board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

H. The board may adopt procedures for certifying and may certify continuing education programs for agents. Participation in the programs is voluntary.

[Acts 1967, 60th Leg., p. 506, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1890, ch. 765, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 3935, ch. 622, §§ 26, 51, 52, eff. Sept. 1, 1983.]

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 9.37. Agent's Licenses: Surrender, Forfeiture; Grounds for Revocation; Notice, Hearing and Appeal

A. Any title insurance agent may voluntarily surrender his license at any time by giving notice to the Board and to the title insurance company concerned. Any agent shall automatically forfeit the license under the title insurance company represented if he shall terminate his agency contract with such company.

B. The license of any agent may be denied, or a license duly issued may be suspended or revoked or

a renewal thereof refused by the Board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

- (1) Has wilfully violated any provision of this Act; or
- (2) Has intentionally made a material misstatement in the application for such license; or
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
- (4) Has misappropriated or converted to his own use or illegally withheld money belonging to a title insurance company, an insured or any other person; or
- (5) Has otherwise demonstrated lack of trustworthiness or competence to act as an agent; or
- (6) Has been guilty of fraudulent or dishonest practices; or
- (7) Has materially misrepresented the terms and conditions of title insurance policies or contracts; or
- (8) Is not of good character or reputation; or
- (9) Has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts.

C. Before the license of any title insurance agent shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of such license and to the title insurance company or companies who desire that such license be granted or continued in effect, and shall set a date not less than twenty (20) days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the title insurance company may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the title company or companies concerned.

D. No applicant or licensee whose license has been denied, refused or revoked hereunder shall be entitled to file another application for a license as an agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by

the Board unless the applicant shows good cause why the denial, refusal or revocation of his license shall not be deemed a bar to the issuance of a new license.

E. If the Board shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license at said hearing, then any such applicant or licensee, and any title insurance company or companies concerned, may appeal from said order by filing suit against the Board as defendant in any of the District Courts of Travis County, Texas, and not elsewhere, within twenty (20) days from the date of the order of said Board. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1967, 60th Leg., p. 507, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1981, 67th Leg., p. 2638, ch. 707, § 4(24), eff. Aug. 31, 1981.]

Art. 9.38. Bonds for Agents

(a) Every person, firm, association, or corporation which has been licensed as a title insurance agent shall make, file, and pay for a surety bond with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of Seven Thousand Five Hundred Dollars (\$7,500) which bond shall obligate the principal and surety to pay such pecuniary losses as may result to any participant in an insured real estate transaction which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or wilful misapplication on the part of any title insurance agent. In lieu of such bond any title insurance agent may deposit with the Board cash (or securities approved by the Board) which cash and securities shall be in the amount of Seven Thousand Five Hundred Dollars (\$7,500) and subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the Board that the terms of any agent's bond may have been violated, the Board may require the agent to appear in Travis County with such records as the Board deems proper on a named date not earlier than ten (10) days nor later than fifteen (15) days from service of notice, and there conduct an examination into the matter. If upon such examination the Board is satisfied that the terms of said bond have been violated, the Board shall immediately notify the surety and prepare a written statement covering the

facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the Board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

[Acts 1967, 60th Leg., p. 508, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.39. Annual Audit

Every title insurance agent shall have an annual audit, at its or his expense, made of trust fund accounts, and within ninety (90) days from the termination of its fiscal year, shall send by certified mail, postage prepaid, to the Board one copy of such audit report with a letter of transmittal, and each such agent, shall also send a copy of such letter of transmittal and audit report to every title insurance company which it represents.

Every title insurance company shall have an annual audit, at its expense, made of trust fund accounts for each county in which it operates in its own name and within ninety (90) days from the termination of its fiscal year shall send by certified mail, postage prepaid, to the Board one copy of such audit report.

The Board shall promulgate regulations setting forth the standards of audit and the form of audit report required.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either.

Each title insurance company shall examine and analyze the audit report furnished by each of its agents, and shall within three (3) months of receipt of same report to the Board on forms to be furnished by the Board the findings and results of its examination and analysis of such audit report. If a title insurance company fails to receive an audit report from any of its agents within the time specified above, it shall forthwith report such omission to the Board.

All such reports and analyses furnished by the title insurance company to the Board shall, at the election of the Commissioner, be classed as confidential and privileged after having been filed with the Board.

If any agent or title insurance company shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the Board may, after notice to the agent or each title insurance company involved and after a hearing at which the agent or title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such

agent or revoke the certificate of authority of such title insurance company.

Any agent or title insurance company feeling aggrieved by any action of the Board hereunder shall have the right to file a suit in the District Court of Travis County in the time and manner provided in Article 9.37.

[Acts 1967, 60th Leg., p. 509, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1891, ch. 765, § 2, eff. Aug. 27, 1979.]

Art. 9.40. Right of Title Insurance Company to Examine Agent's Trust Fund Accounts and to Require Reports

Any title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title insurance agents, such examination to be made at the expense of the title insurance company; or the title insurance company may require special reports from any such agent regarding any of its transactions. Each title insurance company shall periodically, but at least every two years, audit the unused forms in the possession of each of its title insurance agents so as to determine that all used forms have been reported to the title insurance company. A report of each such audit shall be made to the State Board of Insurance.

[Acts 1967, 60th Leg., p. 509, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1975, 64th Leg., p. 1090, ch. 409, § 22, eff. Sept. 1, 1975.]

Art. 9.41. Requirements for Escrow Officers

No person shall act in the capacity of escrow officer without (1) being licensed by the Board, and (2) obtaining and maintaining a surety bond as required by Article 9.45; and no title insurance agent shall employ any person as escrow officer who is not licensed and bonded in accordance with the provisions of this Act.

[Acts 1967, 60th Leg., p. 509, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.42. List of Escrow Officers Must be Filed

A. Unless a system of staggered renewal is adopted under Section B of this article, every title insurance agent licensed and operating under the provisions of this Act shall on or before the first day of June of each year, certify to the Board on forms provided by the Board the names and addresses of every person employed by it to serve in the capacity of escrow officer within the state, whose license is to be renewed, and shall apply for and pay a license renewal fee in an amount not to exceed Fifty Dollars (\$50) as determined by the Board for each person included in said list. If it shall terminate any licensed escrow officer, it shall immediately notify the Board in writing of such act

and request cancellation of the license, notifying such escrow officer of such action. No agent shall permit any person to act as escrow officer within the state until the foregoing conditions have been complied with, and the Board has granted the said license.

Unless a system of staggered renewal is adopted under Section B of this article, a license shall continue in force until the second June first following its issuance, unless previously cancelled. Provided, however, that if any title insurance agent surrenders all its licenses, or has all its licenses revoked by the Board, all existing licenses of its escrow officers shall automatically terminate without notice.

The Board shall keep a record of the names and addresses of all escrow officers licensed by it in such manner that the escrow officers employed by any title insurance agent within the state may be conveniently determined.

B. The Board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

C. An unexpired license may be renewed by paying the required renewal fee to the Board before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the Board the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the Board all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the Board shall send written notice of the impending license expiration to the licensee at his last known address. This section may not be construed to prevent the Board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

D. The Board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

[Acts 1967, 60th Leg., p. 509, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1892, ch. 765, § 3, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 3961, ch. 622, § 53, eff. Sept. 1, 1983.]

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 9.43. Application for Escrow Officer's License

A. Before an initial license is issued to any person to act as escrow officer within the State of Texas for any title insurance agent, there shall be first filed by such title insurance agent with the Board an application for an escrow officer's license on forms provided by the Board, accompanied by a license fee in an amount not to exceed Fifty Dollars (\$50) as determined by the Board, which fees including license renewal fees under Article 9.42 shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund to be used by the State Board of Insurance to enforce the provisions of this article and all laws of this state governing and regulating escrow officers for such title insurance agents. In the event an applicant fails to qualify for, or is refused a license, the license fee shall be refunded. The application shall be signed and duly sworn to by such title insurance agent and by the proposed escrow officer.

B. Such application shall contain the following:

(1) that the proposed escrow officer is a natural person and a bona fide resident of the State of Texas;

(2) that the proposed escrow officer has reasonable experience or instruction in the field of title insurance;

(3) that the proposed escrow officer is known to the agent to have a good business reputation and is worthy of the public trust and the agent knows of no fact or condition which would disqualify him from receiving a license;

(4) that the proposed escrow officer qualifies as an escrow officer as defined in this Act.

The Board shall grant such license, if it determines from the application and its own investigation that the foregoing requirements have been met.

[Acts 1967, 60th Leg., p. 510, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1979, 66th Leg., p. 1893, ch. 765, § 4, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 3936, ch. 622, § 27, eff. Sept. 1, 1983.]

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 9.44. Annual License of Escrow Officers; Surrender and Cancellation

A. Any escrow officer may voluntarily surrender his license at any time by giving notice to the Board. An escrow officer shall likewise automatically forfeit his license if he shall fail to be employed as an escrow officer.

B. The license of any escrow officer may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the Board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

- (1) has wilfully violated any provision of this Act; or
- (2) has intentionally made a material misstatement in the application for such license; or
- (3) has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
- (4) has misappropriated or converted to his own use or illegally withheld money belonging to a title insurance company, agent, or any other person; or
- (5) has otherwise demonstrated lack of trustworthiness or competence to act as escrow officer; or
- (6) has been guilty of fraudulent or dishonest practices; or
- (7) has materially misrepresented the terms and conditions of title insurance policies or contracts; or
- (8) is not of good character or reputation.

C. Before the license of any escrow officer shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of such license and to the title insurance agent which is either the employer of the holder of such license or desires that such license be granted, continued or renewed and shall set a date not less than twenty (20) days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the title insurance agent may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the agent concerned.

D. No applicant or licensee whose license has been denied, refused or revoked hereunder shall be entitled to file another application for a license as an escrow officer within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refus-

ed by the Board unless the applicant shows good cause why the denial, refusal or revocation of his license shall not be deemed a bar to the issuance of a new license.

E. If the Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license at said hearing, then any such applicant may appeal from said order by filing suit against the Board as defendant in any of the District Courts of Travis County, Texas, and not elsewhere, within twenty (20) days from the date of the order of said Board. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1967, 60th Leg., p. 510, ch. 219, § 1, eff. Oct. 1, 1967; Acts 1981, 67th Leg., p. 2638, ch. 707, § 4(25), eff. Aug. 31, 1981.]

Art. 9.45. Bonds for Escrow Officers

(a) Every title insurance agent shall procure at its expense for its escrow officers, a bond of such type as may be approved by the State Board of Insurance with a surety licensed by the Board to do business in Texas, in an amount to be determined by multiplying the number of escrow officers by Five Thousand Dollars (\$5,000) but not exceeding Fifty Thousand Dollars (\$50,000) payable to the State Board of Insurance, which bond shall obligate the principal and surety to pay such pecuniary loss as the agent shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication on the part of such escrow officer, either directly and alone, or in connivance with others. In lieu of such bond, cash (or securities approved by the Board) in multiples of Five Thousand Dollars (\$5,000) per escrow officer employed but not exceeding Fifty Thousand Dollars (\$50,000) may be deposited by the agent with the Board, subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the Board that the terms of any such bond as provided in Paragraph (a) of this Article 9.45 may have been violated, the Board may require the escrow officer to appear in Travis County with such records as the Board deems proper on a named date not earlier than ten (10) days nor later than fifteen (15) days from service of notice, copies of which notice shall also be sent to any title insurance agent concerned, and

there conduct an examination into the matter. If upon such examination the Board is satisfied that the terms of said bond have been violated by an escrow officer, the Board shall immediately notify the surety and agent concerned and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the Board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

[Acts 1967, 60th Leg., p. 511, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.46. Maintenance Tax on Gross Premiums

The State of Texas by and through the State Board of Insurance shall annually determine the rate of assessment on an annual or semiannual basis, as determined by the Board, and collect a maintenance tax in an amount not to exceed one percent of the correctly reported gross title insurance premiums of all authorized insurers writing title insurance in this state. The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article. The State Board of Insurance, after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating title insurance during the succeeding year. The taxes collected shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance. The State Board of Insurance may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.

[Acts 1967, 60th Leg., p. 512, ch. 219, § 1, eff. Oct. 1, 1967. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5013, ch. 902, § 1, eff. Sept. 1, 1983.]

Art. 9.47. Exceptions

Sec. 1. Unless title insurance companies or the business of title insurance is expressly mentioned, no provision of this Code, except as contained in this Chapter, shall be applicable to corporations incorporated or doing business exclusively under this Chapter, or to the title insurance business conducted by

corporations created under Subdivision 57, Article 1302 of the Revised Statutes of 1925, or under Chapter 8 of this Code, or under any other law, and no law hereafter enacted shall apply to such title insurance companies or to such title insurance business unless such subsequent enactment expressly states that it shall so apply.

Sec. 2. Regardless of Section 1 of this Article, where applicable to title insurance companies, Article 1.01 through 1.25; Article 2.01; Article 2.02, Sections 1, 2 and 3; Article 2.03, except Section 5; Article 2.04; Article 2.05; Article 2.06; Article 3.01, Section 10(a), (b) and (c); Article 3.12, except Section (c); Article 3.13; Article 3.14; Article 21.21; Article 21.21-1; Article 21.25; Article 21.26; Article 21.31; Article 21.36; Article 21.37; Article 21.43; Article 21.46; and Article 21.47 shall apply to and govern title insurance companies where applicable thereto. In case of conflict between provisions of any of the foregoing articles and the provisions of this Chapter Nine, the latter shall govern.

[Acts 1967, 60th Leg., p. 512, ch. 219, § 1, eff. Oct. 1, 1967.]

Art. 9.48. Title Insurance Guaranty

Title

Sec. 1. This article shall be known and may be cited as the "Texas Title Insurance Guaranty Act."

Purpose

Sec. 2. This article is for the purposes and findings set forth in Section 1 of Article 12.28-A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Scope

Sec. 3. This article shall apply only to all title insurance (direct and reinsurance) written by title insurance companies authorized to do business in this state and doing business under and regulated by the provisions of this Chapter 9.

Construction

Sec. 4. This article shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this article

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

B. "Commissioner" is the Commissioner of Insurance of this State.

(2) "Covered claim" is an unpaid claim of an insured which arises out of and is within the

coverage and not in excess of the applicable limits of a title insurance policy to which this article applies, issued or assumed (whereby an assumption certificate is issued) by an insurer licensed to do business in this state and covered by this article, if such insurer becomes an "impaired insurer" after the effective date of this article and the insured real property (or lien thereon) is located within this state. Individual "covered claims" shall be limited to \$100,000 and shall not include any amount in excess of \$100,000. "Covered claim" shall also include any sum up to \$100,000 for which any insurer is liable in connection with the fidelity or solvency of any title insurance agent of such insurer as authorized by Article 9.49 of this chapter of this code. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this article.

(3) "Insurer" is any title insurance company authorized to do business in this state, and doing business under and regulated by the provisions of this Chapter 9.

(4) "Impaired insurer" is (a) an insurer which, after the effective date of this article, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the commissioner; or (b) after the effective date of this article, an insurer placed in conservatorship after it has been deemed by the commissioner to be insolvent and which has been designated an "impaired insurer" by the commissioner.

(5) "Payment of covered claims" is actual payment of claims and also is the utilization of funds of the impaired insurer and funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities arising from covered claims.

(6) "Net direct written premiums" is the gross amount of premiums paid by policyholders for issuance of policies of title insurance insuring risks located in this state and to which this article applies. The term does not include premiums for reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for reinsurance ceded to other insurers.

Assessments

Sec. 6. Whenever the commissioner determines that an insurer has become an impaired insurer, the

receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A or Article 9.29 of the Insurance Code shall promptly estimate the amount of additional funds needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. Thereafter, the commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims. The commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer.

The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas. Assessments during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next successive calendar years.

Insurers designated as impaired insurers by the commissioner shall be exempt from assessment from and after the date of such designation and until the commissioner determines that such insurer is no longer an impaired insurer.

The commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the conservator or receiver, as the case may be, within 30 days after the commissioner gives notice of the assessment, and assessments may be collected by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments under the provisions of this article shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

No insurer shall be deemed or considered to have or incur any liability, real or contingent, under the provisions of this Article 9.48 of this Chapter 9 until any such assessment shall have been actually made in writing by the commissioner under the provisions of this Article 9.48.

Penalty for Failure to Pay Assessments

Sec. 7. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due.

Any insurer whose certificate or authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 8. Upon receipt from an insurer of payment of an assessment or partial assessment, the receiver or conservator shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in payment of "covered claims," the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the commissioner, which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the commissioner. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

Payment of Covered Claims

Sec. 9. When an insurer has been designated by the commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this article. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of claims, pending orderly liquidation or disposition of

such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this article.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. The commissioner shall not require the insurer that reinsures or assumes the policies of the impaired insurer or enters into an agreement to substitute itself in the place of the impaired insurer, to issue assumption certificates or other written evidence of such agreement to the policyholders of the impaired insurer, except to policyholders that have made a claim for loss arising under their policy (issued by the impaired insurer) before the date of such reinsurance, assumption or substitution agreement. The commissioner shall require that the reinsurance, assumption, or substitution agreement be filed as a public record with the State Board of Insurance. The commissioner shall approve such agreement unless, after public hearing held within 30 days following such filing, he determines that such agreement does not effectively protect the policyholders of the insurers to give notice of such hearing to its policyholders. Such notice shall be by publication, not less than seven days in advance of the hearing, in a newspaper of general circulation printed in the State of Texas. No cause of action shall lie against the impaired insurer for breach of contract or refund of premium after the agreement has been approved by the commissioner and the notice of hearing before the commissioner shall so advise the policyholders of the impaired insurer.

This article shall not be construed to impose restriction or limitation upon the authority granted or authorized the commissioner, the conservator, or the receiver elsewhere in the Insurance Code and other statutes of this state but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 10. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other

claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further that in ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state. Such funds received from assessments shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer, the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution. Upon determination by the conservator that actual payment of covered claims should be made, the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than 90 days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from assessments shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval

at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a title insurance policy issued or assumed by such insurer shall, if such cause of action meets the definition of "covered claim," have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising from the same title insurance policy shall be no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation. In the proceedings of considering "covered claims," no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution. Such assignment to the impaired insurer may be assigned to the insurer executing such reinsurance, assumption or substitution agreement.

Release From Conservatorship or Receivership

Sec. 11. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this article shall not be authorized, upon release from conservator-

ship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid pro rata in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assigns; provided, however, the commissioner may, upon application of the advisory association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan. The commissioner shall give 10 days notice of such hearing to the insurers to whom the participation receipts were issued for an assessment made for the benefit of the released insurer, and the holders of the receipts shall be entitled to appear at and participate in such hearing.

Creation of Advisory Association

Sec. 12. There is created by this article an advisory association to be known as the "Texas Title Insurance Advisory Association", herein called the "advisory association", to be composed of four insurers. Within 30 days after the effective date of this article, the State Board of Insurance shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, one shall be appointed to serve for a one-year term of office, one shall be appointed to serve for a two-year term of office, one shall be appointed to serve for a three-year term of office, and one shall be appointed to serve a four-year term of office. Subsequent members of the advisory association shall serve for the term of office as stated above and shall be elected by insurers, subject to the approval by the commissioner.

The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this article, giving due consideration to geographical location and segments of the industry represented in Texas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as the initial appointments.

The advisory association shall conduct its meetings in Austin, Texas, in the Insurance Building of the State of Texas. Meetings shall be held upon call by the commissioner or upon written request of a majority of the members. Meetings shall not be open to the public, and only members of the advisory association, members of the State Board of Insurance, the commissioner, and persons authorized by the commissioner shall attend such meetings.

The advisory association shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the advisory association when he deter-

mines that an insurer is insolvent or impaired and may call a meeting of the advisory association when he determines that a danger of insolvency or impairment of an insurer exists. The advisory association shall, upon majority vote, notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the advisory association any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors, and employees of an insolvent or impaired insurer, or an insurer the commissioner considers to be in danger of insolvency or impairment, to appear before the advisory association for conference or for the taking of testimony. Members of the advisory association shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Advisory association members shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of advisory association members.

The advisory association shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, the liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator, or conservator to best protect the interests of persons holding covered claims against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of covered claims.

Reports or recommendations made by the advisory association to the commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the advisory association or the advisory association for any report, individual report, recommendation or individual recommendation by the advisory association or members to the commissioner, liquidator, or conservator.

Members shall serve without pay, but their expenses in attending meetings shall be paid subject to the authorization by the legislature in its appropriations bills or otherwise, and subject to the rules of the State Board of Insurance. Members shall serve until their successors are appointed.

Any insurer that has an officer, director, or employee serving as a member of the advisory association shall not lose the right to negotiate for and

enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

The advisory association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code.

The State Board of Insurance shall within 90 days after the effective date of this article promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members.

Recognition of Assessments in Rates and Premium Tax Offset

Sec. 13. Insurers shall be entitled to recoup assessments up to one percent of their net direct written premiums from rates promulgated, established, or approved by the State Board of Insurance in the next calendar year. The State Board of Insurance in promulgating, establishing, or approving rates shall take into account assessments and refunds of assessments made in accordance with this article and shall include in the formula forming the basis for promulgating, establishing, or approving rates sums sufficient to provide for such recoupment.

Unless the State Board of Insurance has determined that all amounts paid by each insurer on assessments on total net direct written premiums have been included in the rates and premiums as provided above, any amounts not so included shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended.¹ The tax credit referred to herein shall be allowed at a rate of 20 percent per year for five successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years.

¹ Transferred; see, now, art. 4.10 of this Code.

Advertisement

Sec. 14. It shall be unlawful for an insurer to advertise or refer to this Act in any manner as an inducement to the purchase of title insurance.

Immunity

Sec. 15. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this article or its agents or employees, the advisory association, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this article.

Rules and Regulations

Sec. 16. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article and in augmentation thereof.

Appeals

Sec. 17. Any action or ruling of the commissioner under this article may be appealed as provided in Article 1.04 of the Insurance Code, as amended. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

Control Over Conflicts

Sec. 18. The provisions of this article and the powers and functions authorized by this article are to be exercised to the end that its purposes are accomplished. This article is cumulative of existing laws, but in the event of conflict between this article and any other law relating to the subject matter of this article or its application, the provisions of this article shall control.

Unconstitutional Application Prohibited

Sec. 19. 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.

[Acts 1975, 64th Leg., p. 1070, ch. 409, § 13, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2639, ch. 707, § 4(26), eff. Aug. 31, 1981.]

Art. 9.49. Insured Closing

Title insurance companies operating under the provisions of this chapter are hereby expressly authorized and empowered to issue upon request on real property transactions in this state at no charge whatever insured-closing and settlement letters, in the form prescribed by the board, in connection with the closing and settlement of loans made by title insurance agents for any title insurance company operating under the provisions of this chapter. After January 1, 1976, only the form prescribed by the board shall be used thereafter in issuing such insured closing and settlement letters. The liability of the title insurance company shall not be changed or altered by the failure of the title insurance company to issue such insured closing and settlement letters as authorized by this Article 9.49.

[Acts 1975, 64th Leg., p. 1078, ch. 409, § 14, eff. Sept. 1, 1975.]

Art. 9.50. Home Solicitation Transactions Act as Consumer Protection Law

Chapter 246, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5069-13.01 through Article

5069-13.06, Vernon's Texas Civil Statutes), shall be deemed and considered a consumer protection law when construed in connection with any policy of title insurance issued in this state.

[Acts 1975, 64th Leg., p. 1079, ch. 409, § 15, eff. Sept. 1, 1975.]

Art. 9.51. Title Insurance Agents Right to Surrender License

No title insurance agent shall be permitted to surrender his license under the provisions of Article 9.37 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.37 by the commissioner of insurance for revocation of such person's title insurance agent's license.

[Acts 1975, 64th Leg., p. 1079, ch. 409, § 16, eff. Sept. 1, 1975.]

Art. 9.52. Escrow Officer's Right to Surrender License

No escrow officer shall be permitted to surrender his license under the provisions of Article 9.44 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.44 by the commissioner of insurance for revocation of such person's escrow agent's license.

[Acts 1975, 64th Leg., p. 1079, ch. 409, § 17, eff. Sept. 1, 1975.]

Art. 9.53. Uniform Closing and Settlement Statements

On or prior to January 1, 1976, the board, after notice and hearing, shall prescribe uniform settlement and closing statement forms to be used in connection with the settlement and closing of any conveyance or mortgaging of real estate in which transaction a title insurance policy is issued by any title insurance company or title insurance agent. The board is specifically authorized to establish separate forms for transactions involving improved residential real property and for all other real property transactions. The forms prescribed by the board shall be designed so that dual forms or separate forms provided for each party to the transaction identifying only the charges made to such party may be used at any settlement or closing.

Every such settlement and closing statement furnished to a party to the transaction shall state thereon the name of any person, firm, or corporation receiving any sum from such party to the settlement or closing. The title insurance company and the title insurance agent, however, shall be required to include within the closing and settlement statement only those items of disbursement as are actually disbursed by the title insurance company or the title insurance agent. If a title is examined or any closing or settlement services rendered

by an attorney, other than a full-time employee of either the title insurance company or the title insurance agent, the amount of such fee (shown as included in the premium) and the name of the attorney (which may be expressed by the name of the firm, if applicable) to whom such fee was paid shall be shown thereon. Such form shall also conspicuously and clearly itemize the charges imposed upon such party in connection with the settlement and closing. If a charge for title insurance is made to such party, the form shall state whether the title insurance premium included in such charges covers or insures the mortgagee's interest in the property, the borrower's interest, or both.

Any title insurance company or any title insurance agent may at its election use the uniform closing statement prepared under the provisions of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533)¹ in lieu of the uniform closing statement prescribed by the board.

The provisions of this Article 9.53 of this Chapter 9 shall not apply to the settlement or closing of any residential real estate transaction regulated by the provisions of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533).

The provisions of this Article 9.53 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Acts 1975, 64th Leg., p. 1079, ch. 409, § 18, eff. Sept. 1, 1975.]

¹ 12 U.S.C.A. § 2601 et seq.

Art. 9.54. Advance Disclosure of Settlement Costs Involving Residential Property

Every title insurance company and every title insurance agent licensed to do business in Texas under the provisions of this Chapter 9 shall, in connection with the issuance of any type of title policy guaranteeing either a lien upon or the title to improved residential property, upon written request of the buyer, seller, or borrower prior to settlement and closing, furnish to any such requesting party to such transaction an itemized disclosure in writing, to the extent that the information is available, each charge to be made to such party, arising in connection with such closing and settlement, upon any standard real estate settlement and closing form developed, prescribed or authorized under Article 9.53 of this chapter. If information is not available concerning any item or items of charges to be made to such party, proper notation shall be made that a charge is to be made, but the information is not available or that the amount shown is an estimate

of such charge. Such person shall be advised in writing as to the identity of the person or organization responsible for such charges to be made for which an estimate has been made or for which notation has been made that the information is not available.

Provided, however, that the title insurance company or title insurance agent providing the disclosures of items of charge shall not be required to disclose costs or charges which the lender is required by any law to disclose to such party. Nothing contained in this Article 9.54 shall be deemed or construed as placing upon any title insurance company or title insurance agent any of the obligations imposed upon lenders by reason of the Federal Real Estate Settlement Procedures Act of 1974 (Public Law 93-533).¹

The provisions of this Article 9.54 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Acts 1975, 64th Leg., p. 1080, ch. 409, § 19, eff. Sept. 1, 1975.]

¹ 12 U.S.C.A. § 2601 et seq.

Art. 9.55. Requirement for Issuance of Owners and Mortgagee Title Policies in Connection With Residential Property

After January 1, 1976, whenever any improved residential real property situated in the State of Texas shall be sold and a mortgagee title policy issued to guarantee the validity of a lien thereon, the title insurance company or title insurance agent so issuing such mortgagee title policy of insurance shall also issue an owner title policy to the owner of such property and the required premium as promulgated by the board shall be charged.

The provisions of this article may, however, be rejected, provided that the person acquiring title shall, at or prior to closing and settlement, execute a written and acknowledged rejection wherein the purchaser rejects issuance of such owner title policy. The form of such rejection shall be prescribed, after notice and hearing, by the board.

The provisions of this Article 9.55 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance

agent has actually handled the closing or settlement of such real estate transaction.

[Acts 1975, 64th Leg., p. 1081, ch. 409, § 20, eff. Sept. 1, 1975.]

Art. 9.56. Creation and Operation of Attorney's Title Insurance Company

Authorization; Applicability of Chapter; Legislative Intent

Sec. 1. (a) This Article 9.56 authorizes, under the limitations and express requirements as herein contained, the incorporation and operation of an "attorney's title insurance company."

(b) All provisions of Chapter 9 of this Insurance Code shall be applicable to such attorney's title insurance company as may be so incorporated, except as shall be otherwise expressly provided in this Article 9.56. The provisions of this Chapter 9 which apply to title insurance companies shall also apply to attorney's title insurance companies except as otherwise expressly provided in this Article 9.56; the provisions of this Chapter 9 which apply to title insurance agents shall also apply to title attorneys, except as otherwise expressly provided in this Article 9.56.

(c) Any rule, regulation, or promulgated premium rate heretofore adopted by the State Board of Insurance or hereafter adopted by the State Board of Insurance under the provisions of Chapter 9 of this Insurance Code shall likewise be applicable to any such attorney's title insurance company and to any title attorneys.

(d) It is the express intent of the Legislature of the State of Texas that any such attorney's title insurance company as and when created shall be expressly regulated as are other title insurance companies conducting the business of title insurance under the provisions of this Chapter 9 of this Insurance Code unless expressly provided in this Article 9.56 to the contrary.

Definitions

Sec. 2. The following definitions shall be applicable to this Article 9.56 of this Chapter 9, to wit:

(a) "Attorney's title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, issued only in connection with and as a part of a real property transaction and title opinion of a title attorney as the term "title attorney" is defined herein, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9.

(b) The "business of attorney's title insurance" shall be conducted by and through a title attor-

ney, as herein defined, duly appointed by such attorney's title insurance company and such business of attorney's title insurance shall be deemed to be (1) the making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, of any contract or policy of title insurance; (2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9, all as a part of a real estate transaction and title opinion of a title attorney.

(c) "Attorney's title insurance company" means any domestic company organized under the provisions of this chapter for the business of attorney's title insurance.

(d) "Title attorney" means any attorney who (1) is a member in good standing of the State Bar of Texas; and (2) owns one or more shares of stock in the attorney's title insurance company by which he is appointed a title attorney under this section; and (3) is actively engaged in the practice of law; and (4) owns or leases and controls an abstract plant as defined by the board, or is a participant in a bona fide joint plant operation as defined by the board, or has a contract to obtain title information from an abstract plant licensed by the board (which said contract is upon the form promulgated by the board and the portion of the premium to be paid to the owner or the operator of said abstract plant has been approved by the board), or who is the appointed title attorney for an attorney's title insurance company and bases his title opinion upon title evidence furnished from an abstract plant approved by the board and owned or leased and controlled by such attorney's title insurance company, except that in the event any attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is further unable to contract to obtain title information from an abstract plant licensed by the board and located in the county in which such attorney is a resident, such attorney may satisfy the requirements of this Subsection (4) by filing with the board disclosure of the inability to obtain said contract as a part of his license application upon a form prescribed by the board so as to make such disclosure a part of the application; and (5) is appointed as a title attorney by an attorney's title insurance company by contract making such arrangements for division of premium as may be approved by the board under this chapter and authorized by such attorney's title insurance com-

pany to solicit insurance and collect premiums and to issue or countersign policies in its behalf; and (6) is certified as such to the State Board of Insurance; and (7) is licensed by the board as a title attorney for such attorney's title insurance company.

May Incorporate

Sec. 3. Private corporations may be created by 15 or more State of Texas resident members of the State Bar of Texas to insure titles to lands or interest therein in this state and indemnify the owners of such lands, or the holders of interests in or liens on such lands, against loss or damage on account of encumbrances upon or defects in the title to such lands or interests therein, provided that such title insurance shall be issued only in connection with and as a part of a title opinion of a title attorney, without any premium or fee therefor except the prescribed title insurance rates provided for in Article 9.07 of this Chapter 9.

Subject to the provisions of Article 9.06 of this Chapter 9, and Section 4 of this article, the capital shares of such corporations may be issued for a par value of \$100 or more per share, and in one or more classes, provided, however, that (a) except as provided in (b) hereafter, all such shares shall be subscribed and paid for, and issued to members of the State Bar of Texas, residing in the State of Texas, subject to the right of reacquisition of such shares by such corporation in the event of death of such attorney shareholder or failure of such attorney shareholder to be and remain a licensed member of the State Bar of Texas, or failure of such attorney shareholder to be and remain qualified to be appointed a title attorney under the provisions of this Article 9.56; and (b) nothing herein contained prohibits an association of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas, from owning shares of any class thereof, providing at least 15 resident members of the State Bar of Texas at all times own shares therein, whether of the same class or not.

Capital Stock and Surplus Required—Association of the Organized State Bar of Texas, the State Bar of Texas, or any Foundation Created By or Through the State Bar of Texas

Sec. 4. (a) The attorney's title insurance company created as an affiliate or subsidiary of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, and operating under the provisions of this section, must have a paid-up capital of not less than \$250,000 and a surplus of not less than \$150,000.

(b) Any other attorney's title insurance company shall meet the capital and surplus requirements

upon organization as required by Article 9.06 of this Chapter 9.

Requirements for Title Attorneys

Sec. 5. No attorney shall act within this state as a title attorney for an attorney's title insurance company without first having been (1) licensed as a title attorney for such company by the board and (2) filing a bond or cash deposit in lieu thereof as required in Section 9; and no attorney's title insurance company shall allow or permit any attorney to act as its title attorney within the state unless said attorney shall first have obtained a license and filed a bond as required by this chapter.

Title Attorney's Licenses

Sec. 6. (a) Before an initial license is issued to any Texas licensed attorney to act as a title attorney within the State of Texas for an attorney's title insurance company, there shall first be filed by the attorney's title insurance company with the board an application for a title attorney's license, on forms to be provided by the board, accompanied by a fee in an amount not to exceed \$50 as determined by the board. The application shall be signed and duly sworn to by the attorney's title insurance company and the applicant title attorney. Such application shall contain the following:

- (1) that the applicant title attorney is a bona fide licensed Texas attorney, resident of Texas; and
- (2) that the applicant title attorney is actively engaged in the practice of law; and
- (3) that the applicant title attorney is known to the attorney's title insurance company to have a good business reputation, to be a current member of the State Bar of Texas, in good standing, and is worthy of the public trust and said attorney's title insurance company knows of no fact or condition which would disqualify him from receiving a license; and
- (4) that the applicant title attorney is qualified as defined in this Article 9.56 of this Chapter 9.

The board shall grant such title attorney's license if it determines from the application and its own investigation that the foregoing requirements have been met.

(b) Unless a system of staggered renewal is adopted under Subsection (d) of this section, on or before the first day of June of each year, every attorney's title insurance company operating under the provisions of this Chapter 9 shall certify to the board, on forms provided by the board, the names and addresses of every title attorney of said attorney's title insurance company, and shall apply for and pay a fee in an amount not to exceed \$50 as determined by the board for an annual license in the name of each title attorney included in said list; if any such attorney's title insurance company shall

terminate any licensed title attorney, it shall immediately notify the board in writing of such act and request cancellation of such license, notifying the title attorney of such action. No such attorney's title insurance company shall permit any title attorney appointed by it to write, sign, or deliver title insurance policies within the state until the foregoing conditions have been complied with, and the board has granted said license. The board shall deliver such license to the attorney's title insurance company for transmittal to the title attorney.

Unless a system of staggered renewal is adopted under Subsection (d) of this section, licenses shall continue until the first day of the next June unless previously cancelled; provided, however, that if any attorney's title insurance company surrenders or has its certificate of authority revoked by the board, all existing licenses of its title attorneys shall automatically terminate without notice.

The board shall keep a record of the names and addresses of all licensed title attorneys in such manner that the title attorneys appointed by any attorney's title insurance company authorized to transact the business of an attorney's title insurance company within the State of Texas may be conveniently ascertained and inspected by any person upon request.

(c) If an attorney's title insurance company terminates its contract with a title attorney or gives notice of termination to the title attorney, then any such title attorney may, within 30 days after either occurrence apply to the board for continuation of his license with an amendment thereto showing the name of another attorney's title insurance company for whom he is or will be authorized to act.

(d) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

(e) An unexpired license may be renewed by paying the required renewal fee to the board before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an origi-

nal license. At least 30 days before the expiration of a license, the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(f) The board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(g) The board may adopt a procedure for certifying and may certify continuing education programs. Participation in the programs is voluntary.

Authority of Title Attorney

Sec. 7. (a) A duly licensed title attorney may issue policies of title insurance for an attorney's title insurance company only if: (1) such title attorney is an appointed title attorney for an attorney's title insurance company; and (2) such title attorney bases each title opinion upon separate and current title evidence furnished by a licensed abstract plant of the records of the county in which the real property, the title to which is to be insured, is located; and (3) if such title attorney does not own or lease and control a licensed abstract plant and does not participate in a bona fide joint plant operation, such title attorney pays to the licensed abstract plant furnishing the title information the portion of the premium which may be agreed upon between the title attorney and the licensed abstract plant and approved by the board under the contract to furnish title information provided for under Paragraph (b) of this Section 7.

(b) The board shall, not later than January 1, 1976, promulgate the form of the contract to be made and entered into between a title attorney and a licensed abstract plant whereby title information shall be furnished by a licensed abstract plant to a title attorney. Such contract shall state therein the standards for the information which is to be furnished. Contracts shall be entered into between each title attorney and each licensed abstract plant. The board may from time to time alter, change, or amend the form of such contract.

The parties to any such contract shall determine the portion of the premium to be paid by the title attorney to the licensed abstract plant, except that the board is authorized to and may disapprove any division of the premium which the board finds to be excessive or inadequate. Such portion of the premium to be paid to the licensed abstract plant shall be deemed and considered as the "regular charge" for title information as that term is used in Article 9.34 of this Chapter 9. Within 10 days following execution, the parties to each such contract shall file a copy of the executed contract with the board. Each

such contract shall be deemed to be approved as to the division of the premium until the parties are notified of disapproval by the board.

(c) In the event a title attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is unable to contract with a licensed abstract plant to obtain the required title information in the county in which the real property, the title to which is to be insured, is located, such title attorney may deliver (but not issue) title insurance policies in conformity with the provisions of Article 9.34 of this Chapter 9. Likewise, a title attorney may deliver (but not issue) a title insurance policy upon real property in conformity with the provisions of Article 9.34 of this Chapter 9 when based upon a duly certified abstract of title prepared by a licensed abstract plant covering the particular real property from the sovereignty of the soil to the date of the transaction.

(d) Each annual audit of each title attorney shall include therein disclosure of the payments for title information and to whom such payments were made.

Title Attorneys' Licenses: Surrender, Forfeiture, Grounds for Revocation; Notice, Hearing, and Appeal

Sec. 8. (a) Any title attorney may surrender his license at any time by giving notice to the board and to the attorney's title insurance company concerned, except that no title attorney shall be permitted to surrender his license under the provisions of this Section 8 if prior to the offer to surrender such license an action shall have been commenced under the provisions of this Section 8 by the Commissioner of Insurance for revocation of such title attorney's license. Any title attorney shall automatically forfeit the license under the attorney's title insurance company represented if he shall terminate his relationship with the attorney's title insurance company.

(b) The license of any title attorney may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

(1) has wilfully violated any provision of this Chapter 9; or

(2) has intentionally made a material misstatement in the application for such license; or

(3) has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(4) has misappropriated or converted to his own use or illegally withheld money belonging to an attorney's title insurance company, an insured, or any other person; or

(5) has otherwise demonstrated lack of trustworthiness or competence to act as a title attorney; or

(6) has been guilty of fraudulent or dishonest practices; or

(7) has materially misrepresented the terms and conditions of title insurance policies or contracts; or

(8) is not of good character or reputation; or

(9) has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts; or

(10) has failed to remain a member of the State Bar of Texas, or has been disbarred; or

(11) is no longer actively engaged in the practice of law.

(c) Before the license of any title attorney shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the board shall give notice of its intention so to do, by registered mail, to the applicant for or holder of such license and to the attorney's title insurance company who desires that such license be granted or continued in effect, and shall set a date not less than 20 days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the attorney's title insurance company may appear to be heard and produce evidence. In the conduct of such hearing, the commissioner of insurance or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records, or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the attorney's title insurance company concerned.

(d) No applicant or licensee whose license has been denied, refused, or revoked hereunder shall be entitled to file another application for a license as a title attorney within one year from the effective date of such denial, refusal, or revocation, or, if judicial review of such denial, refusal, or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the board unless the applicant shows good cause why the denial, refusal, or revocation of his license shall not be deemed a bar to the issuance of a new license.

(e) If the board shall refuse an application for any license provided for in this Act, or shall suspend, revoke, or refuse to renew any such license at said hearing, then any such applicant or licensee, and any attorney's title insurance company concerned, may appeal from said order by filing suit against the board as defendant in any of the district

courts of Travis County, Texas, and not elsewhere, within 20 days from the date of the order of said board. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The board shall not be required to give any appeal bond in any cause arising hereunder.

Bonds for Title Attorneys

Sec. 9. (a) Every attorney who has been licensed as a title attorney shall make, file, and pay for a surety bond with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of \$7,500, which bond shall obligate the principal and surety to (1) pay such pecuniary losses as may result to any participant in a real estate settlement or closing where an attorney's title insurance policy is issued by such title attorney which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or wilful misapplication on the part of any title attorney, (2) to pay such pecuniary loss as any party to an escrow agreement in which the title attorney is escrowee shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication on the part of such title attorney, either directly and alone, or in connivance with others. In lieu of such bond any title attorney may deposit with the board cash (or securities approved by the board) which cash and securities shall be in the amount of \$7,500 and subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the board that the terms of any title attorney's bond may have been violated, the board may require the title attorney to appear in Travis County with such records as the board deems proper on a named date not earlier than 10 days nor later than 15 days from service of notice, and there conduct an examination into the matter. If upon such examination the board is satisfied that the terms of said bond have been violated, the board shall immediately notify the surety and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

Annual Audit and Report of Title Attorneys

Sec. 10. Every title attorney shall have an annual audit, at his expense, made of trust fund accounts, and within 90 days after January 1 of each calendar year shall send by certified mail, postage prepaid, to the board one copy of such audit report with a letter of transmittal, and each such title attorney shall also send a copy of such letter of transmittal and audit report to the attorney's title insurance company which he represents.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either, recommended by said title attorney and approved by the title insurance company represented by said title attorney.

Each attorney's title insurance company shall examine and analyze the audit report furnished by each of its title attorneys and shall within three months of receipt of same report to the board on forms to be promulgated by the board the findings and results of its examination and analysis of such audit report. If an attorney's title insurance company fails to receive an audit report from any of its title attorneys within the time specified above, it shall forthwith report such omission to the board.

All such reports and analyses furnished by the attorney's title insurance company to the board shall, at the election of the commissioner, be classed as confidential and privileged after having been filed with the board.

If any title attorney shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the board may, after notice to the title attorney and the attorney's title insurance company involved and after a hearing at which the attorney and attorney's title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such title attorney.

Any title attorney or attorney's title insurance company feeling aggrieved by any action of the board hereunder shall have the right to file a suit in a District Court of Travis County in the time and manner provided in Section 8.

Right of Attorney's Title Insurance Company to Examine Title Attorney's Fund Accounts and Require Reports

Sec. 11. Any attorney's title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title attorneys, such examination to be made at the expense of the attorney's title insurance company; or the attorney's title insur-

ance company may require special reports from any such title attorney regarding any of its transactions.

Application to Other Title Insurance Companies

Sec. 12. The business of attorney's title insurance shall only be conducted by attorney's title insurance companies, as defined herein, and no title insurance company, foreign or domestic, or title insurance agent or escrow officer of a title insurance agent presently or hereafter licensed to transact a title insurance business in the State of Texas, pursuant to the provisions of this Chapter 9 of this Insurance Code, may operate as an attorney's title insurance company or a title attorney under the provisions of this chapter.

Exemption From Other Acts

Sec. 13. (a) The sale, issuance, or offering of any capital stock to persons permitted by the provisions of this Article 9.56 to own such capital stock are hereby exempted from all provisions of the laws of this state, other than this Chapter 9, which provide for supervision, registration, or regulation in connection with the sale, issuance, or offering of securities; and the sale, issuance, or offering of any such capital stock to such persons shall be legal without any action or approval whatsoever on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

(b) The shares of stock of each attorney's title insurance company (regardless of class) may be owned only (except as provided in Section 3 of this Article 9.56) by attorneys duly licensed by the State Bar of Texas, residing in the State of Texas, and qualified to be appointed a title attorney under the provisions of this Article 9.56. Each certificate evidencing any share shall have endorsed thereon provisions relating to limitation upon the alienation of such shares whereby such shares may be owned only by such qualifying attorneys or the attorney's title insurance company so issuing such shares. The provisions of this Section 13B shall not, however, be applicable to shares owned by the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas.

(c) At time of organization of any attorney's title insurance company, the applicants for such attorney's title insurance company shall, as a part of the application for granting and approving the charter of such attorney's title insurance company, file with and obtain the approval of the State Board of Insurance an acceptable plan providing for the reacquisition of any and all shares of stock of such attorney's title insurance company issued to any qualified attorney when such attorney no longer remains

qualified to own the same or upon the death of such attorney, whichever shall first occur. Such plan shall, in addition to its other provisions, contain an express provision that under no circumstance may such attorney's title insurance company acquire outstanding shares of its stock as treasury stock if such reacquisition of such shares will result in reducing the capital and surplus of such attorney's title insurance company below the minimum capital and surplus required for the initial organization of such attorney's title insurance company.

(d) In the event of the death of any title attorney, the attorney's title insurance company shall have a period of nine months following the death of such title attorney within which to acquire such deceased title attorney's share or shares.

[Acts 1975, 64th Leg., p. 1081, ch. 409, § 21, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2640, ch. 707, § 4(27), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 3963, ch. 622, § 54, eff. Sept. 1, 1983.]

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 9.57. Title Insurance Policy Provisions

(a) Each policy of title insurance insuring an owner of real property delivered or issued for delivery in this state shall include certain provisions, the form, substance, and content of which shall be promulgated by the State Board of Insurance, in accordance with this article.

(b) If after the policy of title insurance has been issued, the insured reports to the title insurance company that a lien or encumbrance exists which is not excepted under the policy or excluded from coverage or that there is defect in the title likewise not excepted under the policy or excluded from coverage:

(1) the title insurance company will promptly investigate to determine if that lien or encumbrance is valid and not barred by law or statute; and

(2) if the title insurance company concludes that a valid lien or encumbrance, not barred by law or statute, exists or that a title defect exists, the title insurance company will take one of the following actions:

(A) institute all necessary legal proceedings to clear the title to the property;

(B) indemnify the insured pursuant to the terms of the policy;

(C) reinsure at current value the title to the property without making exception to the lien, encumbrance, or defect or indemnify another insurer for reinsuring the title without making exception to the lien, encumbrance, or defect;

(D) secure a release of the encumbrance, lien, or defect; or

(E) effect a combination of Subdivisions (A) through (D) of this subsection.

(c) The State Board of Insurance may promulgate, by amendment to the Owner Policy of Title Insurance or by separate endorsement to the Owner Policy of Title Insurance, language to carry out this article in a manner consistent with the terms, provisions, conditions, and stipulations of the policy or the exceptions to coverage contained in the schedules to the policy. Nothing in this article prohibits the State Board of Insurance from adopting for use in this state a policy or policies in a simplified, generally more understandable, and usable form.

[Acts 1983, 68th Leg., p. 3998, ch. 622, § 89, eff. Jan. 1, 1984.]

CHAPTER TEN. FRATERNAL BENEFIT SOCIETIES

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Art. 10.01. Fraternal Benefit Society

Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, and which shall make provision for the payment of benefits in accordance with Article 10.05 is hereby declared to be a fraternal benefit society. Fees collected by the board under this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to fees collected under this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Art. 10.02. Lodge System Defined

Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known into which members shall be admitted in accordance with its constitution, laws, ritual, rules and regulations, and which shall be required by the laws of such society to hold periodical meetings, shall be deemed to be operating on the lodge system.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.03. Representative Form of Government Defined

Any society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and not less than the number of votes required to amend its constitution and laws; and provided, further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates shall be held as often as once in four calendar years. No member under age sixteen shall have voice or vote in the management of the society. No member, officer, representative or delegate shall vote by proxy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.04. Exemptions

Except as herein provided, such societies shall be governed by this chapter and shall be exempt from all provisions of the insurance laws of this State, not only in governmental relations with the State, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.05. Benefits

(1) A society authorized to do business in this State may provide for the payment of:

- (a) Death benefits in any form;
- (b) Endowment benefits;
- (c) Annuity benefits;
- (d) Temporary or permanent disability benefits as a result of disease or accident;
- (e) Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident;
- (f) Monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of Three Hundred Dollars (\$300);
- (g) For the payment of funeral benefits, and

(2) Such benefits may be provided on the lives of members or, upon application of a member, on the lives of the member's family, including the member, the member's spouse and minor children, in the same or separate certificates.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 352, ch. 169, § 1.]

Art. 10.06. Benefits Upon Life of Child

Any fraternal benefit society authorized to do business in this State may provide in its laws, in addition to other benefits provided for therein, for insurance, annuities, or for insurance and annuities, upon the lives of children at any age, upon the application of some adult person related to or interested in said child as the laws of such society may provide. Any such society may at its option organize and operate branches for such children and membership in local lodges, and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.07. Contributions on Certificates; How Based

The contributions to be made upon such certificate shall be based upon the "Standard Industrial Mortality Table Three and One-half Per Cent," or the "English Life Table Number Six," or upon such other mortality and interest standards permitted by the Standard Valuation Law¹ and authorized by the laws of this state for use by life insurance companies for a similar type of contract or benefit issued

in the same calendar year or such other mortality table as may be approved by the State Board of Insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491; Amended by Acts 1981, 67th Leg., p. 2987, ch. 785, § 1, eff. June 17, 1981.]

¹ Article 3.28.

Art. 10.08. Reserve

Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the mortality and interest standards adopted by the society for computing contributions, the same to be first approved by the State Board of Insurance.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 24; Amended by Acts 1981, 67th Leg., p. 2987, ch. 785, § 1, eff. June 17, 1981.]

Art. 10.09. Enforcing Payment of Contributions and Control of Certificates

Any society shall have the full power to provide for means of enforcing payment of contributions, designations, and in all other respects for the regulation, government and control of such certificate and all rights, obligations and liabilities incident thereto and connected herewith not at variance with the provisions of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.10. Specified Payments

Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.11. Child Membership

In the event of the termination of membership in the society by the person responsible for the support of any child, on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided, the contributions are continued; or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.12. Members and Beneficiaries

Any person may be admitted to beneficial, or general, or social membership in any society in such manner and upon such showing of eligibility as the laws of the society may provide, and any beneficial member may direct any benefit to be paid to such person or persons, entity, or interest as may be

permitted by the laws of the society; provided, that no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable in conformity with the provisions of the contract of membership, and the member shall have full right to change his beneficiary, or beneficiaries, in accordance with the laws, rules, and regulations of the society.

Nothing contained in this chapter shall be construed to affect or apply to societies which admit to membership only persons engaged in one or more hazardous occupations, in the same or similar lines of business.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.13. Liability for Damages and Attorney's Fees

In all cases where a loss occurs and the fraternal benefit society liable therefor shall fail to pay the same within sixty (60) days after the demand therefor, such society shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve (12%) per cent damages on the amount of such loss together with reasonable attorney's fees for the prosecution and collection of such loss.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.14. Organization as Beneficiary

Fraternal benefit societies, heretofore or hereafter incorporated by the State of Texas or licensed to do business therein, shall be authorized to provide in their constitutions, by-laws or fundamental laws for the issuance of benefit certificates to their members, wherein any association, society or corporation, organized and operated for religious, eleemosynary or educational purposes, may be named as beneficiary.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.15. Certificate

Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions or amendments to said charter or articles of incorporation, or articles of association, or constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such

changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.16. Funds

Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment of the surrender of any part thereof, except as provided in Article 10.05 of this chapter. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. No society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard with interest assumption not more than four (4%) per cent per annum, or any mortality tables and interest assumptions authorized presently or in the future which would be permitted by the Standard Valuation Law¹ for use by life insurance companies for a similar type of contract or benefit issued in the same calendar year, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with interest assumptions authorized presently or in the future which would be permitted by the Standard Valuation Law for use by life insurance companies, for a similar type of disability benefit issued in the same calendar year. Provided, however, that any society may value its certificates in accordance with valuation standards otherwise authorized by the laws of this state for the valuation of similar policies issued by life insurance companies. Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1981, 67th Leg., p. 2987, ch. 785, § 1, eff. June 17, 1981.]

¹ Art. 3.28.

Art. 10.17. Investments

Every society shall invest its funds only in securities permitted by the laws of this State for the investment of the assets of life insurance companies. Any foreign society permitted or seeking to do business in this State which invest funds in accordance with the laws of the state in which it is incorporated shall be held to meet the requirements of this chapter for the investment of funds. In case the Constitution and by-laws of the Grand Lodge or governing body of any such association provides that all or any part of the beneficiary or mortuary or insurance fund of such association that is paid in by or collected from the members of such subordinate or local lodge may be retained in the custody of and controlled and managed by such subordinate or local lodge, and designate what officer of such subordinate or local lodge shall have the custody and control of such fund and authorize such local officers to loan or invest the same, and such local officer shall have executed and filed, and shall from time to time when required by the Board of Insurance Commissioners, file with the Board such bond or other written instrument to be prescribed and approved in terms and amount by such Board as will indemnify such fund against waste, depletion or loss through loans, investment or otherwise, then such fund so secured shall be exempt from the provisions of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.18. Funds

(a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

(b) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

(c) Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued one year from the effective date of this Article, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 352, ch. 169, § 2.]

Art. 10.19. Qualification

Hereafter, only such corporation, society, order of voluntary association, having not less than five hundred (500) members and ten (10) subordinate lodges, without capital stock organized and carried on solely for the mutual benefit of its members, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, may, provided that it has been in continuous operation for a period of not less than five (5) years immediately preceding the filing of its articles of incorporation or association as hereinafter provided, qualify as a Fraternal Benefit Society as defined in Article 10.01 for the purpose of providing for the payment of benefits as provided in Article 10.05, by filing with the Board duly certified articles of incorporation or association. Such articles shall set out:

1. The name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or lead to confusion.

2. The purpose for which it is formed, which shall not include more liberal powers than are granted by this Chapter. Any lawful, social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.

Such articles of incorporation or association and duly certified copies of the Constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of Five Thousand Dollars (\$5,000.00), with sureties approved by the State Board of Insurance, conditioned upon the return of the advance payments, as provided in this article, to applicants, if the organization fails to qualify within one (1) year, shall be filed with such Board who may require such further information as it deems necessary, and if the purposes of the society conform to the requirements of this law, and all provisions of law have been complied with, said Board shall so certify and retain and record or file the articles of incorporation or association and furnish the incorporators a preliminary certificate authorizing said society to solicit from its members applications for insurance benefits as hereinafter provided.

Upon receipt of said certificate from the State Board of Insurance, said society may solicit from its members applications for insurance benefits for the purpose of completing its qualification and shall collect from each applicant the amount of not less than one (1) regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No

such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred (500) lives for at least One Thousand Dollars (\$1,000.00) each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examination have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten (10) subordinate lodges or branches into which said five hundred (500) applicants have been initiated; nor until there has been submitted to said Board, under oath of the president and secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent (4%) per annum; nor until it shall be shown to the Board by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred (500) applicants have each paid in cash at least one (1) regular monthly payment as herein provided per One Thousand Dollars (\$1,000.00) of indemnity to be effected, which payments in the aggregate shall amount to at least Twenty-Five Hundred Dollars (\$2,500.00); all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

Said advanced payments shall, during the period of completing qualification, be held in trust, and if such qualification is not completed within one (1) year as hereinafter provided, returned to said applicants.

The Board may make such examination and require such further information as it deems advisable; and upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the Board shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the qualification of such society at the date of such certificate. The Board shall cause a record of such certificate to be made

and a certified copy of such record may be given in evidence with like effect as the original certificate.

Unless the five hundred (500) applicants herein required have been secured and the organization has qualified as a fraternal benefit society as herein provided, the preliminary certificate granted under the provisions of this article shall be null and void after one (1) year from its date, or after such further period, not exceeding one (1) year, as may be authorized by the State Board of Insurance upon cause shown.

Provided, however, that this Article shall not apply to societies specifically exempted from the provisions of Chapter 10 of the Insurance Code and provided further, that the above provisions of this article shall not apply to Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965, so long as their licenses or renewals or extensions thereof continue in force. The following provisions of this article shall apply to such Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965.

When any domestic society shall have discontinued business for the period of one (1) year, or has less than four hundred (400) members holding benefit certificates, its permanent certificate shall become null and void. Every such society shall have the power to make a constitution and bylaws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to, or amend such constitution and bylaws and shall have such other powers as are necessary and incidental to carrying into effect its object and purposes.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1965, 59th Leg., p. 1188, ch. 551, § 1.]

Art. 10.20. Powers Retained; Amendments

Any society now engaged in transacting business in this State may exercise all of the rights conferred hereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this chapter, if incorporated; or if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its Constitution and laws, and all such amendments shall be filed with the Board and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, Constitution or laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.21. Mergers and Transfers

No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the Board of Insurance Commissioners, together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds ($\frac{2}{3}$) of the members of the supreme legislative or governing body of each of said societies.

Upon the submission of said contract, financial statements and certificates, said Board shall examine the same, and if it shall find such statements to be correct and the said contract to be in conformity with the provisions of this article, and that such merger or transfer is just and equitable to the members of each of said societies, the Board shall approve said merger or transfer, issue its certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect. In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by said Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.22. Annual License

Societies which are now authorized to transact business in this State may continue such business until their present licenses expire and the authority of such societies may thereafter be renewed annually for a period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance. The license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the Board of Insurance Commissioners Ten (\$10.00) Dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Repeal

This article was repealed to the extent that it requires periodic renewal of certificates by Acts 1959, 56th Leg., p. 434, ch. 194, § 2.

Art. 10.23. Admission of Foreign Society

No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this

State, shall transact any business herein without a license from the Board of Insurance Commissioners. Any such society shall be entitled to a license to transact business within this State upon filing with said Board a duly certified copy of its charter or articles of association; a copy of its Constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the Chairman of the Board as hereinafter provided; a statement of its business under oath of its president and secretary or corresponding officers in the form required by said Board of Insurance Commissioners, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the Board of Insurance Commissioners; a certificate from the proper official in its home state, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical or other payments by persons holding similar contracts; and upon furnishing the Board such other information as it may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, said Board shall issue a license to such society to do business in this State for the period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next following the date of said certificate, and such license shall, upon compliance with the provisions of this chapter, be renewed annually. The license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this State shall have the qualifications required of domestic societies organized under this chapter and have its assets invested as required by the laws of the state, territory, district, country or province where it is organized. For each such license or renewal the Society shall pay the Board of Insurance Commissioners Ten (\$10.00) Dollars. When said Board refuses to license any society or revokes its authority to do business in this State, the Board shall reduce its decision to writing and file the same in its office, and shall furnish a copy thereof, together with a statement of its reasons, to the officers of the society, upon request, and the action of said Board of Insurance Commissioners shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. Nothing in this or the preceding article shall be construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.24. Service of Process

Every society, whether domestic or foreign, hereafter applying for admission, shall before being licensed, appoint in writing the Chairman of the Board of Insurance Commissioners and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this State.

Copies of such appointment certified by said Chairman of the Board shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon said Chairman of the Board, or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such society. No such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than thirty (30) days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said Chairman of the Board he shall forthwith forward by registered mail, one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.25. Place of Meeting

Each domestic society shall have its principal office in this State, but may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches. All business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.26. No Personal Liability

Officers and members of the supreme, grand or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society. The same shall be payable only out of the funds of such society and in the manner provided by its law.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.27. Waiving Provisions of Law

The constitution and laws of the society may provide that no subordinate body nor any of its subordinate officers or members shall have the power or authority to waive any provision of the laws and Constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this State upon the passage of this law as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single State organizations, and all reports required by the provisions of this chapter shall be made and furnished by the officers of such supreme State governing body and shall embrace and contain the transactions, liabilities and assets of such State organization.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.28. Benefit Not Attachable

No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.29. Constitution and Laws

Every society transacting business under this chapter shall file with the Board, a duly certified copy of all amendments of, or additions to, its Constitution and laws within ninety (90) days after the enactment of the same. Printed copies of the Constitution and laws, as amended, changed, or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.30. Annual Reports

Every society transacting business in this State shall annually, on or before the first day of March, file with the State Board of Insurance in such form as the Board may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as said Board may deem necessary to a proper exhibit of its business and plan of working. The Board may at other times require any further statement it may deem necessary to be made relating to such society.

In addition to such annual report, each society shall annually report to said Board a valuation of its certificates in force on December 31st last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society, and shall be filed with the State Board of Insurance within ninety (90) days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty (20) years, and covering not less than one hundred thousand (100,000) lives with interest assumption not more than four (4%) per centum per annum, provided, however, that any society may value its certificates in accordance with valuation standards otherwise authorized by the laws of this state for the valuation of similar policies issued by life insurance companies. Each such valuation report shall set forth clearly and fully the mortality and interest bases and the method of valuation.

Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences, and in such cases a separation of the funds shall not be required.

The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured

liabilities. A report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June 1st of each year; or in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society.

The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contributions shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five (5%) per centum per annum.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1981, 67th Leg., p. 2987, ch. 785, § 1, eff. June 17, 1981.]

Art. 10.31. Provisions to Insure Security

If the valuation of the certificates, as hereinbefore provided, on December 31, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation as to the degree of deficiency as shown in the valuation as of December 31, 1917. If at any succeeding triennial valuation such society does not show at least the same condition, the Board of Insurance Commissioners shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the Society has failed to maintain the conditions required herein, said Board may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, or in the case of a foreign society, its license may be cancelled in the manner provided in this chapter. Any such society shown by any triennial valuation, subsequent to December 31, 1917, not to have maintained the condition herein required, shall, within two (2) years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December 31, 1917, or thereafter, as to all new members admitted, be subject so far as stated rates of contributions are concerned, to the provisions of this chapter applicable to the organization of new societies. The net mortuary or beneficiary contributions and funds of new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown

by the succeeding triennial valuation, then the said new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.32. Accumulation Basis

In lieu of the requirements of the two preceding articles, any society accepting in its laws the provisions of this article may value its certificates on a basis herein designated "accumulation basis," by crediting each member with the net amount contributed for each year and with interest at approximately the next rate earned and by charging him with his share of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this State, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts, no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund of contribution especially created or required for such purpose. Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society. Certificates issued, rerated or adjusted on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumption for mortality and interest recognized by the law of this State shall be valued on such basis, herein designated the "Tabular Basis." If on the first valuation under this article a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve or from increased contributions or by an increase in the number of assessments applied to the society, as a whole or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be

specified in its laws. If the laws of the society so provide, the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society. The required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life, or other plan of insurance, specified in the contract, according to assumptions for mortality and interest recognized by the law of this State and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July 1st of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis. For this purpose individual bookkeeping accounts for each member shall not be required and all calculations may be made by the actuarial methods.

Nothing herein shall prevent the maintenance of such surplus over and above the credits on the accumulation basis, and the reserves on the tabular basis pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.33. Examination of Domestic Societies

The Board of Insurance Commissioners or any person it may appoint, shall have the power of visitation and examination into the affairs of any domestic society. It may employ assistants for the purpose of such examination, and it, or any person it may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and conditions of the society. The expense of such examination shall be paid by the society examined, upon statement furnished by the Board of Insurance Commissioners, and the examination shall be made at least once in three (3) years. Whenever after examination the Board is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business

fraudulently; or whenever any domestic society, after the existence of one (1) year or more, shall have a membership of less than four hundred (400), or shall determine to discontinue business, said Board may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and if it shall then appear upon the trial that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society, and to distribute its funds to those entitled thereto. No such proceeding shall be commenced by the Attorney General against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date named in said notice, to show cause why such proceedings should not be commenced.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.34. Application for Receiver, etc.

No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in the State unless the same is made by the Attorney General.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.35. Examination of Foreign Societies

The Board of Insurance Commissioners, or any person whom it may appoint, may examine any foreign society transacting or applying for admission to transact business in this State. The said Board may employ assistants, and it, or any person it may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and conditions of the society. It may, in its discretion, accept in lieu of such examination the examination of the Insurance Department of the state, territory, district, province or country where such society is organized. The actual expense of examiners making such examination shall be paid by the society, upon statements furnished by the Board. If any such society or its officers refuse to permit such examination or to comply with the provisions of the law relative thereto, the authority of such society to write new business in this State shall be suspended, or license refused, until satisfactory evidence is furnished the Board of Insurance Commissioners relating to the

condition and affairs of the society, and during suspension the society shall not write any new business in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.36. No Adverse Publications

Pending, during or after an examination or investigation of any such society, either domestic or foreign, the Board of Insurance Commissioners shall make public no financial statement, report or finding, nor shall it permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement or report or finding, and to make such showing in connection therewith as it may desire.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.37. Revocation of License

When the Board of Insurance Commissioners on investigation is satisfied that any foreign society transacting business under this law has exceeded its powers, or has failed to comply with any provision of this chapter, or is conducting business fraudulently, or is not carrying out its contracts in good faith, the Board shall notify the society of its findings, and state in writing the grounds of the Board's dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If, on the date named in said notice, such objections have not been removed to the satisfaction of said Board or the society does not present good and sufficient reason why its authority to transact business in this State should not at that time be revoked, the Board may revoke the authority of the society to continue business in this State. All decisions and findings of said Board made under the provisions of this article may be reviewed by proper proceedings in any court of competent jurisdiction.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.38. Examination of Certain Societies

Nothing in this chapter shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias) and the Junior Order of the United American Mechanics (exclusive of their beneficiary degree of insurance branch) or societies which limit their membership to any one hazardous occupation nor to similar societies which do not issue insurance certificates nor to an association of local lodges of a society now doing business in this State which provides death benefits not exceeding Five Hundred (\$500.00) Dollars to any one person or

disability benefits not exceeding Three Hundred (\$300.00) Dollars in any one year to pay one person or both, nor to any contracts of reinsurance business on such plan in this State nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit of more than One Hundred (\$100.00) Dollars or for disability benefits of more than One Hundred and Fifty (\$150.00) Dollars to any person in one (1) year. The Board of Insurance Commissioners may require from any society such information as will enable it to determine whether such society is exempt from the provisions of this law.

Any fraternal benefit society heretofore organized and incorporated and operating within the definition set forth in the first three articles of this chapter, providing for the benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this chapter and shall have all the privileges and shall be subject to all the provisions and regulations of this law, except that the provisions of this law requiring medical examinations, valuations of benefit certificates and that the certificates shall specify the amount of benefits, shall not apply to such society.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 10.39. Exemption from Taxation

Every fraternal benefit society organized or licensed under the provisions of Chapter 8 of Title 78 of the Revised Civil Statutes of Texas or this Chapter is hereby declared to be a charitable and benevolent institution, and all of the funds of such fraternal benefit society shall be exempt from all and every state, county, district, municipal and school tax, including occupation taxes, other than taxes or¹ real estate and office equipment when used for other than lodge purposes.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

¹ Probably should read "on".

Art. 10.40. Conversion of Fraternal Benefit Society into Mutual or Stock Company

Sec. 1. Any fraternal benefit society with a lodge system and representative form of government, doing business in the State of Texas, may convert itself into a Mutual Benefit Company, or into an incorporated Stock Company, by conforming to the provisions of this act.

Sec. 2. When it shall be determined by the governing body of a Fraternal Benefit Society to submit the proposed change to the members of the society, a meeting shall be called not less than

ninety (90) days hence, and notice of such purpose with a general plan of the changes shall be mailed to each member or policyholder of the Society to their post office address as shown by the Society records, and all the subordinate lodges or branches of the Society, which notice shall be mailed at least forty (40) days prior to the day named in the call by the governing body. Within twenty (20) days after the receipt of such notice, each lodge or subordinate branch shall in Regular or Called Session pass upon the proposal and choose a representative or delegate, by whatever name the representative may be known, to the governing body for the State (if such Society be operating in more than one State). When the delegates or representatives so chosen to the State body shall have assembled they shall choose the requisite number of representatives or delegates to which the State may be entitled to the Supreme or Grand Lodge, if same be located in the State of Texas. Provided that no such society shall convert itself into a mutual benefit or incorporated stock company except upon such terms and conditions as in the opinion of the Board of Insurance Commissioners of Texas shall fully protect the rights and interests of its members and policyholders; and the plan of such change shall be submitted to and approved by the Board of Insurance Commissioners before it shall be submitted to the members or policyholders and the subordinate lodges or branches as hereinbefore provided.

Sec. 3. Pursuant to said notice and convening of the supreme governing body, there shall be adopted a resolution by delegates representing lodges which comprise not less than sixty (60%) per cent of the total membership of the association authorizing the conversion of the said fraternal benefit society into a mutual or stock life insurance company, and shall set forth or ratify a certificate of incorporation, amending the society's charter, and shall set forth:

(a) The name of the society, and the name of the new corporation by which it shall thereafter be known, which shall preferably be a continuation of the same name. Provided that if the new corporation shall change from the former name of the society, it shall not adopt the same name as that of any other such society doing business in this State, nor a name similar to that of any other society doing business in this State;

(b) The object of the corporation;

(c) The location of its principal office, which must be within the State of Texas; and the names of the principal officers of such corporation, who shall serve until their successors are elected and qualified;

(d) The period, if any, for the duration of the corporation;

(e) If the conversion is into a mutual benefit company there shall be set forth the amount of the free surplus which in amount and form shall comply with Article 11.01 of this Code as amend-

ed; and such conversion shall comply with the requirements of Article 11.02 of this Code as amended, and upon such conversion such company shall be subject to all of the provisions of Chapter 11 of this Code. If the conversion is into an incorporated stock company, there shall be set forth the amount of the surplus and the amount of the capital stock authorized, the number of shares into which it is divided, and the amount of capital stock to be immediately paid in, and in amount and form such capital and surplus shall be in conformity with Articles 3.02 and 3.02a of this Code, as amended; and such conversion shall comply with the requirements of Article 3.04 of this Code as amended, and upon such conversion such company shall be subject to all of the provisions of Chapter 3 of this Code.

Sec. 4. The certificate of incorporation so adopted or amended shall be filed with the Board of Insurance Commissioners and be incorporated in the charter of the proposed Company.

Sec. 5. A report of said meeting certified to by the presiding officers under the corporate seal of such Society shall also be filed with the Board of Insurance Commissioners.

Sec. 6. If such Fraternal Benefit Society be converted into a Stock Life Insurance Company, each and every policyholder, certificate holder, or other member of such Society, shall have a preference right for ninety (90) days after such determination to subscribe for the proportion of the total capital stock offered for sale, which the amount of his insurance bears to the Society's total insurance in force at the time of the conversion, which time shall be that at which the supreme governing body authorize the change.

Before any of the stock shall be offered for public sale, the membership of the Society shall have a preference in the purchase thereof, provided that no one member shall be allowed to subscribe or purchase more than twenty-five (25%) per cent of the capital stock of the new company, nor shall he subscribe or be allowed to purchase more than ten (10%) per cent of the capital stock of the new company if there be other members applying in writing for the purchase of stock whose subscriptions are not filled. If the membership shall not have subscribed for the total capital stock authorized, then others who were not members of the Society at the time of the conversion may be permitted to subscribe for stock and be allowed equal rights in the ownership thereof, with all other stockholders. It shall be the duty of such Fraternal Benefit Society desiring to be converted into a Stock Company to advise every member or policyholder of his right to subscribe for and purchase the stock of such Stock Life Insurance Company and of the amount of such stock for which he is entitled to subscribe and all other terms and conditions, in a form to be approved

by the Board of Insurance Commissioners within ten (10) days after such Society shall be voted to so convert itself into a Stock Company. Proof of depositing a letter addressed to all members or policyholders, conveying the advice, in the approved form as herein provided for, shall be deemed proof of compliance with the foregoing requirement.

Sec. 7. When such Fraternal Benefit Societies shall have complied with the provisions of this article and the other laws of this State regulating the incorporation of Life Insurance Companies, and shall have received from the Board of Insurance Commissioners its charter or certificate of authority to transact business as a Stock Life Insurance Company, its reorganization and conversion into such Stock Company shall be complete. Such reorganization and converted corporation shall be deemed in law to have all the rights, privileges, powers, and authority of any other Stock corporation organized for doing a Life Insurance business in the State of Texas, and controlled by the laws applying thereto. The new corporation shall be deemed in law to be a continuation of the business of the Fraternal Benefit Society when the reorganization and conversion shall have been accomplished by the formation of a new Company or by amendment to its former charter, and such reorganized corporation shall succeed to and become invested with all and singular the rights, privileges, franchises, and all property, real, personal, or mixed, of the former Society, and all debts due on any account and all other things and choses in action theretofore belonging to such Fraternal Benefit Society, and all property rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as they were the property of the former Fraternal Benefit Society, and the title to any real estate by deed or otherwise vested in the former Fraternal Benefit Society shall forthwith vest in such organized converted corporation, and the title thereto shall not in any way be impaired by reason of such change or reincorporation.

Sec. 8. The rights of all members, policyholders, creditors, and the standing of all claims under the former Fraternal Benefit Society shall be preserved unimpaired under the new corporation, and all debts, liabilities, and duties of the former Fraternal Benefit Society shall thenceforth attach to the reorganized corporation, and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, and all outstanding benefit certificates or policies issued by the said Fraternal Benefit Society shall be valid obligations of the new incorporation without the issuance of new policies.

Sec. 9. Such organized and converted corporation shall be obliged to carry out and perform all of the obligations of every kind and character owing

by the former Fraternal Benefit Society to the holders of its policies or beneficial certificates, and the same may be enforced against it to the extent as if said policies and beneficial certificates had been issued by it after conversion. Any pending suits wherein the former Fraternal Benefit Society was a party shall be unaffected by the conversion thereof and shall be prosecuted by or against such reorganized and converted corporation the same as if the conversion had not taken place.

Sec. 10. The members of such Fraternal Benefit Society, or the policyholders in the chartered incorporated Company, may form local clubs for social and charitable purposes, but the same shall have no connection with the management of the affairs of the corporation or affect its liability or the insurance in effect.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 16.]

Art. 10.41. False Statements; Penalty

Any person, officer, member or examining physician of any society authorized to do business under the laws of this State relating to fraternal benefit societies who wilfully makes any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this law, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than thirty days nor more than one year, or both.

[1925 P.C.]

Art. 10.42. Unlawfully Soliciting Membership; Penalty

Whoever solicits membership for, or in any manner assists in procuring membership in any fraternal benefit society not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in such society not authorized by law to do business in this State, shall be fined not less than fifty nor more than two hundred dollars.

[1925 P.C.]

Art. 10.43. Soliciting Without Certificate of Authority; Penalty

Whoever solicits for or organizes lodges of such association as are defined to be a fraternal benefit society under the laws of this State, without first obtaining from the Commissioner of Insurance a certificate of authority showing that the association has complied with the provisions of such laws and is entitled to do business in this State, shall be fined not less than one hundred nor more than two hundred and fifty dollars, or be imprisoned in jail for

not less than three nor more than six months, or both.

[1925 P.C.]

Art. 10.44. Exceptions

No provision of the preceding articles shall prohibit any member of a local or subordinate lodge from soliciting any person to become a member of any local or subordinate lodge already in existence, nor apply to any members of any local or subordinate lodge who participate in, direct or conduct the organization or establishment of any local or subordinate lodge within the limits of the county of their residence or lodge district.

[1925 P.C.]

Art. 10.45. General Penalty

Any officer, agent or employé of any fraternal benefit society organized under the laws of this State who neglects or refuses to comply with or who violates any provision of the laws of this State governing such societies, shall where the penalty is not provided for in the preceding articles of this chapter, be fined not exceeding two hundred dollars.

[1925 P.C.]

CHAPTER ELEVEN. MUTUAL LIFE INSURANCE COMPANIES

Art.

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Art. 11.01. Incorporation

Sec. 1. Nine or more persons, residents of this State, may form a mutual life insurance company for the purposes of insuring the lives of individuals on the mutual level premium, legal reserve plan, and any such company heretofore or hereafter created may issue, combined or separately, life, health and accident insurance policies, subject to the provi-

sions of this chapter, by executing and acknowledging articles of incorporation for that purpose. Such articles of incorporation shall set forth:

1. The name and residence of each incorporator;

2. The name of the proposed company, which shall contain the words "Mutual Life Insurance Company" as a part thereof; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;

3. The location of the principal office from which the business of the company is to be transacted;

4. The number of directors and the name and residence of each one who is to serve until the first regular election of directors;

5. The amount of its free surplus which shall, at the time of incorporation, be not less than Two Hundred Thousand (\$200,000.00) Dollars. Such free surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this State or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter, and shall not include any real estate as a part of its free surplus; provided, however, that twenty-five (25%) per cent of the minimum free surplus may be invested in first mortgage real estate loans. Notwithstanding any other provision of this Code, a minimum of One Hundred Thousand (\$100,000.00) Dollars of such free surplus shall at all times be maintained in cash or in the classes of investments described in this article. After the granting of charter the free surplus in excess of such One Hundred Thousand (\$100,000.00) Dollars may be invested as otherwise provided in this Code for stock companies.

Sec. 2. (a) From and after the effective date of this Act the surplus requirement of Paragraph 5 of Section 1 of Article 11.01 of this Code shall be the minimum surplus requirement for any company which is subject to the provisions of Chapter 11 of this Code as amended; provided, however, that no such company which was licensed and doing business in this State prior to May 1, 1955 shall be required to increase the amount or convert the class or form of its existing surplus to comply with the surplus requirement of said Paragraph 5 of Section 1 of Article 11.01 of this Code as amended, nor shall any such company be denied the right of writing new business if such company does not maintain the surplus stated in Article 11.17 of this Code, so long as all other laws are complied with.

(b) Each such mutual life insurance company shall have the right to apportion to its free surplus all or any portion of the contingency reserves provided for in Article 11.11 of the Insurance Code while and whenever the free surplus of such compa-

ny shall be less than One Hundred Thousand (\$100,000.00) Dollars.

(c) Any mutual life insurance company heretofore organized or operating under the provisions of Chapter 11 of this Code may convert into a stock legal reserve life insurance company subject to the following conditions:

1. There shall be contributed in cash of the United States the sum of not less than Fifty Thousand (\$50,000.00) Dollars in capital and not less than Twenty-five Thousand (\$25,000.00) Dollars in surplus, which contributed capital and surplus shall be in addition to all assets of such company at the date of conversion;

2. Such conversion shall only be made on a vote of the policy holders of such company at a meeting called for such purpose. Pursuant to such policy holder authorization, the Board of Directors and officers of such mutual legal reserve life insurance company shall amend its existing charter or articles of incorporation so as to comply with the requirements of Article 3.02 of this Code, as amended, except as to the capital and surplus requirements thereof;

3. After compliance with the provisions hereof and approval of the proposed conversion by the State Board of Insurance, such company shall be and become a legal reserve stock life insurance company, except that such company so converted shall not: (1) insure any life for more than Five Thousand (\$5,000.00) Dollars in event of death; nor (2) declare or pay any cash dividend unless and until the capital and surplus of such stock legal reserve life insurance company shall be increased to not less than the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code as amended;

4. Any such company so converted shall within ten years from the date of its conversion increase its capital and surplus to not less than the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code, or its certificate of authority to do business shall be revoked by the State Board of Insurance;

5. From and after the date of such conversion such legal reserve life insurance company shall be governed by the provisions of Chapter 3 of this Code, as amended, except as otherwise herein provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 17; Acts 1983, 68th Leg., p. 3902, ch. 622, § 11, eff. Sept. 1, 1983.]

Art. 11.02. Application, Charter and Certificate of Authority

Sec. 1. As a condition precedent to the granting of a charter of any such insurance company, the

incorporators shall file with the State Board of Insurance the following:

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

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

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

4. A charter fee of Twenty-five (\$25.00) Dollars.

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

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

(a) The minimum free surplus, as required by law, is the bona fide property of the company;

(b) The proposed officers, directors and managing executive have sufficient insurance experi-

ence, ability and standing to render success of the proposed company probable;

(c) The applicants are acting in good faith.

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

Sec. 2. The Board shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof. If it finds that the company has complied with all applicable laws and is possessed of a free surplus of not less than Two Hundred Thousand (\$200,000.00) Dollars and that such surplus is in the custody of the officers either in cash or classes of investments as provided in Paragraph 5 of Article 11.01 of this Code, as amended, it shall issue to such company a certificate of authority to transact a life, health or accident insurance business within this State as such officers may apply for and as may be authorized by its charter issued pursuant to Article 11.01 of this chapter; which certificate shall be issued for a period of not more than fifteen (15) months and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance, on which date such certificate shall expire by its terms unless revoked or suspended according to law. The foregoing requirement as to free surplus shall apply to mutual assessment companies or associations which may convert to mutual legal reserve companies under the provisions of Article 11.10 of the Insurance Code as amended. No original or first certificate of authority shall be granted, except in conformity herewith.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 1010, ch. 415, § 1; Acts 1955, 54th Leg., p. 916, ch. 363, § 18; Acts 1983, 68th Leg., p. 3903, ch. 622, § 12, eff. Sept. 1, 1983.]

Repeal

This article was repealed to the extent that it requires periodic renewal of certificates by Acts 1959, 56th Leg., p. 434, ch. 194, § 2.

Art. 11.03. Directors

The business of a mutual life insurance company shall be controlled and directed by a board of directors consisting of not less than five (5) members, who shall be elected annually as provided in this chapter. The directors who are to serve until the first annual election shall be named in the charter, and they shall hold office until their successors shall be elected and qualified, or until they shall be removed for improper practices. The board of directors shall elect the officers of the company, which shall be a president, and such number of vice presidents as the by-laws may provide; a secretary,

a treasurer, a medical director and such other officers as the by-laws may provide for; and shall fix the compensation of all such officers. The duties of all officers shall be prescribed by the by-laws. The by-laws governing the company until the date of its first annual meeting shall be adopted by the board of directors at their first meeting after the certificate of authority shall be issued authorizing the company to transact the business of a mutual life insurance company.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 11.04. Annual and Special Meetings of Policyholders

There shall be an annual meeting of all the policyholders of each mutual life insurance company at the home office of such company or at such other place as may be properly announced to the policyholders, on the fourth Tuesday in April after it shall have received a certificate of authority to transact the business of life insurance, and annually thereafter, at which the directors shall be elected for the succeeding year, and at which bylaws for the government of the company, not inconsistent with the provisions of this Chapter or with the laws of this state may be adopted, and at which the existing bylaws may be repealed or amended. Provided, however, the bylaws of the company may set an annual meeting date on any day prior to April 30 in each year; and provided further, that when the Board of Directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the terms of office of directors of the first class to expire at the first annual meeting of policyholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of policyholders. At an annual or special meeting, each policyholder shall be entitled to one vote for each Five Hundred Dollars (\$500.00) of insurance held by him. Any policyholder may execute his proxy authorizing and entitling the holder to exercise his voting powers, unless such proxy shall be revoked previous to such annual or special meeting.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1965, 59th Leg., p. 273, ch. 114, § 1.]

Art. 11.05. Bonds of Officers

The president, secretary and treasurer shall each give bond for the protection of the policyholders in amount and with securities to be approved by the Board of Insurance Commissioners, conditioned for the faithful performance of their respective duties.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 11.06. Annual Statement; Renewal Certificate

Such mutual life insurance companies shall file their annual statements with the Board of Insurance Commissioners, and receive from the Board their certificates of authority to transact the business of life, health, and accident insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 11.07. Examination

All of the provisions of Article 1.15 and Article 1.16 relative to the examination of companies shall apply to companies formed under this Chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1965, 59th Leg., p. 309, ch. 141, § 1a.]

Art. 11.08. Agents and Commissions

Any such mutual life insurance company which has received authority from the Board of Insurance Commissioners to transact business in this State shall receive from such Board, upon written request therefor, a certificate of authority for each of its agents in this State. Contracts between such companies and such agents shall not provide for commissions or other compensation to such agents in excess of the expense loading in the premiums of policies issued upon the applications procured by such agents, collected therefor, and paid to the company in cash.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 11.09. Repealed by Acts 1963, 58th Leg., p. 1117, ch. 434, § 10, eff. Aug. 23, 1963**Art. 11.10. Mutual Assessment Companies May Convert**

Mutual assessment companies and associations organized and operating under the laws of this State on May 17, 1943 which desire to convert to a mutual legal reserve company, and qualify under Chapter 11 of the Insurance Code, shall be required at the time of conversion to be possessed of free surplus of not less than Two Hundred Thousand (\$200,000.00) Dollars. In order to convert, such company shall comply with the provisions of Articles 11.01 and 11.02 of the Insurance Code as amended, and upon such conversion shall be subject to all of the provisions of Chapter 11 of this Code.

Nothing in this article or in the provisions of this chapter or Chapter 3 of this Code shall ever be

construed to mean that any of the associations or similar concerns, by whatsoever name or class designated, whether specifically named herein or not, shall be required by the Board of Insurance Commissioners to convert to mutual legal reserve companies as herein authorized unless they voluntarily decide to do so; and if such associations have not heretofore voluntarily decided to come under this chapter, and if such associations do not hereafter so voluntarily decide to come under this chapter, then this chapter shall not in any way apply to any such associations.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 1010, ch. 415, § 2; Acts 1955, 54th Leg., p. 916, ch. 363, § 19.]

Art. 11.11. Contingency Reserve

Any mutual, level premium, legal reserve life insurance company organized and doing business under the provisions of this Chapter may accumulate and maintain a contingency reserve, over and above all of its reserves and liabilities required or specifically permitted by the provisions of this Chapter, in an amount not exceeding Ten Thousand Dollars (\$10,000), or an amount equal to the sum of twenty per cent (20%) of all of its policy reserves and policy liabilities, plus one per cent (1%) of the amount of its life insurance then in force, if such sum be greater than Ten Thousand Dollars (\$10,000), but in no event to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000), or twenty per cent (20%) of all of its policy reserves and policy liabilities, whichever shall be greater. The term "policy reserves and policy liabilities" as used in this Section of this Act shall include only its reserves on outstanding life insurance policies and annuity contracts, contracts issued as supplemental thereto or in connection therewith or provisions included therein insuring against disability or against death by accident or accidental means, and including liabilities required under optional modes of settlement, and for dividends left on deposit at interest, after deducting the net value of its risks reinsured by other solvent assuming insurers, but this shall not affect any existing contingency reserve held by any such company on the effective date of this Act, save that whenever and as long as such existing contingency reserve shall exceed the limit above-mentioned, it shall not be entitled to maintain any additional contingency reserve.

The State Board of Insurance may, for good cause shown by an official order, permit any such company to accumulate and maintain a contingency reserve in excess of the maximum amount hereinbefore prescribed, for a period, not exceeding one (1) year under any one order, which shall be specified in such order. The State Board of Insurance shall state in such order its reasons therefor.

All such contingency reserves as provided for by this Act shall be invested according to law under

the supervision of the State Board of Insurance and shall be used exclusively for the payment of death claims and dividends to policyholders. All interests and earnings from such investments in excess of the maximum contingency reserves as provided for in this Act shall be paid in dividends to policyholders according to present laws.

The contingency reserve described in this Article shall be deemed to be unassigned surplus, and in addition to any free surplus elsewhere required or allowed, may be so designated in all financial statements and reports and treated as such.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 814, ch. 301, § 1; Acts 1983, 68th Leg., p. 103, ch. 18, § 1, eff. April 13, 1983.]

Art. 11.12. Surplus and Dividends

Each such company shall make an annual accounting and apportionment of divisible surplus to each policyholder, beginning not later than the end of the second policy year on all policies issued; and each such policyholder shall be entitled to and credited with or paid such portion of the entire divisible surplus as may be equitably apportioned to his policy. Upon the 31st day of December of each year, or as soon thereafter as may be practicable, each such company shall truly ascertain the surplus earned by it during such year; and after setting aside from such surplus such portion thereof as the Board of Insurance Commissioners may approve for retirement of any unpaid advances theretofore made pursuant to Article 11.16 of this chapter, and after deducting the contingency reserve and the amount of earned surplus, if any, apportioned to free surplus as provided for in this chapter, it shall apportion to each of its policies upon which all premiums due and payable for at least two (2) years have been paid, an equitable proportion of the remainder of such surplus, and shall immediately submit a detailed report of such apportionment under oath of its president or secretary to the Board of Insurance Commissioners. If such Board shall find such apportionment to be equitable and just to the policyholders and in accordance with the provisions of this chapter, it shall approve the same, and it shall become effective. If it shall not approve such apportionment, it shall make such changes therein as it shall deem equitable and just and necessary to make the same comply with the provisions of this chapter, and shall certify such changes to such company, whereupon such apportionment as changed by such Board shall become effective. Each dividend declared as aforesaid shall be paid in cash, or in the equivalent of its cash value in any option stated in the policy and selected by the policyholder, notice of which selection by the policyholder shall be given to the company in writing.

It is further provided that each such company heretofore organized or converted and operating under the provisions of Chapter 11 of this Code

which does not at the effective date of this amendment to this Code maintain the minimum free surplus specified in Article 11.01 as amended shall have the right, subject to the limitations herein set forth, to pay dividends but shall not be obligated by the provisions of this article to pay dividends to the policyholders until the minimum free surplus specified in Article 11.01 as amended has been acquired or accumulated by such company. The divisible surplus available for payment of dividends shall not include:

(a) Any portion of the free surplus, required by Article 11.01 as amended, of companies organized after the effective date of this amendment;

(b) Any portion of the free surplus of any company theretofore apportioned from earned surplus, transferred from contingency reserves or otherwise accumulated or acquired by such company as a part of its free surplus;

(c) That portion of the earned surplus for the preceding calendar year in excess of seventy-five (75%) per cent thereof whenever the free surplus of any company shall be less than Twenty-five Thousand (\$25,000.00) Dollars; it being the intent and purpose of this clause that each company whose free surplus is less than Twenty-five Thousand (\$25,000.00) Dollars shall be obligated to apportion a minimum of twenty-five (25%) per cent of the net earned surplus for the preceding calendar year to the free surplus of such company until such company shall have acquired or accumulated a free surplus of at least Twenty-five Thousand (\$25,000.00) Dollars.

No such company shall ever be required by the provisions of this article to pay dividends to policyholders at any time when the free surplus theretofore accumulated or acquired by said company shall be impaired.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 1010, ch. 415, § 3; Acts 1955, 54th Leg., p. 916, ch. 363, § 20.]

Art. 11.13. Policies

Mutual life insurance companies are authorized to transact business throughout this State and in other states to which they may be admitted; they shall issue no policies except upon the participating plan with dividends payable annually as provided in this chapter; the form of all policies issued by any such company shall be approved by the Board of Insurance Commissioners, and all such policies shall have plainly printed on both the face and the reverse sides thereof the words, "The form of this policy is approved by the Board of Insurance Commissioners of the State of Texas," and the Board shall revoke the certificate of authority of any such company which shall issue any policy except upon such form so approved. No such company shall issue any policy or policies by which, after deducting reinsurance, if any, it shall be bound for more than Five

Thousand (\$5,000.00) Dollars upon any one life at any time when the total amount of its insurance in force is less than Ten Million (\$10,000,000.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 11.14. Table of Guaranteed Values

Each policy issued by such company shall contain a table of guaranteed values, which shall become non-forfeitable not later than upon the payment of the third full annual premium; such tables of values shall be drawn in accordance with the law governing life, health and accident insurance companies.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 11.15. Incurring Debts

No mutual life insurance company shall have the power except as provided in this chapter, to borrow money for any purpose other than the payment of death losses. No such company shall have the power to incur any debt on any account except under policies issued by it or for money borrowed to pay death losses, for which any portion of its assets over and above that which may represent or be derived from the expense loading of the premiums collected by it, shall, in any event be subject to execution upon a judgment therefor.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 11.16. Advances to Company

Any officer or director of a mutual life insurance company or any person so authorized in Article 21.27 of this code, may advance to such company any sum of money for the purpose of promoting or conserving its business, or to enable it to comply with any requirement of the law; and such money, together with such interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum, shall be payable only out of the surplus remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advance shall be reported in each annual statement.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 11.17. Liabilities

Any such insurance company transacting business within this State shall at all times have and maintain a minimum free surplus of not less than One Hundred Thousand (\$100,000.00) Dollars and if such minimum free surplus shall become impaired to the extent of thirty-three and one-third (33 $\frac{1}{3}$ %) per cent thereof, computing its liabilities in the manner provided by the laws of this State, it shall make good such impairment within sixty (60) days; and failing to make good such impairment within

said time shall forfeit its right to write any business in this State until said impairment shall have been made good. The Board of Insurance Commissioners may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its above mentioned minimum free surplus shall become impaired to the extent of fifty (50%) per cent thereof, computing its reserve liability in the manner provided by the laws of this State for the computation of such reserve liability. No company shall write new business unless it is possessed of the minimum free surplus required by this article, except to the extent it may be otherwise expressly authorized by this Code to do so.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 1010, ch. 415, § 4; Acts 1955, 54th Leg., p. 916, ch. 363, § 21.]

Art. 11.18. Investment of Funds

Mutual life insurance companies shall invest their funds in accordance with the provisions of the third chapter of this code, concerning investments of life, health and accident insurance companies in this State; all moneys of mutual life insurance companies, coming into the hands of any officer thereof, when not invested as prescribed, shall be deposited in the name of such company in some bank which is subject to either state or national regulation and supervision, and which has been approved by the Board of Insurance Commissioners as a depository therefor.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 11.18-1. Investment of Funds; Penalty

Mutual life insurance companies shall invest their funds in accordance with the provisions of the statutes concerning investments of life insurance companies in this State; all moneys of mutual life companies, coming into the hands of any officer or officers thereof, when not invested as prescribed by said laws, shall be deposited in the name of such company or companies in some bank or banks which are subject to either State or national regulation and supervision, and which have been approved by the Commissioner of Insurance as depositories therefor. Any officer or director of any such company who shall knowingly and wilfully violate or assent to the violation of the provisions of this article shall be imprisoned in the penitentiary not less than one nor more than five years.

[1925 P.C.]

Art. 11.19. Other Laws to Govern

The provisions of Chapter 3 of this Code, when not in conflict with the Articles of this Chapter, shall apply to and govern mutual life insurance companies organized under the provisions of this Chapter, provided, however, that when any mutual

life insurance company organized under the provisions of this Chapter has a surplus equal to or greater than the minimum of capital and surplus required of capital stock companies under the provisions of Article 3.02 of Chapter 3, Insurance Code of the State of Texas, Revised Civil Statutes of Texas of 1925, the following provisions of Chapter 11 only shall apply to such mutual companies: 11.01, 11.02, 11.03, 11.04, 11.05, 11.06, 11.07, 11.10, 11.11, 11.12, 11.14, 11.16, 11.17, 11.18, 11.19, 11.20, and 11.21. On all other matters the provisions of said Chapter 3 shall apply to and govern such mutual life insurance companies.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 546, ch. 171, § 1; Acts 1963, 58th Leg., p. 1117, ch. 434, § 11, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 219, ch. 121, § 1, eff. May 5, 1967.]

Art. 11.20. Mergers and Consolidations

Sec. 1. Any two or more mutual life insurance companies may merge into one of such companies, domestic or foreign, or consolidate into a new mutual life insurance company, domestic or foreign, by compliance with the procedures provided in this Article.

Sec. 2. When it shall be determined by a majority vote of the Board of Directors, respectively, of two or more mutual life insurance companies, to either merge or consolidate, said Boards of Directors shall prepare a plan of merger or consolidation, as the case may be, and file such plan with the Commissioner of Insurance for approval. Such plan may contain provisions for future apportionment of then existing or prospective accumulations, or both, of divisible surplus, or any other equitable arrangement, whereby the equitable interests, if any, of affected policyholders may be adjusted.

Sec. 3. As soon as practicable after such filing, the Commissioner of Insurance shall hold a hearing on the question of whether he should approve such plan. As soon as practicable after such hearing, said Commissioner shall approve such plan unless he finds that such plan:

- (1) is contrary to law, or
- (2) effectuation of such plan would not be in the best interest of the policyholders of any one or more domestic mutual life insurance company which is a party to such plan, or
- (3) effectuation of such plan would substantially reduce the security of or service to be rendered to policyholders, whether residents of this state or elsewhere, of any domestic mutual insurance company which is a party to such plan.

In making such decision, the Commissioner of Insurance may consider all facts, elements, matters and financial conditions relating thereto, including but not limited to past, present and prospective operations and accumulations of said companies desiring to merge or consolidate.

If the Commissioner of Insurance disapproves such plan, he shall within a reasonable time after such hearing specify in detail his reasons therefor and so notify all of the parties to such plan. If the Commissioner of Insurance approves such plan, he shall so notify all of the parties thereto, whereupon each board of directors of each domestic company party thereto shall proceed to submit such plan for adoption or rejection to its respective policyholders as hereinafter provided.

Sec. 4. As soon as practicable after receipt of notice of approval of a plan of merger or consolidation to which a company is a party, each domestic party thereto shall cause such plan to be submitted to a vote of its policyholders at a meeting thereof, which meeting may be either an annual or a special meeting. Written or printed notice shall be given to each policyholder, addressed to his last known address, in accordance with the applicable bylaws, but not less than fifteen (15) days before such meeting. And each such notice shall specifically state that at least one of the purposes of such meeting is to vote upon such plan, a copy of which shall accompany such notice. At each such meeting of policyholders of a domestic party to such plan, each policyholder shall: (i) be entitled to a number of votes determined as provided in Article 11.04 of this Chapter of this Code, and (ii) may vote in person, by proxy to whomever the policyholder may designate in writing, or by mailed ballot. The plan of merger or consolidation shall be considered approved by the policyholders of such company upon receiving the affirmative vote of at least two-thirds ($\frac{2}{3}$) of the votes cast at such meeting on such question.

Sec. 5. (a) Upon the required approval of such plan by the policyholders of each domestic company which is a party to such plan and, if one or more foreign companies is a party thereto, upon the approval thereof in compliance with such foreign law or laws as may be applicable thereto, the president or a vice-president and the secretary or an assistant secretary of each company which is a party to such plan shall execute and file with the Commissioner of Insurance an affidavit that such plan has been approved as herein required.

(b) If the Commissioner of Insurance finds that such affidavit conforms to law, he shall endorse thereon the word "Filed," and the date of filing thereof; and

(1) if the plan be a plan of merger, the Commissioner shall then execute and deliver a Certificate of Merger to the surviving company or its representative; or

(2) if the plan be a plan of consolidation, the Commissioner shall execute and deliver a Certificate of Consolidation to the new company when such new company shall be issued a charter and license upon submission of proper articles of incorporation to the Commissioner of Insurance,

and upon his approval together with approval of the Attorney General in accordance with the procedure now required for the issuance of a new charter, and proof that the new company has surplus of not less than the surplus of the mutual life insurance company involved in such consolidation having the largest surplus.

Sec. 6. Upon the issuance by the Commissioner of a Certificate of Merger or Consolidation, as the case may be, the merger or consolidation referred to in such certificate shall thereupon be deemed effective unless some subsequent date be specifically stated as the effective date thereof in the plan therefor.

Sec. 7. As of the time that such merger or consolidation is deemed effective:

(1) All policies of insurance outstanding against any company so merged or consolidated shall be deemed to be assumed by the new or surviving mutual life insurance company on the same terms and under the same conditions as if such policies had continued in force against the original issuer thereof and the new or surviving company shall carry out the terms of such policies and be entitled to all the rights and privileges thereof and the reserves and surplus accumulating on such policy prior to such merger or consolidation.

(2) All the rights, franchises and interests of the companies so merged or consolidated, in and to every species of property, real, personal and mixed, and the things in action thereunto belonging, shall be deemed as transferred to and vested in the surviving or new mutual life insurance company, without any other deed or transfer; and simultaneously therewith the surviving or new mutual life insurance company shall be deemed to have assumed all of the liabilities of the merged or consolidated companies;

(3) All investments of each mutual life insurance company which was a party to such merger or consolidation that were authorized when made by the laws of the state in which such mutual life insurance company was organized, as proper securities or assets, including real property, for investment of funds of any mutual life insurance company and which investments are taken over by the surviving or new company by virtue of such merger or consolidation under the provisions of this Act, shall be, under the laws of this state, considered as valid securities or assets, including real property, of such new or surviving company, provided such investments are approved by the Commissioner of Insurance in this state, and the same are taken over on terms satisfactory to said Commissioner; provided, however, that in the event the new or surviving company acquires by virtue of such merger or consolidation real estate or property beyond or in excess of that permitted by the applicable Articles pertaining to owning or holding real estate, such company shall sell or

dispose of all such excess real estate within the time specified in such applicable Articles unless it shall procure a certificate from said Commissioner that the interest of such company will materially suffer from the forced sale or disposition thereof, in which event the time for the sale or disposition thereof may be extended to such time as the Commissioner of Insurance shall direct in such certificate. Provided further, that this Section will not preclude the designation and use of such acquired excess real estate as branch offices in accordance with the applicable provisions of this Code.

(4) The divisible surplus of each company which is a party to such merger or consolidation which was available for apportionment to policyholders in accordance with the provisions of Article 11.12 of this Chapter of this Code immediately prior to the effectiveness of such merger or consolidation shall continue to be available to the policyholders of the surviving or new company in accordance with the provisions of such Article.

Sec. 8. Nothing herein shall be construed as affecting, modifying, amending or repealing in any manner the Anti-Trust Statutes of this state.

[Acts 1967, 60th Leg., p. 219, ch. 121, § 2, eff. May 5, 1967.]

Section 1 of the act of 1967 amended article 11.19; section 3 thereof is codified as article 11.21; sections 4 and 5 provided:

"Sec. 4. If any Section, paragraph or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining Sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect.

"Sec. 5. All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only."

Art. 11.21. Total Direct Reinsurance Agreements

Sec. 1. Total direct reinsurance agreements may be made and entered into between any domestic mutual life insurance company and any other life insurance company, domestic or foreign, provided: (a) the assuming company is authorized to transact the kinds of insurance provided by the policies assumed; and (b) no total direct reinsurance agreement shall be made until the contract therefor has been submitted to and approved by the Commissioner of Insurance as protecting fully the interests of the policyholders of any domestic insurer.

Sec. 2. Total direct reinsurance agreements, whereby all policies of any ceding domestic mutual life insurance company, are totally assumed by another company, must first be so approved by the Commissioner of Insurance and thereafter by such affected policyholders of the domestic company in like mode and manner as is required under the provisions of Article 11.20 of this Chapter of this Code for policyholder approval of a merger or consolidation agreement. Upon consummation of any such total direct reinsurance agreement, the assuming company shall be entitled to all the rights,

privileges and benefits accorded under Section 7, of Article 11.20 of this Chapter of this Code, the same as though such business had been assumed by merger or consolidation.

[Acts 1967, 60th Leg., p. 221, ch. 121, § 3, eff. May 5, 1967.]

CHAPTER TWELVE. LOCAL MUTUAL AID ASSOCIATIONS

Art.

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Art. 12.01. Scope of Chapter

This chapter and Chapter 14 of this code shall apply to and regulate the business of local mutual aid associations, including those associations defined in Article 14.37 of Chapter 14 of this code operating for the purpose of providing benefit for members and death benefit for the beneficiaries of deceased members, and shall comprehend and include all societies and associations of any sort operating an insurance business and paying such benefits where funds are provided by assessments upon the members as needed, except those exempt under this chapter and Chapter 14 aforesaid.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.02. Definition

Any person or persons desiring to organize a local mutual aid association to be operated upon the assessment as needed or similar plan or a burial company, association or society as defined in Article 14.37, Chapter 14 of this code, shall be permitted to do so upon the terms and conditions hereinafter set forth and by complying with the provisions of this chapter. No person, firm or corporation shall hereafter operate in this State any sort of a local mutual aid society or association paying a death benefit or other benefits and providing its funds by assessments as needed, except under the provisions hereof, or under other specific provisions of the laws of this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.03. Territorial Limitation of Association

Any local mutual aid association or association defined in Article 14.37, Chapter 14, of this code, shall be permitted to operate in any county in this State. If the Articles of Association of such association provides for its operation in a limited portion or area of this State, such local mutual aid association or association defined in Article 14.37, Chapter 14, of this code, may hereafter amend such Articles of Association so as to permit it to operate and do business on a statewide basis, and after such amendment it shall be entitled to receive a certificate of authority covering all such territory, provided such association shall not be possessed of a permissive deficiency reserve as provided in Article 14.15 of this Chapter 14 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1967, 60th Leg., p. 1830, ch. 708, § 1, eff. June 17, 1967.]

Acts 1967, 60th Leg., p. 1830, ch. 708, in § 2 amended art. 22.05, and in § 3 thereof provides:

"If any section, paragraph, or provision of this Act be declared unconstitutional or invalid for any reason, such holding shall not in any manner affect the remaining sections, paragraphs or provisions of this Act, but the same shall remain in full force and effect."

Art. 12.04. Independent Associations

There shall be no connection between any two associations operating under this chapter and no one association shall contribute anything by way of salary or compensation to any executive officer for the purposes of such other association.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.05. Organization

Any number of persons not less than five, all of whom must be citizens of the United States and residents of the territory to be embraced within their field of operation may organize a local mutual aid association or an association as defined in Article 14.37 of Chapter 14 of this code in the following manner:

(1) They shall draw up articles of association which shall be executed in triplicate, acknowledged as required for instruments intended to be recorded, and which shall state:

(a) The name of the association, which must be distinctly different from associations operating in the same radius.

(b) The location of the principal office and the territory to which its operation shall be confined.

(c) The object for which the association is created, including the upper and lower age limits of persons to whom benefit certificates may be issued.

(d) Titles of the officers of the association and the number of directors, and the names of the persons who will, pending permanent organization, fill such offices.

(2) The said articles of association so executed shall be presented to the Board of Insurance Commissioners of the State of Texas, together with the application for a permit to solicit members, and together with the bond in a sum of Five Thousand (\$5,000.00) Dollars, which said bond shall be payable to the Board of Insurance Commissioners, executed by the organizers as principals and one surety company, acceptable to the Board, as surety, conditioned that if the persons organizing the association shall fail to secure the requisite number of members or for any other reason shall not consummate the organization of the association within six (6) months from its date, then the advance membership dues and assessments shall be returned to the parties paying same.

(3) The constitution and by-laws under which the association will operate pending permanent organization, together with the certificate of membership which the association proposes to issue, shall be submitted to the Board for approval.

(4) The Board shall make an investigation of the individuals who shall make such application, and when the Board shall be satisfied that the organizers are responsible persons, and of the probability that territory to be served can support such association and that the articles of association, constitution, by-laws and certificates are in proper form and the bond shall have been approved, it shall issue a permit to the organizers authorizing them to solicit membership in the association and to collect the membership fee and one death assessment.

(5) When such permit to solicit membership has been issued by the Commissioners, the organizers may solicit members, and when they shall have received not less than five hundred (500) bona fide applications for membership in the association in all classes and when they shall have collected from such members the membership fees and one advance assessment, they shall make a showing to the Board of Insurance Commissioners of Texas in such form as is required, setting forth the facts. Such membership should be completed within six (6) months from date of filing application. Thereupon the Board shall require, and the officer of the association designated to have charge of the funds of the association shall make and file a surety bond executed by a surety company authorized to do business in the State of Texas, satisfactory to the Board as surety, payable and in an amount and conditioned as required and specified in Article 14.08, Chapter 14 of this code.

Provided, however, that the provisions of this Article shall not apply to any local mutual aid association now organized and operating whose total membership shall at no time exceed one

thousand (1,000) members and which shall never charge for annual dues or assessments in excess of One (\$1.00) Dollar each, and whose membership fee shall at no time exceed Two Dollars and Fifty Cents (\$2.50). However, such association thus exempted shall file a bond, conditioned as herein above provided, in the amount of One Thousand (\$1,000.00) Dollars with the Board of Insurance Commissioners of Texas.

(6) The Board shall then issue to such association a certificate of authority to do business in Texas, which shall expire on May 31st following, together with a certified copy of the charter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.06. Names of Association

Upon application for charter to do business in Texas the Board of Insurance Commissioners may determine whether the name of the association would be confusing and misleading to the public; if so, it may refuse the certificate or charter, and prohibit the doing of business under the name.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.07. Failure to Consummate Organization

If the organizers shall not complete the membership within the time required, the money collected shall be returned and the temporary permit issued shall be revoked.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.08. By-Laws

The constitution, by-laws and form of certificates of each association submitted to the Board and approved before writing of business is commenced, shall be effective until the first annual meeting of the association, at which time they must be confirmed by such meeting, with or without amendments as the association may decide. The constitution and by-laws of such association shall not violate any of the provisions of this law, but shall be in harmony herewith.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.09. Kinds of Benefits

Any association hereafter organized under the provisions of this chapter shall provide for the payment of death benefits only and may not provide for old age benefits and benefits in case of accidental injuries or sickness. Any association heretofore organized prior to March 21, 1929, and paying death, old age and accident benefits may continue to pay same. Anyone or all of said benefits and the benefits to be provided shall be clearly set out in the policy issued by the association.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.10. May Not Issue Guaranteed Certificates

An association shall not issue certificates providing for a level premium or guaranteed benefits, nor for surrender of loan values.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.11. Revocation of Right to Do Business

The Board shall not revoke the right of any association to do business in this State except upon the judgment of a court of competent jurisdiction or upon the filing of articles of dissolution by the members of said association or the officers for them or upon a statement being filed with said Board showing that said membership had been merged and taken over by another society or association.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.12. Corporate Existence

Any association organized under the provisions hereof or which has accepted the provisions hereof shall for the purposes of operation be and become a body corporate with authority to sue and be sued in its own name and to exercise the other powers and functions specifically herein granted, but not otherwise. Except as herein provided, such association shall be governed by this chapter and Chapter 14 of this code and shall be exempted from all other provisions of the insurance laws of this State. No law hereafter enacted shall apply to them unless they be expressly designated therein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.13. Dissolution and Forfeitures

Associations may dissolve at any time by vote of the majority of the members at a regular meeting called by the secretary or a special meeting called for the purpose of considering dissolution; any class or group which has been in existence for six (6) months or more shall also be dissolved automatically and shall forfeit its right to do business at any time the membership shall fall below fifty (50%) per cent of the maximum value of the policy issued, or when any class or group shall cease to operate for a period of one (1) year, and no action by any supervisory officer of the state shall be necessary to such dissolution or forfeiture. In the event of said membership becoming less than fifty (50%) per cent of the maximum amount provided in said class or group, said members by a majority vote of said officers for them shall have the right to transfer and merge said members with any other society or association after obtaining the approval of the Board of Insurance Commissioners; provided, however, that if any such association or society shall have engaged in business continuously for a period of ten (10) years, then it shall not automatically be dissolved nor forfeit its right to do business, at any time the membership shall fall below fifty (50%) per

cent of the maximum value of the policy issued, but it shall become dissolved only in the event the membership shall fall below twenty-five (25%) per cent of the maximum value of the policy issued. Provided, further, that when membership becomes less than fifty (50%) per cent, the association will be dissolved automatically in event it fails to notify each member when assessment is made of the amount paid on the next preceding death claim.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.14. Winding Up Affairs

If any association heretofore or hereafter doing a local mutual aid business as herein defined or as defined in Article 14.37, Chapter 14 of this code shall cease to operate, or shall fall below the requirements of this Chapter or shall undertake to operate without a permit or certificate of authority, or shall fail or refuse to make reports as and when by law required, or shall refuse to submit to examination or pay the cost thereof, or shall conduct its business in a fraudulent, illegal or dishonest manner, or shall violate any of the terms of this chapter, shall, in addition to any other penalties imposed on it or on its members or officers, subject itself to forfeiture of its right to do business and to dissolution; and the Attorney General shall at the request of the Board of Insurance Commissioners file such suit as may be necessary to wind up the affairs of such association and if necessary have a receiver appointed for that purpose, the venue of all of which suits shall be laid in Travis County, Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.15. Penalty

Any person or persons who shall violate any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than Five Hundred (\$500.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.16. Exemptions

The provisions of this chapter shall not apply to labor unions, domestic orders or associations which do not provide a death benefit of more than One Hundred and Fifty (\$150.00) Dollars, nor to the associations which are now described in Article 10.38 of this code, nor any society or association, if any, heretofore legally operating statewide on an assessment basis under any charter heretofore granted under any valid statute of this State; provided, nothing herein shall affect those associations defined in Article 14.37, Chapter 14 of this code, organized and operating under the provisions of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.17. Fraternal Law Not Applicable

The provisions of the Fraternal Society Law, which is Chapter 10 of this code, and Chapter 3 of this code shall not apply to associations coming within purview of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 12.18. Fees

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

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

CHAPTER THIRTEEN. STATEWIDE MUTUAL ASSESSMENT COMPANIES**Art.**

- 13.01. Corporations Included.
- 13.02. Life, Health and Accident Insurance Authorized by Mutual Assessment Life, Health and Accident Companies; Chapter 6, Title 78.
- 13.03. Branch Offices.
- 13.04. Policies.
- 13.05. Benefits; Minimum Membership Requirements.
- 13.06. Corporations Not Complying.
- 13.07. Penalty.
- 13.08. Fees.
- 13.09. Exceptions and Exemptions.

Art. 13.01. Corporations Included

Any corporation organized and incorporated under a preexisting law in this State without capital stock and not for profit, which law has been amended or repealed or reenacted, prior to the effective date of this code and which was operating and actually carrying on in this State immediately prior to January 1, 1933, the statewide business of mutually protecting or insuring the lives of its members by assessments made upon its members shall comply with the terms of this chapter and Chapter 14 of this code, be subject to the subsequent provisions hereof and shall be known as statewide mutual assessment corporations.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 13.02. Life, Health and Accident Insurance Authorized by Mutual Assessment Life, Health and Accident Companies; Chapter 6, Title 78

Every mutual assessment life, health and accident insurance company chartered by authority of Chapter 6, Title 78, Revised Civil Statutes of Texas, and licensed by the Insurance Department of Texas under said Act and Section 18a of Senate Bill No. 37, Acts of the First Called Session of the 41st

Legislature, and which has qualified under this chapter may transact the business of life, health and accident insurance under the provisions of its charter and this chapter. Provided, further, that any such company may amend or extend its charter by compliance with the same requirements provided in the general corporation laws of Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 13.03. Branch Offices

No corporation operating under this chapter shall be permitted to operate any independent branch office, separate group, club, or class, under any other name than that of said corporation, but all of its policies shall be issued in the home office of said corporation. Nothing herein shall be construed, however, as to prohibit any corporation hereunder from providing by its by-laws for the creation of separate groups, clubs, or classes, based upon such a reasonable classification as specified in the by-laws, and providing in the policies issued to the members of such groups, clubs, or classes that the benefits under said policies shall be limited to the assessments made, levied, and collected from any such particular group, club, or class, respectively. It is further provided that no stock or assets or benefits of any such particular group, club or class, shall be pledged, sold, or transferred without the consent of three-fourths ($\frac{3}{4}$) of the members of such particular group, club, or class.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 13.04. Policies

No corporation hereunder shall issue any certificate or policy upon a limited payment plan, nor guarantee or promise to pay any type of endowment or annuity benefits, but shall confine its operation to the issuance of certificates looking to continuous payment of premiums or assessments during the life time of the policyholder.

Nothing in any application for the policy shall constitute a defense against any claim or loss under the policy unless a copy of said application is attached to the policy, and no misrepresentation therein shall constitute a defense unless same shall be shown to be material to the risk assumed, and any person who shall solicit an application for insurance upon the life of another shall in any controversy between the insured and his beneficiary and the company issuing any policy upon such application, be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have power to waive, change or alter any of the terms or conditions of the application or policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 13.05. Benefits; Minimum Membership Requirements

No corporation operating under this chapter shall write any policy or certificate of insurance calling for a maximum benefit in excess of Five Thousand (\$5,000.00) Dollars, nor any policy or certificate of insurance unless the membership of said corporation, liable for assessments on said policy or certificate or group or class or club liable therefor shall be sufficient in number at the assessment rate charged said class to pay fifty (50%) per cent of the maximum benefit set forth in said policy or certificate. In the event the membership in any group, class, or club of said corporation shall fall below such number, then the corporation shall immediately notify the members of such group, class, or club, and if said membership is not increased to said number within six (6) months thereafter, said group, class, or club, shall be consolidated with some other group, class, or club, or discontinued. In the event any corporation hereunder has only one class, group, or club, then in the event the membership of said corporation shall at any time fall below fifty (50%) per cent of the number required at the assessment rate charged to pay the maximum benefit provided by any one of its policies or certificate, the corporation shall immediately notify the members of the corporation, and unless the membership is increased to said number within six (6) months thereafter, the Board of Insurance Commissioners shall take steps under Article 14.33 of Chapter 14 to bring about the liquidation of said corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 13.06. Corporations Not Complying

No person, firm, unincorporated association, or corporation shall carry on in this State the statewide business of mutually protecting or insuring the lives of its members by assessments made upon its members except under the terms of and by complying with the provisions of this chapter and Chapter 14 of this code. Each and every charter of every corporation and mutual relief or benefit association granted by the State of Texas under the authority of the Secretary of State of this State, which was or is exempt from the provisions of the insurance laws of this State by the terms of Article 2971a, R.S. 1879, (Article 3096, Revised Statutes 1895) and Article 3096w, Revised Statutes, 1895, which corporations heretofore have failed or refused to comply with the terms of Chapter 8A, Title 78, Revised Civil Statutes of Texas is hereby expressly repealed and revoked and said corporations are hereafter forever prohibited from carrying on any business in this State. It is the expressed intent of this article and this chapter to revoke, repeal and cancel the charter of every corporation, dormant, or otherwise, exempt from the insurance laws of this State by Article 2971a, Revised Statutes 1879, and Article 3096 and 3096w, Revised Statutes of 1895, which failed to

comply with the terms of Chapter 8A, Title 78, Revised Civil Statutes of Texas. The charters of all corporations complying with said Chapter 8A, Title 78, are expressly continued in force subject to the provisions of law. It shall be the duty of the Attorney General of this State immediately upon the effective date of this code to take necessary action by quo warranto, application for receiver, or otherwise to enforce the forfeiture of charters as provided herein and to liquidate and close the affairs of any corporation herein referred to which has heretofore failed to comply with the terms of this chapter and Chapter 14 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 13.07. Penalty

Any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than Five Hundred (\$500.00) Dollars. Any responsible officer or any corporation permitting or participating in the violation of this law by any corporation shall be deemed guilty of a violation of this chapter and subject to the penalties herein.

The Attorney General shall be authorized to enforce in addition to the rights of forfeiture provided herein the penalty provided in this article and Article 14.59 of Chapter 14 against any corporation or unincorporated association which shall be guilty of the violation of any of the provisions of this chapter and Chapter 14. The venue of any suit or prosecution under this article may be in Travis County, Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 13.08. Fees

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

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Art. 13.09. Exceptions and Exemptions

This chapter shall in no wise affect or apply to companies operating as local mutual aids, as fraternal benefit societies, reciprocal exchanges, or to foreign assessment companies operating under any other law in this State, or any other form of insurance other than those corporations carrying on in this State the statewide business of mutually protecting or insuring the lives of their members by assessments made upon their members. Except as expressly provided in this chapter and in Chapter 14 of this code, no insurance law of this State shall apply to any corporation operating under this chap-

ter, and no law hereafter enacted shall apply to them unless they be expressly designated therein. [Acts 1951, 52nd Leg., p. 868, ch. 491.]

CHAPTER FOURTEEN. GENERAL PROVISIONS FOR MUTUAL ASSESSMENT COMPANIES

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Art. 14.01. Mutual Assessment Companies; Scope of Act

This chapter shall apply to and embrace all insurance companies and associations, whether incorporated or not, which issue policies or certificates of insurance on the lives of persons, or provide health and accident benefits, upon the so-called mutual assessment plan, or whose funds are derived from the assessments upon its policyholders or members, and shall, in fact apply to all life, health and accident companies or associations which do not come within the provisions of Chapters 3, 8, 10, 11, 15, 18 or 19 of this code and Chapter 5 of Title 78, Revised Civil Statutes, 1925, and amendments thereto, except that it shall not apply to associations not operated for profit composed only of the members of a particular religious denomination, and which do not provide insurance benefits in excess of One Thousand (\$1,000.00) Dollars, on any one person and which do not pay any officer a salary in excess of One Hundred (\$100.00) Dollars per month.

This chapter shall include local mutual aid associations; statewide life; or life, health and accident associations; mutual assessment life, health and accident associations; burial associations; and similar concerns by whatsoever name or class designated, whether specifically named or not.

This chapter does not enlarge the powers or rights of any of such associations nor enlarge the scope of their legal or corporate existence; nor authorize the creation of any association or corporation to do any of the sorts of business above indicated, where such creation is not now specifically

permitted by law. The laws prohibiting or limiting such creation and the exercise of corporate power are not affected by this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.02. Definitions

The following terms when used in this chapter shall be defined:

"Association" shall refer to and include all types of organizations, corporations, firms, associations, or groups subject to the provisions of this chapter.

"Board" shall refer to the Board of Insurance Commissioners of the State of Texas.

"Member" shall include policyholders or any persons insured by an association, by whatsoever means the insurance may be made effective.

"Certificate" shall include any insurance policy or contract of insurance, certificate of membership or other document through which insurance is effected or evidenced.

"Face of certificate" shall refer to the maximum amount of promised benefits, as shown on the certificate.

"Paid in full" or "full payment" shall mean the payment of the full amount of maximum benefit due on the happening of the contingency insured against.

"Insolvent" shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this chapter.

"Assessment" shall include premiums and mean any and all money or valuable thing paid in consideration of such insurance as is afforded by the certificate.

"Membership fee" shall be the amount of the first assessment or assessments permitted by the Board to be placed in the expense fund of associations, representing cost of soliciting or procuring the member.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.03. Shall be Mutual in Operation

All associations operating under this chapter shall be mutual in character, but no liability shall rest upon any officer, director or member in an individual capacity by virtue of any policy issued or claims arising thereon.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.04. By-Laws

Each corporation shall submit to the Board of Insurance Commissioners a copy of its by-laws. Such by-laws shall contain all things required by this chapter and shall not contain any provision in conflict with this chapter. The by-laws shall provide for the periodical meetings of the membership

and for special meetings, at which meetings all members shall be permitted to vote. The Board of Insurance Commissioners shall examine such by-laws, and if the same comply with the provisions of this chapter shall signify their approval of same. If they shall not be in accordance with the provisions hereof, then the corporation shall make said by-laws conform hereto. Upon approval of the by-laws a copy duly certified to by the president or general manager and the secretary of the corporation shall be filed with the Board of Insurance Commissioners, and a copy duly certified by such Board shall be received in evidence in all the courts of this State. All policies issued by a corporation under this chapter shall provide that said policy is subject to the by-laws of the corporation and all future amendments thereto. All amendments shall be filed with the Board of Insurance Commissioners in a like manner as the original by-laws. A certified copy of any changes in the by-laws of each such corporation shall be mailed to each of the stockholders and/or members at the next assessment after such change in the by-laws is made.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.05. Amending By-Laws

By-laws of any association may be amended by a majority of the members of the association present when ratified by the Board of Directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered, must be mailed to all members. Such notices must contain full copies of the proposed changes in the by-laws and fair explanations of the intent and effect thereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.06. Refusal of Certificate or Permit

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

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

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.07. Officers of Associations

The Board of Insurance Commissioners shall not issue to any association a certificate of authority to do business in Texas, when it shall find any officer, employee, or member of the board of directors to be unworthy of the trust or confidence of the public. After a certificate has been granted, the Board shall order the removal of any officer, employee, or director found unworthy of the trust, and if such officer, employee, or director be not removed, the Board shall cancel the certificate and proceed to deal with the association as though it were insolvent.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.08. Bonds of Officers and Employees

Such association 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 Board of Insurance Commissioners, designating therein some officer who shall be responsible in the handling of the funds of the corporation. Such association shall make and file for such officer a surety bond with a corporate surety company authorized to write surety bonds in this State, as surety, satisfactory and payable to the Board of Insurance Commissioners of Texas in the sum of not less than Two Thousand Five Hundred (\$2,500.00) Dollars for the use and benefit of said association, and which shall at all times be equal to the amount of the mortuary fund on hand, not to exceed Twenty Thousand (\$20,000.00) Dollars, which said bond shall obligate the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others, while employed as such officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the Board of Insurance Commissioners cash (or securities approved by the Board) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond. Provided, however, that the provisions of this article shall not apply to any local mutual aid association now organized and operating whose total membership shall at no time exceed one thousand (1,000) members and which shall never charge for annual dues or assessments in excess of One (\$1.00) Dollar each, and whose membership fee shall at no time exceed Two Dollars and Fifty Cents (\$.250). However, such association thus exempted shall file a bond, conditioned as hereinabove provided in the amount of One Thousand (\$1,000.00) Dollars with the Board of Insurance Commissioners.

In addition to the bond required in the preceding paragraph, and in addition to the bond already

required by law of certain associations subject to this chapter, each association shall procure for all other office employees, or other persons who may have access to any of its claim funds, separate bonds or blanket bonds with some surety licensed by the Board to do business in Texas, in an amount or amounts fixed by the Board with a minimum of One Thousand (\$1,000.00) Dollars and a maximum of Five Thousand (\$5,000.00) Dollars, payable to the Board of Insurance Commissioners for the use and benefit of the association obligating the principal and surety to pay such pecuniary loss as the association 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 for in this article may be had on such bonds until same are exhausted.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.09. Recovery on Bond

When the Board is informed that any officer of any such association has violated the terms of either of said bonds it shall demand a written explanation of such officer as to such charge, and if after such explanation the Board is not satisfied as to the existing facts in controversy it shall notify such officer to be and appear in Travis County with such records, writings, and other correspondence and facts as the Board deems proper, not earlier than ten (10) days or later than fifteen (15) days from service of notice, and it shall there conduct an examination into such affair, and if upon such examination the Board shall become satisfied that the terms of said bond have been violated by said officer the Board shall immediately notify the company executing said bond and prepare a written statement covering said facts and deliver same to the Attorney General of Texas, whose duty it shall be to investigate said charges and if satisfied that the terms of said bond have been violated he shall enforce the liability against said cash or securities, or he shall file suit on said bond in the name of the Board of Insurance Commissioners of Texas for the benefit of the beneficiaries thereof against said officer as principal and the sureties of his bond for the recovery of said amounts due by said officer, and all costs of suit in some court of competent jurisdiction, in Travis County, Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.10. Deposits

Each association shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to the largest risk assumed on any one life or person, which may be in cash or in convertible securities subject to approval by the Board. Such deposit shall be liable for the payment of all final judgments against the association, and

subject to garnishment after final judgments against the association. When such deposit becomes impounded or depleted it shall at once be replenished by the association, and if not replenished immediately on demand by the Board, the association may be regarded as insolvent and dealt with as hereinafter provided.

When any association shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.11. Membership

Membership in the association shall be confined to persons qualified under the provisions of the by-laws. Such membership shall equal the qualifying membership at all times and failure to maintain such, the association shall be considered insolvent and dealt with as hereinafter provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.12. Books and Records

All the records and books of each association shall be kept in the shape, form and manner acceptable to the Board, and if such records and books of any association are kept in such manner as not to reflect truly and accurately the condition of the association, or the facts essential to its faithful and effective operation, the association shall at once adopt forms or systems acceptable to the Board which will serve the purpose most effectively.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.13. Records; Merging of Membership

Each association shall keep a complete and correct roster of its members with proper statistical records for the purpose of determining proper cost of insurance, by ages or otherwise, and shall keep accurate records of groups, classes or clubs or other division of memberships, if any; and shall keep records to show amounts paid in on assessments by each member and each group; and as to groups, must show how the funds are distributed between expense and mortuary or relief funds, and showing the amounts paid out of the funds of the whole membership or each group in death claims or other benefits.

The associations subject to this chapter are hereby expressly prohibited from merging with another association, are prohibited from "transferring" any part or group of membership, or all the membership to another association or from merging groups or transferring members from one group to another in an association without the consent in advance of the Board of Insurance Commissioners which may be

given only after complete investigation into the facts and determination that such transfer or merger is to the advantage of members of the association or groups to be affected.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.14. Amendment of Charter

Any amendment to the charter of an association operating under this chapter changing the name of the association, must be submitted to the Board of Insurance Commissioners for approval; and the charter of any association operating under this chapter may not be amended to provide for changing its name to a name that is determined by the Board of Insurance Commissioners to be confusing and misleading to the public.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.14a. Validation of Existing Charters; Right to Amend to Extend Corporate Existence

This Article shall apply to every company or association regulated by the provisions of Chapter 14 of the Insurance Code of Texas on the effective date hereof. The charters of all such companies which are actively conducting an insurance business under Chapter 14 of the Insurance Code of Texas on the effective date hereof and which have been issued a permanent certificate of authority from the State Board of Insurance pursuant to Article 1.14 of the Insurance Code of Texas, authorizing such companies to transact an insurance business, are hereby in all things validated. Any such company or association shall have the right to amend its charter for the purpose of extending its period of duration, which may be perpetual, by filing an amendment for such purpose within six (6) months after the effective date of this Article in the same manner as would be done with any other amendment to its charter under existing laws. This Article shall not apply to any company or association which failed to comply with the provisions of Article 13.06 of the Insurance Code of Texas, nor to any company or association which has heretofore voluntarily surrendered its charter, nor to any company or association which has had its charter forfeited or cancelled by a Court of competent jurisdiction, nor to any company or association which has surrendered its certificate of authority and charter to the State Board of Insurance and has had a cessation of corporate existence under the provisions of Chapter 22 of the Insurance Code of the State of Texas.

[Acts 1963, 58th Leg., p. 330, ch. 125, § 1.]

Acts 1963, 58th Leg., p. 330, ch. 125, § 2, provided:

"Precedence of Act in Cases of Conflict. The rights, power, authority, and procedures granted in the foregoing Section of this Act shall be deemed to be in addition to all other rights, authorities and procedures now existing and conferred by the laws of the State of Texas, and any pre-existing Act which tends to hamper or limit the rights, authorities and procedures granted in this Act

shall be deemed to be superseded by the provisions hereof and, to the extent that any other law is in conflict with, or inconsistent with the provisions hereof, the provisions of this Act shall take precedence and be effective."

Art. 14.15. Annual Statement; Certificate of Authority; Reserves; Permissive Deficiency Reserve

Annual Statement; Certificate of Authority

Sec. 1. On or before the 1st day of April of each year, each association or company operating under the provisions of this Chapter shall file with the State Board of Insurance a complete and full sworn statement of its condition on the 31st day of December next preceding. Such statement shall exhibit all real and contingent assets, and all liabilities and an account of income and disbursements to and from the mortuary and expense funds during the year, and on forms which the State Board of Insurance shall furnish for the making of such annual statements. Upon examination of said annual statement, the State Board of Insurance shall, if such report shows that the company or association is in all things complying with the requirements of law, issue such company or association a certificate of authority to transact its business in this State for the year next succeeding the filing of said report, or continue its certificate of authority in force as is provided in Article 1.14 of this Insurance Code.

Method of Calculating Reserves

Sec. 2. In the manner as in this Article is herein-after provided, each company or association regulated by the provisions of this Chapter, except assessment-as-needed associations or companies, shall in each year, commencing as of December 31, 1965, compute or cause to be computed its reserve liability on all outstanding and in force policies of insurance. In making such computation each company or association is authorized to use group methods and approximate averages for fractions of a year or otherwise. Such reserve liability shall be computed upon the net premium basis in accordance with the reserve table and interest rate adopted by such company or association and approved by the State Board of Insurance and such reserve liability may be calculated on not more than a one year preliminary term basis with allowance for the permissive deficiency reserve provided for in this Chapter 14. Such reserves shall be calculated and determined as follows:

(a) (1) Each individual life policy insuring one or more persons at individual premiums for each such person shall be reserved and each company or association regulated by the provisions of this Chapter shall maintain reserves on such individual life policies in accordance with any reserve standards adopted by such company or association and approved by the State Board of Insurance, provided such reserves are at least equal in

the aggregate to reserves based on the 1956 Chamberlain Reserve Table with interest not to exceed three and one half per cent (3½%) per annum. Any company or association is hereby authorized to use the 1956 Chamberlain Reserve Table with interest not to exceed three and one half per cent (3½%) per annum.

(2) Family group life policies upon which a group premium is charged, and which premium is not reduced upon the death of any insured, shall be reserved and each company or association shall maintain reserves on such family group policies in any one of the following methods of calculation as may be selected by such company or association:

(i) The reserves shall be equal to the reserves which would be required in accordance with the provisions of this Article on individual life policies on the lives of the then living two oldest members of each such family group; the amount of insurance for such two members shall be based on the assumption that the elder of such two members will be the first to die; or

(ii) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Article, on individual life policies, on the lives of the then living members of such family group; the amount of insurance for each such member of the family group shall be based on the assumption that each such member will be the first to die; or

(iii) Any table or any method of calculating reserves as shall be approved in advance by the State Board of Insurance.

(3) As is applicable to all life policies (individual and family group) in force on December 31, 1965, or upon which a rate increase is effected after December 31, 1965, life reserves (individual and family group) may be determined as follows:

(i) the issue year shall be the last calendar year for which the gross premium on the reserve table and interest rate adopted by the company or association at the attained age in that calendar year is equal to or less than the premium rate charged by the company or association on such policy so reserved, and

(ii) the issue age shall be the attained age in the calendar year just defined.

Gross premium as herein used shall mean the renewal net premium plus such expense loading as shall be designated by the company or association or as shall otherwise be regulated by the provisions of this Chapter 14.

(b) All health, accident, hospitalization and sickness insurance shall be reserved by the company or association and such company or association shall maintain reserves on such insurance in the same manner as is required by a company writing such coverage under the provisions of Chapter 22 of this Insurance Code, as amended.

Reserve Liability, Computation

Sec. 3. The State Board of Insurance, as soon as practical, in each year, shall compute or cause to be computed the reserve liability of each company or association regulated by the provisions of this Chapter 14. In making such computation the said Board may use group methods and approximate averages for fractions of a year or otherwise.

Permissive Deficiency Reserve, Reduction of Permissive Deficiency Reserve

Sec. 4. (a) As of December 31, 1965, each such company or association regulated by the provisions of this Chapter shall so calculate the amount of the required reserves as aforeprovided in this Article, and shall also determine the amount of the net assets (net assets being the gross amount of such mortuary fund assets at such date, but less any liabilities of said fund, exclusive of reserves) of its mortuary or claim fund, or by whatever name said fund may be designated. In the event the net assets of the mortuary fund are insufficient to equal the amount of the required reserves as in this Article provided, the difference shall be designated and carried as a permissive deficiency reserve.

(b) In the event any company or association shall, as of December 31, 1965, possess a permissive deficiency reserve, it shall not later than July 1, 1966: (1) file an application with the State Board of Insurance seeking approval of a rate increase whereby such rate increase shall be accomplished by charging a premium based upon the advancement of ages of such insureds, from age at issue date, or such ages so previously advanced, in order to totally eliminate such permissive deficiency reserve or to partially eliminate such permissive deficiency reserve in connection with a plan to cure such permissive deficiency reserve; or (2) file an application with the State Board of Insurance for approval of a plan whereby such permissive deficiency reserve will be eliminated over a period of time not to exceed eighteen (18) years. Such plan shall reasonably demonstrate the anticipated ability of the company or association to correct such permissive deficiency reserve during such period of time. Such plan may include any reasonable method, procedure or financial arrangement in order to accomplish the required reduction of the permissive deficiency reserve over such period of eighteen (18) years. Provided said plan is found to reasonably demonstrate the ability of the company or association during such period of time to eliminate such permissive deficiency reserve, then such permissive deficiency reserve shall be allowed without creating the insolvency of the company or association, but the company or association shall reduce said permissive deficiency reserve so determined by at least $\frac{1}{18}$ th thereof during each calendar year thereafter, commencing as of December 31, 1966, so that as of December 31, 1983, the permissive deficiency reserve will

be fully paid and satisfied, provided, however, that such required reduction in the permissive deficiency reserve shall never exceed the cumulative aggregate amount of $\frac{1}{18}$ th per annum.

In the event that such plan be not finally approved, such company or association shall increase rates as provided in Section 4, Paragraph (b)(1) of this Article.

(c) Each company or association may, in addition to, or in combination with, or in lieu of, such rate adjustment or readjustments of rates as in this Chapter provided, offer each insured a proportionate reduction in the amount of insurance, or some lesser reduction, provided such plan is agreed to by the individual insured or the controller of said policy.

(d) Any decision made by the State Board of Insurance as to approval or disapproval of the plan for curing such permissive deficiency reserve shall be subject to judicial review in accordance with Article 21.44¹ of Sub-Chapter F of Chapter 21 of this Insurance Code.

¹ Renumbered; see, now, art. 21.80.

Net Premiums to be Charged

Sec. 5. (a) Any company or association using an approved plan to cure its permissive deficiency reserve, but possessing as of December 31, 1965, a permissive deficiency reserve equal to or in excess of 50% of its required reserve so determined to exist as of such date, shall, by July 1, 1966, furnish to the State Board of Insurance an affidavit executed by its President, Vice President or Secretary, certifying that at least the renewal net premium based upon:

(1) the table of rates and reserves adopted by the company or association; and

(2) the age of each insured at date from which reserves are calculated, is being deposited to the company's or association's mortuary or claim fund upon each in force life policy or life policy in combination with other type benefits. In the event such company or association cannot so furnish such affidavit, said company or association shall:

(1) forthwith alter the division of premiums between the mortuary and expense funds so that such renewal net premium so calculated at age from which reserves are calculated on each such policy is placed in the company's or association's mortuary fund; or

(2) forthwith apply to the State Board of Insurance for approval of a rate increase whereby the rate charged on each such policy will thereafter contribute to the mortuary fund at least the renewal net premium so determined under such table at age from which reserves are calculated.

(b) Any company or association using an approved plan to cure its permissive deficiency reserve, but possessing as of December 31, 1965, a

permissive deficiency reserve of less than 50% of its required reserve so determined to exist as of such date, shall, by July 1, 1966, furnish to the State Board of Insurance an affidavit executed by its President, Vice President or Secretary, certifying that in the aggregate premiums deposited to the mortuary or claim fund equal or exceed at least the aggregate amount of the renewal net premiums on all policies in force on December 31, 1965, based upon

(1) the table of rates and reserves adopted by the company or association, and

(2) the age of each insured at date from which reserves are calculated. In the event such company or association cannot so furnish such affidavit, said company or association shall:

(1) forthwith:

(i) alter the division of premiums between the mortuary and expense funds so that such renewal net premium in the aggregate on all policies in force on December 31, 1965, so calculated at age from which reserves are determined on each policy in force is placed in the company's or association's mortuary fund, and

(ii) provide in its bylaws that annually thereafter in each calendar year an amount, from the premiums collected, in the aggregate equal to the renewal net premium on all policies in force on December 31st of each such year will be deposited to the company's or association's mortuary fund; or

(2) forthwith apply to the State Board of Insurance for approval of a rate increase whereby the rate charged on each such policy will thereafter contribute to the mortuary fund at least the renewal net premium so determined under such table at age from which reserves are calculated.

Adjustment of Premiums to Reduce Permissive Deficiency Reserve

Sec. 6. In the event any annual required reduction of the permissive deficiency reserve is not accomplished as of December 31st of each year involved, the Board of Directors of the company or association shall by appropriate action increase rates by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment, so as to correct the failure to make the required reduction of the permissive deficiency reserve. In the event of the failure of the Board of Directors of the company or association to so act within thirty (30) days following such calculation of its reserves, the company or association shall be dealt with in accordance with this Chapter as if it were insolvent. In like manner if it shall be apparent at any time during any calendar year that the annual required reduction of the permissive deficiency reserve cannot be accomplished as of Decem-

ber 31st of each or any year, the Board of Directors of the company or association may by appropriate action increase rates by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment so as to correct the failure to accomplish such annual required reduction of the permissive deficiency reserve on all or any part of the permissive deficiency reserve. Any such rate adjustment or readjustment shall be deemed and considered as assessments upon said policies.

Rate Adjustment Required to Maintain Reserves

Sec. 7. In the event any company or association at any future time does not possess in its mortuary fund the required reserves, less any permissive deficiency reserve, the Board of Directors of the company or association shall by appropriate action increase rates on policies in force by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment so as to correct such reserve inadequacy. Such rate adjustment may be made at any time, and from time to time, provided it shall be apparent that such reserve inadequacy will exist as of December 31st of the year in which such rate adjustment is made, and any such rate adjustment or readjustment so made shall be deemed and considered as an assessment upon said policies. In the event of the failure of the Board of Directors of the company or association to so act in adjusting rates within thirty (30) days following the calculation of reserves as of the dates in this Chapter provided, the company or association shall be dealt with in accordance with this Chapter as if it were insolvent.

Dividends

Sec. 8. In the event that the amount of the mortuary or claim fund of the company or association shall exceed the amount of the required reserves to be maintained, such company or association may pay dividends from said fund to its policyholders provided:

(a) no permissive deficiency reserve exists at date of payment; and

(b) the amount of the dividend and method of distribution thereof is equitable and nondiscriminating and approved in advance of payment by the State Board of Insurance.

State Board of Insurance Approval

Sec. 9. Whenever rates shall be increased subsequent to date of issue of a policy, such increase shall not be placed in effect until first approved by

the State Board of Insurance as provided in Article 14.23 of this Chapter 14.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1965, 59th Leg., p. 457, ch. 234, § 1, eff. May 21, 1965.]

Art. 14.16. Examination

In addition to the annual report required by this chapter, the State Board of Insurance shall, once in every two (2) years or oftener if it deems it advisable, require the books, records, accounts, and affairs of any corporation or association qualifying and acting under this chapter to be examined and audited by an accountant or accountants or examiner designated and commissioned by the Board. For the purpose of any examination, the Board and the auditors and examiners shall have free access to all books, records, papers, and accounts of the corporation; and the cost for the time required in making such examination and audit and all necessary expenses in connection therewith shall be paid by the corporation upon presentation of a bill showing the charges made by the Board, which shall include the salaries, traveling expenses, hotel bills, and other expenses of such auditors and/or examiners, together with all other expenses in connection with such examination. Each corporation or association shall be charged with the salary of the auditors and examiners for the time required in making such examination and the time required in connection with going to and coming from the place or places necessary in connection with such examination, together with all expenses incurred by such auditors and/or examiners, and in addition thereto such corporation or association shall be charged by the Board with an amount equal to the salaries of the actuaries, examination clerk or clerks, stenographers, and all other employees employed in connection with the examination work in the Board for the time said employees are performing duties in connection with the examination of each corporation so examined.

The amounts so collected shall be paid into the State Treasury to the credit of the State Board of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance.

The Commissioner of Insurance or any deputy or examiner shall have the right to require any officer, agent, or employee of any company or association operating under this law, or any other person, to be sworn and to answer under oath any questions regarding the affairs or activities of said association or company, and said Commissioner deputy, examiner, or auditor is hereby authorized to administer such oath.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Art. 14.17. Certificate of Authority Required; Exemptions

It shall be the duty of the Board of Insurance Commissioners to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Board to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided no provision of this and the preceding Article shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation, or individual, nor shall it apply to associations which limit their membership to bona fide borrowers of a Federal agency in Texas and members of the borrower's immediate family who are living with him and who are not engaged in nonfarm work for their chief income, and which association has been in existence for at least five (5) years, and which are not operated for profit and which pay no commissions to anyone; provided, however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. Such permit shall be for the current year or fractional part thereof and shall expire on the thirty-first day of May thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 661, ch. 304, § 1; Acts 1959, 56th Leg., p. 1085, ch. 496, § 1; Acts 1975, 64th Leg., p. 483, ch. 206, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 363, ch. 146, § 1, eff. May 14, 1981.]

Repeal

This article was repealed, to the extent that it requires periodic renewal of certificates, by Acts 1959, 56th Leg., p. 434, ch. 194, § 2.

Art. 14.18. Policies or Certificates

Every policy or certificate of insurance issued by an association shall state definitely on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid shall be plainly stated in the policy. Every health, accident or other benefit shall be plainly stated in the policy, and the terms and conditions under which they shall be paid shall be stated plainly in the policy.

An application for each certificate must be signed by the applicant, unless the applicant is a minor, in which event the application may be signed by a parent or guardian; and a copy thereof must be attached to and made part of such certificate. If the certificate is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the contestable period, the application shall so state in not less than ten point type in language acceptable to the Board. All statements in the application shall in the absence of fraud be regarded as representations and not warranties.

All conditions of the certificate must be stated thereon, including such portions of the by-laws of the association as may affect the insurance rights of the parties in any material way; and amendments to the by-laws which might affect such rights of members must forthwith be mailed by first-class mail to each certificate holder affected. In case of controversy the burden of proof shall be on the company to prove the amendment was mailed to the member. Each certificate must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two years from date of issue, except for non-payment of dues or assessments. It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on rates in force at the time of the death of the insured. No certificate issued by such association, nor any application for the certificate shall contain language or be in such form as to mislead the applicant or the policyholder as to the type of insurance afforded.

It shall be unlawful for any association to assume liability on a life insurance risk on any one life in an amount in excess of Five Thousand (\$5,000.00) Dollars.

Every certificate issued must be approved by the Board as to form and language before it is used by an association. It is not mandatory that these forms be uniform for all associations, but the Board is directed to bring about as great uniformity as is feasible as early as practicable by cooperation with the several associations. All certificate forms hereafter used must be in accord with the provisions of

this chapter and with all other laws regulating such associations as are embraced in this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.19. Renewals of Certificates

In case a certificate shall terminate for any reason, and in case it shall be a rule of the association that all reinstated certificates shall be regarded as new certificates, then the application for reinstatement shall carry the statement in at least ten point type that the same rules apply to it as to the original certificate, and that it can be invalidated within the contestable period for false statements respecting the health or physical condition of the applicant, or other matters material to the risk. A true and correct copy of the application for reinstatement shall be mailed by first-class mail to the certificate holder upon the reinstatement of the certificate. In case of controversy the burden of proof shall be on the association to prove the copy of reinstatement application was mailed to the member. In the event a renewal certificate is issued, such renewal certificate shall have a copy of the application for reinstatement attached and made a part thereof.

It is specifically provided, however, that in case an association shall renew or reinstate a certificate after termination, the payments by the reinstated member shall be divided between the funds in the same percentage as is required of regular payments in the particular by-laws, unless nine (9) months have elapsed between termination and reinstatement. If nine (9) months have elapsed between termination and reinstatement, a reinstatement fee not in excess of the membership fee may be charged and placed in the expense fund. Furthermore, in case of renewal or reinstatement, the renewal or reinstatement certificate shall not be contestable for any cause except nonpayment of assessments for longer than six (6) months from date thereof, unless the reinstatement or renewal is within the original two (2) year contestable period, in which case the same may be extended for six (6) months from the date on which it would have originally expired.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.20. Reduced Benefits or Excluded Coverage on Life Policies; Health and Accident Policies Excluded

Sec. 1. Any company or association licensed and operating under this chapter, may with the approval of the State Board of Insurance issue policies providing for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service, or aerial flight in time of peace or war; or in case of death of the member by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy; or if death or injury is caused by mob

violence or legal execution; or reduce or exclude benefits for sickness from certain named causes. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided herein, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy. The provisions of this Section 1 of this Article 14.20 shall apply to all outstanding policies already containing such limitations.

Sec. 2. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Section 1 of this Article 14.20) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Section 1 of this Article 14.20) shall not exceed five years from issue date. This Section 2 of this Article 14.20 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

Sec. 3. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Section 3 of this Article 14.20 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

Sec. 4. The provisions of Section 2 and Section 3 of this Article 14.20 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 2(a)(2) of Article 14.15 of this Insurance Code.

Sec. 5. The provisions of this Article 14.20 shall not apply to health and accident policies.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1975, 64th Leg., p. 1035, ch. 400, § 1, eff. Nov. 1, 1975.]

Section 2 of the 1975 Act amended § 5 of art. 22.13; § 3 thereof provided:

"Sec. 3. The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

Art. 14.21. Policies May be Issued at Stipulated Rate; May Provide for Deduction of Unpaid Balance of Annual Premium from Benefits

Any insurance company or association licensed by the Board of Insurance Commissioners to operate under this chapter may issue policies on the stipulated or specified premium plan which allows the insured the privilege of paying regular premiums weekly, monthly, quarterly, semi-annually, or annually, as he may choose from time to time. Such policies may also provide that upon the maturity of benefits payable under the policy or certificate any balance of premium for the current policy year remaining unpaid shall be deducted from the benefits payable. The provisions of this article shall apply to all outstanding policies already containing such a provision.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.22. Certificates Subject to Constitution, By-Laws

Certificates issued by an association shall state that said certificate is issued subject to all the terms of the constitution and by-laws of the association then in force and as the same might thereafter be amended and that said certificate shall be governed by such by-laws and constitutional provisions that the Board of Insurance Commissioners shall therefore and thereafter approve.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.23. Assessments and Premiums; Adjustment of Rates; Penalty For Failure to Comply; Authority of State Board of Insurance

Assessments and Premiums

Sec. 1. (a) Each company or association shall levy regular and periodical assessments by whatever name they may be called. These assessments must be in such amounts and at such proper intervals as will meet the reasonable operating expenses of the company or association and pay in full the claims arising under its certificates.

(b) All premiums or assessments upon policies hereafter issued insuring the life of one or more persons shall be in accordance with the reserve table standards adopted by the company or association and approved by the State Board of Insurance, except that any company or association is hereby authorized to use the 1956 Chamberlain Reserve Table with interest not to exceed 3½% per annum, and shall be in an amount so as to deposit in the mortuary or claim fund an amount at least equal to the renewal net premiums calculated in accordance with the reserve standard adopted by such company or association and approved by the State Board of Insurance.

Rate Adjustments

Sec. 2. When, or if, in the course of operation the amount of the mortuary fund of the company or association is not equal to or in excess of the required reserves under the reserve standard adopted by the company or association and approved by the State Board of Insurance on such policies, but less any permissive deficiency reserve, the amount of the premiums shall be increased in the manner as prescribed in this Chapter 14 until such rates are adequate to eliminate the inadequacy of the required reserve, less any permissive deficiency reserve, and the State Board of Insurance shall so order.

Penalty

Sec. 3. When any company or association shall refuse to comply with the order of the State Board of Insurance respecting rates or assessments as in this Chapter authorized, it shall be treated as insolvent.

Authority of the Board of Directors

Sec. 4. The Board of Directors of each company or association by resolution may increase rates on life policies in force up to the rate on an attained age basis in accordance with the 1956 Chamberlain Reserve Table, with interest at $3\frac{1}{2}\%$ per annum, or any other reasonable, equitable or necessary increase, and may likewise adjust rates on health, accident, sickness and hospitalization policies in force. Any increase rate or rate adjustment on policies in force shall apply to all classes of the same or similar policies.

State Board of Insurance Approval

Sec. 5. Any increase in rates on policies in force shall not be placed in effect without the advance approval of the State Board of Insurance approving the same as being in compliance with the provisions of this Chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1961, 57th Leg., p. 234, ch. 121, § 1; Acts 1965, 59th Leg., p. 457, ch. 234, § 2, eff. May 21, 1965.]

Art. 14.24. Revenues from Fees and Assessments

The funds of the association shall be derived from membership fees and assessments. Assessments shall be made upon the membership to meet benefit claims and for surplus funds and for expenses. Calls for assessments must specify the purpose for which made. Before suspending any member from membership it shall be necessary for the association to mail a notice, by first-class mail, to the member, which notice shall state the final date of payment. All funds collected that belong to the association shall be deposited within five (5) days in a state or national bank.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

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Art. 14.25. Division of Funds; Bylaw Provisions; Investment of Funds**Division of Funds**

Sec. 1. The provisions of this Section 1 shall apply to all companies or associations regulated by the provisions of this Chapter, except companies or associations operating upon an assessment-as-needed basis.

(a) Assessments or premiums upon (i) policies issued after December 31, 1965, insuring the life of one or more persons, and (ii) policies insuring the life of one or more persons issued prior to December 31, 1965, and upon which the rate has been increased based upon an age other than age at date of issue, when collected shall be divided into at least two funds. One of these shall be the mortuary or relief fund, by whatever name it may be called in the different companies or associations, and from which fund claims under certificates shall be paid, and nothing else, except: (1) dividends to policyholders when paid in accordance with this Chapter, (2) income taxes, if any, which may be due by reason of the income to or operation of said fund, and (3) other expenditures permitted by law; and the other fund shall be the expense fund from which expenses may be paid. As applies to all such policies, as defined in (i) and (ii) of this subparagraph and insuring the life of one or more persons, an amount at least equal to the renewal net premium, calculated at the age of issue or some other advanced age in accordance with the reserve standard adopted by such company or association, shall be placed in the mortuary fund. All other portions of the premiums may be placed in the expense fund. Whenever any life premium rate is increased in accordance with the provisions of this Chapter at any age other than at age of issue, the expense loading on the new premiums shall not, upon all ages fifty and above, exceed twenty-five per cent (25%) of such gross premium charged, unless an additional expense loading is approved by the State Board of Insurance as being reasonable and necessary.

(b) Premiums or assessments upon all policies in force on December 31, 1965, except as in Subparagraph (a) of this Section 1 provided, and upon all health, accident, sickness and hospitalization policies shall be divided so that at least sixty per cent (60%) of such premium, exclusive of the membership fee, shall be placed in the mortuary fund of the company or association. The membership fee and the remaining portion of the premium may be placed in the expense fund. As to policies in force on December 31, 1965, insuring the life of one or more persons and upon which a rate increase has not been accomplished, any company or association may at its election divide the premiums on such life policies so as to place at least the net renewal premium, based upon the reserve table adopted by it, in its

mortuary fund and place the remaining portion of said premium in its expense fund.

Assessment-as-Needed, Division of Funds

Sec. 2. The provision of this Section 2 shall apply to all companies or associations operating upon an assessment-as-needed basis.

(a) Assessments when collected shall be divided into at least two funds. One of these shall be the mortuary or relief fund, by whatever name it may be called in the different associations; and the other fund shall be the expense fund. At least sixty per cent (60%) of assessments collected except the membership fee, must be placed in the mortuary or relief fund.

Bylaw Provision

Sec. 3. Each company or association shall provide in its bylaws for the method and procedure for the allocation of premiums to be made between the mortuary and expense funds.

Investment of Funds

Sec. 4. The mortuary fund may be invested only in such securities and investments as are a legal investment for the reserve funds of a domestic life, health and accident insurance company regulated by the provisions of Chapter 3 of this Insurance Code, as amended, and the expense fund may be invested in any securities and investments as are legal investments for the surplus funds of a domestic life, health and accident insurance company regulated by the provisions of Chapter 3 of this Insurance Code, as amended.

Use of Funds

Sec. 5. Each company or association mortuary fund and expense fund shall be expended only in the manner as is provided for each fund in Subparagraph (a) of Section 1 of Article 14.25 of this Chapter of this Insurance Code and invested only as provided in Section 4 of Article 14.25 of this Chapter of this Insurance Code.

Cost of Defending Contested Claims

Sec. 6. The reasonable costs of defending contested claims on health, accident, sickness or hospitalization policies only may be paid from the mortuary or claim fund of any company or association authorized to write health, accident, sickness or hospitalization insurance, provided:

(a) each such expenditure for that purpose is approved by the State Board of Insurance, and

(b) such company or association possess the required reserves as provided in this Chapter 14 but less any permissive deficiency reserve.

Limitation Upon Rate Increases on Certain Life Policies

Sec. 7. Any other provision of this Chapter 14 of this Insurance Code, as amended, notwithstanding, rates on life policies issued after the effective date of this Act may not be increased during any consecutive five-year period more than double the rate than charged such insured at the time of such rate increase.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1965, 59th Leg., p. 457, ch. 234, § 3, eff. May 21, 1965.]

Art. 14.26. Investments

Any surplus funds on hand belonging to any such association must be invested, if at all, in such securities as the funds of stock life, health and accident insurance companies may be invested in.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.27. Groups or Class of Members

The constitution and by-laws of each association shall state the number of members to be admitted in a class or group of the association. Accounts of the mortuary assessments of the several classes shall be kept separately; and the funds of one group or class shall not be used to pay claims for any other classes.

In the creation of a new group, club, or class, an association may have six (6) months from the date of its creation within which to build said group, club, or class up to the required membership to pay claims in full, provided in the interim the certificates provide for no more than a Five Hundred (\$500.00) Dollar benefit, unless the association has funds out of which it may lawfully make and actually does make the full payment of benefits in the interim. Creation of any new group shall be subject to advance approval by the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.28. Beneficiaries

The payment of death benefits shall be confined to the wife or husband of a member, or relatives by blood to the fourth degrees, or by marriage to the third degree, or to persons actually dependent upon the member, and creditor, estate or any one having an insurable interest or any purely charitable or religious institution.

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. When such is the case the nearest relative of the insured shall receive said insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.29. Payment of Claims

It is the primary purpose of this chapter to secure to the members of the associations and their beneficiaries the full and prompt payment of all claims according to the maximum benefit provided in their certificates. It is therefore required of all associations that all claims under certificates be paid in full within sixty (60) days after receipt of due proof of claims.

Written notice of claim given to the association shall be deemed due proof in the event the association fails upon receipt of notice to furnish the claimant, within fifteen (15) days, such forms as are usually furnished by it for filing claims.

Any association which shall become unable to pay its valid claims in full within sixty (60) days after due proofs are received, shall for the purpose of this chapter be regarded as insolvent, and dealt with as is more fully provided hereinafter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.30. Contests

It shall not be unlawful for an association to contest claims for valid reasons; but claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. Therefore, if liability is to be denied on any claim, the association is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

The Board shall cancel the certificate of authority of any association found to be operating fraudulently or improperly contesting its claims.

Reports regarding the costs of contests must be made under oath of an officer of the association, with the annual report of all associations to the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.31. Assessment-as-Needed Groups

The provisions of this chapter requiring the full payment of claims shall not apply to any groups, club, or class previously organized and now operating on the post-mortem or assessment-as-needed plan and any association having such a group, club, or class may continue to operate it on said plan so long as any such group, club, or class has a sufficient membership at the assessment rate charged to produce, and so long as it does produce, for the mortuary or relief fund at least fifty (50%) per cent of the maximum value of the largest policy in said group, club, or class. In the event the membership of any group, club, or class is only sufficient in number to pay between fifty (50%) per cent and one hundred (100%) per cent of the maximum value, it shall be the duty of the officer of said association to

have printed on each assessment notice the percentage of the maximum value of the certificate actually paid on the last death claim in said group, club, or class. Provided further, that no association and no group, club, or class in any association shall hereafter be organized to operate on the post-mortem or assessment-as-needed plan.

If on any assessment the amount realized is not sufficient to pay fifty (50%) per cent of the face of the certificate, the association shall be deemed insolvent and dealt with as hereinafter provided.

The benefits to be paid by such association shall be dependent upon the amount realized from assessments upon the membership, and the certificates issued shall so provide; and the certificates shall also state the maximum to be paid.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.32. Payments on Certificates Already in Force

If the payments of the members of any association coming within the scope of this chapter on certificates issued and in force when this code takes effect, or the reinsurance or renewals of such certificates, shall prove insufficient to pay matured death and disability claims in the maximum amount stated in such policies or certificates, and to provide for the creation and maintenance of the funds required by its by-laws, such association may with the approval of the Board of Insurance Commissioners and after proper hearing before said Board provide for meeting such deficiency by additional, increased, or extra rates of payment. The members may be given the option of agreeing to reduced maximum benefits, or of making increased payments.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.33. Insolvency; Conservatorship; Receiver

If, upon an examination or at any other time, it appears to the Commissioner that such association be insolvent, or its condition be, in the opinion of the Commissioner, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such association appears to have exceeded its powers or failed to comply with the law, or has a membership of less than five hundred (500) paying their assessments, then the Commissioner shall notify the association of his determination and said association shall have thirty (30) days under the supervision of the Commissioner within which to comply with the requirements of the Commissioner; and in the event of its failure to comply within such time, the Commissioner, acting for himself, or through a conservator appointed by the Commissioner for that purpose, shall immediately take charge of such association, and all of the property and effects thereof.

If the Commissioner is satisfied that such association can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Commissioner, pending the election of new directors and officers by the membership in such manner as the Commissioner may determine, the same shall be done, and the conservator may, with the approval of the Commissioner, reinsure any part of such company's policies or certificates of insurance with some solvent insurance company or association authorized to transact business in this State. The conservator may transfer to the reinsurance company such mortuary funds or other assets or portions thereof as may be required to reinsure such policies or certificates. If the Commissioner, however, is satisfied that such association is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Commissioner shall proceed to reinsure the outstanding policies in some solvent association or company, authorized to transact business in this State, or the Commissioner shall proceed through such conservator to liquidate such association, or the Commissioner may give notice to the Attorney General who shall thereupon apply to any court in Travis County having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such corporation or to require it to comply with the law or to satisfy the Commissioner as to its solvency. The court may, in its discretion, appoint agents or receivers to take charge of the effects and wind up the business of the corporation, under usages and practices of equity; and may make disposition of the business and membership of the corporation as in the discretion of the court may seem proper. No suit for receiver shall be filed against any such corporation, nor shall any receiver be appointed, except upon the application therefor by the Attorney General, and in no event shall any receiver for any such corporation be appointed until after reasonable notice has issued and a hearing had before the court.

It shall be in the discretion of the Commissioner to determine whether or not he will operate the association through a conservator, as provided above, or proceed to liquidate the association, or report it to the Attorney General, as herein provided.

When the policies of an association are reinsured or liquidated, as herein provided, the Commissioner shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the association so reinsured or liquidated. Where the Commissioner lends his approval to the merger, transfer, or consolidation of the membership of one association with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter

of the association from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of associations reinsured or liquidated. No merger or transfer shall be approved unless the association assuming the members transferred or merged is operating under the supervision of the Commissioner of Insurance. The cost incident to the conservator's services shall be fixed and determined by the Commissioner and shall be a charge against the assets and funds of the association to be allowed and paid as the Commissioner may determine.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1965, 59th Leg., p. 1638, ch. 705, § 1, eff. Aug. 30, 1965.]

Art. 14.34. Service of Process

In any lawsuit brought against an association operating under this chapter, service of citation shall be had upon the president, any acting vice-president, secretary, or general manager of said association or upon the Chairman of the Board of Insurance Commissioners, which service upon the Chairman shall be within the time required for service upon individuals. The Board when served with citation for such association shall forthwith transmit the same by registered mail to the association at the post office address as designated in records on file with the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.35. Venue

In all actions brought against corporations operating under and subject to this chapter growing out of or based upon any right of claim or loss or proceeds due, arising from or predicated upon any claim for benefits under any policy or contract of insurance issued by such corporation, venue shall lie in the county where the policyholder or beneficiary instituting such suit resides or in the county of the principal office of such corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.36. Special Disability Provision

If any of the provisions of this chapter may appear obscure when applied to health, accident or disability provisions in certificates issued by associations authorized to issue health, accident or disability certificates, then the Board is directed to interpret same in accord with the expressed purpose and spirit of this chapter looking to the full payment of claims, and at the same time preserving to members the benefit of the protection afforded by such association.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.37. Burial Association

Any individuals, firms, co-partnerships, corporations or associations doing the business of providing

burial or funeral benefits, which under any circumstances may be payable partly or wholly in merchandise or services, not in excess of One Hundred and Fifty (\$150.00) Dollars, or the value thereof, are hereby declared to be burial companies, associations or societies, and shall organize under provisions of Chapter 12, and shall operate under and be governed by Chapter 12 and this chapter. It shall be unlawful for any individual, individuals, firms, partnerships, corporations, or associations, other than those defined above, to engage in the business of providing burial or funeral benefits, which under any circumstances may be paid wholly or partly in merchandise or services.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.37-1. Insurance Policies Payable in Merchandise or Burial Materials and Services; Penalty

Sec. 1. It shall hereafter be unlawful for any person, corporation, insurance company, fraternal organization, burial association or other association to write, sell or issue any certificate, policy, contract or membership, maturing upon the death of the person holding the same or upon the death of some member of the holder's family, if such certificate, policy, contract or membership provides that it is to be paid or settled, or if the plan of such person, corporation, organization or association provides that its certificates, policies, contracts or memberships are to be paid or settled, in merchandise or services rendered, or agreed to be rendered, or by furnishing burial materials or burial services, or in discounts on the regular prices of merchandise, burial materials or funeral services or other services; or if such certificate, policy, contract or membership is to be paid at maturity in anything except money.

Sec. 2. Any person, corporation, insurance company, fraternal organization, burial association or other association which shall hereafter write, sell or issue any certificate, policy, contract, or membership prohibited by the foregoing section of this Act shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than Ten Dollars (\$10.00) nor more than Two Hundred Fifty Dollars (\$250.00), each sale of any such policy, contract or membership shall constitute a separate offense.

[Acts 1931, 42nd Leg., p. 247, ch. 147.]

Art. 14.38. Certificate of Burial Associations

Policies or certificates issued by burial associations shall provide for payment of the benefit in certain stipulated merchandise and burial service, which shall be scheduled in the policy or certificate and approved by the Board of Insurance Commissioners as being of the reasonable value as stated in the face of the policy, unless the insured shall at the

time said policy is issued elect to have same paid in cash. The policy shall show in writing the election made. If the association issuing said policy shall fail or refuse to furnish the merchandise and services provided for in the policy same shall be paid in cash.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.39. Rules and Regulations

The Board is hereby authorized to promulgate reasonable rules and regulations to carry out the purposes of this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Arts. 14.40 to 14.41. Repealed by Acts 1979, 66th Leg., p. 1252, ch. 593, § 4, eff. June 13, 1979

Art. 14.42. Annual Assessment

There is levied upon each burial association having a permit to do business in Texas, an annual assessment of one-half of one cent ($\frac{1}{2}$ of 1c) per member in the association as of December thirty-first of each year but not less than Five (\$5.00) Dollars annually, which shall be in addition to any other fees now payable and which assessment shall be paid by each association between January first and March first of each year. Said assessments shall be paid to the State Board of Insurance along with and at the same time each association files with said Board its annual statement. Said assessment shall be based upon the calendar year. All assessments paid to the State Board of Insurance under this article shall be and the same are here and now appropriated for and to the use and benefit of the State Board of Insurance for the purpose of obtaining advice, information, and knowledge relative to adequate and reasonable rates to be charged by burial associations of Texas and compiling records thereof and carrying out Articles 14.42-14.52 of this code. All assessments collected under this article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to assessments under this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979; Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Section 2 of the 1979 amendatory act provided:

"On the effective date of this Act, the Burial Association Rate Board is abolished, and its powers, duties, and functions are transferred to the State Board of Insurance."

Art. 14.43. General Responsibilities of Board; Contracts

(a) The State Board of Insurance shall assume and exercise the powers, duties, and functions provided by Articles 14.44-14.52 of this code.

(b) The State Board of Insurance may contract with experts and consultants to assist it in carrying out its powers, duties, and functions under Articles 14.44, 14.45, 14.47, and 14.48 of this code. Before entering into a contract, the Board shall solicit competitive bids, and the contract shall be awarded to the lowest and best bidder. Procedures for soliciting bids and awarding contracts shall be provided in the rules of the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.44. Experience Rating; Rate Schedules Fixed

The State Board of Insurance shall adopt a schedule of reasonable and adequate rates, giving the maximum and minimum rates which may be charged per week, per month, per quarter, per six (6) months and per annum by burial associations for the definite benefits at the definite ages, which ages will be in convenient groups as designated by said Board. Such schedule of rates shall be adopted in compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). To insure the adequacy and reasonableness of rates the Board may take into consideration experience gathered from a territory within this State sufficiently broad to include the varying conditions of the risks involved and over a period sufficiently long to insure that the minimum and maximum rates determined therefrom shall be just and reasonable as they may apply to the insuring public, and adequate and non-confiscatory as they may apply to the burial associations. The Board is hereby authorized and empowered to require sworn statements from any burial association within this State showing its experience in assessments collected and claims paid over a reasonable period of time and such other information as the Board shall find to be necessary or helpful in making the maximum and minimum rate schedules. After said rate schedules have been adopted, the Board shall cause to be mailed a copy of such rate schedule to each burial association having a permit to do business in Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Section 3 of the 1979 amendatory act provided:

"Within 90 days after the effective date of this Act, the State Board of Insurance shall adopt a schedule of rates for burial associations that is in compliance with and that is adopted in the manner provided by Article 14.44, Insurance Code, as amended. Until the schedule of rates is adopted under this section, the schedule of rates in effect on the effective date of this Act continues in force."

Art. 14.45. Adoption and Filing of Rate Schedule by Associations

After such rate schedule has been so mailed by the State Board of Insurance, it shall be the duty of the officers and directors of each burial association

to convene and to adopt a rate schedule to be thereafter used and charged by such association for the different benefits at the different ages and which schedule shall use the same age groups and benefits as is given in the rate schedule so mailed to it by the State Board of Insurance and which rates so adopted shall not be less than the minimum nor more than the maximum rates adopted by the Board. Each burial association shall file with the State Board of Insurance, duplicate copies of the rate schedule adopted by it and which rate schedule must be so filed at least within thirty (30) days from the date the rate schedule was so mailed by the State Board of Insurance. Such copy shall be endorsed by the State Board of Insurance showing the date of its filing and one of such copies shall be retained by the Board and the other copy returned to the association to be kept as a part of its permanent files. With the consent of the State Board of Insurance an association may change its rates by adopting and filing with the Board, a new rate schedule in all respects similar to the first schedule but in each instance each rate must be within the maximum and minimum as adopted by the State Board of Insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.46. Violation as to Rates; Penalties

It shall be unlawful for any burial association, its officers, agents, or employees to charge, receive, or collect any rate, premium, or assessment from any member of said association other than the rate, premium, or assessment applicable for the age and benefit as named in said association's rate schedule on file with the Board of Insurance Commissioners and in force at that time. Any officer, agent, or employee of any burial association who charges, receives, or collects any premium or assessment in violation of this article, or any officer, of any burial association who knowingly permits it to be done, shall be guilty of misdemeanor and upon conviction shall be fined not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200.00) Dollars. The Board of Insurance Commissioners may cancel the permit of any burial association violating the provisions of this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.47. Data for Fixing Rates

It shall be the duty of said State Board of Insurance to gather such data, statistics, and information as it can from time to time as to the death rates, lapses, experiences and other information relative to burial association rates within, and without the State of Texas as may be deemed beneficial in fixing reasonable and adequate burial association rates and which information may be disseminated

by the Board among the burial associations of Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.48. Limitation on Board's Power; Amendment of Schedules

The Board's duties and power shall not cease upon the adoption of its first rate schedule, but it shall continue to study the statistics, rates, and experiences of burial associations and at any time it deems proper, it may adopt a new rate schedule or amendment to a previous schedule and when any such amendment or new schedule is adopted, it shall thereafter be considered the official rate schedule of burial associations. When a new or amended schedule is adopted and copies forwarded to the burial associations by the State Board of Insurance, the new or amended rate schedule shall be thereafter used by it as to members thereafter accepted and such procedure shall be followed from time to time, when and as often as the Board shall adopt an amended or new rate schedule for the State.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.49. Rates Used Prior to this Law

Rates which were adopted and in use by any association prior to June 12, 1947, may be continued to be used by such burial association as to its then members, but with the consent and approval of the Board of Insurance Commissioners of Texas, any association may change such rates and make the same comply and correspond with the rate schedule last filed by such association with the Board of Insurance Commissioners as herein designated.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.50. No Connection Between Associations

There shall be no connection directly or indirectly between two (2) or more burial associations. No member, director, or officer of one burial association shall be a member, director, or officer of any other burial association. No person whose husband, wife, or employee is an officer or director of one burial association shall be an officer or director of any other burial association. No funeral director, undertaker, or funeral home directly or indirectly connected with or designated by one burial association as its funeral director, undertaker, or funeral home shall be connected with or designated by any other burial association as its funeral director, undertaker, or funeral home to furnish its members with its services and/or merchandise or to service its policies or to be in any manner connected with its affairs.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.51. Affiliation with Funeral Home; Rules and Regulations

It is against the public policy of this State for a funeral home or for those who own it in whole or in part to be connected directly or indirectly or affiliated with more than one burial association and the provisions of Articles 14.42 through 14.52 of this chapter shall be liberally construed and the State Board of Insurance shall make such rules and regulations as may be necessary to carry out the spirit and purpose of this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.52. Payment in Lieu of Merchandise and Services

If a burial association is not given the opportunity to provide the merchandise and services stipulated in the policy it shall be required to pay not less than the total amount paid into its mortuary fund for account of said policy in lieu of the stipulated merchandise and services unless a greater per cent of the face value is specified in the policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.53. Mortuary or Relief Funds; Taxes on Income

Any company or association operating under the provisions of this chapter, may pay from the mortuary or relief funds by whatever name it may be called any taxes that may be assessed against or required to be paid by the company or association because of income to such funds.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.54. Mutual Fire Insurance Companies Not Affected

Nothing in this chapter shall ever be construed to include or affect in any manner mutual fire insurance companies.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.55. Penalty; Unlawful Conversion

If any director, officer, agent, employee, attorney at law or attorney in fact, of any association under this chapter, shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such association, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.56. Penalty; Diversion of Special Funds

If any director, officer, agent, employee, attorney at law, or attorney in fact of any association under this chapter, shall willfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any association under this chapter, which has been set apart by law or by any valid rule or regulation of the Board of Insurance Commissioners of the State of Texas for a specific use, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.56-1. Penalty for Appropriation of Money

Any officer or any employé of a mutual accident insurance company, incorporated under the laws of this State, who shall use or appropriate, or knowingly permit to be used or appropriated by another, any money belonging to such mutual insurance company, in any manner other than is provided in the law authorizing the organization of such company, shall be confined in the penitentiary not less than two nor more than ten years.

[1925 P.C.]

Art. 14.57. Penalty; False Reports

The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such association whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the association. If any officer, director, agent, employee, attorney at law or attorney in fact, of any association under this chapter shall willfully make any false affidavit in connection with the requirements of this chapter, he shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.58. Penalty; Violation of Board Order

If any director, officer, agent, employee, or attorney at law or attorney in fact of any association under this chapter, shall willfully refuse or fail to comply with any lawful order of the Board of Insurance Commissioners of this State he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.59. Penalty; Violation of Other Provisions of Chapter

If any director, officer, agent, employee or attorney at law or attorney in fact of any association under this chapter, or any other person, shall violate any of the provisions of this chapter not specifically set out in Articles 14.55, 14.56, 14.57, 14.58 and 14.46 of this chapter, he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.60. Fees Appropriated

All fees paid to the State Board of Insurance by all associations regulated by this chapter shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be spent for the purpose of enforcing and carrying out the provisions of this chapter and other laws relating to the regulation and supervision of such associations as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Art. 14.61. Conversion or Reinsurance of Domestic Local Mutual Aid Associations, etc., into Legal Reserve Companies

Sec. 1. (a) Any domestic local mutual aid association; statewide life, or life, health and accident association; mutual assessment life, health and accident association; burial association; or any other similar concern, by whatsoever name or class designated, whether specifically named herein or not, organized and operating under the laws of the State of Texas, may convert or reinsure itself into a legal reserve insurance company operating under the provisions of Chapter 11 of this code, or be reinsured by any legal reserve insurance company operating under the provisions of Chapter 3 of this code by conforming to the provisions of this article. When it shall be determined by a majority vote of the Board of Directors of any such association to submit the proposed change to the members of the association, said board of directors shall prepare in detail plans for making such change, and such plans shall be submitted to the Board of Insurance Commissioners. Upon receipt of such Board's written approval of such plans, or of such plans amended to meet the requirements of such Board in accordance with the provisions of said chapters, said board of directors or such officer of such association as may be authorized by its by-laws to call a meeting of its members, shall mail to each member a copy of the proposed plans and shall enclose with each copy of

such plans a notice of a meeting of said members to be held not earlier than fifteen (15) days after the date of mailing of such notice.

(b) Such meeting shall be held for the purpose of ratification or rejection of the proposed change, and the members may vote in person, by proxy, or by mail; provided that all votes shall be cast by ballot, and the Chairman of the meeting shall supervise and direct the method of procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting, who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the Chairman of the Board of Insurance Commissioners and to the association the result thereof, under such rules and regulations as shall be prescribed by the Board of Insurance Commissioners. A majority vote cast shall be sufficient for ratification of said change.

(c) When such association shall have complied with the provisions of this Article and the other laws of this State regulating the incorporation of such mutual legal reserve insurance companies, and shall have received from the Board of Insurance Commissioners its charter and certificate of authority to transact business as a mutual insurance company, its reorganization and conversion shall be complete. Such reorganized and converted or reinsured corporation shall be deemed in law to have the rights, privileges, powers and authority of any other corporation organized in accordance with the provisions of said Chapters. The new corporation shall be deemed in law to be a continuation of the business of the former association and shall succeed to and become invested with all and singular the rights and privileges not inconsistent with the provisions of said Chapters, and all property, real, personal or mixed of the former association, and all debts due on any account, and all other things and choses in action theretofore belonging to such association, and all property, rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as if they were the property of the former association, and the title to any real estate by deed or otherwise vested in the former association shall forthwith vest in such organized converted corporation and the title thereto shall not in any way be impaired by reason of such change or reincorporation. The standing of all claims under the former association shall be preserved unimpaired under the new corporation, and all debts, liabilities and duties of the former association shall thenceforth attach to the reorganized corporation and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, except that the liabilities created under the terms of policies or

certificates outstanding at the date of conversion or reorganization may be altered in accordance with the provisions of said plans approved by the Board of Insurance Commissioners; provided, however, that no alteration shall be made in the renewability or noncancellability of any insurance agreement, contract, policy or certificate theretofore made or issued.

Sec. 2. The sums of any mortuary funds belonging to such association shall thereafter be effectually the property of such organized and converted corporation or corporation reinsuring the membership of such association, but may be disbursed for payment of valid claims outstanding and arising thereafter from policies issued by the legal reserve company to the members of the assessment association under the approved agreement; to set up the legal reserve on new policies issued by the legal company to the members of the assessment association under said agreement; and to pay their actuarial portion of such mortuary fund to members of such association who refuse to accept the new policies offered them, and who make request therefor within sixty (60) days from the date of conversion or reinsurance.

The effective date of the legal reserve policies may be the effective date of the reinsurance contract. On conversion ten (10%) per cent of the mortuary fund credit allocated to each policy may be credited to the contingency reserve fund of the company for the benefit of the policyholders, and the balance of the mortuary credit may be applied in either of the following ways:

(a) As a reserve credit to permit the legal reserve policy issued to be dated back as far as the reserve credit will permit; or

(b) As an annuity to reduce the required premium either for a given term or for the whole of life.

(c) No change shall ever be made until same shall have been approved by the Board of Insurance Commissioners.

Sec. 3. Providing further that nothing in this article or in the provisions of Chapter 11 or Chapter 3 of this code shall ever be construed to mean that any of the associations or other similar concerns, by whatsoever name or class designated, whether specifically named herein or not, shall be required by the Board of Insurance Commissioners to make the change herein provided for unless they voluntarily decide to do so, and that this article is purely permissive and if such associations do not so voluntarily decide to come under this article, or laws amended by it, then this article shall not in any way apply to such association.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 1187, ch. 466, § 1.]

Art. 14.62. Reinsurance

Companies and associations operating under the provisions of this Act may enter into reinsurance contracts or agreements with legal reserve companies authorized to write life, health, and accident insurance in this State with capital or surplus of at least One Hundred Thousand Dollars (\$100,000), and pay the premiums for such reinsurance out of the mortuary or claim funds. Provided, that such reinsurance contracts or agreements shall be subject to the approval of the Board of Insurance Commissioners of Texas, and that no company or association shall pay more out of its mortuary or claim fund for such reinsurance than is currently received by the mortuary or claim fund on the policies or members reinsured. Within thirty (30) days from the effective date of this Act, the Board of Insurance Commissioners shall issue instructions outlining the conditions under which such contracts or agreements will be approved.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 14.63. Conversion of Local Mutual Aid Association or Statewide Mutual Assessment Company into Stock Legal Reserve Life Insurance Company

Sec. 1. Any local mutual aid association or statewide mutual assessment company or association doing business in this State on January 1, 1955, may convert into a stock legal reserve life insurance company, provided such company or association so converted has at least One Hundred Thousand (\$100,000.00) Dollars in its claim or mortuary fund at the time of such conversion and complies with the following provisions:

a. There shall be contributed in cash of the United States the additional sum of not less than Fifty Thousand (\$50,000.00) Dollars in capital and not less than Twenty-five Thousand (\$25,000.00) Dollars in surplus.

b. All policies of insurance in force shall be exchanged for a legal reserve policy in accordance with the provisions of Section 2 of Article 14.61 of this Code.

c. Such conversion shall only be made upon a vote of the membership duly called for such purposes. Pursuant to such authorization, the board of directors and officers of such company or association shall amend its existing charter or articles of association, as the case may be, so as to comply with the requirements contained in Article 3.02 of this Code, as amended, except as to the capital and surplus requirements thereof.

d. After the exchange of such mutual assessment policies for legal reserve policies in accordance with the provisions of Section 2 of Article 14.61, the proper legal reserve required by Chapter 3 of this Code, as amended, shall be estab-

lished and maintained for such policies so as to leave the capital of the company at all times unimpaired and not less than Fifty Thousand (\$50,000.00) Dollars.

e. After compliance with the provisions hereof, and approval of the same by the Attorney General of the State of Texas and the Board of Insurance Commissioners, such company or association shall be and become a legal reserve stock life insurance company, except that such company so converted shall not: (1) operate in any territory not previously authorized under the old charter or articles of association, as the case may be; nor (2) insure any life for more than Five Thousand (\$5,000.00) Dollars in event of death; nor (3) declare or pay any cash dividends; unless and until the capital and surplus of such converted company or association shall be increased to the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code.

Sec. 2. Any such company or association so converted shall within ten (10) years from the date of its conversion increase its capital and surplus to the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of the Insurance Code, or its certificate of authority to do business shall be revoked by the Board of Insurance Commissioners.

Sec. 3. From and after the date of such conversion such legal reserve stock life insurance company shall be governed by the provisions of Chapter 3 of the Insurance Code, as amended, except as otherwise herein provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 916, ch. 363, § 22.]

Art. 14.64. Issuance of Life Insurance Policies by Local Mutual Aid Associations or Statewide Mutual Assessment Companies

Each local mutual aid association or statewide mutual assessment company possessing a mortuary fund and expense fund combined in at least the sum of \$100,000.00 above all liabilities of such combined funds may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that: (1) no individual life shall be insured for more than \$5,000.00, (2) each such policy shall be reserved as required under the provisions of Chapter Three of this Insurance Code, and (3) each such life policy shall be issued only upon an endowment or limited pay basis.

[Acts 1971, 62nd Leg., p. 1311, ch. 346, § 1, eff. May 24, 1971.]

**CHAPTER FIFTEEN. MUTUAL INSURANCE
COMPANIES OTHER THAN LIFE**

Art.

- 15.01. Who May Incorporate.
- 15.02. Articles of Incorporation.
- 15.03. Name of Company.
- 15.04. Certificate of Incorporation.
- 15.05. Powers and By-Laws.
- 15.05-A. Application of Texas Non-Profit Corporation Act.
- 15.06. Kinds of Insurance.
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- 15.08. Conditions to Obtain License.
- 15.09. Corporation May Contract With.
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- 15.19-1. Failure to Report Condition; Penalty.
- 15.19-2. False Statement or Misappropriation; Penalty.
- 15.20. Provisions Controlling as to Mutual Insurance.
- 15.20-1. Penalty for Noncompliance.
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Art. 15.01. Who May Incorporate

Any number of persons not less than twenty (20), a majority of whom shall be bona fide residents of this State, by complying with the provisions of this chapter, may become, together with others who may hereafter be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as herein provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.02. Articles of Incorporation

Any person proposing to form any such company shall subscribe and acknowledge articles of incorporation specifying:

- (a) The name, the purpose for which formed, and the location of its principal or home office, which shall be within this State;
- (b) The names and addresses of those composing the board of directors in which management shall be vested until the first meeting of members;
- (c) The names of places of residence of the incorporators.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.03. Name of Company

No name shall be adopted by such company which does not contain the word "mutual," or which is so

similar to any name already in use by any such existing corporation, company or association, organized or doing business in the United States, as to be confusing or misleading.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.04. Certificate of Incorporation

Applicants for such Articles of Incorporation shall comply with and be subject to the provisions of Article 2.01 of this Code except:

- 1. The minimum number of persons adopting and signing such Articles of Incorporation shall be governed by Article 15.01 of this Chapter; and
- 2. Free surplus shall constitute capital structure within the meaning of Article 2.01.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 25.]

Art. 15.05. Powers and By-Laws

The company shall have legal existence from and after the date of issuance of said certificate. The company shall have such powers as are necessary or incident to the transaction of its business. The Board of Directors named in such articles may thereupon adopt by-laws, accept applications for insurance, and proceed to transact the business of such company; provided, that no insurance shall be put into force until the company has been licensed to transact insurance as provided by this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.05-A. Application of Texas Non-Profit Corporation Act

Insofar as the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), are not inconsistent with or contrary to any applicable provisions of the Insurance Code, as amended, the provisions of the Texas Non-Profit Corporation Act as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), shall apply to and govern mutual insurance companies as defined in Article 15.01 of this chapter. Provided however, any such mutual insurance company may upon advance approval of the Commissioner of Insurance pay dividends to its members, and wherever in the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the secretary of state, such is to be vested in, required of, or performed by the Commissioner of Insurance insofar as such mutual insurance companies are concerned.

[Acts 1975, 64th Leg., p. 347, ch. 148, § 1, eff. May 8, 1975.]

Art. 15.06. Kinds of Insurance

Any company organized under the provisions of this Chapter is empowered and authorized to write

any kinds of insurance, which may lawfully be written in Texas, except life insurance. Any such company writing fidelity and surety bonds shall keep on deposit with the State Treasurer cash or securities as provided in Article 2.10 approved by the Board equal in amount to that required of domestic stock companies. Any such company shall be possessed of a surplus over and above all of its liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business. Mutual insurance companies operating under the provisions of this Chapter shall be required to charge the rates prescribed by the Board of Insurance Commissioners and be subject to the same rates and reserve supervision that domestic insurance companies are subject to by law.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 177, § 26.]

Art. 15.07. Meet Same Legal Requirements of Other Companies Writing Bonds

Any mutual insurance company qualifying to write bonds under this chapter shall meet the same legal requirements as all other insurance companies who are writing bonds under this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.08. Conditions to Obtain License

No company organized under this Chapter shall issue policies or transact any business of insurance unless and until its charter is granted as provided in this Code and unless and until the Board has, by issuance of Certificate of Authority, authorized it to do so. The provisions of Article 2.20 of this Code shall apply to all renewal Certificates of Authority.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 27.]

Art. 15.09. Corporation May Contract With

Any public or private corporation, board or association in this State or elsewhere may make application, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this State to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.10. Votes of Members

Every member of the company shall be entitled to one vote, or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premium paid, as may be provided in the by-laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.11. Provisions of Policy

The maximum premium shall be expressed in the policy of a mutual company organized under this Chapter, and it may be solely a cash premium or a cash premium and an additional contingent premium, which contingent premium shall be equal in amount to one (1) additional cash premium, but no such company shall issue an insurance policy for a cash premium and without an additional contingent premium until and unless it possesses a surplus above all liabilities of a sum at least equal to the minimum capital and surplus required of a stock insurance company transacting the same kinds of business.

When any company shall issue policies for cash premiums only, in pursuance of the authority of this Article, it may waive all contingent premiums set forth in policies then outstanding. The issuance of policies for cash premiums only in pursuance of this Article may not be exercised by any such company until written notice of its intention so to do accompanied by a certified copy of the resolution of the Board of Directors providing for the issuance of such policies shall have been filed with and approved by the Board. Policyholders of a mutual insurer shall at no time be liable for assessment on policies issued at a time when such approval by the Board is in effect. Neither the officers nor directors of any such mutual insurer, the Board of Insurance Commissioners, nor any receiver or liquidator shall have authority to levy assessments upon the holders of such policies.

A foreign mutual insurance company authorized to do business in Texas may issue an insurance policy for a cash premium and without an additional contingent premium and may waive contingent premiums on outstanding policies under the same conditions and subject to the same restrictions and provisions as a mutual insurance company organized under this Code and doing the same kinds of business.

If up to the time of the effectiveness of this Act a mutual insurance company was authorized to write non-assessable policies in Texas under the provisions of this Code, such mutual company 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.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 28.]

Art. 15.12. May Advance Money

Any director, officer or member of such company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirements of the law and such moneys and interest thereon as may have been agreed upon, not exceeding twenty (20%) per cent per annum shall be payable only out of the surplus remaining after providing for all reserve, other liabilities and lawful surplus, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advances shall be reported in each annual statement.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1981, 67th Leg., p. 558, ch. 236, § 1, eff. Aug. 31, 1981.]

Art. 15.13. Reserves

Such company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic stock insurance companies transacting the same kind of insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.14. Foreign Mutual Company

Any such mutual insurance company organized outside of this State and authorized to transact the business of insurance on the mutual plan in any state, district or territory, shall be admitted and licensed to transact the kinds of insurance authorized by its charter or articles to the extent and with the powers and privileges specified in this chapter when it shall be solvent under this chapter, and shall have complied with the following requirements:

(a) Filed with the Board of Insurance Commissioners a copy of its by-laws certified to by its secretary;

(b) Filed with the said Board a certified copy of its charter or articles of incorporation;

(c) Appointed the Chairman of the said Board its agent for the service of process, in any action, suit or proceedings in any court of this State, which authority shall continue as long as any liability shall remain outstanding in this State;

(d) Filed a financial statement under oath, in such form as the Board may require, and have complied with the other provisions of law applicable to the filing of papers and furnishing information by stock companies on application for authority to transact the same kind of insurance;

(e) Its name shall not be so similar to any name already in use by any such existing corporation, company or association organized or licensed in this State as to be confusing or misleading.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.15. Subject to General Laws

Every such mutual insurance company, whether organized within or without the state, shall be subject, except as otherwise provided by law, to all general provisions of law applicable to stock insurance companies transacting the same kinds of insurance, investments, valued policies, policy forms and rates, reciprocal or retaliatory laws, insolvency and liquidation, publication and defamatory statements, and shall make its annual report in such form and submit to such examination and furnish such information as may be required by the Board. As far as practicable such examinations of mutual insurance companies organized outside of this State shall be made in cooperation with the insurance departments of other states and the forms of annual report shall be such as are in general use throughout the United States.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.16. No Exemption From General Laws

Nothing in this chapter shall be construed to mean that any company or association incorporated or organized hereunder shall be exempt from the provisions of the General Laws of this State, heretofore or hereafter enacted governing the incorporation, organization, regulation and operation of companies or organizations writing insurance in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.17. Reinsurance

Any such mutual insurance company organized or admitted to transact insurance in this State may by policy, treaty or other agreement cede to or accept from any insurance company or insurer reinsurance upon the whole or any part of any risk which reinsurance shall be without contingent liability or participation or membership unless the contract provides otherwise and shall not be effected with any company or insurer disapproved therefor by written order of the Board of Insurance Commissioners filed in its office.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.18. Taxes and Fees

Every such company, whether organized within or without this State shall be subject to such fees as are now provided by law for stock companies doing the same kind of business and to such taxes as may be provided by law for such mutual companies. The tax shall be paid upon the gross premiums received for direct insurance upon property or risks

located in this State, deducting premiums upon policies not taken, premiums returned on cancelled policies and any refund or return made to the policyholders other than for losses.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.19. Rights and Privileges of Certain Companies Retained

Rights and privileges of companies affected by the repeal of Chapters 5, 9, 12, 13, 14 and 15 of Title 78 of the Revised Civil Statutes of 1925, shall remain in effect to the extent set out in the Acts 1929, 41st Legislature, 1st Called Session, page 90, Chapter 40, Section 18 as amended Acts 1929, 41st Legislature, 2nd Called Session, page 99, Chapter 60, Section 1.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.19-1. Failure to Report Condition; Penalty

If at any time the admitted assets of any mutual company operating under the law providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall come to be less than the largest single risk for which the company is liable, then the president and the secretary of the company shall at once notify the Commissioner of Insurance, and he may make an examination into the company's affairs if he deems best, and if such president and secretary shall fail to report the company's condition as so required, they shall each be fined not less than one hundred nor more than five hundred dollars.

[1925 P.C.]

Art. 15.19-2. False Statement or Misappropriation; Penalty

Whoever shall intentionally submit a false statement, or intentionally misappropriate the funds of mutual companies organized under the laws providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall be confined in the penitentiary not less than five nor more than ten years.

[1925 P.C.]

Art. 15.20. Provisions Controlling as to Mutual Insurance

No sort of mutual insurance, other than life insurance, may be conducted in this State, except under the provisions of this law, or under some law remaining on the statutes authorizing the same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 15.20-1. Penalty for Noncompliance

Any person who shall transact the business of mutual fire insurance in this State without complying with the laws regulating such business shall be

fined not less than fifty nor more than five hundred dollars.

[1925 P.C.]

Art. 15.21. Penalty for Violation of Act

Any person or corporation violating the provisions of this Act¹ shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars.

[Acts 1929, 41st Leg., 1st C.S., p. 90, ch. 40, § 20.]

¹ Civil Statutes, arts. 4860a-1 to 4860a-19 (now arts. 15.01 to 15.20).

CHAPTER SIXTEEN. FARM MUTUAL INSURANCE COMPANIES

Art.

- 16.01. Farm Mutual Insurance; Definitions.
- 16.02. Farm Mutual Insurance Companies Shall Not Insure Against.
- 16.03. Farm Mutual Companies Formed.
- 16.04. Charter and Articles of Incorporation of Companies Not Holding a Certificate of Authority; Contents.
- 16.05. Application for Permission to Solicit Insurance by Companies Not Holding a Certificate of Authority.
- 16.06. Conditions of Incorporation for Companies Not Heretofore Holding a Certificate of Authority.
- 16.07. Location of Business.
- 16.08. By-Laws.
- 16.09. Provision Against Waiver of By-Laws.
- 16.10. Premiums and Assessments.
- 16.11. Policyholders' Liabilities.
- 16.12. Directors; Qualifications; Term.
- 16.13. Directors' Power to Borrow.
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- 16.16. Removal of Officers or Directors.
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- 16.18. Annual Reports to Policyholders and to the Board.
- 16.19. Examinations by the Board.
- 16.20. Solvency.
- 16.21. Renewal of Charters or Securing of Charters by Farm Mutual Insurance Companies in Operation Prior to April 1937.
- 16.22. Fees.
- 16.23. Applicability of the Texas Non-Profit Corporation Act.
- 16.24. Exemption from Insurance Law.
- 16.25. Companies Organized Between 1955 and the Effective Date of this Act.
- 16.26. Unconstitutional Application Prohibited.
- 16.27. Authority of the State Board of Insurance.

Acts 1973, 63rd Leg., p. 292, ch. 139, rewrote Chapter 16 of the Insurance Code (former Articles 16.01 to 16.28) as Articles 16.01 to 16.27.

Art. 16.01. Farm Mutual Insurance; Definitions

(a) Farm mutual insurance companies are companies organized on the mutual or cooperative plan against loss or damage to property below specified by fire, lightning, explosion, theft, windstorm, hurri-

cane, hail, riot, civil commotion, smoke, aircraft and land vehicles, and heretofore issued a certificate of authority by the State Board of Insurance to operate under the provisions of Chapter 16 of the Insurance Code; such farm mutuals are authorized to write insurance against loss or damage from any hazard specified herein or that any other fire or windstorm insurance company operating in Texas under the provisions of Chapter 6 of the Insurance Code may write on property below specified.

(b) Farm mutual insurance companies may insure rural and urban dwellings and attendant outhouses and yard buildings, and all their contents for home and personal use, including family vehicles, musical instruments and libraries, barns and ranch buildings of every description together with vehicles and implements used thereon; agricultural products produced or kept on farms and ranches. No building, or its contents, with more than 40 per cent of its floor space or more than 500 square feet of floor space, whichever is the lesser amount, used for business purposes may be insured by a farm mutual insurance company except church buildings, fraternal lodge halls, private and church schools, and non-industrial use buildings owned by non-profit organizations may be insured, wherever situated.

(c) Each farm mutual insurance company shall include the words "Farm Mutual" or "Farmers Mutual" in its name, and must maintain a majority of its total insurance in force on rural property at all times at the time of writing thereof, and operate on a regular and special assessment basis and use not more than 25 per cent (25%) of their gross income for expenses unless otherwise approved by the Commissioner of Insurance. "Rural property" shall mean any property located outside an urban area. "Urban area" as used herein shall mean that land area subject to the taxing authority of any incorporated city or town having a population by the last published federal census figures of more than 2,500 inhabitants. Property located in what is defined as rural property by the preceding sentence at the time it is first insured shall thereafter continue to be classified as rural property so long as insurance thereon continues by policy or policies written by the same farm mutual insurance company without lapse in effective coverage for longer than sixty (60) days.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 29; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Section 2 of the 1973 amendatory act provides:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions and applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 16.02. Farm Mutual Insurance Companies Shall Not Insure Against

No farm mutual insurance company shall assume or issue any contract of insurance that seeks to indemnify an insured for liability incurred by the insured to third parties for the commission of any tortious act by the insured. No farm mutual insurance company shall assume or issue any contracts of insurance covering the liability of any insured under a contract to maintain, hold or store property belonging to others.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.03. Farm Mutual Companies Formed

(a) Farm mutual companies now chartered and duly operating under Chapter 16, Insurance Code, and having heretofore issued to them a certificate of authority by the State Board of Insurance may renew their charters as provided in Article 16.21 of this chapter.

Those farm mutual companies or associations now operating under a certificate of authority issued by the State Board of Insurance which were organized and operating prior to April 6, 1937, but not yet incorporated, shall be granted a charter as provided in Article 16.21 of the Insurance Code if application therefor is made prior to the expiration of three (3) years from the effective date of this Act.

(b) Any association of individuals which has not prior to the effective date of this Act been issued a certificate of authority by the State Board of Insurance will be required to secure a charter in compliance with Articles 16.04, 16.05 and 16.06 of the Insurance Code dealing with incorporation of companies not heretofore issued such a certificate of authority, and must show that it has theretofore been in existence as a bona fide association of individuals for a period of not less than three years, containing a membership of not less than 100 persons, operating under a system of subordinate lodges, or locals, or districts, without capital stock, organized and carried on solely for the mutual benefit of its members, and not for profit, having a representative form of government, operating for the purpose of membership recreation or membership welfare, and who now have by a majority vote of said association decided to apply for a charter as a farm mutual insurance company under the provisions of this Chapter 16.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.04. Charter and Articles of Incorporation of Companies Not Holding a Certificate of Authority; Contents

The charter and articles of incorporation of a farm mutual or farmers mutual insurance company not holding a certificate of authority on the effec-

tive date of this Act shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, all of whom must be bona fide inhabitants in any one or more adjoining counties in this state, owning each not less than \$5,000.00 of insurable property, and have applied in writing for insurance thereon in the company to be formed, and which charter is to be acknowledged before a notary public by not less than five (5) of them and all charter members are members of an association as described in Article 16.03(b).

It shall state the name of the company which shall include the words "Farm Mutual" or "Farmers Mutual," the place of its principal office, the number, names and post office addresses of its first directors, who shall not be less than five (5), the kind of property it will insure, and the risk to be insured against; and such other provisions as the incorporators may desire to set out therein in keeping with this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.05. Application for Permission to Solicit Insurance by Companies Not Holding a Certificate of Authority

Any ten (10) or more of such inhabitants, desiring to form a farm mutual insurance company, may apply to the State Board of Insurance for permission to solicit insurance on the mutual or cooperative plan, which application shall state:

(a) That not less than one hundred (100) individuals have heretofore been members of an association as described in Article 16.03(b) and said association has by majority vote indicated its desire to insure property of its members under Chapter 16 of the Insurance Code and for said association to be chartered as a farm mutual insurance company;

(b) The name of the company shall include the words "Farm Mutual" or "Farmers Mutual;"

(c) The locality of the principal business office of such company;

(d) The risks the company proposes to insure;

(e) The names and places of residence of not less than ten (10) persons making such application;

(f) An affidavit of at least two (2) of such applicants correctly stating the names and residences of such applicants and verifying the facts stated in the application.

Upon receipt of such application, together with a Twenty-five (\$25.00) Dollar fee for filing same, the State Board of Insurance shall examine it and upon finding that it complies with this chapter shall issue a permit for a period of six (6) months, authorizing said applicants to solicit insurance on the mutual or cooperative plan in accordance with the terms of the application, but not to issue policies of insurance or

pay losses. Such permit may be renewed as often and as long as the State Board of Insurance finds it necessary upon application therefor and upon the payment of Ten (\$10.00) Dollars for each renewal. Moneys collected from applicants for insurance shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.06. Conditions of Incorporation for Companies Not Heretofore Holding a Certificate of Authority

Before a charter shall be granted a farm mutual insurance company not heretofore holding a certificate of authority from the State Board of Insurance, the incorporators must have on hand:

(a) Not less than one hundred (100) applications in writing for insurance on not less than four hundred (400) separate risks; provided that no one (1) risk shall be for more than one (1%) per cent of the total amount of insurance applied for in the new company, and that a separate risk shall be one (1) or more items of real estate and its contents, if any, which is not exposed to any other property on which insurance is applied for in the new company;

(b) The free surplus required herein in cash. All companies organized after the effective date of this Act under this Chapter must have received a charter to operate and shall at time of incorporation and at all times thereafter have free surplus equal to \$2.00 for each \$100.00 of insurance in force, or \$200,000.00 whichever amount is greater invested as provided in Article 2.08 of this Code as now provided or as amended in the future. Funds in excess of such minimum surplus may be invested as now provided in Article 2.10 of this Code or as amended in the future. If such free surplus is at any time impaired, it must be restored without delay under the provisions of this Chapter; the State Board of Insurance shall proceed as is provided in Section 5 of Article 1.10 of this Code as it now exists or as amended in the future.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 1020, ch. 421, § 1; Acts 1955, 54th Leg., p. 413, ch. 117, § 30; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.07. Location of Business

A farm mutual insurance company may write insurance (a) in the county where its home office is located at the time of incorporation and in any county adjoining the county in and for which it is organized; or (b) in any county in which no farm mutual insurance company has been organized; or (c) anywhere in Texas if its reserve fund exceeds the sum of Two Hundred Thousand (\$200,000.00)

Dollars in cash or securities in which the reserve fund of stock fire insurance companies may be invested; provided, however, that the provisions of this entire article shall not apply to any farm mutual insurance company now organized and operating in Texas and having heretofore been issued a certificate of authority under Chapter 16 prior to the effective date of this Act.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 1020, ch. 421, § 2; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.08. By-Laws

(a) The by-laws will state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

(b) They shall also fix the liability of the policyholders for all losses accrued while the policies are in force in addition to the regular premium or assessments for the same and the time and manner of the payment of such liability; provided that the amount of such contingent liability shall never be less than One (\$1.00) Dollar for each One Hundred (\$100.00) Dollars of insurance in such policy.

(c) Farm mutual companies may adopt all rules, regulations, provisions and requirements contained in the standard policies of companies writing fire or windstorm insurance as promulgated from time to time by the State Board of Insurance, insofar as they are applicable to farm mutual insurance companies, as a part of their by-laws and contracts of insurance, which adoption shall be evidenced either by statement to that effect in the by-laws or in the policies.

(d) The by-laws may also provide that when a loss occurs, the companies may, at their option, provide and require that all or a certain per cent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed, provided such provision may be made equally applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homesteads and exempt personal property. Provided also, that farm mutual companies may in their by-laws provide that the requirements of Article 6.13 of this Code shall not be applicable to their contracts of insurance.

(e) By-laws of the company shall always constitute a part of the contract with the insured and the policy shall so state.

(f) The by-laws of farm mutual insurance companies may provide for the organization of local chapters for the transaction of their business and for the creation of districts in and for which their directors may be elected. The by-laws may also provide that delegates from local chapters constitute the supreme governing body of the company. In the organization of local chapters, and the creation of

the districts, the hazards insured against, and the classes of risks, as well as the territory of operation, may be taken into consideration.

(g) The meetings of the policyholders of farm mutual insurance companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third ($\frac{1}{3}$) of the Directors of the Company, or the State Board of Insurance.

Each policyholder in a farm mutual insurance company shall be entitled to only one vote in all policyholders' meetings.

No voting by proxy shall be permitted unless it is specially authorized by the by-laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.09. Provision Against Waiver of By-Laws

Such companies may provide in their by-laws that local chapters, and the officers and agents elected by such local chapters, company adjusters or appointed representatives, do not have the power to waive any provision of the constitution, by-laws or policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.10. Premiums and Assessments

All premiums and assessments, including the contingent liability of policyholders for all insurance written by farm mutual insurance companies shall be fixed, levied and paid as and when required by the by-laws of the companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remain the property of the insured.

If default is made by a policyholder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home county of the company and the company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said lien, together with all costs of suit including a reasonable attorney's fee.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.11. Policyholders' Liabilities

Policyholders shall be liable for losses of the company only as prescribed in the constitution and by-laws of the company, and that only in proportion that the premiums or assessments for the insurance of any policy bear to the total amount of the premiums or assessments for all the insurance in the class to which the policy belongs.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 1020, ch. 421, § 3; Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.12. Directors; Qualifications; Term

Directors of farm mutual insurance companies shall hold their office for one (1) year after their election, and until their successors qualify, unless otherwise provided in their constitution and by-laws.

Only bona fide policyholders who carry insurance on their property in an amount not less than Three Thousand (\$3,000.00) Dollars each in a company, shall be eligible to become or remain directors of the same. When a director reduces his said insurance below such amount, he shall no longer be qualified to act as such director.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.13. Directors' Power to Borrow

The Board of Directors of farm mutual insurance companies may, acting by and through its duly authorized officers, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge the assets of the company including the contingent liability of the policyholders for such losses as security for such loans.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.14. Powers of Directors

The Board of Directors of farm mutual insurance companies shall have all powers granted by Chapter 16, and those granted by the charter, constitution and by-laws if not in conflict with the provisions of this Chapter 16.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.15. Reserve Funds

The Board of Directors of farm mutual insurance companies may provide for the accumulation of reserve funds, to be invested in such securities as the reserve funds of other fire insurance companies are by law required to be invested.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.16. Removal of Officers or Directors

The Board of Directors of a company may at any time, in any meeting by a two-thirds (2/3) majority vote of all the directors, remove any officer or director of the company from his office without assigning any reason therefor, and name another person or persons to assume the duties of the one or ones removed, and to fill any unexpired term, when, in their judgment, it shall be deemed to the best interest of the company.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.17. Reciprocal Insurance Contracts

Farm mutual insurance companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other companies on a mutual or cooperative plan; provided that no farm mutual shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a farm mutual reinsures the property of another company, it shall not by reason of such fact be, or become a member or partner, of such company, but shall only become liable for the losses of such other company as specified in the contract of interinsurance and not otherwise; and provided further, that a farm mutual shall only have authority to reinsure the risks of another company in consideration of the fact that such other company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.18. Annual Reports to Policyholders and to the Board

Farm mutual insurance companies shall annually make and submit written reports to their policyholders showing (a) the rate and total amount of premiums or assessments paid during the year for their insurance, (b) the operating expenses, (c) the names of the claimants and the amounts paid each for the losses suffered; and make available to each policyholder a copy of such report as and when prescribed in the by-laws of the company; provided, however, that it shall not be necessary to report the names and amounts of claims of policyholders of one class of insurance to the policyholders in another class, unless the policyholders in such other class are liable for the losses of the former class.

They shall also make such reports annually to the State Board of Insurance as the Board may require of them, or as shall be required by law.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.19. Examinations by the Board

The State Board of Insurance shall as often as it deems necessary, examine farm mutual insurance companies.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.20. Solvency

A farm mutual insurance company or association shall be considered solvent and entitled to continue business if its assets, including the contingent liability of its policyholders for its losses, are reasonably sufficient to pay its losses, according to the terms of the policies and it has not impaired its required free surplus, if any, to any extent in excess of 16% per cent of such surplus.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.21. Renewal of Charters or Securing of Charters by Farm Mutual Insurance Companies in Operation Prior to April 1937

Any farm mutual insurance company, organized and in business prior to April 6, 1937, and still in business, may at any time before its charter expires by lapse of time, have its charter extended perpetually, and shall, under the extended charter, continue to have and enjoy all the rights, privileges and immunities that it had under the original charter; provided, however, that it is first authorized to extend its said charter either by a two-thirds majority vote of all of its directors, or by a simple majority vote of those voting at a meeting of its policyholders. The application for such extensions shall set out in haec verbae the charter to be extended and it shall state the time to which it is to be extended and be signed and acknowledged by the president and secretary of the company.

Any such company whose charter has expired or may hereafter expire by lapse of time, but is or shall be still doing business in this State, may have its charter renewed for a perpetual term from the time of the expiration of the former existing charter in like manner as charters may be extended as provided in the paragraph preceding, and from the time of such renewal it shall be entitled to all the rights, privileges and immunities it had and enjoyed under the prior existing charter.

Any such unincorporated farm mutual insurance company which has heretofore been in business prior to April 6, 1937, and is still in business, and permitted currently to operate under a certificate of

authority issued by the State Board of Insurance and has paid all its losses promptly according to contract, shall at any time prior to the expiration of three (3) years from the effective date of this Act, when authorized to do so by two-thirds of its directors, or by a majority vote of its policyholders voting at any annual meeting or special meeting called for that purpose, apply for a charter and be incorporated for a perpetual term as a farm mutual insurance company under this chapter without compliance with the preceding Articles 16.03, 16.04, 16.05 and 16.06. The application for such charter shall state its name, its purpose, the location of its principal office, the number and names of its directors, and the nature and value of its assets, and it shall be signed and acknowledged by its president and secretary. It shall thereupon be entitled to a charter and to function and do business as a farm mutual insurance company, and to enjoy the same rights, privileges and immunities that it had and enjoyed as an unincorporated company, except as otherwise herein provided.

Any such unincorporated farm mutual insurance company until receiving its charter shall nevertheless be subject to the provisions and requirements of this chapter to the extent pertinent.

Such fire or storm mutual insurance companies as included in this article, heretofore operating under the now repealed provisions of 4860a-20, Revised Civil Statutes of Texas, shall become subject to the provisions and requirements of this chapter in lieu of any act heretofore governing such companies. Any such company shall have the right to change its name so as to include the words "Farm Mutual" or "Farmers Mutual," and may amend its constitution and by-laws and/or charter for the purpose of adopting any provision or meeting any requirement of this chapter. The Board shall charge and collect a filing fee of Ten (\$10.00) Dollars for each amendment to the charter of any such company.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.22. Fees

For the renewal and extension of the granting of any charter, the Board shall charge and collect a filing fee of Ten (\$10.00) Dollars and a like amount for any amendment to the charter of any such company.

The Board shall charge a fee of One (\$1.00) Dollar for the issuance of a certificate of authority or renewal thereof to all companies operating under this chapter, and for filing such annual statement required by the Board, it shall charge a filing fee of Twenty (\$20.00) Dollars.

Fees collected under this article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A

of this code applies to fees collected under this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973; Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Art. 16.23. Applicability of the Texas Non-Profit Corporation Act

Insofar as the same are not inconsistent with or contrary to any applicable provision of this chapter as it now exists or may be amended in the future, the provisions of the Texas Non-Profit Corporation Act shall apply to and govern farm mutual insurance companies, provided, however, that wherever said Texas Non-Profit Corporation Act¹ imposes some duty, authority, responsibility, power; or some act is vested in, required of, or is to be performed by the Secretary of State, such is hereby vested in, required of, or shall be performed by the State Board of Insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

¹ Civil Statutes, art. 1396-1.01 et seq.

Art. 16.24. Exemption from Insurance Law

(a) Unless farm mutual insurance companies are expressly mentioned, no provision of the Insurance Code, except as contained in this chapter, shall be applicable to insurers holding a certificate of authority under this chapter and no law hereinafter enacted shall apply to such companies unless such subsequent enactment states that it shall apply.

(b) Regardless of the preceding portion of this Article, Articles 1.01, 1.02, 1.04, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.29, 2.08, 2.10, 3.12, 3.13, 3.14,¹ 6.16, 21.21, 21.25, 21.28, 21.28A, 21.28B, 21.39-A, and Sections 10(a), (b) and (c) of Article 3.01 and Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 17 of Article 1.10 of the Insurance Code as they now exist or shall hereafter be amended shall apply to and govern farm mutual insurance companies except where such Articles or portions thereof are in conflict with the provisions of Chapter 16 of the Insurance Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

¹ Repealed; see, now, art. 21.39-B.

Art. 16.25. Companies Organized Between 1955 and the Effective Date of this Act

All farm mutual insurance companies organized between January 1, 1955, and the effective date of this Act shall always have a free surplus of \$2.00 for each \$100.00 of insurance in force; or a free surplus of \$200,000.00 whichever amount is less.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.26. Unconstitutional Application Prohibited

This chapter and law do not apply to any insurer or other person to any extent that it cannot validly apply under the Constitution of the United States or the Constitution of the State of Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

Art. 16.27. Authority of the State Board of Insurance

The State Board of Insurance is hereby vested with power and authority under this Act to promulgate, after public hearing, and enforce rules and regulations concerning the application to farm mutual insurance companies of the Articles referred to in Article 16.24 of the Insurance Code and for the clarification, amplification and augmentation of the terms and provisions of Chapter 16 of the Insurance Code (as it now exists or as it may be amended in the future) which in the discretion of said Board are deemed necessary to accomplish the purposes of this Act.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1973, 63rd Leg., p. 292, ch. 139, § 1, eff. May 21, 1973.]

CHAPTER SEVENTEEN. COUNTY MUTUAL INSURANCE COMPANIES

Art.

- 17.01. County Mutual Insurance Companies; Definitions.
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- 17.04. Charter and Articles of Incorporation; Contents.
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- 17.09. Policyholders' Liabilities.
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- 17.12. Directors; Qualifications; Term.
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- 17.23. By-Laws as Part of Contracts.
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- 17.25. County Mutual Insurance Companies.

Art. 17.01. County Mutual Insurance Companies; Definitions

County Mutual Insurance Companies are companies organized for the purpose of insurance on the mutual or cooperative plan against loss or damage

by fire, lightning, gas explosion, theft, windstorm and hail, and for all or either of such purposes.

Unless they are restricted by their charters, they may write insurance against said hazards:

(a) On both rural and urban dwellings and attendant outhouses and yard buildings and all their contents for home and personal use—including family vehicles, musical instruments and libraries;

(b) On barns and other farm, dairy, truck garden, hennery and ranch buildings and improvements of every description;

(c) On all vehicles, harness, implements, tools and machinery of every kind and description used on and about farms, truck gardens, dairies, henneries or ranches;

(d) On all fruits and products, other than growing crops, and all fowls, domestic animals and livestock of every description, produced, raised, grown, kept or used on truck gardens, henneries, farms, ranches and dairies; and

(e) On church houses, country school houses, country lodge rooms and country recreation halls, other than road houses and public dance halls and their contents.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.02. Formation of Company

No county mutual insurance company may be formed under the provisions of this Chapter after the effective date of the Act of which this section is a part, except such as are formed pursuant to permits issued under Article 17.03 of this Code prior to the effective date of this amendment. County mutual insurance companies formed prior to the effective date of this Act and actively engaged in the insurance business at the time of such effective date or formed pursuant to permit issued prior to the effective date of this amendment under Article 17.03 shall be permitted to engage in business in accordance with the provisions of Chapter 17, as amended, and other applicable laws; provided, however, that neither the provisions of this Act nor the provisions of Senate Bill No. 107, Acts of 53rd Regular Session, Texas Legislature, 1953, effective May 22, 1953,¹ shall apply to any county mutual insurance company organized and operating as a county mutual fire insurance company on May 22, 1953, whose business is devoted exclusively to the writing of industrial fire insurance policies covering dwellings, household goods and wearing apparel on a weekly, monthly or quarterly basis on a continuous premium payment plan. Provided further, that this exemption shall apply only so long as said companies are engaged exclusively in the writing of

such industrial fire insurance policies. Section 22 of Article 17.25 is hereby repealed.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 31.]

¹ Article 17.05 et seq.

Art. 17.03. Application for Permission to Solicit Insurance

Permits issued prior to the effective date of this amendment pursuant to the provisions of Article 17.03 shall expire by their present terms and shall not be renewed. Moneys collected from applicants other than charter members shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 32.]

Art. 17.04. Charter and Articles of Incorporation; Contents

The charter and articles of incorporation of a county mutual insurance company shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, and be acknowledged before a notary public by not less than five (5) of them.

It shall also state the name of the company, which shall include the words "County Mutual Insurance Company," the place of its principal office; the number, names and post office addresses of its first directors, the number never to be less than five (5); and such other provisions as the incorporators may desire to set out therein.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.05. Conditions of Incorporation

Before a charter shall be granted a county mutual insurance company, the incorporators must have on hand:

(a) Not less than twenty-five (25) applications in writing for insurance on not less than one hundred (100) separate risks; provided that no one risk shall be for more than one (1%) per cent of the total amount of insurance applied for in the new company, and that a separate risk shall be one or more items of real or personal property which is not exposed to any other property on which insurance is applied for in the new company;

(b) Not less than One (\$1.00) Dollar for each One Hundred (\$100.00) Dollars of insurance applied for at the time of incorporation, in cash or securities in which the reserve funds may be invested;

(c) Not less than Ten Thousand (\$10,000.00) Dollars in free surplus which shall be in cash or securities in which its reserve funds may be invested, if the company is organized to write insur-

ance locally in the county of its domicile and any adjoining counties; if such company is organized to write insurance in any county within this State, its surplus requirement as provided herein shall be Twenty-Five Thousand (\$25,000.00) Dollars in cash or securities in which its reserve funds may be invested; and

(d) Said application for charter shall also be accompanied by a copy of the by-laws of the company, and the bond of the secretary or manager of the same in such sum and conditioned as the Board may determine.

When the foregoing requirements have been complied with to the satisfaction of the Board of Insurance Commissioners, the Board, upon the payment of a fee of Fifty (\$50.00) Dollars, shall issue such company a charter to do business as an incorporated company.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 540, ch. 196, § 1.]

Art. 17.06. By-Laws; Additional Provisions

The by-laws shall state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

They shall also fix the liability of the policyholders for all losses accrued while the policies are in force, in addition to the regular premium or assessments for the same; and the time and manner of the payment of such liability; provided that the amount of such liability shall be \$2.00 for each \$100.00 of insurance in such policy.

The by-laws may also provide that when a loss occurs, the companies may, at their option, provide and require that all or a certain per cent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed; provided such provision may be equally made applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homestead and exempt personal property. County mutual companies may in their by-laws provide that the requirements of Article 6.13 of this Code shall not be applicable to their contracts of insurance.

Provided, however, that a county mutual insurance company which meets the requirements of Article 17.11, subsection (c) shall not be subject to the provisions of the next two (2) preceding paragraphs, but shall be subject to the provisions of Article 15.11 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 540, ch. 196, § 2; Acts 1955, 54th Leg., p. 413, ch. 117, § 33.]

Art. 17.07. Organization of Local Chapters

The by-laws of county mutual insurance companies may provide for the organization of local chap-

ters for the transaction of their business and for the creation of districts in and for which their directors may be elected. The by-laws may also provide that delegates from local chapters constitute the supreme governing body of the company. In the organization of local chapters, and the creation of the districts, the hazards insured against, and the classes of risks, as well as the territory of operation, may be taken into consideration.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.08. Premiums and Assessments

All premiums and assessments, including the contingent liability of policyholders for all insurance written by county mutual insurance companies shall be fixed, levied and paid as and when required by the by-laws of the companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remains the property of the insured.

If default is made by a policyholder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home county of the company and the company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said lien, together with all costs of suit including a reasonable attorney's fee in a sum of not less than Five (\$5.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.09. Policyholders' Liabilities

Policyholders shall be liable for losses of the company only as prescribed in the by-laws of the company and Article 17.06 of this Code, and that only in proportion that the premium or assessments for the insurance of any policy bears to the total amount of premiums or assessments for all the insurance in the class to which the policy belongs.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 34.]

Art. 17.10. Directors Power to Borrow

The Board of Directors of county mutual insurance companies may, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge the assets of the company including the contingent liability of the policyholders for such losses as security for such loans.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.11. Financial Requirements and Impairment of Surplus

County mutual insurance companies shall maintain at all times unearned premium reserves as provided in Article 6.01 of this Code. The unearned premium reserves and any other type of reserves authorized by the Board of Directors shall be invested in such securities as the reserve funds of other insurance companies doing the same kind of business are by law required to be invested.

There shall be maintained at all times free surplus invested only in items enumerated in Article 2.08 of this Code of:

(a) Not less than \$25,000.00 if the company is organized to write insurance locally in the county of its domicile only; or

(b) Not less than \$50,000.00 if the company is organized to write insurance in the county of its domicile and any adjoining counties only; or

(c) Not less than an amount equal to the aggregate of the minimum capital and minimum surplus required of a fire insurance company by Article 2.02 of this Code if such company is organized to write insurance in a county other than the county of its domicile and any adjoining counties within this State.

Each county mutual insurance company shall be subject to the provisions of Section 5 of Article 1.10 and Article 2.20 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 540, ch. 196, § 3; Acts 1955, 54th Leg., p. 413, ch. 117, § 35.]

Art. 17.12. Directors; Qualifications; Term

Directors of county mutual insurance companies shall hold their office for one year after their election, and until their successors qualify, unless otherwise provided in their by-laws.

Only bona fide policyholders who carry insurance on their property in an amount not less than One Thousand (\$1,000.00) Dollars each in a company, shall be eligible to become or remain Directors of the same. When a Director reduces his said insurance below such amount, he shall no longer be qualified to act as such Director.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.13. Charter to Prescribe Power of Directors

The Board of Directors of county mutual insurance companies shall have such discretion, power and authority as their charter shall provide.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.14. Voting by Policyholders

Each policyholder in a county mutual insurance company shall be entitled to only one vote in all policyholders' meetings.

No voting by proxy shall be permitted unless it is specially authorized by the by-laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.15. Meetings

The meetings of the policyholders of county mutual insurance companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third ($\frac{1}{3}$) of the Directors of the company, or the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.16. Location of Business

A county mutual insurance company possessed of \$25,000.00 or more in surplus as provided in Article 17.11 may write insurance locally in the county of its domicile; and such company possessed of \$50,000.00 or more in surplus as provided in Article 17.11 may write insurance in the county of its domicile and any adjoining counties; and such company possessed of surplus equal to the aggregate of the minimum capital and minimum surplus required of a fire insurance company by Article 2.02 of this Code may write insurance anywhere within this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 540, ch. 196, § 4; Acts 1955, 54th Leg., p. 413, ch. 117, § 36.]

Art. 17.17. Advancements to the Company

One or more of the policyholders of the company may advance to the company such funds as are necessary for the purposes of its business or to enable it to comply with any requirement of this Chapter, including the surplus requirement of Article 17.11, 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, 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 company or any of its assets. No commission or promotion expense, or other bonus, shall be paid in connection with the advance of any such money to the company, and the amount of all such advances shall be reported in each annual statement.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 540, ch. 196, § 5.]

Art. 17.18. Biennial Examination

The Chairman of the Board of Insurance Commissioners shall biennially, or oftener, if he should

deem it necessary, in person or by one or more examiners, examine county mutual insurance companies.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.19. Extension of Charters

Any such company at any time before its charter or any extension thereof expires may have such charter extended for a term of fifty (50) years from the date of expiration. It shall continue under the extended charter to have all the rights, privileges and immunities granted by this chapter. The application for such extension shall be made to the Board, shall show that the application was authorized either by a two-thirds ($\frac{2}{3}$) vote of the directors or by a majority vote at a policyholders' meeting, shall set out in haec verbae the charter to be extended, shall state the time for which it is to be extended, shall be signed and acknowledged by the president and secretary of the company, and shall be accompanied by a fee of Fifty (\$50.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.20. Reciprocal Insurance Contracts

County mutual insurance companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other companies on the mutual or cooperative plan; provided that no county mutual insurance company shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a county mutual insurance company reinsures the property of another company, it shall not by reason of such fact be, or become a member or partner, of such other company, but shall only become liable for the losses of such other company as specified in the contract of interinsurance and not otherwise; and provided further, that a county mutual insurance company shall only have authority to reinsure the risks of another company in consideration of the fact that such other company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.21. Fees

The Board shall charge a fee of One (\$1.00) Dollar for the issuance of a certificate of authority or renewal thereof to all companies operating under this chapter, and for filing each annual statement, it shall charge a filing fee of Twenty (\$20.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.22. Exemption from Insurance Laws

County mutual insurance companies shall be exempt from the operation of all insurance laws of this state, except such laws as are made applicable by their specific terms or as in this Chapter specifically provided. In addition to such other Articles as may be made to apply by other Articles of this Code, county mutual insurance companies shall be subject to all the provisions of Article 1.04(e),¹ and of Subdivision 7 of Article 1.10 and of Article 1.24 and of Article 2.04 and of Article 2.05 and of Article 2.08 and of Article 2.10 and of Article 5.12 and of Article 5.37 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 5.49 and of Article 21.21 and of Article 21.28B and of Article 21.49 of this Code, and the provisions of Article 7064 of the Revised Civil Statutes of Texas, 1925.²

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 37; Acts 1967, 60th Leg., p. 432, ch. 196, § 2, eff. May 15, 1967; Acts 1973, 63rd Leg., p. 1042, ch. 406, § 2, eff. Aug. 27, 1973; Acts 1981, 67th Leg., p. 2298, ch. 561, § 1, eff. Sept. 1, 1981.]

¹ Repealed.

² Transferred; see, now, art. 4.10 of this Code.

Section 2 of Acts 1981, 67th Leg., p. 2298, ch. 561, provides: "This Act takes effect September 1, 1981, and Articles 1.04(e), 1.10(7), and 21.21, Insurance Code, apply only to actions of county mutual insurers occurring on or after that date."

Section 1 of Acts 1967, 60th Leg., p. 431, ch. 196, is codified as article 21.28B and section 3 of the act is a severability clause and is set out as a note under article 21.28B.

Art. 17.23. By-Laws as Part of Contracts

By-laws of the company shall always constitute a part of the contract with the insured and the policy shall so state.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.24. Provision Against Waiver of By-Laws

Such companies may provide in their by-laws that local chapters and officers and agents elected by them do not have the power to waive any provision of such by-laws.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 17.25. County Mutual Insurance Companies

Regulation

Sec. 1. County mutual insurance companies operating under the provisions of this Chapter shall be authorized to write insurance against loss or damage from any hazard provided therein or that any other fire or windstorm insurance company operating in Texas may write on property described in Article 17.01 of this Chapter. County mutual insurance companies qualifying to write casualty lines for state wide operation may write all lines of automobile insurance, provided that no such company shall assume a risk on any one hazard greater

than five (5%) per cent of its assets, unless such excess shall be promptly reinsured.

**Companies Subject to Provisions of Articles;
Requirements**

Sec. 2. Any company operating under or subject to the provisions of this chapter excepting those companies which out of the total amount of insurance in force maintain more than sixty (60%) per cent in force on rural property and those companies operating on the assessment-as-needed plan, which shall hereafter be known as "Farm Mutual Insurance Companies," shall become subject to the provisions of this article and shall comply with the following requirements, to-wit:

Definitions

Sec. 3. The following terms when used in this article shall be defined:

"Company" shall refer to and include all types or organizations, corporations, associations, companies or groups subject to the provisions of this article.

"Board" shall refer to the Board of Insurance Commissioners of the State of Texas.

"Member" shall include policyholders or any persons insured by a company, by whatsoever means the insurance may be effective.

"Policy" shall include any insurance certificate or contract or insurance, certificate of membership or other document through which insurance is effected or evidenced.

"Assessment-as-needed plan" shall refer to companies that other than for nominal reserve purposes assess members only when a loss or losses occur and who use not more than twenty-five (25%) per cent of their gross income for expenses.

"Insolvent" shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this article.

"Rural Property" as the term is used in this article shall mean any property which has at least five (5) acres of cultivated or grazing land used exclusively with such insured property.

"Paid in full" or "full payment" shall mean the payment of the full amount of loss actually sustained not to exceed the maximum stated in the policy on the happening of the contingency insured against.

Deposit

Sec. 4. Each such company shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to the largest amount assumed on any one risk, or upon a showing or re-insurance acceptable to the Board, the largest amount retained on any one risk after re-insurance, which deposit may be in cash or in convertible

securities subject to approval of the Board. Such deposit shall be liable for the payment of all judgments against the company, and subject to a garnishment after final judgment against the company. When such deposit becomes impounded or depleted it shall at once be replenished immediately on demand by the Board, or the company may be regarded as insolvent.

When any company shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

Policy Forms Prescribed

Sec. 5. Each county mutual insurance company shall be subject to the provisions of Article 5.06 and of Article 5.35 and of Article 5.36 of this Code. The Board of Insurance Commissioners pursuant to Article 5.35 may in its discretion make, promulgate and establish uniform policies for county mutual insurance companies different from the uniform policies made, promulgated and established for use by companies other than county mutual insurance companies, and shall prescribe the conditions under which such policies may be adopted and used by county mutual insurance companies, and the conditions under which such companies shall adopt and use the same forms and no others as are prescribed for other companies.

File Schedule of Charges

Sec. 6. Such companies shall file with the Board a schedule of its rates, the amount of policy fee, inspection fee, membership fee, or initial charge by whatever name called, to be charged its policyholders or those applying for policies.

Sec. 7. Repealed by Acts 1955, 54th Leg., p. 413, ch. 117, § 39.

Books and Records

Sec. 8. All the records and books of each company shall be kept in the shape, form and manner as to reflect truly and accurately the condition of the company, or the facts essential to its faithful and effective operation. The company shall at once adopt forms or systems which will serve the purpose most effectively.

Agents' License

Sec. 9. Agents or solicitors for such companies shall be licensed and appointed as provided in Article 21.07 or 21.14 of this Code.

Removal of Officers

Sec. 10. The Board of Insurance Commissioners shall not issue to any company a certificate of authority to do business in Texas, when it shall find

after notice and hearing any officer or member of the board of directors to be unworthy of the trust or confidence of the public. After a certificate has been granted, the Board shall order, after notice and hearing, the removal of any officer or director found unworthy of trust, and if such officer or director be not then removed, the Board shall cancel the certificate and proceed to deal with the company as though it were insolvent.

Bond of Officers, Employees

Sec. 11. Such companies shall furnish a bond for the officer responsible for the handling of funds of the members in some surety licensed by the Board to do business in Texas in the minimum amount of One Thousand (\$1,000.00) Dollars, said bond to be kept at all times at least equal to the cash assets on hand, with a maximum of Twenty Thousand (\$20,000.00) Dollars, said bond shall be made payable to the Board of Insurance Commissioners for the use and benefit of the members of the company, and shall obligate the principal and surety to pay such pecuniary loss as the company shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others.

In addition to the bond required in the preceding paragraph each company shall procure a like bond for all other office employees, who may have access to any of its funds, in an amount or amounts fixed by the Board with a minimum of One Thousand (\$1,000.00) Dollars and a maximum of Five Thousand (\$5,000.00) Dollars. Successive recoveries on any of the bonds provided for in this section may be had on such bonds until same are exhausted.

Contesting of Claims

Sec. 12. It shall not be unlawful for a company to contest claims for valid reasons; but claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. Therefore, if liability is to be denied on any claim, the company is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

The Board, after notice and hearing, shall cancel the certificate of authority of any company found to be operating fraudulently or improperly contesting its claims.

Amendment to By-Laws

Sec. 13. By-laws of any such company may be amended by a majority of the members of the company present or represented by proxy when ratified by the board of directors, but only at meet-

ings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners as being in conformity with this Act. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered must be mailed or delivered personally to all members.

Conservatorship or Liquidation

Sec. 14. If, upon an examination or at any other time, and after proper notice and hearing, it appears to the Board of Insurance Commissioners that such company be insolvent, or its condition be, in the opinion of the Board, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such company appears to have exceeded its powers or failed to comply with the law, then the Board shall notify the company of its determination and said company shall have thirty (30) days under the supervision of the Board within which to comply with the requirements of the Board; and in the event of its failure to so comply within such time, the Board, acting for itself or through a conservator appointed by the Life Insurance Commissioner for that purpose, shall immediately take charge of such company, and all of the property and effects thereof. If the Board is satisfied that such company can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Board, pending the election of new directors and officers by the membership in such manner as the Board may determine, the same shall be done. If the Board, however, is satisfied that such company is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Board shall proceed to reinsure the outstanding liabilities in some solvent company, authorized to transact business in this State, or the Board shall proceed through such conservator, to liquidate such company, or the Board may give notice to the Attorney General as provided under the General Laws relating to insurance corporations. It shall be in the discretion of the Board to determine whether or not it will operate the company through a conservator, as provided above, or proceed to liquidate the company, as herein provided, or report it to the Attorney General. When the liabilities of a company are reinsured or liquidated, as herein provided, the Board shall report the same to the Attorney General who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the company so reinsured or liquidated. Where the Board lends its approval to the merger transfer or consolidation of the membership of one company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the company

from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of companies reinsured or liquidated. No merger or transfer shall be approved unless the company assuming the members transferred or merged is operating under the supervision of the Board of Insurance Commissioners. The cost incident to the conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the company to be allowed and paid as the Board may determine.

Violation by Agent

Sec. 15. Should any agent or solicitor for any company be found guilty of making a charge greater than that filed with the Board, or guilty of misrepresentation, he shall have his license cancelled and shall not thereafter be again licensed by said Board. Any agent or solicitor who, upon conviction, is found guilty of overcharge or misrepresentation, shall be punished by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars.

Misappropriation of Funds

Sec. 16. If any director, officer, agent, employee, attorney at law or attorney in fact, of any association under this article shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such company, knowing that he is not entitled to receive it, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Unlawful Diversion of Funds

Sec. 17. If any director, officer, agent, employee, attorney at law, or attorney in fact of any company under this article, shall wilfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any company under this article, which has been set apart by law, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Compel Written Reports

Sec. 18. The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such company whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the company. If any officer, director, agent, employee,

attorney at law or attorney in fact, of any company under this article, shall wilfully make any false affidavit in connection with the requirements of this article, he shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

Violation of Provisions

Sec. 19. If any director, officer, agent, employee or attorney at law or attorney in fact of any company under this article, or any other person, shall violate any of the provisions of this article not specifically set out in Sections 16, 17, and 18 of this article, he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Contingent Liability

Sec. 20. The contingent liability of policyholders required under Article 17.06 of this Chapter shall be fixed in the by-laws of each company and shall be \$2.00 for each \$100.00 of property insured in any policy issued by companies subject to the provisions of this Article. Where any risk is insured against more than one hazard, for the purposes of this Chapter and of this Article, the amount of risk or insurance in any policy shall be the maximum loss that may be sustained at any one time by the company under the policy, regardless of the number of hazards insured against.

Appeals

Sec. 21. It shall be the right and privilege of any individual or any such company to appeal within sixty (60) days from any Board order or ruling to the District Court in the County of Travis, Texas. The trial shall be de novo, and in the event of appeal the orders of the Board shall be suspended pending final judgment of the courts.

Sec. 22. Repealed by Acts 1955, 54th Leg., p. 413, ch. 117, § 31.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1953, 53rd Leg., p. 540, ch. 196, §§ 6, 8; Acts 1955, 54th Leg., p. 517, ch. 153, § 2; Acts 1955, 54th Leg., p. 413, ch. 117, §§ 31, 37A to 40; Acts 1979, 66th Leg., p. 873, ch. 399, § 1, eff. June 6, 1979; Acts 1981, 67th Leg., p. 403, ch. 166, § 1, eff. May 20, 1981.]

CHAPTER EIGHTEEN. LLOYD'S PLAN

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Art. 18.01. "Underwriters" Defined

Individuals, partnerships or associations of individuals, hereby designated "underwriters," are authorized to make any insurance, except life insurance, on the Lloyd's plan, by executing articles of agreement expressing their purpose so to do and complying with the requirements set forth in this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.01-1. "Underwriters" and "Attorneys"

Individuals, partnerships or associations of individuals, hereby designated "underwriters" are authorized to make any insurance, except life insurance, on the Lloyds plan, by executing articles of agreement expressing their purpose so to do, and complying with the requirements set forth in the law authorizing such insurance. Policies of insurance may be executed by an attorney in fact or other representatives, hereby designated "attorney," authorized by and acting for such underwriters under powers of attorney.

[1925 P.C.]

Art. 18.02. "Attorneys" Defined

Policies of insurance may be executed by an attorney or by attorneys in fact or other representative, hereby designated "attorney," authorized by and acting for such underwriters under power of attorney. The principal office of such attorneys shall be maintained at such place as may be designated by the underwriters in their articles of agreement; provided that no license shall be issued to any attorney at Lloyd's to bind risks or insurance in Texas, or with citizens of Texas or covering property in Texas, unless their attorneys in fact be residents of this State and maintain their office in this

State, except as may be hereinafter specifically provided.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.03. Application for License

The attorney shall file with the Board of Insurance Commissioners a verified application for license setting forth and accompanied by:

(a) The name of the attorney and the title under which the business is to be conducted, which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this State as to be likely to confuse or deceive.

(b) The location of the principal office.

(c) The kinds of insurance to be effected, which kinds of insurance may be as follows:

1. Fire insurance, which term shall be construed to include tornado, hail, crop and floater insurance.

2. Automobile insurance, which term shall be construed to include fire, theft, transportation, property damage, collision liability and tornado insurance.

3. Liability insurance.

4. Marine insurance.

5. Accident and health insurance.

6. Burglary and plate glass insurance.

7. Fidelity and surety bonds insurance.

8. Any other kinds of insurance not above specified, the making of which is not otherwise unlawful in this State, except life insurance.

(d) A copy of each form of policy or contract by which such insurance is to be effected.

(e) A copy of the form of power of attorney by virtue of which the attorney is to act for and bind the several underwriters and a copy of the articles of agreement entered into between the underwriters themselves and the attorney.

(f) The names and addresses of all underwriters, whose number shall not be less than ten.

(g) A financial statement showing in detail the assets contributed or accumulated in the hands of the attorneys in fact, committee of underwriters, trustees and/or other officers of such underwriters at Lloyd's, together with the liabilities incurred and outstanding and the income received and disbursements made by the attorney for the underwriters.

(h) An instrument executed by each and all of the underwriters specially empowering the attorney to accept services of process for each underwriter in any action on any policy or contract of insurance and an instrument from the attorney to such Board delegating the attorney's powers in this respect to such Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.03-1. Application for License

The attorney for a Lloyds shall file with the Commissioner of Insurance a verified application for license setting forth the data and information required by law, and upon complying with the law such Commissioner shall issue to any attorney applying therefor a license specifying the kind or kinds of insurance which he is authorized to make, which shall continue in force until surrendered by the attorney or revoked or suspended by such Commissioner as authorized by law.

[1925 P.C.]

Art. 18.04. License

Such underwriters and their attorney shall be subject to the provisions of Article 2.01 and Article 2.04 of this Code, except that:

1. The Articles of Agreement shall be in lieu of Articles of Incorporation; and
2. The aggregate of guaranty fund and free surplus shall constitute capital structure within the meaning of Article 2.01.

The attorney for such underwriters shall pay a fee of \$10.00 to the State Board of Insurance upon the filing of the application for license.

Upon determination by the State Board of Insurance that such underwriters and their attorneys have fully complied with the law the Board shall issue a Certificate of Authority as provided by Article 1.14 of this code.

Fees collected under this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to fees collected under this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 41; Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Art. 18.05. Assets

No attorney shall be licensed for the Underwriters at a Lloyd's until and unless the provisions of Article 2.01 are fully complied with and until and unless the net assets contributed to the attorney, a committee of underwriters, trustee or other officers as provided for in the Articles of Agreement shall constitute a guaranty fund and surplus over and above all of its liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business. The required net assets shall be invested following the licensing as provided in Article 2.08 as to minimum guaranty fund and surplus required, and as provided in Article 2.10 as to other funds.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 42.]

Art. 18.06. Limitation of Business

The underwriters at a Lloyd's shall not assume nor write insurance obligations in Texas nor for citizens of Texas, nor covering property located in Texas which produce a net premium income in excess of ten times the net assets of such underwriters, and if at any time the liabilities assumed upon such insurance shall produce a net premium income greater than ten times such net assets, then no further insurance obligation shall be assumed until the net assets have been increased so as to admit of additional insurance obligations which will produce a premium income not greater than ten times such net assets; provided that when the net assets at a Lloyd's shall equal the sum of money which will be required of a stock insurance company doing the same character of business in Texas, then his limitation upon the volume of business to be written shall not apply further; provided further that if in the judgment and discretion of the Board of Insurance Commissioners such underwriters at a Lloyd's shall have effected reinsurance, or other contracts, with responsible and solvent insurance carriers reducing the net lines at risk carried by such underwriters at a Lloyd's so that their operations are safe and their solvency not in danger, then such Board may renew or extend the licenses of such underwriters, irrespective of this limitation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.07. Impairment of Guaranty Fund and Surplus

Lloyds' companies shall be subject to the provisions of Section 5 of Article 1.10 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 43.]

Art. 18.08. Reserves

Underwriters at a Lloyd's are required to compute reserve liabilities for all outstanding business and for all incurred losses upon the same basis required for stock insurance companies doing the same classes and character of business in Texas.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.09. Investments

The assets of Underwriters at a Lloyds' to the extent of the minimum required under the provisions of Article 2.02 and of Article 18.05 of this Chapter shall be cash or shall be invested in such securities as are eligible for investment of the capital stock and minimum surplus of stock insurance companies transacting the same sort of business, and the other assets of underwriters shall be invested, if at all, in such property or securities as the funds of the stock insurance companies doing the same sort of business may be invested in, except that only the surplus, in excess of the required minimum guaranty fund and surplus of a Lloyds'

may be invested in the securities eligible for investment of surplus in excess of capital and minimum surplus of such similar stock insurance companies. Lloyds' organized prior to August 10, 1943, and doing business under Certificate of Authority from the Board of Insurance Commissioners shall not be required to conform to this Article except as to securities thereafter acquired, whether in substitution for securities then held or from additional, successor or substituted underwriters. Underwriters at a Lloyds' shall be permitted to purchase, hold or convey real estate in accordance with the provisions and subject to the limitations of Article 6.08 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 44.]

Art. 18.10. Control of Net Assets

The assets of underwriters at a Lloyd's to the extent of the minimum required under the provisions of this chapter shall be submitted to and subjected to the joint control of the attorney in fact for such underwriters, and the Board of Insurance Commissioners, in some manner satisfactory to the Board, so that the same may not be withdrawn or diverted, or expended, except with the approval of the Board and the purposes provided for in this chapter. Such underwriters, however, shall be entitled to the interest or income accruing from such property or securities as may be placed under the joint control of such attorney in fact and the Board as and when the same is payable. Provided, however, in lieu of such joint control any attorney in fact at a Lloyd's now doing business in this State may give bond in the sum of Twenty-five Thousand (\$25,000.00) Dollars for the safe keeping of assets, to be released only on approval of the Board of Insurance Commissioners, and in such form and with corporate surety as shall be approved by the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.11. Examination of Affairs

All of the provisions of Article 1.15 and of Article 1.16 relative to examination of companies shall apply to companies organized under this Chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 45.]

Art. 18.11-1. Examination of Books and Affairs

The Commissioner of Insurance may make examinations of the books and affairs of any attorney for underwriters at a Lloyds, and the attorney and his deputies shall facilitate such examination and furnish all information which such Commissioner may reasonably demand.

[1925 P.C.]

Art. 18.12. Annual Reports

The attorneys for such underwriters shall annually file with the Board of Insurance Commissioners a verified report of the business done by the attorney for such underwriters during the previous year, and of the condition of its affairs, together with such other information as the Board of Insurance Commissioners may demand; such report shall be filed upon blanks prepared by the Board and shall cover the report of all the business of such underwriters, wherever the same may be conducted.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.13. Limitation of Liability

An underwriter at a Lloyd's may limit his total liability by contract with the persons insured to the proportionate part of the loss represented by the ratio which his subscription paid in, in cash and/or securities such as allowed by this chapter bears to the total guaranty fund contributed by the several underwriters and his total liability on all risks may be limited to the amount of his subscription as expressed in his power of attorney and agreement with the attorney in fact, provided at least half of the subscription of each underwriter must be paid or contributed to the guaranty fund in cash and/or admissible securities. Each underwriter shall be responsible solely for his own liability as fixed in the contract of insurance and not be liable as a partner.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.14. Liability of Substitutes

Additional or substituted underwriters shall be bound in the same manner and to the same extent as original subscribers to the articles of agreement and power of attorney on file with the Board; and the acts of the duly appointed deputy or substitute attorney of any attorney licensed under this chapter accepting powers of attorney from underwriters and in making and issuing policies and contracts of insurance and in doing any additional acts incident thereto shall be deemed authorized by the license issued to the original attorney.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.15. Division of Profits

No profits shall accrue to an underwriter, except upon the basis of his actual investment in cash or convertible securities, disregarding any obligation or subscription to pay in additional cash or securities at a later date.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.16. Assuming Risk

No attorney for underwriters at a Lloyd's shall assume any one insurance risk exceeding one-tenth of the amount of the net assets of the underwriters

as defined in this chapter and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.16-1. Assuming Undue Risk

No attorney for underwriters at a Lloyds shall assume any one insurance risk exceeding one-fifth of the amount of the net assets of the underwriters as defined by law and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured.

[1925 P.C.]

Art. 18.17. Action on Policy

Action on any policy or contracts of insurance made by the attorney for the underwriters may be brought against the attorney or against the attorneys and the underwriters or any of them. In such action, summons and process shall be served on either the Chairman of the Board of Insurance Commissioners or on the attorney in fact and when so served shall have the same force and effect as if served on the attorney and on each underwriter personally. A judgment in any such action against the attorney or against any of the underwriters shall be binding upon and be a judgment against each and all of the underwriters as their several liabilities may appear in the contract of insurance on which the action is brought.

Such summons or other process shall be served in duplicate, and the Chairman of the Board shall forthwith by registered mail send one copy thereof to the attorney for the underwriters at the principal office designated in the application for license or latest amendments thereof. The party commencing any action against the underwriters at a Lloyd's and securing service of process in this manner shall at the time of such service pay to such Board for the use of the department a fee of Two (\$2.00) Dollars, which he shall be entitled to collect as taxable costs in the action if he shall prevail.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.18. Winding Up Affairs

Whenever it shall appear to the Board of Insurance Commissioners that the minimum assets provided for in Article 18.05 have become impaired, the Board shall immediately give notice to the attorney in fact for such Lloyd's to appear and show cause why the license of such attorney shall not be revoked, and if within thirty (30) days from the giving of such notice the impairment or insolvency shall not be made good by such underwriters, or their attorney, such license shall immediately be can-

celled. If such attorney or other person shall make any advancement to make good such impairment, the claim for such advancement against the assets of such underwriters shall be deferred to the claims for losses under policies or contracts of insurance. If such impairment is not made good within the time prescribed, then the Board shall proceed to take charge of the assets of such underwriters, and to effect a reinsurance of all business outstanding in Texas or covering property located in Texas, and for that purpose, the Board shall have the right to use the net assets, and to make provision for the payment of outstanding claims and losses. In case reinsurance cannot be effected by the said Board, then the affairs of such underwriters at Lloyd's shall be wound up through receivership proceedings instituted by the Attorney General of Texas at the request of the Board.

In case underwriters at a Lloyd's shall desire to withdraw from the insurance business, they may be permitted to do so, if and when they shall satisfy the Board that adequate provision has been made, through reinsurance or otherwise, for the payment of all unadjusted losses, and for the reinsurance of all outstanding risks in favor of citizens of Texas, or covering property in Texas, and thereupon any bond of the attorney in fact shall be released, and said Board shall release to such underwriters the net assets over which it may have been given joint control.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.19. Foreign Lloyd's

In case underwriters at a Lloyd's who are nonresidents of Texas, or who maintain their principal office outside of Texas, apply for a permit to do business in Texas, such permit shall not be granted unless such underwriters have and maintain net assets in Texas which are subject to the joint control of their attorney in fact and the Board of Insurance Commissioners of this State sufficient to meet the minimum requirements of this chapter relative to the amount of net assets which underwriters at Lloyd's must have; or unless they submit to and file with the Board a bond executed by such corporate sureties as the Board may require, which corporate sureties must be licensed to do guaranty, fidelity and surety business in Texas, in a principal amount which would be required for net assets of underwriters at Lloyd's under foregoing provisions of this chapter, which said bond shall be payable to the Board of Insurance Commissioners, and which shall be conditioned for the payment of all claims arising upon contracts issued in Texas, or issued to residents and citizens of Texas, or covering property located in Texas, and which bond shall be held by the Board for the benefit of all persons having valid claims arising upon such contracts. It shall also provide that in the event the underwriters shall become insolvent or cease to transact business in

this State at any time when there are outstanding policies of insurance in favor of citizens of this State, or upon property in this State, the Board shall have power, after having given ten (10) days' notice to the attorneys for such underwriters, or any receiver in charge of its property and affairs, to contract with any other insurance carrier transacting business in this State for the assumption and reinsurance by it of all insurance risks outstanding in this State of such underwriters, which contract shall also provide for the assumption by such reinsurance carrier of all outstanding and unsatisfied lawful claims then outstanding against such underwriters. In the event of the Board making any such contract, and if the same shall be approved as reasonable by the Attorney General, the reinsuring carrier shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Such bond shall also bind any additional or substitute underwriters at such Lloyd's. If any underwriters desiring to do so, at their option, in lieu of giving the bond authorized by this article, shall submit admissible securities subject to the joint control of its attorney in fact and the Board of Insurance Commissioners, such deposits of securities shall be deemed to have been made upon such terms and conditions as provided by such bond.

If there shall be any recovery upon the bond or from the deposit hereinabove provided for, then the Board shall immediately demand additional security so as to bring the amount of the bonds up to the minimum sum required hereunder, which additional bond must be posted within thirty (30) days from the date of such demand. Provided, there may be successive recoveries on said bond until the principal sum thereof is exhausted.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.20. Provisions Applicable to Foreign Lloyd's

All of the provisions of this chapter are applicable to underwriters at a Lloyd's who are non-residents of Texas, or who maintain their principal office outside of Texas, in the same manner that they are applicable to underwriters of a Lloyd's who are residents of Texas and who maintain their principal office in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.21. Reinsurance

The provisions of this Chapter shall not prevent any Texas Lloyd's from reinsuring its excess lines with a solvent foreign Lloyd's, acceptable to the Board of Insurance Commissioners, which has no license to do business in Texas nor from reinsuring any business from such foreign Lloyd's.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.22. Revocation and Suspension of License

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.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 18.22-1. Penalty for Violation of Act

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 Statutes¹ 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,² shall be fined not exceeding five hundred dollars.

[1925 P.C.]

¹ Now, this chapter.

² Articles 18.01-1, 18.03-1, 18.11-1, 18.16-1.

Art. 18.23. Exemption from Insurance Laws with Limitations

Underwriters at a Lloyds' shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless it is specifically so provided in such other law that same shall be applicable. In addition to such Articles as may be made to apply by other Articles of this Chapter, underwriters at a Lloyds' shall not be exempt from and shall be subject to all of the provisions of Article 2.20 and of Article 5.35 and of Article 5.36 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 5.49 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 46.]

Art. 18.24. Promotion of Lloyd's

(1) No person or persons, firm or corporation, shall be instrumental in the origination of a Lloyd's business if in such organization any money or property shall be paid over to such person, persons, firm or corporation, or their agent or representative, by way of commission or other compensation for procuring underwriters or guaranty fund for such Lloyd's, unless such person, persons, firm or corporation shall in advance make application to the Board of Insurance Commissioners and shall receive a permit from such Board to organize such Lloyd's and charge a commission in connection with such organization.

(2) In no event shall more than ten (10%) per cent of the total amount of the subscription to such an enterprise by any underwriter be paid to any person by way of commission for the sale of "units" or

interest in such Lloyd's business or in the procuring of underwriters therefor.

(3) This article shall not apply to the organization or the enlargement of a Lloyd's in which no promotion expense is deducted from the contributions made by the underwriters, and no commission of any sort is paid for the procuring of underwriters or subscriptions to the guaranty fund of such business.

(4) This article shall apply to the continued organization or the continued extension of any Lloyd's business which has heretofore been licensed by the Insurance Department of this State, if in such further extension of such business any commission is to be paid, but such permit shall not be refused because of the contemplated size or amount of the guaranty fund of such Lloyd's.

(5) After such permission shall have been granted for the organization of enlargements of a Lloyd's, no securities shall be accepted as contributions to the guaranty fund of such Lloyd's, unless such securities shall have been approved in advance by the Board of Insurance Commissioners as complying with this law relative to the investment of the funds of such organizations.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

CHAPTER NINETEEN. RECIPROCAL EXCHANGES

Art.

- 19.01. May Exchange Contracts.
- 19.02. Attorney for Subscribers.
- 19.03. Declaration of Subscribers.
- 19.04. Service of Process.
- 19.05. Statement of Indemnity.
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Art. 19.01. May Exchange Contracts

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.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 19.02. Attorney for Subscribers

Such contracts may be executed by a duly appointed attorney in fact duly authorized and acting

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for such subscribers. 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.

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.

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.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 355, ch. 172, § 1.]

Art. 19.03. Declaration of Subscribers

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. 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. The

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

2. The kind or kinds of insurance to be effected or exchanged, provided that same shall not include life insurance;

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, 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. 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. 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. 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. 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.

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;

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.

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.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 47.]

Art. 19.04. Service of Process

Concurrently with the filing of such declaration, the attorney shall file with the Board of Insurance Commissioners an instrument in writing executed by him for said subscribers conditioned that upon the issuance of certificates of authority as herein-after provided, service of process may be had upon the Chairman of such Board in all suits in this State arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. Three copies of such process shall be served and said Chairman of such Board shall file one copy, forward one copy to said attorney, and return one copy with his admission of service. It is provided, however, that in lieu of the method hereinabove provided, service of process may be had upon such attorney in fact in all suits, which service shall likewise be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts through such attorney. If said attorney in fact be a corporation, either foreign or domestic, or joint stock company, or association, service of process thereon may be had in any manner provided by general law for service of process on corporations, joint stock companies, or associations.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 19.05. Statement of Indemnity

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.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 19.06. Financial Requirements

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.

If fidelity and surety bond insurance is exchanged in this State by any reciprocal exchange, there shall be kept on deposit with the State Treasurer of Texas, 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 State Treasurer 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.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 48.]

Art. 19.07. May Advance Money

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.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 19.08. Financial Report

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. 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.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 19.09. Any Corporation May Exchange

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 much granted as the rights and powers expressly conferred.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 19.10. Certificate of Authority

Such attorney-in-fact by whom or through whom are issued any policies of or contracts of indemnity of the character referred to herein shall procure from the State Board of Insurance of Texas a Certificate of Authority as provided in Article 1.14, and the provisions of Article 2.20 shall be applicable as well as to renewal Certificates of Authority.

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.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 49; Acts 1959, 56th Leg., p. 355, ch. 172, § 2.]

Art. 19.10-1. Indemnity Contracts; Penalty

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.

[1925 P.C.]

Art. 19.11. Fees and Taxes

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 Article 7064 and of Article 7064a of the Revised Civil Statutes of Texas and of Article 4.02 and of Article 4.04 and of Article 5.12 and of Article 5.24 and of Article 5.49 and of Article 5.68 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 50.]

Art. 19.12. Exemption from Insurance Laws with Limitations

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. 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 all of the provisions of Section 5 of Article 1.10 and of Article 1.15 and of Article 1.16 and of Article 5.35 and of Article 5.36 and of Article 5.37 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 6.12 and of Article 8.07 of this Code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 51; Acts 1971, 62nd Leg., p. 2942, ch. 973, § 1, eff. June 15, 1971.]

CHAPTER TWENTY. GROUP HOSPITAL SERVICE

Art.

20.01. Nonprofit Corporations for Group Hospital Service; Incorporation.

Art.

- 20.02. Supervision; Requirements.
- 20.03. Deposit.
- 20.04. Officers'; Employees' Bond.
- 20.05. Payment of Claims; Cancellation of Certificate.
- 20.06. Dissolution; Liquidation; Rehabilitation; Conservation.
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- 20.20. Expenses of Directors; Meetings.
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Art. 20.01. Nonprofit Corporations for Group Hospital Service; Incorporation

Any seven (7) or more persons, a majority of whom are superintendents of hospitals or physicians or surgeons licensed by the State Board of Medical Examiners, upon application to the Secretary of State of the State of Texas for a corporate charter may be incorporated for the purpose of establishing, maintaining and operating a nonprofit hospital service plan, whereby hospital care may be provided by said corporation through an established hospital or hospitals, and sanitariums with which it has contracted for such care, as is hereinafter defined.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 20.02. Supervision; Requirements

All corporations organized under the provisions of this chapter shall be under the direct supervision of the Board of Insurance Commissioners of the State of Texas, and shall be subject to the following requirements:

(a) Upon incorporation, and as a condition thereof, they shall have collected in advance from at least five hundred (500) applicants the application fee and at least one (1) month's payment for insurance. It shall be a condition of continued operation that a minimum membership of five hundred (500) be maintained;

(b) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the Board of Insurance Commissioners 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 Board;

(c) They shall maintain reserves to cover the liability for claims incurred but not yet paid and for the expenses of settlement on those claims; provided that the reserves shall be estimated using a method which has been submitted to the Commissioner of Insurance for approval; and provided further that the method shall be deemed approved thirty (30) days after filing unless earlier affirmatively approved or disapproved by the Commissioner of Insurance;

(d) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the Board shall issue it a certificate authorizing it to transact business for a period of not more than fifteen (15) months, and not extending beyond May 31, next following the date of said certificate;

(e) Policy, certificate, and application forms, and forms of all contracts with health care providers, as defined in Article 20.11 of this chapter, as amended, shall be subject to the provisions of Article 3.42 of this code, as amended.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1977, 65th Leg., p. 1037, ch. 383, § 1, eff. Oct. 1, 1977.]

Repeal

Repeal of this article to the extent that it requires periodic renewal of certificates, see note under art. 1.14.

Art. 20.03. Deposit

Each such corporation shall place with the State Treasurer through the Board of Insurance Commissioners a deposit equal to One Hundred (\$100.00) Dollars for each one thousand (1,000) of its members and fractional part of such number, provided that the maximum deposit shall be Two Thousand (\$2,000.00) Dollars. The deposit shall be liable for the payment of all judgments against the corporation and subject to garnishment after final judgment against the corporation. When such deposit becomes impounded or impaired, it shall at once be replenished by the corporation; and if not replenished immediately on demand by the Board, the corporation may be regarded as insolvent and dealt with accordingly.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 20.04. Officers'; Employees' Bond

Each such corporation shall furnish a bond for the officer or employee responsible for the handling of the funds, the bond to be in some Surety company licensed by the Board of Insurance Commissioners to do business in Texas, and the bond to be in a minimum amount of One Thousand (\$1,000.00) Dollars, to be at all times at least equal to the assets on hand, with a maximum bond of Twenty-five Thousand (\$25,000.00) Dollars. In addition, it shall furnish on all employees who have access to any of its funds, separate bonds, or a blanket bond, in

amounts to be reasonably fixed by the Board, with a minimum of Five Hundred (\$500.00) Dollars, and a maximum of Ten Thousand (\$10,000.00) Dollars. All such bonds shall be made payable to the Board of Insurance Commissioners for the use and benefit of the corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 20.05. Payment of Claims; Cancellation of Certificate

All claims under certificates shall be paid in full within sixty (60) days after the services called for by the particular certificate have been rendered, and after receipt of due proof of claim. Written notice of claim given to the corporation shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the claimant within fifteen (15) days such forms as are usually furnished by it for filing such claims. The Board of Insurance Commissioners shall cancel the certificate of authority of any corporation found to be operating fraudulently or improperly contesting its claims, or which fails to pay its valid claims in accordance with the provisions of this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 20.06. Dissolution; Liquidation; Rehabilitation; Conservation

Any dissolution, liquidation, rehabilitation, or conservation of any such corporation shall be handled as provided in Articles 21.28, 21.28-A, and 21.28-B of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1977, 65th Leg., p. 1037, ch. 383, § 2, eff. Oct. 1, 1977.]

Art. 20.07. Repealed by Acts 1977, 65th Leg., p. 1039, ch. 383, § 9, eff. Oct. 1, 1977

Art. 20.08. Fees

The Board of Insurance Commissioners shall charge a fee of Twenty (\$20.00) Dollars for filing the annual statement of each corporation operating under this chapter, and a fee of One (\$1.00) Dollar for the issuance of each certificate of authority to such corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 20.09. Applicability of Certain Legal Requirements

Such corporations organized and operated under the provisions of this chapter shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this chapter, except as may be otherwise required in this chapter, and the provisions of the other chapters of this code which are not expressly made applicable to corporations

organized and operating under this chapter are hereby declared inapplicable.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 3, eff. Oct. 1, 1977.]

Art. 20.10. Corporations Nonprofit; Salaries; Investments; Expenses

Such corporations shall be governed and conducted as nonprofit organizations; and provided that no paid officer or employee of said corporations shall receive more than Twenty Thousand Dollars (\$20,000.00) per annum for his services, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. Such corporation's investments shall be subject to the limitations applicable to insurance companies operating under the provisions of Chapter 3 of this code. No corporation operating under this chapter may incur general expenses during a calendar year in excess of twenty percent (20%) of premiums earned in that calendar year; provided further that the maximum expense shall be reduced by one-half percent ($\frac{1}{2}\%$) for each Fifty Million Dollars (\$50,000,000) of premium earned to fifteen percent (15%) for corporations earning Five Hundred Million Dollars (\$500,000,000) or more of premium in a calendar year. "General expenses" means the expenses incurred by a corporation in the operation of its business except that the term shall not be deemed to include taxes, license fees, commissions, or any expenses incurred in the performance of contracts made directly or indirectly with the government of this state or of the United States under which the corporation does not assume an insurance risk.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 331, ch. 163, § 1; Acts 1977, 65th Leg., p. 1038, ch. 383, § 4, eff. Oct. 1, 1977.]

Art. 20.11. Authority of Corporation to Contract with Providers Other Than Physicians

Such corporations shall have authority to contract with health care providers, other than physicians, in such manner as to assure to each person holding a policy or certificate of said corporation the furnishing of such services and supplies as may be agreed upon in the policy, with the right to said corporation to limit in the policy the types of disease for which it shall furnish benefits; provided that such corporations shall not be required to contract with any particular health care provider; and provided further that this Article shall not be deemed to authorize such corporation to contract with any health care provider in any manner which is prohibited by any licensing law of this state under which the health care provider operates. Health care provider means any person, association, partnership, corporation, or other entity furnishing or providing any

services or supplies for the purpose of preventing, alleviating, curing, or healing human illness or injury.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 5, eff. Oct. 1, 1977.]

Art. 20.12. Prohibition Against Contracting for Medical Services

Such corporations shall not contract to furnish to the member a physician or any medical services, nor shall said corporation contract to practice medicine in any manner, nor shall said corporation control or attempt to control the relations existing between said member and his or her physician, nor restrict the right of the patient to obtain the services of any licensed doctor of medicine; provided that nothing in this article shall prohibit a corporation from contracting with a health organization certified under Article 4509a, Revised Civil Statutes of Texas, 1925. In addition, such corporations are hereby authorized to provide benefits for medical and/or surgical care on the basis of indemnity payments for expenses incurred.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 331, ch. 163, § 2; Acts 1977, 65th Leg., p. 1039, ch. 383, § 6, eff. Oct. 1, 1977.]

Art. 20.13. Personnel of Directors

Such corporation shall have 20 directors who shall have full control over its management affairs. The board of directors shall be composed of persons who are residents of Texas. Not more than five directors may be persons who are chief executive officers or owners of an institutional health care provider. Not more than three directors may be persons licensed by the Texas State Board of Medical Examiners. Not more than one director may be a person licensed by the Texas State Board of Dental Examiners. The remaining directors shall not be health care providers or employees of or have a financial interest in a health care provider as defined in this chapter.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 7, eff. Oct. 1, 1977.]

Art. 20.14. Supervision

Every such corporation shall, before accepting applications for membership in said nonprofit hospital service plan, submit to the Board of Insurance Commissioners a plan of operation, together with a schedule of its dues to be charged and the amount of hospital service contracted to be rendered; which plan shall first be approved by the Board as fair and reasonable before said corporation shall engage in business.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 20.15. Minimum Surplus

Such corporation shall maintain a surplus of at least \$100,000 to meet adverse contingencies.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 8, eff. Oct. 1, 1977.]

Art. 20.16. Membership Certificates

Every such corporation shall issue to its members certificates of membership setting forth the benefits to which they are or may become entitled. Such certificates, and the contracts made between the corporation and the member's employer or group representative shall be in form approved by the State Board of Insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 331, ch. 163, § 3.]

Art. 20.17. Bond of Treasurer

The treasurer of such corporation shall be required to give a fidelity bond with corporation surety in such sum as may be determined by the officers of said corporation for the faithful handling of the funds of said corporation and all funds collected from members or subscribers of said corporation shall be deposited to the account of said corporation in a bank, which is a State depository.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 20.18. Finance Procedure

Such corporation shall not pay any of the funds collected from members or subscribers to any hospital until after said hospitals shall have rendered the necessary hospital care to such subscriber or member.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 20.19. Participation Contracts; Re-insurance; Agreements

Such corporations shall be authorized to contract with other organizations similar in character for joint participation through mutualization contract agreements, re-insurance treaties or otherwise and cede or accept risks from any insurance company or insurer upon the whole or any part of any risks, provided that such contract forms, documents, treaties or agreement forms are filed with and approved by the State Board of Insurance for such purposes.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 331, ch. 163, § 4.]

Art. 20.20. Expenses of Directors; Meetings

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 said corporation. Provided, however, that the directors may not have more than

one (1) meeting per month, which meeting shall not last more than five (5) days.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 20.21. Examination of Books and Records

Every such corporation shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the Board of Insurance Commissioners annually, the expense of such examination to be borne by said corporation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

CHAPTER TWENTY A. HEALTH MAINTENANCE ORGANIZATION ACT**Art.**

- 20A.01. Short Title.
- 20A.02. Definitions.
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- 20A.33. Taxation.
- 20A.34. Effective Date.
- 20A.35. Severability.

This chapter was not enacted as part of the Insurance Code of 1951.

Art. 20A.01. Short Title

This Act may be cited as the Texas Health Maintenance Organization Act.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 1, eff. Dec. 1, 1975.]

Art. 20A.02. Definitions

For the purposes of this Act:

(a) "Basic health care services" means health care services which an enrolled population might reasonably require in order to be maintained in good health, including, as a minimum, emergency care, inpatient hospital and medical services, and outpatient medical services.

(b) "Board" means the State Board of Health.

(c) "Commissioner" means the commissioner of insurance.

(d) "Enrollee" means an individual who is enrolled in a health care plan, including covered dependents.

(e) "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

(f) "Group hospital service corporation" means a nonprofit corporation organized and operating under Chapter 20 of the Insurance Code.

(g) "Health care" means prevention, maintenance, and rehabilitation services provided by qualified persons other than medical care.

(h) "Health care plan" means any plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services; provided, however, a part of such plan consists of arranging for or the provision of health care services, as distinguished from indemnification against the cost of such service, on a prepaid basis through insurance or otherwise.

(i) "Health care services" means any services, including the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury.

(j) "Health maintenance organization" means any person who arranges for or provides a health care plan to enrollees on a prepaid basis.

(k) "Medical care" means furnishing those services defined as the practice of medicine in Section 11, Chapter 426, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4510a, Vernon's Texas Civil Statutes).¹

(l) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, organizations, trusts, or corporations.

(m) "Physician" means anyone licensed to practice medicine in the State of Texas.

(n) "Provider" means any practitioner other than a physician, such as a registered nurse, pharmacist, optometrist, pharmacy, hospital, or other institution

or organization or person that furnishes health care services, who is licensed or otherwise authorized to practice in this state.

(o) "Sponsoring organization" means a person who guarantees the uncovered expenses of the health maintenance organization.

(p) "Uncovered expenses" means the estimated administrative expenses and the estimated cost of health care services that are not guaranteed, insured, or assumed by a person other than the health maintenance organization. Health care services may be considered covered if the physician or provider agrees in writing that enrollees shall in no way be liable, assessable, or in any way subject to payment for services except as described in the evidence of coverage issued to the enrollee under Section 9 of this Act. The amount due on loans in the next calendar year will be considered uncovered expenses unless specifically subordinated to uncovered medical and health care expenses or unless guaranteed by the sponsoring organization.

(q) "Uncovered liabilities" means obligations resulting from unpaid uncovered expenses, the outstanding indebtedness of loans that are not specifically subordinated to uncovered medical and health care expenses or guaranteed by the sponsoring organization, and all other monetary obligations that are not similarly subordinated or guaranteed.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 2, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1449, ch. 638, § 1, eff. June 13, 1979; Acts 1981, 67th Leg., p. 2299, ch. 562, § 1, eff. June 12, 1981; Acts 1983, 68th Leg., p. 1538, ch. 292, § 2, eff. Aug. 29, 1983.]

¹ Repealed; see, now, Civil Statutes, art. 4495b.

Art. 20A.03. Establishment of Health Maintenance Organization

(a) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this Act. No person shall establish or operate a health maintenance organization in this state, or sell or offer to sell or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this Act. A foreign corporation may qualify under this Act, subject to its registration to do business in this state as a foreign corporation under the Texas Business Corporation Act and compliance with all provisions of this Act and other applicable Texas statutes.

(b) Within 90 days of the effective date of this Act, every existing health maintenance organization shall submit an application for a certificate of authority. Each such applicant may continue to operate until the commissioner acts on the application. In the event that an application is denied, the appli-

cant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 3, eff. Dec. 1, 1975.]

Art. 20A.04. Application for Certificate of Authority

(a) Each application for a certificate of authority shall be on a form prescribed by rule of the commissioner and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(2) a copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officer in the case of a corporation, and the partnership or members in the case of a partnership or association;

(4) a copy of any independent or other contract made or to be made between any provider, physician, or persons listed in Paragraph (3) hereof and the applicant;

(5) a statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;

(6) a copy of the form of evidence of coverage to be issued to the enrollee;

(7) a copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(8) a financial statement showing the applicant's assets, liabilities, and sources of financial support; if the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this Act;

(9) a description of the proposed method of marketing the plan, a financial plan which includes a projection of the initial operating results anticipated until the organization has had a net income for 12 consecutive months, and a statement as to the sources of working capital, as well

as any other sources of funding, provided that updated projections for the next calendar year must be filed by December 31 of each year until the organization has had a net income for 12 consecutive months;

(10) a power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner and his successors in office, or a duly authorized deputy, as the true and lawful attorney of such applicant in and for the state upon whom all lawful processes in any legal action or proceedings against the health maintenance organization on a cause of action arising in this state may be served;

(11) a statement reasonably describing the geographic area or areas to be served;

(12) a description of the complaint procedures to be utilized;

(13) a description of the procedures and programs to be implemented to meet the quality of health care requirements set forth herein;

(14) a description of the mechanisms by which enrollees will be afforded the opportunity to participate in matters of policy and operation; and

(15) such other information as the commissioner may require to make the determinations required by this Act.

(b) The State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of this Act to require a health maintenance organization, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents described in Subsection (a) of this section to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment. As soon as reasonably possible after any filing for approval required by this subsection is made, the commissioner shall in writing approve or disapprove it. Any modification or amendment for which the commissioner's approval is required shall be considered approved unless disapproved within 30 days; provided that the commissioner may postpone the action for such further time, not exceeding an additional 30 days, as necessary for proper consideration.

[Acts 1975, 64th Leg., p. 515, ch. 214, § 4, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1450, ch. 638, § 2, eff. June 13, 1979; Acts 1983, 68th Leg., p. 1539, ch. 292, § 3, eff. Aug. 29, 1983.]

Art. 20A.05. Issuance of Certificate of Authority

(a)(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall begin consideration of the application and forthwith transmit copies of such application and accompanying documents to the board.

(2) The board shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

(A) has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities, in a manner enhancing availability, accessibility, and continuity of services;

(B) has arrangements, established in accordance with rules and regulations promulgated by the board with the concurrence of the commissioner, for an ongoing quality of health care assurance program concerning health care processes and outcome; and

(C) has a procedure, established by rules and regulations of the board with the concurrence of the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of operation, the pattern of utilization of its services, availability and accessibility of its services.

(3) Within 45 days of receipt of the application by the board for issuance of a certificate of authority, the board shall certify to the commissioner whether the proposed health maintenance organization meets the requirements of this section. If the board certifies that the health maintenance organization does not meet such requirements, it shall specify in what respects it is deficient.

(b) The commissioner shall, after notice and hearing, issue or deny a certificate of authority to any person filing an application pursuant to Section 4 of this Act within 75 days of the receipt of the certification of the board; provided, however, that the commissioner may grant a delay of final action on the application to an applicant who has demonstrated a need therefor, including any delay occasioned by an application to the federal government. Issuance of the certificate of authority shall be granted upon payment of the application fee prescribed in Section 32 of this Act if:

(1) the board certifies that the health maintenance organization's proposed plan of operation meets the requirements of Subsection (a)(2) of this section; and

(2) the commissioner is satisfied that:

(A) the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(B) the health care plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for co-payment;

(C) the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner shall consider:

(i) the financial soundness of the health care plan's arrangement for health care services and a schedule of charges used in connection therewith;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of plan;

(iv) any agreement which provides for the provision of health care services; and

(v) any surety bond or deposit of cash or securities submitted in accordance with Section 13 of this Act as a guarantee that the obligations will be duly performed;

(D) the enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to Section 7(b) of this Act;

(E) nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 4 of this Act, or by independent investigation, is contrary to Texas law.

(c) If the board or the commissioner, or both, shall certify that the health maintenance organization's proposed plan of operation does not meet the requirements of this section, the commissioner shall not issue the certificate of authority. The commissioner shall notify the applicant that it is deficient, and shall specify in what respects it is deficient.

(d) A certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. Any change in control, as defined by Article 21.49-1 of the Insurance Code of Texas, of the health maintenance organization, shall be subject to the approval of the commissioner.

[Acts 1975, 64th Leg., p. 517, ch. 214, § 5, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1450, ch. 638, § 3, eff. June 13, 1979.]

Art. 20A.06. Powers of Health Maintenance Organization

(a) The powers of a health maintenance organization include, but are not limited to, the following:

(1) the purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and ancillary equipment and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the health maintenance organization;

(2) the making of loans to a medical group, under an independent contract with it in furtherance of its program, or corporations under its

control, for the purpose of acquiring or constructing medical facilities and hospitals, or in the furtherance of a program providing health care services to enrollees;

(3) the furnishing of medical care services through physicians who have independent contracts with the health maintenance organizations; the furnishing or arranging for the delivery of health care services through providers or groups of providers who are under contract with or employed by the health maintenance organization; provided, however, that a health maintenance organization is not authorized to employ or contract with physicians or providers in any manner which is prohibited by any licensing law of this state under which such physicians or providers are licensed;

(4) the contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration;

(5) the contracting with an insurance company licensed in this state, or with a group hospital service corporation authorized to do business in the state, for the provision of insurance, indemnity, or reimbursement against the cost of health care and medical care services provided by the health maintenance organization;

(6) the offering, in addition to the basic health care services, of:

(A) additional health care or medical services;

(B) indemnity benefits covering out-of-area emergency services; and

(C) indemnity benefits in addition to those relating to out-of-area and emergency services, provided through insurers or group hospital service corporations;

(7) receiving and accepting from government or private agencies payments covering all or part of the cost of the services provided or arranged for by the organization;

(8) all powers given to corporations (including professional corporations and associations), partnerships, and associations pursuant to their organizational documents which are not in conflict with provisions of this Act, or other applicable law.

(b)(1) The health maintenance organization shall file notice, with adequate supporting information, with the commissioner prior to the exercise of any power granted in Subdivision (1) or (2) of Subsection (a) of this section. The commissioner shall disapprove such exercise of powers which, in his or her opinion would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the commissioner does not disapprove within 30 days of filing, it shall be deemed approved; provided that the commissioner may, by official order, postpone action for such further time,

not exceeding 30 days, as may be considered necessary for proper consideration.

(2) The commissioner may promulgate rules and regulations exempting from the filing requirements of this subdivision those activities having a de minimis effect.

[Acts 1975, 64th Leg., p. 518, ch. 214, § 6, eff. Dec. 1, 1975.]

Art. 20A.07. Governing Body

(a) The governing body of any health maintenance organization may include physicians, providers, or other individuals, or any combination of the above.

(b) The governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 7, eff. Dec. 1, 1975.]

Art. 20A.08. Fiduciary Responsibility

Any director, officer, member, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the enrollees.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 8, eff. Dec. 1, 1975.]

Art. 20A.09. Evidence of Coverage and Charges

(a)(1) Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a group hospital service corporation, whether by option or otherwise, the insurer or the group hospital service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in Section 14 of this Act; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the medical and health care services and the issuance of other benefits, if any, to which the enrollee is entitled under the health care plan;

(ii) any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or indication whether the plan is contributory or noncontributory with respect to group certificates; and

(v) a clear and understandable description of the health maintenance organization's methods for resolving enrollee complaints. Any subsequent changes may be evidenced in a separate document issued to the enrollee.

(4) Any form of the evidence of coverage or group contract to be used in this state, and any amendments thereto, are subject to the filing and approval requirements of Subsection (c) of this section, unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or group hospital service corporations, in which event the filing and approval provisions of such law shall apply. To the extent, however, that such provisions do not apply to the requirements of Subdivision (3), Subsection (a) of this section, the requirements of Subdivision (3) shall be applicable.

(b)(1) No schedule of charges for enrollee coverage for medical services or health care services or amendments thereto may be used in conjunction with any health care plan until a copy of such schedule or amendments thereto has been filed with the commissioner.

(2) Such charges may be established in accordance with actuarial principles for various categories of enrollees, provided that charges applicable to an enrollee shall not be individually determined based on the status of his or her health. However, the charges shall not be excessive, inadequate, or unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. A certification, by a qualified actuary, to the appropriateness of the charges, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

(c) The commissioner shall, within a reasonable period, approve any form of the evidence of coverage or group contract, or amendment thereto, if the requirements of this section are met. It shall be unlawful to issue such form until approved. If the commissioner disapproves such form, the commis-

sioner shall notify the filer. In the notice, the commissioner shall specify the reason for the disapproval. A hearing shall be granted within 30 days after a request in writing by the person filing. If the commissioner does not disapprove any form within 30 days after the filing of such form it shall be considered approved; provided that the commissioner may by written notice extend the period for approval or disapproval of any filing for such further time, not exceeding an additional 30 days, as necessary for proper consideration of the filing.

(d) The commissioner may require the submission of whatever relevant information he or she deems necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(e) Article 3.74 of the Texas Insurance Code applies to health maintenance organizations.

(f) Article 3.51-9 of the Texas Insurance Code applies to health maintenance organizations.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 9, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1451, ch. 638, § 4, eff. June 13, 1979; Acts 1981, 67th Leg., p. 198, ch. 91, § 2, eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 64, ch. 7, § 2, eff. Nov. 10, 1981.]

Art. 20A.10. Annual Report

(a) Each health maintenance organization shall annually, on or before the 1st day of March, file a report, verified by at least two principal officers, with the commissioner, with a copy to the board, covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the State Board of Insurance and shall include:

(1) a financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(2) the number of persons enrolled during the year, the number of enrollees as of the end of the year, and the number of enrollments terminated during the year;

(3) a summary of the information compiled pursuant to Section 12 of this Act in such form as required by the State Board of Insurance; and

(4) such other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the duties under this Act.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 10, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1451, ch. 638, § 5, eff. June 13, 1979.]

Art. 20A.11. Information to Enrollees

Every health maintenance organization shall provide to its enrollees reasonable notice of any materi-

al adverse change in the operation of the organization that will affect them directly.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 11, eff. Dec. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1541, ch. 292, § 4, eff. Aug. 29, 1983.]

Art. 20A.12. Complaint System

(a)(1) Every health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner after consultation with the board to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services.

(2) Every health maintenance organization shall submit to the commissioner and to the board an annual report in a form prescribed by rule of the State Board of Insurance after consultation with the board.

(b) The commissioner or board may examine such complaint system.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 12, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1452, ch. 638, § 6, eff. June 13, 1979.]

Art. 20A.13. Protection Against Insolvency

(a) Unless otherwise provided by this section, each health maintenance organization shall furnish a surety bond, or deposit with the State Treasurer cash or securities, or any combination of these or other guarantees that are acceptable to the State Board of Insurance, in an amount as set forth in this section.

(b) For a health maintenance organization which has not received a certificate of authority from the State Board of Insurance prior to September 1, 1981:

(1) the amount of the initial surety bond, deposit, or other guarantee shall be equal to five percent of its estimated uncovered expenses for the first 12 months of operation, but in no event less than \$100,000; and

(2) on or before March 15 of each year following the year in which the health maintenance organization receives a certificate of authority, the health maintenance organization shall deposit with the State Treasurer an amount equal to four percent of the dues or premium revenue collected during the previous calendar year.

(c) For a health maintenance organization which has received a certificate of authority from the State Board of Insurance prior to September 1, 1981:

(1) on or before March 15, 1982, the organization shall deposit an amount equal to one percent of the dues or premium revenue collected during the previous calendar year; and

(2) two percent of dues or premium revenue collected during the previous calendar year shall

be deposited on or before March 15, 1983, three percent of dues or premium revenue collected during the previous calendar year shall be deposited on or before March 15, 1984, and four percent of dues or premium revenue collected during the previous calendar year shall be deposited on or before March 15, 1985, and on or before March 15 of each subsequent year until the requirement is waived by the State Board of Insurance.

(d) Upon application by a health maintenance organization operating for more than one year under a certificate of authority issued by the State Board of Insurance, the State Board of Insurance may waive some or all of these requirements for any period of time it shall deem proper whenever it finds that one or more of the following conditions justifies such waiver:

(1) the total amount of the surety bond, deposit, or other guarantee is equal to 25 percent of the health maintenance organization's estimated uncovered expenses for the next calendar year;

(2) the health maintenance organization's net worth is equal to at least 25 percent of its estimated uncovered expenses for the next calendar year; or

(3) either the health maintenance organization or its sponsoring organization has been in operation for at least 10 years and has a net worth of at least \$5,000,000.

(e) If one or more of the requirements is waived, any amount previously deposited shall remain on deposit until released in whole or in part by the State Treasurer upon order of the State Board of Insurance pursuant to the same standards specified in Subsection (d) of this section.

(f) A health maintenance organization that has made a deposit with the State Treasurer may, at its option, withdraw the deposit or any part thereof, first having deposited with the State Treasurer, in lieu thereof, a deposit of cash or securities of equal amount and value to that withdrawn. Any securities shall be approved by the State Board of Insurance before being substituted.

(g) Each health maintenance organization shall maintain a minimum surplus of not less than \$200,000, net of accrued uncovered liabilities. The surplus may consist only of cash, bonds of the United States, bonds of this state, or a combination of these. If a health maintenance organization fails to comply with the surplus requirement of this subsection or Subsection (h) of this section, the commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees.

(h) The minimum surplus for a health maintenance organization authorized to operate on the effective date of Subsection (g) of this section and

having a surplus of less than \$200,000 shall be as follows:

- (1) \$50,000 by December 31, 1984;
- (2) \$100,000 by December 31, 1985;
- (3) \$150,000 by December 31, 1986; and
- (4) \$200,000 by December 31, 1987.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 13, eff. Dec. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2300, ch. 562, § 2, eff. June 12, 1981; Acts 1983, 68th Leg., p. 1541, ch. 292, § 5, eff. Aug. 29, 1983.]

Section 7 of the 1983 amendatory act provides:

"Subsection (h), Section 13, Texas Health Maintenance Organization Act (Article 20A.13, Vernon's Texas Insurance Code), as added by this Act, expires on December 31, 1987."

Art. 20A.14. Prohibited Practices

(a) No health maintenance organization, or representatives thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For the purposes of this Act:

(1) a statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan;

(2) a statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which said statement is made or such item of information is communicated, such statement or items of information may be reasonably understood by a reasonable person, not possessing special knowledge, regarding health care coverage, as indicating any benefit or advantage or absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of or person considering enrollment in, a health care plan, if such benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist;

(3) an evidence of coverage shall be deemed to be deceptive if the evidence of coverage, taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans, and evidence of coverage therefor, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

(b) Article 21.21, as amended, and Article 21.21-2, of the Insurance Code, shall be construed to apply to health maintenance organizations and health care plans and evidence of coverage, except to the extent that the commissioner determines that the nature of health maintenance organizations and health care

plans and evidence of coverage renders any provisions of such sections clearly inappropriate.

(c) An enrollee may not be cancelled or not renewed except for the failure to pay the charges for such coverage, or for such other reason as may be promulgated by rule of the commissioner.

(d) No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

(e) No physician or health care provider or group of physicians or providers or health care facility or institution may exclude any other physician or provider from staff privileges, facilities, or institutions solely on the ground that such physician or provider is associated with a health maintenance organization issued a certificate of authority under this Act.

(f) Only those persons who comply with the provisions of this Act and are issued a certificate of authority by the commissioner may use the phrase "health maintenance organization" or "HMO" in the course of operation.

[Acts 1975, 64th Leg., p. 522, ch. 214, § 14, eff. Dec. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2301, ch. 562, § 3, eff. June 12, 1981.]

Art. 20A.15. Regulation of Agents

(a) A health maintenance organization agent is anyone who represents any health maintenance organization in the solicitation, negotiation, procurement, or effectuation of health maintenance organization membership or holds himself or herself out as such. No person or other legal entity may perform the acts of a health maintenance organization agent within this state unless such person or legal entity has a valid health maintenance organization agent's license issued pursuant to this Act. The term "health maintenance organization agent" shall not include:

(1) any regular salaried officer or employee of a health maintenance organization or of a licensed health maintenance organization agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for health maintenance organization membership and receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for health maintenance organization membership;

(2) employers or their officers or employees or the trustees of any employee benefit plan to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits

involving the use of membership in a health maintenance organization; provided that such employers, officers, employees, or trustees are not in any manner compensated directly or indirectly by the health maintenance organization issuing such health maintenance organization membership;

(3) banks or their officers and employees to the extent that such banks, officers, and employees collect and remit charges by charging same against accounts of depositors on the orders of such depositors.

(b) The Commissioner of Insurance shall collect in advance from health maintenance organization agent applicants a license fee in an amount not to exceed \$50 as determined by the board and an examination fee in an amount not to exceed \$20 as determined by the board. A new examination fee shall be paid for each 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.

(c) Except as may be provided by a staggered renewal system adopted under Subsection (i) of this section, each license issued to a health maintenance organization agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the commissioner or the authority of the agent to act for the health maintenance organization is terminated.

(d) Licenses which have not expired or been suspended or revoked may be renewed upon written request and payment by the agent of a renewal fee in an amount not to exceed \$50 as determined by the board.

(e) Any agent licensed under this section may represent and act as an agent for more than one health maintenance organization at any time while the agent's license is in force. Any such agent and the health maintenance organization involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing the agent to act as agent for an additional health maintenance organization or health maintenance organizations. Such notice must set forth the health maintenance organization or health maintenance organizations which the agent is then licensed to represent and shall be accompanied by a certificate from each health maintenance organization to be named in each additional appointment that said health maintenance organization desires to appoint the applicant as its agent. This notice shall contain such other information as the State Board of Insurance may require. The agent shall be required to pay a fee in an amount not to exceed \$16 as determined by the board for each additional appointment applied for, which fee shall accompany the notice.

(f) It shall be the duty of the commissioner to collect from every agent of any health maintenance organization in the State of Texas under the provisions of this section a licensing fee and an initial appointment fee for each appointment by a health maintenance organization. All fees collected under this section shall be used by the State Board of Insurance to administer the provisions of the Texas Health Maintenance Organization Act and all laws of this state governing and regulating agents for such health maintenance organizations. All of such funds shall be paid into the State Treasury to the credit of the State Board of Insurance operating fund and shall be paid out for salaries, traveling expenses, office expenses, and other incidental expenses incurred and approved by the State Board of Insurance.

(g) The State Board of Insurance may, after notice and hearings, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents.

(h) An unexpired license may be renewed by paying the required renewal fee to the board before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner shall send written notice of the impending license expiration to the licensee at his last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(i) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

(j) Not later than the 30th day after the day on which a licensing examination is administered under this section, the commissioner shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commissioner shall send notice

to the examinees of the results of the examination within two weeks after the date on which the commissioner receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commissioner shall send notice to the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this section, the commissioner shall send to the person an analysis of the person's performance on the examination.

(k) The State Board of Insurance may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(l) The State Board of Insurance may adopt a procedure for certifying and may certify continuing education programs for agents. Participation in the programs is voluntary.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 15, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1452, ch. 638, § 7, eff. June 13, 1979; Acts 1983, 68th Leg., p. 3937, ch. 622, §§ 28, 55, 56, eff. Sept. 1, 1983.]

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 20A.16. Powers of Insurers and Others

(a) An insurance company licensed in this state, pursuant to Chapter 2, 3, or 15 of the Insurance Code, or a group hospital service corporation authorized to do business in this state, may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this Act. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies or group hospital service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization under the provisions of this Act.

(b) Notwithstanding any provision of insurance or group hospital service corporation laws, an insurer or group hospital service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided by a health maintenance organization and to provide coverage in the event of failure of a health maintenance organization to meet its obligations. Among other things, under such contracts, the insurer or group hospital service corporation may make benefit payments to a health maintenance organization for health care services rendered by physicians or providers pursuant to health care plans.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 16, eff. Dec. 1, 1975.]

Art. 20A.17. Examinations

(a) The commissioner may make an examination of the affairs of any health maintenance organization as it is deemed necessary, but not less frequently than once every three years.

(b) The board may make an examination concerning the quality of health care services of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements as often as it deems it necessary, but not less frequently than once every three years.

(c)(1) Every health maintenance organization shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations. Every physician and provider so examined need only make available for examination that portion of its books and records relevant to its relationship with the health maintenance organization.

(2) Medical, hospital and health records of enrollees and records of physicians and providers providing service under independent contract with a health maintenance organization shall only be subject to such examination as is necessary for an ongoing quality of health assurance program concerning health care procedures and outcome in accordance with an approved plan as provided for in this Act. Said plan shall provide for adequate protection of confidentiality of medical information and shall only be disclosed in accordance with applicable law and this Act and shall only be subject to subpoena upon a showing of good cause.

(3) For the purpose of examinations, the commissioner and board may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of such physicians and providers concerning their business.

(d) Articles 1.15, 1.16, and 1.19, as amended, of the Insurance Code shall be construed to apply to health maintenance organizations, except to the extent that the commissioner determines that the nature of the examination of a health maintenance organization renders such clearly inappropriate.

(e) Articles 1.04(e),¹ 1.12, and 1.24, and Section 7 of Article 1.10, Insurance Code, as amended, and Article 1.30, Insurance Code, apply to health maintenance organizations.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 17, eff. Dec. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2301, ch. 562, § 4, eff. June 12, 1981.]

¹ Repealed.

Art. 20A.18. Management and Exclusive Contracts

(a) No health maintenance organization may enter into an exclusive agency contract or manage-

ment contract, unless the contract is first filed with the commissioner and approved under this section within 30 days after filing or such reasonable extended period as the commissioner may specify by notice given within the 30 days.

(b) The commissioner shall disapprove a contract submitted under Subsection (a) of this section if he finds that:

- (1) it subjects the health maintenance organization 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 health maintenance organization are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the health maintenance organization with due regard for the interests of its enrollees, creditors, or the public; or
- (5) the contract contains provisions which impair the interests of the organization's enrollees, creditors, or the public in this state.

[Acts 1975, 64th Leg., p. 524, ch. 214, § 18, eff. Dec. 1, 1975.]

Art. 20A.19. Hazardous Financial Condition

(a) Whenever the financial condition of any health maintenance organization indicates a condition such that the continued operation of the health maintenance organization might be hazardous to its enrollees, creditors, or the general public, then the commissioner of insurance may, after notice and hearing, order the health maintenance organization 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 reinsurance;
- (2) to reduce the volume of new business being accepted;
- (3) to reduce expenses by specified methods;
- (4) to suspend or limit the writing of new business for a period of time; or
- (5) to increase the health maintenance organization's capital and surplus by contribution.

(b) The State Board of Insurance is authorized, by rules and regulations, to fix uniform standards and criteria for early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors, or the general public, and to fix standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent

with the purposes expressed in Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 524, ch. 214, § 19, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1453, ch. 638, § 8, eff. June 13, 1979.]

Art. 20A.20. Suspension or Revocation of Certificate of Authority

(a) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Act if the commissioner finds that any of the following conditions exist:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational documents, or its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under Section 4 of this Act.

(2) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of Section 9 of this Act.

(3) The health care plan does not provide or arrange for basic health care services.

(4) The board certifies to the commissioner that:

(A) the health maintenance organization does not meet the requirements of Section 5(a)(2) of this Act; or

(B) the health maintenance organization is unable to fulfill its obligation to furnish health care services as required under its health care plan.

(5) The health maintenance organization is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to enrollees or prospective enrollees.

(6) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under Section 7(b) of this Act.

(7) The health maintenance organization has failed to implement the complaint system required by Section 12 of this Act in a manner to resolve reasonably valid complaints.

(8) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(9) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(10) The health maintenance organization has otherwise failed to comply substantially with this Act, and any rule and regulation thereunder.

(b) A certificate of authority shall be suspended or revoked only after compliance with this section.

(c) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children, or newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(d) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization, as he may find to be in the best interest of the enrollees, to the end that the enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

[Acts 1975, 64th Leg., p. 525, ch. 214, § 20, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1453, ch. 638, § 9, eff. June 13, 1979.]

Art. 20A.21. Rehabilitation, Liquidation, or Conservation of Health Maintenance Organizations

All rehabilitation, liquidation, or conservation of a health maintenance organization shall be considered to be rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to Articles 21.28, as amended, 21.28-A, and 21.28-B of the Insurance Code. The commissioner may also order the conservation, liquidation, or rehabilitation of a health maintenance organization if the commissioner is of the opinion that the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of the state.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 21, eff. Dec. 1, 1975.]

Art. 20A.22. Rules and Regulations

The State Board of Insurance may, after notice and hearing, promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of this Act.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 22, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1454, ch. 638, § 10, eff. June 13, 1979.]

Art. 20A.23. Appeals

(a) Any person who is affected by any rule, ruling, or decision of the commissioner or board shall have the right to have such rule, ruling, or decision

reviewed by the State Board of Insurance by making an application to the State Board of Insurance. Such application shall state the identities of the person, the rule, ruling, or decision complained of, the interest of the person in such rule, ruling, or decision, the grounds of such objection, the action sought of the State Board of Insurance, and the reasons and grounds for such action by the State Board of Insurance. The original shall be filed with the chief clerk of the State Board of Insurance together with a certification that a true and correct copy of such application has been filed with the commissioner. Within 30 days after the application is filed, and after 10 days' written notice to all parties of record, the State Board of Insurance shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter. The State Board of Insurance shall make such other rules and regulations with respect to such applications and their consideration as it considers to be advisable, not inconsistent with this Act. Said application shall have precedence over all other business of a different nature pending before said State Board of Insurance.

(b) In the public hearing, any and all evidence and matters pertinent to the appeal may be submitted to the State Board of Insurance whether included in the application or not.

(c) If any person who is affected by any rule, ruling, or decision of the State Board of Insurance be dissatisfied with any rule, ruling, or decision adopted by the commissioner, board, or State Board of Insurance, that person, after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such rule, ruling, or decision, or either or all of them, in a district court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as a defendant. Said action shall have precedence over all other causes on the docket of a different nature. Said appeal shall be filed within 20 days after the State Board of Insurance has entered an order. The decision of the State Board of Insurance shall not be enjoined or stayed except on application to such district court after notice to the State Board of Insurance. The proceedings on appeal shall be under the substantial evidence rule, and such appeal shall be taken to a district court in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall at once be returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 23, eff. Dec. 1, 1975.]

Art. 20A.24. Violation of Act

A person or an agent or an officer of a health maintenance organization who wilfully violates this Act or the rules promulgated pursuant to this Act or who knowingly makes a false statement with respect to a report or a statement required by this Act is guilty of a Class B misdemeanor.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 24, eff. Dec. 1, 1975.]

Art. 20A.25. Confidentiality of Medical and Health Information

Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any physician or provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Act; or upon the express consent of the enrollee or applicant; or pursuant to a statute or court order for the production of evidence or to discovery therefor; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. The health maintenance organization shall be entitled to claim such statutory privilege against such disclosure which the physician or provider who furnishes such information to the health maintenance organization is entitled to claim.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 25, eff. Dec. 1, 1975.]

Art. 20A.26. Statutory Construction in Relationship to Other Laws

(a) Except as otherwise provided in this Act, provisions of the insurance law and provisions of the group hospital service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this Act. This provision shall not apply to an insurance company or a group hospital service corporation licensed and regulated pursuant to the insurance laws or the group hospital service corporation laws of this state except with respect to its health maintenance organization's activities authorized and regulated pursuant to this Act.

(b) Solicitation of enrollees by health maintenance organizations granted a certificate of authority, or their representatives or agents, shall not be construed to violate any provision of law relating to solicitation or advertising by providers or physicians.

(c) Nothing in this Act shall be construed as permitting the practice of medicine as defined by the laws of this state. Nothing in this Act shall be construed to repeal, modify, or amend Section 3, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4505, Vernon's Texas Civil

Statutes), and no health maintenance organization shall be exempt from same.

(d) The provision of factually accurate information regarding coverage, rates, location and hours of service, and names of affiliated institutions, physicians, and providers by health maintenance organizations or its personnel to potential enrolled participants shall not be construed to be violative of any provision of law relating to solicitation or advertising by physicians or providers. Such information with respect to providers or physicians shall in no manner be contrary to or in conflict with any law or ethics regulating the practice of practitioners of any professional service rendered through or in connection with such providers or physicians.

(e) Any health maintenance organization authorized under this Act which contracts with a health facility or enters into an independent contractual arrangement with physicians or providers organized on a group practice or individual practice basis shall not by virtue of any contracts or arrangements be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(f)(1) This Act shall not be applicable to any person licensed to practice medicine in this state, nor to any professional association organized under the Texas Professional Association Act, as amended (Article 1528f, Vernon's Texas Civil Statutes), nor to any nonprofit corporation organized and complying with Section 4, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4509a, Vernon's Texas Civil Statutes), so long as that person, professional association, or nonprofit corporation is engaged in the delivery of health or medical care that is within the definition of the practice of medicine as defined in Section 2(k) of this Act.

(2) Any person, professional association, or nonprofit corporation referred to above, which shall employ or enter into a contractual arrangement with a provider or group of providers to furnish basic health care services as defined in Section 2(a) of this Act, would be subject to the provisions of this Act, and shall be required to obtain a certificate of authority from the commissioner.

(3) Notwithstanding any other law, any person, professional association, or nonprofit corporation referred to above, which conducts activities permitted by law but which do not require a certificate of authority under this Act, and in the process contracts with one or more physicians, professional associations, or nonprofit corporations referred to above, shall not, by virtue of such contract or arrangement, be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(4) Notwithstanding any other law, provisions of the insurance law and the provisions of the group hospital service corporation law shall not be applicable to the above persons, professional associations, or nonprofit corporations.

(g)(1) No health maintenance organization shall be exempt from any statute that provides for the regulation and certification of need of health care facility construction, expansion, or other modification, or the institution of a health care service through the issuance of a certificate of need, if at the time of establishment of operation or during the course of operation of the health maintenance organization it becomes subject to the provisions of that statute.

(2) If the proposed plan of operation of the health maintenance organization includes the provision of any facility and/or service that makes the health maintenance organization subject to the statute mentioned in Subdivision (1) of this subsection, the commissioner may not issue a certificate of authority until the commissioner has received a certified copy of the certificate of need granted to the health maintenance organization by the agency responsible for the issuance of the certificate of need.

(h) Activities permitted under authority of Chapter 491, Acts of the 52nd Legislature, 1951, as amended,¹ shall not be considered subject to the provisions of this Act.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 26, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1454, ch. 638, § 11, eff. June 13, 1979.]

¹ Article 1.01 et seq.

Art. 20A.27. Public Record

All applications, filings, and reports required under this Act shall be treated as public documents, except that examination reports shall be considered confidential documents which may be released if, in the opinion of the commissioner, it is in the public interest.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 27, eff. Dec. 1, 1975.]

Art. 20A.28. Authority to Contract

The commissioner or board, in carrying out their obligations under this Act, may contract with other state agencies or, after notice and hearing, with other qualified persons to make recommendations concerning the determinations to be made by the commissioner or board.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 28, eff. Dec. 1, 1975.]

Art. 20A.29. Physician-Patient Relationship

This Act shall not be construed to:

(a) authorize any person, other than a duly licensed physician or practitioner of the healing

arts, acting within the scope of his or her license, to engage, directly or indirectly, in the practice of medicine or any healing art, or

(b) authorize any person to regulate, interfere, or intervene in any manner in the practice of medicine or any healing art.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 29, eff. Dec. 1, 1975.]

Art. 20A.30. Officers and Employees Bond

A health maintenance organization shall maintain in force on all officers and employees a surety bond, issued by an insurance company holding a certificate of authority to do business in this state and made payable to the State Board of Insurance for the use and benefit of the health maintenance organization, which said bond shall obligate the principal and surety to pay such pecuniary loss as the health maintenance organization shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication by an employee or officer, in an amount not less than \$100,000 or such other sum as may be prescribed by the commissioner. The bond must be written with at least a three-year discovery period and must contain a provision that no cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of the cancellation or termination has been filed with the commissioner, unless an earlier date of cancellation or termination is approved by the commissioner. The bond that is currently in force must be placed on the next renewal date by a bond that satisfies the requirements of this section.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 30, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1455, ch. 638, § 12, eff. June 13, 1979; Acts 1983, 68th Leg., p. 1542, ch. 292, § 6, eff. Aug. 29, 1983.]

Art. 20A.31. Injunctions

When it appears to the commissioner that a health maintenance organization is violating or has violated this Act or any rule or regulation issued pursuant to this Act, the commissioner may bring suit in a district court of Travis County to enjoin the violation and for such other relief as the court may deem appropriate.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 31, eff. Dec. 1, 1975.]

Art. 20A.32. Fees

Every organization subject to this chapter shall pay to the commissioner the following fees:

(a) for filing its original application for a certificate of authority, \$250;

(b) for filing each annual report pursuant to Section 10 of this Act, \$100;

(c) the expenses of any examinations conducted pursuant to this Act; and

(d) the licensing, appointment, and examination fees pursuant to Section 15, Texas Health Maintenance Organization Act (Article 20A.15, Vernon's Texas Insurance Code).

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

[Acts 1975, 64th Leg., p. 530, ch. 214, § 32, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1455, ch. 638, § 13, eff. June 13, 1979; Acts 1983, 68th Leg., p. 3937, ch. 622, § 29, eff. Sept. 1, 1983.]

Art. 20A.33. Taxation

(a) Each health maintenance organization shall on or before the first day of March of each year file its annual statement showing the gross amount of revenues collected during the year ending December 31 preceding, and each such health maintenance organization if organized under the laws of this state shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 4.11, Insurance Code, as amended; if such health maintenance organization is not organized under Texas laws, said health maintenance organization shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 4769, Revised Civil Statutes of Texas, 1925, as amended. For the purposes of computing and collecting the tax herein provided, a health maintenance organization is an "insurance organization" within the terms of Article 4.11, Insurance Code, as amended.

Upon receipt of the sworn statement above provided, the State Board of Insurance shall certify to the State Treasurer the amount of taxes due by such health maintenance organization which shall be paid to the State Treasurer on or before March 15 following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this state during the calendar year ending December 31 in which such payments were collected, or for that portion of the year during which the health maintenance organization transacted business in this state. Taxes collected under this section shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A, Insurance Code, applies to taxes collected under this section.

(b) Each such health maintenance organization shall be subject to the provisions of Articles 4.13, 4.14, and 4.15, Insurance Code, as amended.

[Acts 1975, 64th Leg., p. 530, ch. 214, § 33, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1456, ch. 638, § 14, eff. June 13, 1979; Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(c), eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3938, ch. 622, § 30, eff. Sept. 1, 1983.]

Art. 20A.34. Effective Date

This Act shall take effect on the first day of December, 1975.

[Acts 1975, 64th Leg., p. 531, ch. 214, § 34, eff. Dec. 1, 1975.]

Art. 20A.35. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application. To this end, all provisions of the Texas Health Maintenance Organization Act are declared to be severable.

[Acts 1979, 66th Leg., p. 1456, ch. 638, § 15, eff. June 13, 1979.]

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SUBCHAPTER A. AGENTS AND AGENTS' LICENSES

Art. 21.01. Certificate of Authority

It shall not be lawful for any person to act within this State, as agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company incorpo-

rated in this State, or out of it, without first procuring a certificate of authority from the Board.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.02. Who Are Agents

Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other state or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust, or aid in adjusting, any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of, or by, any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter. The provisions of this subchapter shall not apply to citizens of this State who arbitrate in the adjustment of losses between the insurers and insured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters who have paid an occupation tax of Two Hundred (\$200.00) Dollars for the year in which the adjustment is made, nor to practicing attorneys at law in the State of Texas, acting in the regular transaction of their business as such attorneys at law, and who are not local agents, nor acting as adjusters for any insurance company. Any person who shall do any of the acts mentioned in this article for or on behalf of any insurance company without such company having first complied with the requirements of the laws of this State, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.02-1. Who Are Agents

Whoever solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State, or foreign government, or who takes or transmits other than for himself, any application for insurance, or any policy of insurance, to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or shall receive or deliver a policy of insurance of any such company, or who shall exam-

ine or inspect any risk, or receive or collect or transmit any premium of insurance, or make or forward any diagram of any building or do any other act in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance, or by the employment of such insurance company, or of or by any broker or other person, shall be held to be the agent of the company for which the act is done or the risk is taken, as far as relates to all the requirements and penalties herein set forth.

[1925 P.C.]

Art. 21.02-2. Exceptions

The preceding article shall not apply to citizens of this State who arbitrate in the adjustment of losses between the insurers and the assured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters, nor to attorneys at law in the State acting in the regular transaction of their business as such, and who are not local agents nor acting as adjusters for any insurance company.

[1925 P.C.]

Art. 21.02-3. Penalty for Unlawfully Acting as Agent

Whoever shall do or perform any of the acts or things mentioned in the first article of this chapter for any insurance company referred to in said article without such company having first complied with the requirements of the laws of this State, shall be fined not less than five hundred nor more than one thousand dollars.

[1925 P.C.]

Art. 21.03. Assessment of Taxes

Whenever any person shall do or perform within this State any of the acts mentioned in the preceding article for or on behalf of any insurance company therein referred to, such company shall be held to be doing business in this State and shall be subject to the same taxes, state, county and municipal, as insurance companies that have been legally qualified and admitted to do business in this State by agents or otherwise are subject, the same to be assessed and collected as taxes are assessed and collected against such companies; and such persons so doing or performing any of such acts or things shall be personally liable for such taxes.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.04. Solicitor Deemed Company's Agents

Any person who shall solicit an application for insurance upon the life of another shall in any controversy between the assured and his benefici-

ary and the company issuing any policy upon such application be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have the power to waive, change or alter any of the terms or conditions of the application or policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.05. Who May Not Be Agents

No stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in the State.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1977, 65th Leg., p. 1421, ch. 579, § 1, eff. Aug. 29, 1977.]

Art. 21.06. Certificates for Agents

Each such foreign insurance company shall, by resolution of its board of directors, designate some officer or agent who is empowered to appoint or employ its agents or solicitors in this State, and such officer or agent shall promptly notify the Board in writing of the name, title and address of each person so appointed or employed. Upon receipt of this notice, if such person is of good reputation and character, the Board shall issue to him a certificate which shall include a copy of the certificate of authority authorizing the company requesting it to do business in this State, and the name and title of the person to whom the certificate is issued. Such certificate, unless sooner revoked by the Board for cause or cancelled at the request of the company employing the holder thereof, shall continue in force until the first day of March next after its issuance, and must be renewed annually.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.07. Licensing of Agents

Applicability of Act

Sec. 1. (a) No person or corporation shall act as an agent of any (i) local mutual aid association, (ii) local mutual burial association, (iii) statewide mutual assessment corporation, (iv) stipulated premium company, (v) county mutual insurance company, (vi) casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, on the date that this Act shall become effective, unless he or it shall have first procured a license from the State Board of Insurance as in this Article 21.07, as amended hereby, is provided, and no such insurance carrier shall appoint any person or corporation to act as its agent unless such person or corporation shall have obtained a license under the provisions of this Arti-

cle, and no such person or corporation who obtains a license shall engage in business as an agent until he or it shall have been appointed to act as an agent by some duly authorized insurance carrier designated by the provisions of this Article 21.07 and authorized to do business in the State of Texas. Any person or corporation desiring to act as an agent of any insurance carrier licensed to do business in the State of Texas and writing health and accident insurance may obtain a separate license as an agent to write health and accident insurance provided such person or corporation complies with the provisions of this Article and has been appointed to act as an agent by some duly authorized insurance carrier authorized to do health and accident insurance business in the State of Texas.

(b) No insurer or licensed insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person or corporation for services as an insurance agent within this State, unless such person or corporation shall hold a currently valid license to act as an insurance agent as required by the laws of this State; nor shall any person or corporation other than a duly licensed insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person or corporation has ceased to hold a license to act as an insurance agent.

Application for License; To Whom License May Be Issued

Sec. 2. (a) Hereafter, when any person or corporation shall desire to become an agent for a (i) local mutual aid association, (ii) a local mutual burial association, (iii) a statewide mutual assessment corporation, (iv) a stipulated premium company, (v) a county mutual insurance company, (vi) a casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, such person or corporation shall, in such form and giving such information as may be reasonably required, make application to the State Board of Insurance for a license to act as an agent. The application shall be accompanied by a certificate on forms to be prescribed and furnished by the State Board of Insurance and signed by an officer or properly authorized representative of the insurance carrier the applicant proposes to represent, stating that the insurance carrier has investigated the character and background of the applicant and is satisfied that he or its officers, directors, and shareholders are trustworthy and qualified to hold himself or the corporation out in

good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this state.

(b) The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as an agent covered by this Article;

(2) That every officer, director, and shareholder of the corporation is individually licensed under the provisions of this Article; and

(3) That such corporation will have the ability to pay any sums up to \$25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business under this Article. The term "customer" means any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) an errors and omissions policy insuring such corporation against errors and omissions in at least the sum of \$50,000 with no more than a \$2,500 deductible feature issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval;

(B) a bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of \$25,000, payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) a deposit of cash or securities of the class authorized by Articles 2.08 and 2.10, Insurance Code, as amended, having a fair market value of \$25,000 with the State Treasurer. The State Treasurer is directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from

business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of an agent under this Article without obtaining a license.

If at any time, any corporation holding an agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 10 and 11 of this Article; provided, however, that should any person who is not a licensed agent under this Article acquire shares in such a corporation by devise or descent, he shall have a period of 90 days from date of acquisition within which to obtain a license or to dispose of the shares of a person licensed under this Article.

Should such an unlicensed person acquire shares in a corporation and not dispose of them within a period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or his personal representative, or at a price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Article shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

Each corporation shall immediately notify the State Board of Insurance upon any change in its officers, directors, or shareholders.

No other corporation may own any interest in a corporation licensed under this Article, and each owner of an interest in a corporation licensed under

this Article shall be a natural person who holds a valid license issued under this Article.

Issuance of License Under Certain Circumstances

Sec. 3. After the State Board of Insurance has determined that such applicant is of good character and trustworthy, the State Board of Insurance shall issue a license to such person or corporation in such form as it may prepare authorizing such applicant to write the types of insurance authorized by law to be issued by applicant's appointing insurance carrier, except that:

(a) Such applicant shall not be authorized to write health and accident insurance unless: (i) applicant, if not a corporation, shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness; and

(b) Such applicant, if not a corporation, shall not be authorized to write life insurance in excess of Five Thousand Dollars (\$5,000.00) upon any one life unless: (i) applicant, if not a corporation, shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness.

Continuing Education

Sec. 3A. The State Board of Insurance may adopt a procedure for certifying and may certify continuing education programs for dealers, salesmen, or agents. Participation in the programs is voluntary.

Examination of Applicant for License to Write Health and Accident Insurance

Sec. 4. (a) Each applicant for a license under the provisions of this Article 21.07, Texas Insurance Code, 1951, as amended, who desires to write health and accident insurance, other than as excepted in Section 3 of this Article 21.07, within this State shall submit to a personal written examination prescribed

and administered in the English or Spanish language by the State Board of Insurance to determine his competency with respect to health and accident insurance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to health and accident insurance, and shall pass the same to the satisfaction of the State Board of Insurance; except that no written examination shall be required of:

(i) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, as amended, which is currently in force at the effective date of this Act;

(ii) An applicant whose license expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination, provided such prior license granted such applicant the right to sell health and accident insurance; or

(iii) An applicant that is a corporation.

(b)(i) The State Board of Insurance shall, within sixty (60) days from the effective date of this Act, establish reasonable rules and regulations with respect to the scope, type and conduct of such written examination and the times and places within this State where such examinations shall be held; applicants, shall, however, be permitted to take such examinations at least once in each week at the office of the State Board of Insurance. The rules and regulations of the State Board of Insurance shall designate text books, manuals and other materials to be studied by applicants in preparation for examination pursuant to this Section. Such text books, manuals and other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the State Board of Insurance and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the State Board of Insurance pursuant to this Section and such questions shall be limited to and substantially similar to the questions relating to health and accident insurance contained in the written examination prescribed by the State Board of Insurance pursuant to Article 21.07-1 of this Insurance Code. The State Board of Insurance shall charge each applicant a fee in an amount not to exceed \$20 as determined by the State Board of Insurance for the privilege of taking such written examination and which 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 State Board of Insurance and received board approval. A new examination fee shall be paid for each and every examination.

(ii) The State Board of Insurance may also establish reasonable rules and regulations whereby, in the discretion of the State Board of Insurance, any insurance carrier may be permitted to conduct written examinations for its agents who have received temporary licenses by appointment of such carrier, subject to such reasonable conditions, requirements and standards as the State Board of Insurance shall require and establish as a predicate for the granting of such authority and for the reasonable supervision, examination and inspection of each such carrier's procedures in giving examinations to its temporary licensees, but provided further that such authority so granted to any insurance carrier to give such examinations may be terminated by the State Board of Insurance on notice and hearing if it shall find that such authorized insurance carrier shall have violated the conditions, requirements and standards required of such carrier to qualify to conduct written examinations.

(c) After the State Board of Insurance shall determine that such applicant has successfully passed the written examination or it has been waived, and is a person of good character and reputation, the State Board of Insurance shall forthwith issue a license to such applicant which shall also authorize such applicant to write health and accident insurance for the designated insurance carrier.

(d) The State Board of Insurance is hereby authorized in its sole discretion to appoint an Advisory Board to make recommendations to it with respect to the scope, type and conduct of written examinations and the Advisory Board, if so appointed, shall consist of individuals experienced in the health and accident insurance business, and may include company officers, managers and employees, general managers and licensed agents. The members of the Advisory Board shall serve without pay.

(e) Whenever the State Board of Insurance shall receive any evidence indicating that an agent who obtained his license under the provisions of Section 4(a)(i) of this Article 21.07 is not competent, or not trustworthy or not of good character, the State Board of Insurance may at any time thereafter require such licensee to submit to the taking of such written examination within ninety (90) days after written notice thereof from the State Board of Insurance, and if upon taking such written examination as provided for in this Section 4 of this Article 21.07 such licensee shall fail to pass the said written examination or if such licensee shall fail to take such written examination within such ninety (90) day period, the license of such licensee may thereupon be terminated by the State Board of Insurance and such license shall thereafter be of no further force and effect.

(f) Not later than the 30th day after the day on which a licensing examination is administered under this article, the commissioner of insurance shall

send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commissioner of insurance shall send notice to the examinees of the results of the examination within two weeks after the date on which the commissioner of insurance receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commissioner of insurance shall send notice to the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this article, the commissioner of insurance shall send to the person an analysis of the person's performance on the examination.

Examination of Applicant for License to Write Life Insurance Upon Any One Life in Excess of \$5,000.00

Sec. 4A. (a) Each applicant for a license under the provisions of this Article 21.07, Insurance Code, as amended, who desires to write life insurance in excess of Five Thousand Dollars (\$5,000.00) upon any one life, other than as excepted in Section 3 of this Article 21.07, within this state shall submit to a personal written examination prescribed and administered in the English or Spanish language by the State Board of Insurance to determine his competency with respect to life insurance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to life insurance and shall pass the same to the satisfaction of the State Board of Insurance; except that no written examination shall be required of an applicant that is a corporation.

(b)(i) The State Board of Insurance shall, within sixty (60) days from the effective date of this Act, establish reasonable rules and regulations with respect to the scope, type and conduct of such written examination and the times and places within this State where such examinations shall be held; applicants shall, however, be permitted to take such examinations at least once in each week at the office of the State Board of Insurance. The rules and regulations of the State Board of Insurance shall designate textbooks, manuals and other materials to be studied by applicants in preparation for examination pursuant to this Section. Such textbooks, manuals and other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the State Board of Insurance and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the textbooks, manuals and other materials designated or prepared by the State Board of Insurance pursuant to this Section. The State Board of Insurance shall charge each applicant a fee not to

exceed \$20.00 for the privilege of taking such written examination and which fee shall not be returned under any circumstance 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 State Board of Insurance and received board approval. A new examination fee shall be paid for each and every examination.

(ii) The State Board of Insurance may also establish reasonable rules and regulations whereby, in the discretion of the State Board of Insurance, any insurance carrier may be permitted to conduct written examinations for its agents, subject to such reasonable conditions, requirements and standards as the State Board of Insurance shall require and establish as a predicate for the granting of such authority and for the reasonable supervision, examination and inspection of each such carrier's procedures in giving examinations to its agents, but provided further that such authority so granted to any insurance carrier to give such examinations may be terminated by the State Board of Insurance on notice and hearing if it shall find that such authorized insurance carrier shall have violated the conditions, requirements and standards required of such carrier to qualify to conduct written examinations.

(c) After the State Board of Insurance shall determine that such applicant has successfully passed the written examination or it has been waived and is a person of good character and reputation, the State Board of Insurance shall forthwith issue a license to such applicant which shall also authorize such applicant to write life insurance upon any one life in excess of Five Thousand Dollars (\$5,000.00) for the designated insurance carrier.

(d) The State Board of Insurance is hereby authorized in its sole discretion to appoint an Advisory Board to make recommendations to it with respect to the scope, type and conduct of written examinations and the Advisory Board, if so appointed, shall consist of individuals experienced in the life insurance business and may include company officers, managers and employees, general managers and licensed agents. The members of the Advisory Board shall serve without pay.

(e) When any license shall be issued by the State Board of Insurance to an applicant entitled to write life insurance upon any one life in excess of Five Thousand Dollars (\$5,000.00), the license shall have stamped thereon the words, "Life Insurance in Excess of \$5,000.00."

Failure of Applicant to Qualify for License

Sec. 5. If the State Board of Insurance is not satisfied that the applicant for a license is trustworthy and of good character, or, if applicable, that the applicant, if required to do so, has not passed the written examination to the satisfaction of the State

Board of Insurance, the State Board of Insurance shall forthwith notify the applicant and the insurance carrier in writing that the license will not be issued to the applicant, and return to said agent the fee for application for license and the fee for appointment.

Agent May Be Licensed to Represent Additional Insurers

Sec. 6. Any agent licensed under this Article may represent and act as an agent for more than one insurance carrier at any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment, that said insurance carrier 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 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.

Expiration and Renewal of License

Sec. 7. (a) Except as may be provided by a staggered renewal system adopted under Subsection (f) of this section, each license issued to an agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the State Board of Insurance or the authority of the agent to act for the insurance carrier is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent.

(c) Upon the filing of a request for renewal of license and payment of a renewal fee as hereinafter required for the license, prior to the date of expiration, the current license shall continue in force until the renewal license is issued by the State Board of Insurance or until the State Board of Insurance has refused, for cause, to issue the renewal license, as provided in this Article, and has given notice of the refusal in writing to the insurance carrier and the agent.

(d) The appointment or appointments given under any Section of this Article authorizing the agents to act as an agent for an insurance carrier shall continue in full force and effect without the necessity of renewal until terminated and withdrawn by the insurance carrier in accordance with Section 9 of this Article 21.07 or otherwise terminated in accordance with this Article 21.07, and each renewal li-

cense issued to the agent shall authorize him or it to represent and act for the insurance carriers for which he or it holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article 21.07, to be the agent of the appointing insurance carriers, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1970, each such insurance carrier so appointing such agent shall file with the State Board of Insurance a certificate, upon forms promulgated by the State Board of Insurance, certifying that such insurance carrier desires to continue the appointment of such agent, and if such insurance carrier shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such insurance carrier has terminated the appointment of such agent in like manner as if compliance had been made by such insurance carrier with Section 9 of this Article.

(e) An unexpired license may be renewed by paying the required renewal fee to the State Board of Insurance before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the State Board of Insurance the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the State Board of Insurance all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his or its last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(f) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

Temporary License

Sec. 8. The State Board of Insurance, if it is satisfied with the honesty and trustworthiness of any applicant who desires to write health and acci-

dent insurance, may issue a temporary agent's license, authorizing the applicant to write health and accident insurance, as well as all other insurance authorized to be written by the appointing insurance carrier, effective for ninety (90) days, without requiring the applicant to pass a written examination, as follows:

To any applicant who has been appointed or who is being considered for appointment as an agent by an insurance carrier authorized to write health and accident insurance immediately upon receipt by the State Board of Insurance of an application executed by such person in the form required by this Article, together with a certificate signed by an officer or properly authorized representative of such insurance carrier certifying:

(a) that such insurance carrier has investigated the character and background of such person and is satisfied that he is trustworthy and of good character;

(b) that such person has been appointed or is being considered for appointment by such insurance carrier as its agent; and

(c) that such insurance carrier desires that such person be issued a temporary license; provided that if such temporary license shall not have been received from the Board within seven days from the date on which the application and certificate were delivered to or mailed to the Board, the insurance carrier may assume that such temporary license will be issued in due course and the applicant may proceed to act as an agent; provided, however, that no temporary license shall be renewable or issued more than once in a consecutive six months period to the same applicant; and provided further, that no temporary license shall be granted to any person who does not intend to actively sell health and accident insurance to the public generally and it is intended to prohibit the use of a temporary license to obtain commissions from sales to persons of family employment or business relationships to the temporary licensee, to accomplish which purposes an insurance carrier is hereby prohibited from knowingly paying directly or indirectly to the holder of a temporary license under this Section any commissions on the sale of a contract of health and accident insurance to any person related to temporary licensee by blood or marriage, and the holder of a temporary license is hereby prohibited from receiving or accepting commissions on the sale of a contract of health and accident insurance to any person included in the foregoing classes of relationship.

Insurance Carrier to Notify State Board of Insurance of Termination of Contract; Communications Privileged

Sec. 9. (a) Every insurance carrier shall, upon termination of the appointment of any agent, immediately file with the State Board of Insurance a

statement of the facts relative to the termination of the appointment and the date and cause thereof. The Board shall thereupon terminate the license of such agent to represent such insurance carrier in this State.

(b) Any information, document, record or statement required to be made or disclosed to the Board pursuant to this Article shall be deemed a privileged communication and shall not be admissible in evidence in any court action or proceeding except pursuant to subpoena of a court of record.

Denial, Refusal, Suspension or Revocation of Licenses

Sec. 10. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the State Board of Insurance if, after notice and hearing as hereafter provided, it finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of, such license:

- (1) Has wilfully violated any provision of the insurance laws of this State; or
- (2) Has intentionally made a material misstatement in the application for such license; or
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
- (4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurance carrier or an insured or beneficiary; or
- (5) Has otherwise demonstrated lack of trustworthiness or competence to act as an agent; or
- (6) Has been guilty of fraudulent or dishonest practices; or
- (7) Has materially misrepresented the terms and conditions of any insurance policy or contract; or
- (8) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by any insurance carrier, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or
- (9) Is not of good character or reputation; or
- (10) Is convicted of a felony.

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of, such license and the insurance carrier whom he or it represents or who desires that he or it be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurance carrier

may appear to be heard and produce evidence. In the conduct of such hearing, the Board or any regular salaried employee specially designated by it for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon its own initiative or upon the request of the applicant or licensee. Upon termination of such hearings, findings shall be reduced to writing and, upon approval by the Board, shall be filed in its office and notice of the findings sent by registered mail to the applicant or licensee and the insurance carrier concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as an agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Board unless the applicant shows good cause why the denial, refusal or revocation of his or its license shall not be deemed a bar to the issuance of a new license.

Judicial Review of Acts of State Board of Insurance

Sec. 11. If the said Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the State Board of Insurance as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said State Board of Insurance.

The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 12. Any person or officer, director, or shareholder of a corporation required to be licensed

by this Article who individually, or as an officer or employee of an insurance carrier, or other corporation, wilfully violates any of the provisions of this Article shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00 or imprisoned not more than six (6) months, or both, each such violation being a separate offense hereunder. In addition, if such offender or the corporation of which he is an officer, director, or shareholder holds a license as an agent, such license shall automatically expire upon such conviction.

State Board of Insurance May Establish Rules and Regulations

Sec. 13. The State Board of Insurance is hereby authorized to establish, and from time to time to amend, reasonable rules and regulations for the administration of this Article 21.07.

Fees and Use of Funds

Sec. 14. (a) It shall be the duty of the State Board of Insurance to collect from every agent of any insurance carrier writing insurance in the State of Texas under the provisions of this Article, a licensing fee and an initial appointment fee, as provided in Subsection (b) of this section, for each and every appointment by any insurance carrier, which fees together with examination fees and renewal license fees shall 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 enforce the provisions of this Article and all laws of this State governing and regulating agents for such insurance carriers.

(b) For those agents subject to licensing under the provisions of this Act, the license fee shall be in an amount not to exceed Fifty Dollars (\$50) and in an amount not to exceed Sixteen Dollars (\$16) for each appointment.

(c) The State Board of Insurance is hereby given full power and authority under the provisions of this Article to use any portion of the fees collected for the purpose of enforcing the provisions of this Article; and said State Board of Insurance is authorized to employ such person or persons as it may deem necessary to investigate and make reports upon any and all alleged violations of said laws and misconduct on the part of such agents and to pay the salaries and expenses of such person or persons so designated by it and all office employees and expenses necessary in the enforcement of this Article out of the fees collected and such person or persons so appointed by the State Board of Insurance are hereby authorized and empowered to administer the oath and to examine under oath any person deemed necessary in gathering information and evidence and to have the same reduced to writing if deemed necessary and all such expenses shall be paid from such fees. If any residue for any

years shall remain over and above the amount necessary to carry on the work and investigation and pay the expenses herein provided for, the same shall be carried over to the following year or years and used in the continuation of the enforcement of this Article and the insurance laws of this State and all such funds are hereby appropriated for such purpose. The funds collected under this provision shall be paid into the State Treasury to the credit of the State Board of Insurance operating fund and shall be paid out for salaries, traveling expenses, office expenses and other incidental expenses incurred by the State Board of Insurance hereunder upon proper account duly approved by the State Board of Insurance.

The State Board of Insurance shall determine the amount of all fees under this Article.

Dual Licensing

Sec. 15. Any person or corporation that holds a license under the provisions of Article 21.07-1, Texas Insurance Code, 1951, as amended, shall be entitled to receive a license under this Article 21.07, and be authorized to write health and accident insurance without being required to pass the examination as required under this Article 21.07. Any person or corporation that holds a license under the provisions of Article 21.14, Texas Insurance Code, 1951, as amended, shall be entitled to write health and accident insurance written by those companies for whom he or it is licensed under Article 21.14 without being required to pass the examination required under this Article 21.07.

License by Reciprocity

Sec. 15A. The State Board of Insurance may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Stamping of License

Sec. 16. When any license shall be issued by the State Board of Insurance to an applicant entitled to write health and accident insurance, the license shall have stamped thereon the words HEALTH AND ACCIDENT INSURANCE.

Expiration of Existing Licenses

Sec. 17. Each license issued prior to the effective date hereof under the provisions of Art. 21.07 and remaining in force at the effective date of this Act shall continue in full force and effect until such license would otherwise expire, and each such license so expiring shall be subject to renewability in accordance with the provisions of this Act upon each respective license expiration date. Any such license so continuing in force may, however, be

revoked by the State Board of Insurance in accordance with the other provisions of this Act.

Assignment of Agent's Commissions

Sec. 18. Notwithstanding any provisions of either this Article or of the Insurance Code to the contrary, an employee, officer, director, or shareholder of either a state or national bank who is licensed as an agent under this Article and who enters into a contract with an insurer to act as the insurer's agent in soliciting or writing policies or certificates of credit life insurance, credit accident and health insurance, or both, covering debtors of the bank in which such agent is an employee, officer, director, or shareholder, may assign and transfer to such bank any commissions, fees, or other compensation to be paid to such agent under the agent's contract with the insurer.

Agent for United States Military Personnel in Foreign Countries

Sec. 19. (a) Notwithstanding any provisions of either this Article or of the Insurance Code to the contrary, any natural person may be licensed by the State Board of Insurance under this Section of this Article to represent any type of authorized life insurance company, including legal reserve life insurance companies, domiciled in this State, provided such person represents such insurer exclusively in a foreign country or territory and either on a United States military installation or with United States military personnel.

(b) The State Board of Insurance may, upon request of such insurer on application forms furnished by the State Board of Insurance and upon payment of a license fee in an amount not to exceed \$50 as determined by the State Board of Insurance, issue such license to such person which will be valid only for such limited representation of such insurer as provided herein. The application shall be accompanied by a certificate, on forms to be prescribed and furnished by the State Board of Insurance and signed by an officer or properly authorized representative of the insurance company the applicant proposes to represent, stating that the insurance company has investigated the character and background of the applicant and is satisfied that the applicant is trustworthy and qualified to hold himself out in good faith as an insurance agent, and that the insurance company desires that the applicant act as an insurance agent to represent the insurance company. The insurer shall also certify to the State Board of Insurance that it has provided the applicant with at least forty (40) hours of training, has tested the applicant and found the applicant qualified to represent the insurer, and that the insurer is willing to be bound by the acts of such applicant within the scope of such limited representation.

(c) Such application and license shall be subject to the provisions of Sections 7, 9, 10, 11, 12, 13, and 14 of this Article.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 517, ch. 153, § 1; Acts 1959, 56th Leg., p. 665, ch. 308, §§ 1, 2; Acts 1969, 61st Leg., 2nd C.S., p. 168, ch. 25, § 1, eff. Sept. 19, 1969; Acts 1971, 62nd Leg., p. 2952, ch. 978, §§ 1, 2, eff. June 15, 1971; Acts 1975, 64th Leg., p. 2372, ch. 731, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 386, ch. 192, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 387, ch. 193, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1421, ch. 579, §§ 2 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 369, ch. 166, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 884, ch. 404, § 1, eff. June 6, 1979; Acts 1981, 67th Leg., p. 708, ch. 269, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2640, ch. 707, § 4(28), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 3939, ch. 622, §§ 31, 57 to 63, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4071, ch. 639, § 1, eff. June 19, 1983; Acts 1983, 68th Leg., p. 4106, ch. 646, §§ 5, 6, eff. Aug. 29, 1983.]

Partial repeal

Article 21.07-1 repeals provisions of this article to the extent only as applicable to Legal Reserve Life Insurance Agents.

Sections 2 and 3 of Acts 1969, 61st Leg., 2nd C.S., p. 168, ch. 25, provided:

"Sec. 2. This Act shall be cumulative of all other existing laws but in the event of any conflict between the provisions of this Act and the provisions of any existing law, the provisions of this Act shall prevail, and all laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed to the extent of such conflict only.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions and applications of this Act which can be given effect without the valid provisions and application, and to this end the provisions of this Act are declared to be severable."

Section 94 of Acts 1983, 68th Leg., p. 4002, ch. 622, § 94, provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 21.07A. Penalty for Acting As, or Employing, Life, Health, or Accident Insurance Agent Without License

Any person who shall act as a life, health or accident insurance agent without having first obtained a license as herein provided, or who shall solicit life, health or accident insurance or act as a life, health or accident agent without having been appointed and designated by some duly authorized life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, or association, or organization, local mutual aid association, or statewide mutual association to do so as herein provided, or any person who shall solicit life, health or accident insurance or act as an agent for any person or insurance company or association not authorized to do business in Texas; or any officer or representative of any life insurance company,

accident insurance company, life and accident, health and accident, or life, health and accident insurance company or association, or organization, local mutual aid association, or statewide mutual association who shall knowingly contract with or appoint as an agent any person who does not have a valid and outstanding license, as herein provided shall be guilty of a misdemeanor and, upon conviction, shall be fined any sum not in excess of Five Hundred Dollars (\$500) and shall be barred from receiving a license as an insurance agent for a period of at least two (2) years.

[Acts 1933, 43rd Leg., p. 356, ch. 138, § 6. Amended by Acts 1935, 44th Leg., p. 679, ch. 289, § 6.]

Art. 21.07-1. Legal Reserve Life Insurance Agents; Examination; Licenses

Legal Reserve Life Insurance Agent Defined

Sec. 1. (a) This Act shall be known as The Texas Agents Qualification and License Law for Agents of Legal Reserve Life Insurance Companies authorized to do business in Texas. It repeals the provisions of Article 21.07 of the Texas Insurance Code, 1951, to the extent only as applicable to such agents. This Act has no application to agents for local mutual aid associations, or for statewide mutual associations or for any type or kind of insurance organization other than legal reserve life insurance companies, and existing statutes, including Article 21.07 of the Texas Insurance Code, 1951, applicable to such agents, other than agents of legal reserve life insurance companies, shall remain in full force and effect.

(b) The term "life insurance agent" for the purpose of this Act means any person or corporation that is an authorized agent of a legal reserve life insurance company, and any person who is a sub-agent of such agent, who acts as such in the solicitation of, negotiation for, or procurement of, or collection of premiums on, an insurance or annuity contract with a legal reserve life insurance company; except that the term "life insurance agent" shall not include:

(1) any regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life insurance agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the business obtained, and who does not solicit or accept from the public applications for insurance or annuity contracts;

(2) employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance or annuities issued

by a legal reserve life insurance company, provided that such employers, officers, employees or trustees are not in any manner compensated, directly or indirectly, by the legal reserve life insurance company issuing such insurance or annuity contracts;

(3) banks or their officers and employees to the extent that such banks, officers and employees collect and remit premiums by charging same against accounts of depositors on the orders of such depositors;

(4) a ticket-selling agent of a public carrier with respect to accident life insurance tickets covering risks of travel;

(5) an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or acting as agent or solicitor for health and accident insurance under license issued pursuant to the provisions of Article 21.14 of the Texas Insurance Code.

(c) The term "sub-agent" means any person, except a regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life insurance agent, engaging in activities defined in Paragraph 1(b), above, who acts for or on behalf of a licensed life insurance agent in the solicitation of, negotiation for, or procurement or making of, or collection of premiums on, an insurance or annuity contract, whether or not he is designated by such agent as a sub-agent or a solicitor or by any other title. Each such sub-agent shall be deemed to be a life insurance agent, as defined above, and wherever, in succeeding Sections of this Act, the term "life insurance agent" is used, it shall include sub-agents, whether or not they are specifically mentioned. Each such sub-agent shall be subject to the provisions of this Act to the same extent as a life insurance agent.

(d) The terms "insurance or annuity contract," "insurance contract," and "annuity contract," shall mean a contract or policy of life, health or accident (including hospitalization) insurance, or an annuity contract, issued by any legal reserve company or insurer engaged in the business of writing life, health or accident (including hospitalization) insurance, or annuity contracts.

(e) The term "excess risk" shall mean all or any portion of a life, health or accident insurance risk or contract of annuity for which application is made through an agent, and which exceeds the amount of insurance or annuity which will be provided by the insurer for which such agent is licensed.

(f) The term "rejected risk" shall mean a life, health or accident insurance risk or annuity contract for which application has been made through an agent and which insurance or annuity contract is declined by the insurer for which such agent is licensed.

(g) The terms "Industrial" and "weekly premium life insurance on a debit basis" refer to the type of life insurance defined in Article 3.52 of the Texas Insurance Code.

Acting for Unauthorized Companies Prohibited

Sec. 2. (a) No person or corporation shall, within this State, solicit, procure, receive, or forward applications for life insurance or annuities, or issue or deliver policies for, or in any manner secure, help, or aid in the placing of any contract of life insurance or annuity for any person other than himself, or itself, directly or indirectly, with any legal reserve life insurance company not authorized to do business in this State.

(b) Any agent shall be personally liable for any loss sustained by any insured or beneficiary on any contract of life insurance or annuity made by or through such agent, directly or indirectly, with any legal reserve life insurance company not authorized to do business in this State and, in addition, for any premium taxes which may become due under any law of this State by reason of such contract.

Acting as Agent Without License Prohibited; No Commissions to be Paid to Unlicensed Persons

Sec. 3. (a) No person or corporation shall act as a life insurance agent within this State until he or it shall have procured a license as required by the laws of this State.

(b) No insurer or licensed life insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person or corporation for services as a life insurance agent within this State, unless such person or corporation shall hold a currently valid license to act as a life insurance agent as required by the laws of this State; nor shall any person or corporation, other than a duly licensed life insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person or corporation has ceased to hold a license to act as a life insurance agent.

Continuing Education

Sec. 3A. The State Board of Insurance may adopt a procedure for certifying and may certify continuing education programs for agents. Participation in the programs is voluntary.

Application for License; To Whom License May Be Issued

Sec. 4. (a) Each applicant for a license to act as a life insurance agent within this State shall file with the Insurance Commissioner his or its written application on forms furnished by the Commission-

er. The application shall be signed and duly sworn by the applicant. The prescribed form shall require the applicant to state his full name; residence; age; occupation and place of business for five years preceding date of the application; whether applicant has ever held a license to solicit life, or any other insurance in any State; whether he has been refused, or has had suspended or revoked a license to solicit life, or any other insurance in any State; what insurance experience, if any, he has had; what instruction in life insurance and in the insurance laws of this State he has had or expects to have; whether any insurer or general agent claims applicant is indebted under any agency contract, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto; whether applicant has had an agency contract cancelled and, if so, when, by what company or general agent and the reasons therefor; whether applicant will devote all or part of his efforts to acting as a life insurance agent, and, if part only, how much time he will devote to such work, and in what other business or businesses he is engaged or employed; whether, if applicant is a married woman, her husband has ever applied for or held a license to solicit life, or any other insurance in any State and whether such license has been refused, suspended, or revoked; and such other information pertinent to the licensing of such agent as the Insurance Commissioner in his discretion may prescribe. It is not intended that the Insurance Commissioner shall be authorized to deny a license to an applicant on the sole ground that he will act only part time as a life insurance agent.

(b) The application shall be accompanied by a certificate on forms furnished by the Insurance Commissioner and signed by an officer or properly authorized representative of the legal reserve life insurance company he or it proposes to represent, stating that the insurer has investigated the character and background of the applicant and is satisfied that he or the officers, directors, and shareholders of the corporation are trustworthy and qualified to hold himself or itself out in good faith to the general public as a life insurance agent, that the applicant has completed the educational requirements as provided in sub-section (e), Section 4 of this Act, and that the insurer desires that the applicant be licensed as a life insurance agent to represent it in this State.

(c) The application, when filed, shall be accompanied by a filing fee in an amount not to exceed \$50 as determined by the State Board of Insurance and, in the case of applicants required to take an examination administered by the Commissioner of Insurance as hereafter prescribed, by an examination fee in an amount not to exceed \$20 as determined by the State Board of Insurance. In the event an applicant fails to qualify for, or is refused a license, the filing fee shall be returned; the examination fee

shall not be returned for any reason 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. A new examination fee shall be paid for each and every examination.

(d) The Insurance Commissioner shall issue a license to a corporation if he finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act¹ having its principal place of business in the State of Texas and having as one of its purposes the authority to act as agent under this Act;

(2) That every officer, director, and shareholder of the corporation is individually licensed as an agent under the provisions of this Act; and

(3) That such corporation will have the ability to pay any sums up to \$25,000.00 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as under this Act. The term "customer" as used herein shall mean any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) An errors and omissions policy insuring such corporation against errors and omissions in at least the sum of \$50,000.00, with no more than a \$2,500.00 deductible feature issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval; or

(B) A bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of \$25,000.00, payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of the Insurance Code, having a fair market value of \$25,000.00 with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer

of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Insurance Commissioner evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of an agent under this Act without obtaining a license.

If at any time, any corporation holding a license under this Act does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 12 and 13 of this Act; provided, however, that should any person who is not an agent licensed under this Act acquire shares in such a corporation by devise or descent, they shall have a period of 90 days from date of acquisition within which to obtain a license as an agent or to dispose of the shares to an agent licensed under this Act.

Should such an unlicensed person acquire shares in such a corporation and not dispose of them within said period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Act shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

Each corporation licensed as an agent under this Act shall immediately notify the State Board of

Insurance upon any change in its officers, directors, or shareholders.

No other corporation may own any interest in a corporation licensed under this Act, and each owner of an interest in a corporation licensed under this Act shall be a natural person who holds a valid license issued under this Act.

No association, partnership, or any legal entity of any nature, other than an individual person or corporation, may be licensed as a life insurance agent.

(e) Each applicant, prior to sitting for the written examination as provided for in Section 5 of this Act, shall complete, under the supervision of such sponsoring insurer, an educational program that shall include:

(1) such texts as may be prescribed by the Commissioner of Insurance on the recommendation of the Advisory Board as provided in Subsection (c) of Section 5 of this Act; and

(2) materials that will provide the applicant with the basic knowledge of:

(A) the broad principles of insurance, licensing, and regulatory laws of this State; and

(B) the obligations and duties of a life insurance agent.

¹ Civil Statutes, art. 1528e.

Examination of Applicant for License

Sec. 5. (a) Each applicant for a license to act as a life insurance agent within this State shall submit to a personal written examination administered in the English or Spanish language, and as shall be prescribed by the State Board of Insurance, to determine his competence with respect to insurance and annuity contracts and his familiarity with the pertinent provisions of the laws of this State, and shall pass the same to the satisfaction of the State Board of Insurance; except that no such written examination shall be required of:

(1) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, which is currently in force at the time of the effective date of this Act;

(2) An applicant whose license as a life insurance agent expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination;

(3) A person who holds the designation Chartered Life Underwriter (CLU);

(4) An applicant that is a corporation.

(b) The Commissioner shall establish rules and regulations with respect to the scope, type and conduct of such written examinations and the times and places within this State where they shall be held; provided, that applicants shall be permitted to take such examinations at least once in each week at the office of the Commissioner, and at least once

in each month in the county court house of the residence of the applicant. The rules and regulations of the Commissioner shall designate text books, manuals and other materials to be studied by applicants in preparation for examinations pursuant to this Section. Such text books, manuals or other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the Commissioner and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the Commissioner pursuant to this Section.

(c) The Commissioner shall appoint an Advisory Board consisting of eight persons of whom two shall be holders of licenses issued under this Article, two shall be employed by and familiar with the operations of legal reserve life insurance companies, two shall be general agents and managers, and two shall be citizens of the State of Texas who are neither agents, general managers, nor employees of legal reserve life insurance companies, which shall make recommendations to him with respect to the scope, type, and conduct of written examinations and the times and places within the State where they shall be held. This Advisory Board shall make such recommendations not less frequently than once every four years. The members of the Advisory Board shall serve without pay but shall be reimbursed for their reasonable expenses in attending meetings of the Advisory Board.

(d) An applicant other than a corporation for a license to act as a combination life insurance agent for a combination company, or as an industrial life agent for an industrial company, may, in lieu of taking and passing to the satisfaction of the Insurance Commissioner a personal written examination as provided in Sub-section (a) of this Section 5, submit to a personal written examination given by the combination or industrial insurer for which he is to be licensed, subject to the following definitions and conditions:

(1) A combination life insurance agent is hereby defined as an agent writing both weekly premium life insurance on a debit basis and ordinary contracts of life insurance. An industrial life agent is an agent writing only weekly life insurance on a debit basis. A combination company is hereby defined as an insurer actually writing weekly premium life insurance on a debit basis and ordinary contracts of life insurance. An industrial company is an insurer writing only weekly premium life insurance on a debit basis.

(2) Any combination or industrial insurer desiring to qualify to administer the examination to its agents shall file with the Commissioner a complete outline and explanation of the course of study and instruction to be given such applicants

and the nature and manner of conducting the examinations of applicants and, after official approval thereof by the Commissioner, may administer such examinations.

(3) The combination or industrial insurer shall certify as to each applicant that he has completed the approved course of study and instruction and has successfully passed the examination in writing without aid.

(4) It shall be the duty of the Commissioner to investigate the manner and method of instruction and examination of each combination and industrial insurer as often as deemed necessary by the Commissioner and the Commissioner may, in his discretion, withdraw from any insurer the privilege of examining agents in lieu of the examination administered by the Commissioner pursuant to Sub-section (a) of this Section 5.

(5) The license to act as a life insurance agent issued to an applicant pursuant to the provisions of this Sub-section (d) shall be stamped COMBINATION OR INDUSTRIAL LICENSE on its face and shall automatically expire and be of no further force and effect when the holder ceases to act as a combination or industrial agent for a combination or industrial company.

(e) Not later than the 30th day after the day on which a licensing examination is administered under this article, the commissioner of insurance shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commissioner of insurance shall send notice to the examinees of the results of the examination within two weeks after the date on which the commissioner of insurance receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commissioner of insurance shall send notice to the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the commissioner of insurance shall send to the person an analysis of the person's performance on the examination.

Issuance or Denial of License

Sec. 6. (a) If the Life Insurance Commissioner is satisfied that the applicant is trustworthy and competent and after the applicant, if required to do so, has passed the written examination to the satisfaction of the Commissioner, a license shall be issued forthwith. If the applicant has not passed the written examination, or if license is denied for any of the reasons set forth in Section 12 of this Act, the Life Insurance Commissioner shall notify the applicant and the insurer in writing that the license will not be issued to the applicant.

Non-residents May Be Licensed

Sec. 7. (a) A person not resident in this State may be licensed as a life insurance agent upon compliance with the provisions of this Act, provided that the State in which such person resides will accord the same privilege to a citizen of this State.

(b) The Life Insurance Commissioner is further authorized to enter into reciprocal agreements with the appropriate official or any other State waiving the written examination of any applicant resident in such other State, provided:

(1) That a written examination is required of applicants for a life insurance agent's license in such other State;

(2) That the appropriate official of such other State certifies that the applicant holds a currently valid license as a life insurance agent in such other State and either passed such written examination or was the holder of a life insurance agent's license prior to the time such written examination was required;

(3) That the applicant has no place of business within this State in the transaction of business as a life insurance agent;

(4) That in such other State, a resident of this State is privileged to procure a life insurance agent's license upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other State.

Agent May Be Licensed to Represent Additional Insurers

Sec. 8. (a) Any life insurance agent licensed in this state may represent and act as a life insurance agent for more than one legal reserve life insurance company at any time while his or its license is in force, if he or it so desires. Any such life insurance agent and the company involved must give notice to the Commissioner of Insurance of any additional appointment or appointments authorizing him or it to act as a life insurance agent for an additional legal reserve life insurance company or companies. Such notice must set forth the insurer or insurers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurer to be named in each additional appointment, that said insurer desires to appoint the applicant as its agent. This notice shall also contain such other information as the Commissioner may require. The agent shall be required to pay a 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. Any insurer may file a request with the Insurance Commissioner for notification in the event any agent licensed to represent such insurer has given the Commissioner of Insurance notice of an additional appointment to represent another insurer; and in such event the Commissioner shall notify the insurer filing such request.

(b) Any life insurance agent licensed in this state may place excess or rejected risks with any legal reserve life insurance company lawfully doing business in this state other than an insurer such agent is licensed to represent; provided, however, that such life insurance agent shall procure an additional appointment to represent such other insurer before receiving commissions or other compensation for his or its services.

Expiration and Renewal of License

Sec. 9. (a) Except as may be provided by a staggered renewal system adopted under Subsection (g) of this section, each license issued to a life insurance agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Insurance Commissioner or the authority of the agent to act for the insurer is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked, may be renewed upon request in writing of the agent.

(c) Each request for renewal of license shall show whether the agent devotes all or part of his or its efforts to acting as a life insurance agent, and if part only, how much time he or it devotes to such work.

(d) Upon the filing of a request for renewal of license, and payment of a renewal fee in an amount not to exceed \$50 as determined by the State Board of Insurance for such license, prior to the date of expiration, the current license shall continue in force until the renewal license is issued by the Commissioner or until the Commissioner has refused, for cause, to issue such renewal license, as provided in Section 12, of this Act, and has given notice of such refusal in writing to the insurer and the agent.

(e) The appointment or appointments given under Section 4 or Section 8 of this Act authorizing the agents to act as a life insurance agent for a legal reserve life insurance company or companies, shall continue in full force and effect, without the necessity of renewal, until terminated and withdrawn by the companies in accordance with Section 11 of this Act, or otherwise terminated in accordance with this Act, and each renewal license issued to the agent shall authorize him or it to represent and act for the companies for which he or it holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article, to be the agent of the appointing companies, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1968, each such company so appointing such life insurance agent shall file with the Commissioner a certificate, upon forms promulgated by the Commissioner, certifying that such legal reserve life insurance company desires to continue

the appointment of such life insurance agent, and if such company shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such company has terminated the appointment of such life insurance agent in like manner as if compliance has been made by such company with Section 11 of this Act.

(f) An unexpired license may be renewed by paying the required renewal fee to the State Board of Insurance before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the State Board of Insurance the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the State Board of Insurance all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his or its last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(g) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

Temporary License

Sec. 10. The Life Insurance Commissioner, if he is satisfied with the honesty and trustworthiness of the applicant, may issue a temporary life insurance agent's license, effective for ninety days, without requiring the applicant to pass a written examination, as follows:

(a) To an applicant who has fulfilled the provisions of Section 4 of this Act where such applicant will actually collect the premiums on industrial life insurance contracts during the period of such temporary license; provided, however, that if such temporary license is not received from the Commissioner within seven days from the date the application was sent to the Commissioner, the company may assume that the temporary license will be issued in due course and the applicant may

proceed to act as an agent. For the purpose of this subsection an industrial life insurance contract shall mean a contract for which the premiums are payable at monthly or more frequent intervals directly by the owner thereof, or by a person representing the owner, to a representative of the company;

(b) To any person who has been appointed or who is being considered for appointment as an agent by an insurer immediately upon receipt by the Commissioner of an application executed by such person in the form required by Section 4 of this Act, together with a certificate signed by an officer or properly authorized representative of such insurer stating:

(1) that such insurer has investigated the character and background of such person and is satisfied that he is trustworthy;

(2) that such person has been appointed or is being considered for appointment by such insurer as its full-time agent; and

(3) that such insurer desires that such person be issued a temporary license; provided that if such temporary license shall not have been received from the Commissioner within seven days from the date on which the application and certificate were delivered to or mailed to the Commissioner, the insurer may assume that such temporary license will be issued in due course and the applicant may proceed to act as an agent; provided, however, that no temporary license shall be renewable nor issued more than once in a consecutive six months period to the same applicant; and provided further, that no temporary license shall be granted to any person who does not intend to actively sell life insurance to the public generally and it is intended to prohibit the use of a temporary license to obtain commissions from sales to persons of family employment or business relationships to the temporary licensee, to accomplish which purposes an insurer is hereby prohibited from knowingly paying directly or indirectly to the holder of a temporary license under this subsection any commissions on the sale of a contract of insurance on the life of the temporary licensee, or on the life of any person related to him by blood or marriage; or on the life of any person who is or has been during the past six months his employer either as an individual or as a member of a partnership, association, firm or corporation, or on the life of any person who is or who has been during the past six months his employee, and the holder of a temporary license is hereby prohibited from receiving or accepting commissions on the sale of a contract of insurance to any person included in the foregoing classes of relationship;

(4) that a person who has been issued a temporary license under this subsection and is act-

ing under the authority of the temporary license may not engage in any insurance solicitation, sale, or other agency transaction that results in or is intended to result in the replacement of any existing individual life insurance policy form or annuity contract that is in force or receive, directly or indirectly, any commission or other compensation that may or does result from such solicitation, sale, or other agency transaction; and that any person holding a permanent license may not circumvent or attempt to circumvent the intent of this subdivision by acting for or with a person holding such a temporary license. As used in this subdivision, "replacement" means any transaction in which a new life insurance or annuity contract is to be purchased, and it is known or should be known to the temporary agent that by reason of the solicitation, sale, or other transaction the existing life insurance or annuity contract has been or is to be:

(A) lapsed, forfeited, surrendered, or otherwise terminated;

(B) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(C) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) reissued with any reduction in cash value; or

(E) pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding 25 percent of the loan value set forth in the policy;

(5) that such person will complete, under such insurer's supervision, at least forty hours of training as prescribed by Subsection (c) of this Section within fourteen days from the date on which the application and certificate were delivered or mailed to the Commissioner.

(6) The Commissioner shall have the authority to cancel, suspend, or revoke the temporary appointment powers of any life insurance company, if, after notice and hearing, he finds that such company has abused such temporary appointment powers. In considering such abuse, the Commissioner may consider, but is not limited to, the number of temporary appointments made by a company as provided by Subsection (e) of this Section, the percentage of appointees sitting for the examination as life insurance agents under this Article as it may be in violation of Subsection (d) of this Section, and the number of appointees successfully passing said examination in accordance with Subsection (d).

Appeals from the Commissioner's decision shall be made in accordance with Section 13 hereof.

(c) At least forty hours of training must be administered to any applicant for a temporary license as herein defined within fourteen days from the date on which the application and certificate were delivered or mailed to the Commissioner. Of this forty-hour requirement, ten hours must be taught in a classroom setting, including but not limited to an accredited college, university, junior or community college, business school, or private institute or classes sponsored by the insurer and especially established for this purpose. Such training program shall be constructed so as to provide an applicant with the basic knowledge of:

- (1) the broad principles of insurance, licensing, and regulatory laws of this State; and
- (2) the obligations and duties of a life insurance agent.

The Commissioner of Insurance may, in his discretion, require that such training program shall be filed with the State Board of Insurance for approval in the event he finds an abuse of temporary appointment powers under Subsection (b)(6) of this Section.

(d) Each insurer is responsible for requiring that not less than 70 percent of such insurer's applicants for temporary licenses sit for an examination during any two consecutive calendar quarters. At least 50 percent of those applicants sitting for the examination must pass during such a period.

(e) Each insurer may make no more than two hundred and fifty temporary licensee appointments during a calendar year under Subsection (b) of this Section.

Deposit of Fees in Fund

Sec. 10A. Fees collected under this article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

Company to Notify Commissioner of Termination of Contract; Communications Privileged

Sec. 11. (a) Every legal reserve life insurance company shall, upon termination of the appointment of any life insurance agent, immediately file with the Life Insurance Commissioner a statement of the facts relative to the termination of the appointment and the date and cause thereof. The Commissioner shall thereupon terminate the license of such agent to represent such insurer in this State.

(b) Any information, document, record or statement required to be made or disclosed to the Commissioner pursuant to this Section shall be deemed a privileged communication and shall not be admissible in evidence in any court action or proceeding except pursuant to subpoena of a court of record.

Denial, Refusal, Suspension, or Revocation of Licenses

Sec. 12. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the Insurance Commissioner if, after notice and hearing as hereafter provided, he finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of such license:

(1) Has wilfully violated any provision of the insurance laws of this State; or

(2) Has intentionally made a material misstatement in the application for such license; or

(3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurer or an insured or beneficiary; or

(5) Has otherwise demonstrated lack of trustworthiness or competence to act as a life insurance agent; or

(6) Has been guilty of fraudulent or dishonest practices; or

(7) Has materially misrepresented the terms and conditions of life insurance policies or contracts; or

(8) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance or annuity contract legally issued by any insurer, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or

(9) Has obtained, or attempted to obtain such license, not for the purpose of holding himself or itself out to the general public as a life insurance agent, but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering himself or himself or members of his family or his or its business associates; or

(10) Is not of good character or reputation; or

(11) Is convicted of a felony.

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Insurance Commissioner shall give notice of his intention so to do, by registered mail, to the applicant for, or holder of such license and the insurer whom he or it represents or who desires that he or it be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurer may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any

person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the insurer concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as a life insurance agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Commissioner unless the applicant shows good cause why the denial, refusal or revocation of his or its license shall not be deemed a bar to the issuance of a new license.

Judicial Review of Acts of Commissioner

Sec. 13. If the said Insurance Commissioner shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the Insurance Commissioner as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said Insurance Commissioner.

Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 14. Any person or officer, director, or shareholder of a corporation required to be licensed by this Act who individually, or as an officer or employee of a legal reserve life insurance company, or other corporation, violates any of the provisions of this Act shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than

\$500.00 or imprisoned not more than six months, or both, each such violation being a separate offense hereunder. In addition, if such offender or corporation of which he is an officer, director, or shareholder holds a license as a life insurance agent, such license shall automatically expire upon such conviction.

Commissioner May Establish Rules and Regulations

Sec. 15. The Life Insurance Commissioner is authorized to establish, and from time to time to amend, reasonable rules and regulations for the administration of this Act.

Accident and Health Insurance Agents

Sec. 16. (a) In this section, "accident and health insurance agent" means any person or corporation that is an authorized agent of a legal reserve life insurance company and who acts as such agent only in the solicitation of, negotiation for, procurement of, or collection of premiums on an accident and health insurance contract with a legal reserve life insurance company, but does not include:

(1) a regular salaried officer or employee of a legal reserve life insurance company, or of a licensed life or accident and health insurance agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for insurance contracts and receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for insurance contracts;

(2) employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that those employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance issued by a legal reserve life insurance company, provided that those employers, officers, employees, or trustees are not in any manner compensated directly or indirectly by the legal reserve life insurance company issuing the insurance contracts;

(3) banks or their officers and employees to the extent that the banks, or their officers, and employees collect and remit premiums by charging the premiums against the account of a depositor on the orders of the depositor;

(4) a ticket-selling agent of a public carrier with respect to accident and health insurance tickets covering risks of travel; or

(5) an agent selling credit health and accident insurance issued exclusively in connection with credit transactions, or acting as agent or solicitor for health and accident insurance under a license issued under either Article 21.07, Article 21.07-1, or Article 21.14, Insurance Code.

(b) The State Board of Insurance may issue a license to a person or a corporation to act only as an accident and health insurance agent for a legal reserve life insurance company as provided by this section.

(c) Each applicant for a license under this section who desires to act as an accident and health insurance agent within this state shall submit to a personal written examination prescribed and administered in the English or Spanish language by the State Board of Insurance to determine the applicant's competency with respect to accident and health insurance and familiarity with the pertinent provisions of the health and accident insurance laws of this state. Except as provided by Subsection (d) of this section, each applicant must pass the examination to the satisfaction of the State Board of Insurance.

(d) A written examination is not required of:

(1) an applicant for license under this Section 16 if the applicant has previously been licensed and currently holds on the effective date of this section a valid license issued by the State Board of Insurance under either Article 21.07, Article 21.07-1, or Article 21.14 of this code;

(2) an applicant whose license expires less than one year before the date of application and who may, in the discretion of the State Board of Insurance, be issued a license without written examination, provided the prior expired license granted the applicant the right to act as an agent for accident and health insurance; or

(3) an applicant that is a corporation; provided, however, that a corporation may be licensed hereunder only if it otherwise complies with the provisions of Subsection (d) of Section 4 of this article, but in the application of such section to such compensation hereunder, any requirement pertaining to or reference therein to "life insurance" shall be changed and limited to "health and accident insurance" only as is intended by the terms of the Section 16.

(e) Within 60 days after the effective date of this section the State Board of Insurance shall establish reasonable rules relating to the scope, type, and conduct of the written examination to be required of an applicant hereunder and the times and the places in this state where examinations will be held. Applicants also may take the examinations at least once in each week at the office of the State Board of Insurance.

(f) The rules adopted by the board shall designate textbooks, manuals, and other materials to be studied by applicants in preparation for an examination under this section. The textbooks, manuals, and other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the State Board of Insurance and distributed to applicants on request and payment of the reasonable cost. All examination questions shall be prepared from the contents of textbooks, manuals, and other materials designated or prepared by the State Board of Insurance pursuant to this section. The questions on the examination must be limited to and be substantially similar to the questions relating to

accident and health insurance included in the written examination prescribed by the State Board of Insurance under other sections of this code.

(g) The State Board of Insurance shall charge each applicant a fee not to exceed \$25 for the privilege of taking the written examination, and the fee may not be returned under any circumstance 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 State Board of Insurance and received approval of such failure to appear. A new examination fee shall be paid for each subsequent examination.

(h) After the State Board of Insurance determines that an applicant has successfully passed the written examination or is exempt therefrom as provided in Subsection (d) above, and the board has determined the applicant to be of good character and reputation, has been appointed to act as an agent by one or more legal reserve life insurance companies, and has paid a license fee of \$25, the board shall issue a license to such applicant authorizing the applicant to act as an accident and health insurance agent for the appointing insurance carrier.

(i) The State Board of Insurance may appoint an advisory committee to make recommendations to the State Board of Insurance relating to the scope, type, and conduct of written examinations. The advisory committee must be composed of individuals experienced in the accident and health insurance business and may include company officers, managers and employees, general managers, and licensed agents. The members of the advisory committee shall serve without pay.

(j) Sections 8, 9, 10, 11, 12, 13, and 14 of this article shall apply to accident and health insurance agents of a legal reserve life insurance company licensed under this section, but in the application of such sections to such agents any requirements, conditions, or references therein to "life insurance" shall be changed and limited to "health and accident" insurance only as is intended by the provisions of this section.

[Acts 1955, 54th Leg., p. 621, ch. 213. Amended by Acts 1959, 56th Leg., p. 665, ch. 308, § 3; Acts 1967, 60th Leg., p. 711, ch. 294, § 1, eff. May 25, 1967; Acts 1969, 61st Leg., p. 1990, ch. 679, § 1, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2047, ch. 703, § 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 1775, ch. 650, § 1, eff. June 16, 1973; Acts 1975, 64th Leg., p. 2372, ch. 731, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 383, ch. 191, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 386, ch. 192, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 388, ch. 193, §§ 5 to 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1427, ch. 579, §§ 5 to 9, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2124, ch. 849, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 370, ch. 166, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2045, ch. 800, § 2, eff. June 13, 1979; Acts 1983, 68th Leg., p. 710, ch. 162, § 1, eff. May 20, 1983; Acts 1983, 68th Leg., p. 3405, ch. 569, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3941, ch. 622, §§ 32, 64 to 69, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4072, ch. 639, § 2, eff. June 19, 1983.]

Section 94 of Acts 1983, 68th Leg., p. 4002, ch. 622, provides: "The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 21.07-2. Life Insurance Counselor

Definition of Term

Sec. 1. The term "Life Insurance Counselor" as used in this Act shall mean any person who, for money, fee, commission or any other thing of value offers to examine, or examines any policy of life insurance or any annuity or pure endowment contract for the purpose of giving, or gives, or offers to give, any advice, counsel, recommendation or information in respect to the terms, conditions, benefits, coverage or premium of any such policy or contract, or in respect to the expediency or advisability of altering, changing, exchanging, converting, replacing, surrendering, continuing or rejecting any such policy or contract, or of accepting or procuring any such policy or contract from any insurer, or who in or on advertisements, cards, signs, circulars or letterheads, or elsewhere, or in any other way or manner by which public announcements are made, uses the title "insurance adviser," "insurance specialist," "insurance counselor," "insurance analyst," "policyholders' adviser," "policyholders' counselor," or any other similar title, or any title indicating that he gives, or is engaged in the business of giving advice, counsel, recommendation or information to an insured, or a beneficiary, or any person having any interest in a life insurance, annuity or pure endowment contract.

License Required; Issuance by Board

Sec. 2. No person shall act as a Life Insurance Counselor, as defined in Section 1 hereof, unless authorized so to act by a license issued by the Board of Insurance Commissioners of the State of Texas pursuant to the provisions of this Act.

Exemptions

Sec. 3. The provisions of this Act shall not apply to the following persons:

- (a) Licensed agents for a life insurance company while acting for an insurer as its agent.
- (b) Licensed attorneys at law of this State when acting within the course or scope of their profession.
- (c) Licensed public accountants of this State while acting within the course or scope of their profession.
- (d) A regular salaried officer or employee of an authorized insurer issuing policies of life insurance while acting for such insurer in discharging the duties of his position or employment.
- (e) An officer or employee of any bank or trust company who receives no compensation from

sources other than the bank or trust company for such activities connected with his employment.

(f) Employers or their officers or employees, or the trustees of any employee benefit plan, to the extent that such employers, officers, employees or trustees are engaged in the administration or operation of any program of employee benefits involving the use of insurance or annuities issued by a legal reserve life insurance company.

Contract, Writing Required; Duplicates; Other Requisites

Sec. 4. No contract or agreement between a Life Insurance Counselor, as defined in this Act, and any other person, firm or corporation, relating to the activities, services, advice, recommendations or information referred to in Section 1 of this Act, shall be enforceable by or on behalf of such Life Insurance Counselor unless it is in writing and executed in duplicate by the person, firm or corporation to be charged, nor unless one of said duplicates is delivered to and retained by such person, firm or corporation when executed, nor unless such contract or agreement plainly specifies the amount of the fee paid or to be paid by such person, firm or corporation, and the services to be rendered by such Life Insurance Counselor; provided, however, that the foregoing provisions shall not be applicable to any of the persons set out in Section 3 above.

Prohibition of Dual Compensation

Sec. 4a. A person licensed under the provisions of this Act who is also licensed under Article 21.07 or Article 21.07-1 of this Code who receives a commission or compensation for his services as an agent licensed under Article 21.07 or Article 21.07-1, shall not be entitled to receive a fee for his service to the same client as a Life Insurance Counselor.

Mode of Licensing and Regulation

Sec. 5. The licensing and regulation of a Life Insurance Counselor, as that term is defined herein, shall be in the same manner and subject to the same requirements as applicable to the licensing of agents of legal reserve life insurance companies as provided in Article 21.07-1 of the Texas Insurance Code, 1951, or as provided by any existing or subsequent applicable law governing the licensing of such agents, and all the provisions thereof are hereby made applicable to applicants and licensees under this Act, except that a Life Insurance Counselor shall not advertise in any manner and shall not circulate materials indicating professional superiority or the performance of professional service in a superior manner; provided, however, that an appointment to act for an insurer shall not be a condition to the licensing of a Life Insurance Counselor.

In addition to the above requirements, the applicant for licensure as a Life Insurance Counselor shall submit to the Commissioner evidence of high moral and ethical character, documentation that he has been licensed as a life insurance agent in excess of three years. After the Insurance Commissioner has satisfied himself as to these requirements, he shall then cause the applicant for a Life Insurance Counselor's license to sit for an examination which shall include the following:

Such examination shall consist of five subjects and subject areas:

- (a) Fundamentals of life and health insurance;
- (b) Group life insurance, pensions and health insurance;
- (c) Law, trust and taxation;
- (d) Finance and economics; and
- (e) Business insurance and estate planning.

No license shall be granted until such individual shall have successfully passed each of the five parts above enumerated. Such examinations may be given and scheduled by the Commissioner at his discretion. Individuals currently holding Life Insurance Counselor licenses issued by the Texas State Board of Insurance, who do not have the equivalent of the requirements above listed, shall have one year from the date of enactment hereof to so qualify.

Not later than the 30th day after the day on which a licensing examination is administered under this Section, the Commissioner shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the Commissioner shall send notice to the examinees of the results of the examination within two weeks after the date on which the Commissioner receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Commissioner shall send notice to the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Section, the Commissioner shall send to the person an analysis of the person's performance on the examination.

Intent of Legislature; Statutes and Amendments Applicable

Sec. 6. It is the legislative intent, and it is hereby provided, that the licensing and regulation of any person acting as a Life Insurance Counselor shall be subject to the same statutes and requirements applicable to the licensing and regulation of agents of legal reserve life insurance companies. In event of subsequent legislative enactment applicable to agents of legal reserve life insurance companies in lieu of, or as an amendment to, present Article 21.07 of the Texas Insurance Code, it is hereby provided

that such statute shall be applicable to any person acting as a Life Insurance Counselor, as defined in this Act.

Violations; Misdemeanor; Penalties

Sec. 7. Any person who shall act as a Life Insurance Counselor, as defined herein, without having first obtained a license as herein provided, or who violates any of the provisions of this Act shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than Five Hundred Dollars (\$500), or imprisoned not more than six months, or both, each such violation being a separate offense hereunder. In addition, if such offender holds a license hereunder, such license shall automatically expire upon such conviction and the offender shall be barred from license for a period of at least two (2) years.

Partial Invalidity

Sec. 8. Should any Section or part thereof of this Act be held to be invalid for any reason, such holding shall not be construed as affecting the validity of any of the remaining Sections or parts thereof, it being the legislative intent that the remainder of this Section shall stand, notwithstanding the invalidity of any Section or part thereof.

[Acts 1955, 54th Leg., p. 39, ch. 29. Amended by Acts 1969, 61st Leg., 2nd C.S., p. 121, ch. 13, §§ 1, 2, eff. Sept. 19, 1969; Acts 1983, 68th Leg., p. 3978, ch. 622, § 70, eff. Sept. 1, 1983.]

Art. 21.07-3. Managing General Agents' Licensing Act

Name of Act

Sec. 1. This Act may be referred to as the "Managing General Agents' Licensing Act."

Definitions

Sec. 2. The following words and phrases when used in this Act shall be defined and construed as follows:

(a) "Managing General Agent" shall mean any person, firm or corporation who has supervisory responsibility for the local agency and field operations of an insurance company or carrier within this state, or any part thereof, and who may perform any of the following acts for a company or carrier: receive and pass upon daily reports and monthly accounts; receive and be responsible for agency balances; handle the adjustment of losses; or, appoint or direct local recording agents, state agents, or special agents within this state, or any part thereof.

(b) "Company" or "Carrier" shall mean any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, Lloyds, or other insurance carrier licensed to transact business in the State of Texas, excepting, how-

ever, those which write only life, health and accident insurance.

(c) "Commissioner" shall mean the Commissioner of Insurance.

(d) "Board" shall mean the State Board of Insurance.

Acting Without License Prohibited

Sec. 3. It shall be unlawful for any person, firm or corporation to act as a managing general agent in behalf of any insurance company or carrier without having in force the license provided for herein, except that no license shall be required if the applicant is a business corporation authorized to do business in Texas, all of whose outstanding stock is solely owned by an insurance company or carrier licensed to do business in Texas, whose business affairs are completely controlled by such insurance company or carrier and the principal purpose for which the corporation exists is to facilitate the accumulation of commissions from the insurance company or carrier and its subsidiaries and affiliates for the account of and payment to an agent who could otherwise lawfully receive such commission direct from the insurance company or carrier and its subsidiaries and affiliates and the corporation does no other act of a managing general agent as provided for in this article; provided, however, that any contracts entered into with agents shall be executed by the managing general agent in behalf of the insurance company or carrier.

Application for License; To Whom License May be Issued

Sec. 4. Each applicant for license shall be a resident of Texas and file a written sworn application on forms furnished by the Commissioner.

(a) The Commissioner shall issue a license to an applicant upon successful completion of the examination and compliance with the other requirements of this Act.

(b) The Commissioner shall issue a license to a partnership where each of the partners has qualified for a license under this Act.

(c) The Commissioner shall issue a license to a corporation if it finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a managing general agent; and

(2) That every officer, director, and shareholder of the corporation is individually licensed as a managing general agent under the provisions of this Insurance Code; provided, however, that in the event ownership of the shares of such corporation is transferred to an unlicensed shareholder, the corporation shall still be entitled to a license if such unlicensed share-

holder qualifies as a licensed managing general agent within 90 days from the date of such transfer.

(d) Nothing contained herein shall be construed to permit any unlicensed shareholder or any employee or agent of any corporation to perform any act of a managing general agent without obtaining a managing general agent's license.

(e) Since all officers, directors, and shareholders must be licensed as managing general agents in order for a corporation to receive a license as a managing general agent, the Commissioner shall not require a corporation to take the examination provided in Section 6 of this Act.

(f) If at any time, any officer, director, or shareholder of any corporation holding a managing general agent's license does not qualify as a licensed managing general agent, or if any unlicensed shareholder does not qualify within the 90-day period as herein provided, the license of such corporation to act as a managing general agent shall be cancelled or denied in accordance with the other provisions of this Act. Each corporation licensed as a managing general agent shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

(g) Each corporation licensed as a managing general agent shall immediately notify the Commissioner upon any change in its officers, directors, or shareholders.

(h) Nothing in this section shall prevent any shareholder from selling or otherwise transferring his stock in any corporation to a company, carrier or managing general agency licensed to do business in Texas, nor prevent any such company or carrier from owning all or any portion of the stock of such corporation.

Issuance of Licenses to Those Presently Acting as Managing General Agents; Renewals

Sec. 5. (a) Any person, partnership, or corporation having a certificate of authority under Article 21.01 of the Insurance Code to operate as a managing general agent in this state, and who was, in fact, acting as a managing general agent for one or more companies or carriers in this state on the effective date of this Act, shall be entitled to receive a license without having to comply with the requirements of Sections 4 and 6 of this Act, but shall be subject to the other provisions of this Act.

(b) Any such person, partnership, or corporation shall file a written sworn application on forms provided by the commissioner within 60 days from the effective date of this Act.

(c) Any corporation applying for or receiving a license under this section shall file, under oath, a list of names and addresses of its officers, directors, and agency manager with its application for license or renewal and the commissioner may require infor-

mation, under oath, on forms provided by him as to the officers, directors, and agency manager of such corporation so as to satisfy himself concerning the provisions of Section 12 of this Act.

(d) Those applicants meeting the requirements of this section shall be issued licenses by the commissioner within 90 days from the effective date of this Act and shall be permitted to continue to act during said 90-day period without having a license.

(e) Any such licensee shall be entitled to the renewal of such license from year to year without reference to the provisions of Sections 4 and 6 of this Act, but shall be subject to all other provisions of this Act.

(f) No corporate licensee qualifying under this section, nor any shareholder owning stock in such corporation, shall ever issue or transfer any stock in said corporation to any person, partnership, corporation or other entity for the purpose of inducing the placement of any policy of insurance with said licensee.

(g) No individual or partnership qualifying for a license under this section shall ever transfer any interest in said proprietorship or partnership to any person, partnership, corporation or other entity for the purpose of inducing the placement of any policy of insurance with said licensee.

(h) Except as provided herein, a licensee that qualifies under this section may not be owned in whole or in part, either directly or indirectly by a state bank, national bank, or bank holding company, as those terms are defined in Article 2, Chapter I, The Texas Banking Code of 1943, as amended (Article 342-102, Vernon's Texas Civil Statutes), or by a subsidiary of one of those financial institutions. This subsection shall not apply to any licensee that on June 1, 1981, is owned by a state bank, national bank, or bank holding company or by a subsidiary of one of those financial institutions so long as ownership continues; nor shall this subsection apply to a licensee for which on July 15, 1981, a state bank, national bank, or bank holding company, or a subsidiary of one of those financial institutions has, pursuant to the applicable law, filed an application for prior approval of ownership or other notice of ownership with the governmental agency having regulatory authority over the financial institution or subsidiary. Before renewing a license issued under this section, the commissioner shall require the licensee to certify compliance with or exemption from this subsection.

License by Reciprocity

Sec. 5A. The State Board of Insurance may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Examination Required; Exceptions

Sec. 6. Each applicant for a license shall submit to, and must pass to the satisfaction of the commissioner, a written examination compiled and administered by the commissioner testing applicant's competence with respect to insurance and familiarity with the insurance laws of this state.

Continuing Education

Sec. 6A. The State Board of Insurance may adopt a procedure for certifying and may certify continuing education programs for agents. Participation in the programs is voluntary.

Emergency License Without Examination

Sec. 7. In the event of death or disability of a managing general agent or for other good cause satisfactory to the commissioner, he may issue to an applicant a temporary or emergency license for a period not longer than six months, without requiring an examination, provided the other requirements of this Act are met.

Conduct of Examinations

Sec. 8. (a) All examinations provided hereunder shall be conducted by the commissioner at such times and places as prescribed by the commissioner, but not less than four times annually. Applicants shall be given ten days' notice of the time and place of such examinations. All examinations shall be in writing.

(b) Not later than the 30th day after the day on which a licensing examination is administered under this section, the commissioner shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commissioner shall send notice to the examinees of the results of the examination within two weeks after the date on which the commissioner receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commissioner shall send notice to the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination administered under this section, the commissioner shall send to the person an analysis of the person's performance on the examination.

Expiration of License; Renewal

Sec. 9. (a) Except as may be provided by a staggered renewal system adopted under Subsection (c) of this section, every license issued hereunder shall expire one year from the date of its issue, unless an application to qualify for renewal of such license shall be filed with the commissioner and fee paid on or before such date, in which event the license

sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

(b) An unexpired license may be renewed by paying the required renewal fee to the board before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner shall send written notice of the impending license expiration to the licensee at his or its last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(c) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

Fees

Sec. 10. Any applicant for a managing general agent's license shall pay a fee at the time application is made in an amount not to exceed \$30 as determined by the State Board of Insurance.

Any application for the renewal of a managing general agent's license shall pay a fee at the time application is made in an amount not to exceed \$50 as determined by the State Board of Insurance.

Only One License Required—Notices of Appointment by Company Required

Sec. 11. (a) Any license issued under this Act shall entitle the licensee to represent or act for one or more companies or carriers as a managing general agent. A separate license for each individual company or carrier represented by a licensee shall not be required.

(b) Any license issued under this Act shall not lapse, nor shall an application for renewal be denied, for the reason that a licensee may not then be appointed to represent any company or carrier.

(c) Each appointment to act as a managing general agent must be reported to the commissioner on forms required by him.

Denial, Refusal, Suspension, or Revocation of Licenses

Sec. 12. A license may be denied, suspended for a period of time, revoked or the renewal thereof refused by the commissioner if, after notice and hearing as hereinafter provided, he finds that the applicant for, or holder of such license:

(a) has wilfully violated or participated in the violation of any provisions of this Act or any of the insurance laws of this state; or

(b) has intentionally made a material misstatement in the application for such license; or

(c) has obtained, or attempted to obtain such license by fraud or misrepresentation; or

(d) has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity; or

(e) has with intent to deceive materially misrepresented the terms or effect of any contract of insurance, or has engaged in any fraudulent transaction; or

(f) has been convicted of a felony, or of any misdemeanor of which criminal fraud is an essential element; or

(g) has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or not of good character and reputation.

Notice and Hearings

Sec. 13. (a) Before any license shall be denied (except for the failure to pass any examination required pursuant to this Act), or suspended or revoked, or the renewal thereof refused hereunder, the commissioner shall give notice of his intention so to do by certified mail to the applicant for, or holder of such license, and shall set a date not less than 20 days nor more than 30 days from the date of mailing of such notice when the applicant or licensee may appear to be heard and to produce evidence. Such notice of hearing shall contain specific reasons for such hearing and a listing of matter to be heard at such hearing. In the conduct of such hearing, the commissioner or any regular employee thereof designated by him for such purpose shall have the power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records, or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon the termination of such hearing, findings shall be reduced to writing, and upon approval by the commissioner, shall be filed in his office and notice of the findings contained in an order of the commissioner shall be sent by certified mail to the licensee or applicant. Such applicant or licensee shall then, if he so desires, appeal to the

State Board of Insurance, as provided in the Insurance Code, from any order of the commissioner.

(b) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass any examination required by this Act) shall be entitled to file another application for license herein provided within one year from the effective date of such denial, refusal, or revocation, or, if judicial review of such denial, refusal, or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the commissioner unless the applicant shows good cause why such denial, refusal, or revocation of his license shall not be deemed a bar to the issuance of a new license.

Judicial Review of Acts of Commissioner and the Board

Sec. 14. If the commissioner shall refuse an application for license as provided in this Act, or shall suspend, revoke or refuse to renew any license at a hearing as hereinbefore provided, and such action is upheld upon review to the board as in this Code provided, and if the applicant or accused thereafter be dissatisfied with the action of the commissioner and the board he may appeal from such action by filing suit against the commissioner and the board as defendants in any of the district courts of Travis County, Texas, or in any district court in the county of applicant's residence, and not elsewhere, within 20 days from the date of the order and action of the said board.

Said action shall have precedence over all other causes of a different nature on the docket. Upon the filing and perfection of such appeal, orders of the commissioner and the board shall be suspended and held for naught until a final court order or decree affirming such action. This appeal shall not be limited to questions of law and shall be tried and determined upon trial de novo to the same extent as now provided in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The commissioner and the board shall not be required to give any appeal bond in any cause arising hereunder.

Notice to Last Address

Sec. 15. Where notice to the applicant or accused is provided for in any part of this Act, notice by certified mail to his last known address shall be sufficient.

Act Inapplicable To

Sec. 16. No provisions of this Act shall apply to the transaction of the Life, Health and Accident Insurance business nor shall it apply to any of the following:

(a) Any actual full-time salaried employee of any insurance company or carrier licensed to do business in Texas while acting for, and in connection with the insurance business of, such company or carrier.

(b) Any adjuster of losses, or inspector of risks, for an insurance company or carrier licensed to do business in Texas.

Fees Collected

Sec. 17. The fees herein provided for, when collected, shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund; provided that no expenditures shall be made from said fund except under authority of the Legislature as set forth in the general appropriations bill; provided further that no appropriation shall ever be made out of the general revenue fund for the purpose of administering this Act or any provision thereof.

Repeal

Sec. 18. All laws or parts of laws pertaining to any phase of the insurance business, which are in conflict with this Act, shall be and the same are hereby repealed; but all laws, civil and criminal, affecting insurance agents, insurance companies or insurance carriers or the insurance business, which are not in conflict herewith, shall not be affected by the provisions of this Act; but this Act shall be deemed cumulative of such laws.

Violations of Act

Sec. 19. Any person, firm, or corporation who violates any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction, shall be fined not more than \$200.

Enforcement of Act

Sec. 20. The attorney general, or any district or county attorney, or the commissioner or board may institute any injunction proceeding or such other proceeding to enforce the provisions of this Act, and to enjoin any person, firm or corporation from engaging or attempting to engage in any of the business in violation of this Act or any of the provisions thereof. The provisions of this section are cumulative of the other penalties or remedies provided for in this Act.

Administration of Act

Sec. 21. The administration of this Act shall be vested in the State Board of Insurance who may

establish, and from time to time amend, reasonable rules and regulations for the administration of this Act.

[Acts 1967, 60th Leg., p. 2048, ch. 757, eff. Aug. 28, 1967. Amended by Acts 1975, 64th Leg., p. 1094, ch. 414, § 2, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2345, ch. 576, § 1, eff. June 15, 1981; Acts 1983, 68th Leg., p. 3941, ch. 622, §§ 33, 71, 72, eff. Sept. 1, 1983.]

Article 21.07-3 was not enacted as part of the Insurance Code of 1951.

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 21.07-4. Licensing of Insurance Adjusters

Definitions

Sec. 1. As used in this Act, unless the context otherwise requires:

(a) "Adjuster" means any person who, as an independent contractor, or as an employee of an independent contractor, adjustment bureau, association, insurance company or corporation, local recording agent, managing general agent, or self-insured, investigates or adjusts losses on behalf of either an insurer or a self-insured, or any person who supervises the handling of claims.

(b) "Adjuster" shall not include:

(1) an attorney at law who adjusts insurance losses from time to time and incidental to the practice of law, and who does not advertise or represent that he is an adjuster;

(2) a salaried employee of an insurer who is not regularly engaged in the adjustment, investigation, or supervision of insurance claims;

(3) persons employed only for the purpose of furnishing technical assistance to a licensed adjuster, including, but not limited to, photographers, estimators, private detectives, engineers, handwriting experts, and attorneys at law;

(4) a licensed agent or general agent of an authorized insurer who processes undisputed and/or uncontested losses for such insurer under policies issued by said agent or general agent;

(5) a person who performs clerical duties with no negotiations with the parties on disputed and/or contested claims;

(6) any person who handles claims arising under life, accident and health insurance policies; or

(7) a person who is employed principally as a right-of-way agent or right-of-way and claims agent and whose primary responsibility is the acquisition of easements, leases, permits, or other real property rights and whose claims handling arises out of operations under those easements, leases, permits, or other contracts or contractual obligations.

(c) "Insurer" means any insurance company or self-insured.

(d) "Commissioner" means the commissioner of insurance.

(e) "Board" means the State Board of Insurance.

License Required; Penalty

Sec. 2. (a) No person shall act as or hold himself out to be an adjuster in this state unless then licensed therefor by this state, except that an individual, who is undergoing education and training as an adjuster under the direction and supervision of a licensed adjuster, may for a period not exceeding 12 months act as an adjuster without having an adjuster's license, if at the beginning of such training period, the name of such trainee has been registered as such with the commissioner. No license shall be required under this article of a nonresident insurance adjuster for the adjustment in this state of a single loss, or losses arising out of a catastrophe common to all such losses, or who is acting as a temporary substitute for a licensed adjuster, unless as outlined specifically in a separate section of this law.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500, or by confinement in the county jail for not more than six months, or by both such fine and confinement.

Application for License

Sec. 3. Application for a license as an insurance adjuster shall be made to the board upon forms as prescribed and furnished by said board. As a part of, or in connection with any such application, the applicant shall furnish such information concerning his identity, personal history, experience, business record, and other pertinent facts as said board may reasonably require.

License by Reciprocity

Sec. 4. The board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Catastrophe or Emergency Adjusters

Sec. 5. In the event of a catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence, the commissioner shall, upon application, issue an emergency license to persons who are residents or nonresidents of this state and who may or may not be otherwise licensed adjusters. Such emergency license shall remain in force for a period not to exceed 90 days, unless extended for an additional period of 90 days by the commissioner. The applicant must be certified by (i) a person licensed

under the provisions of this Act, or by (ii) an insurer which maintains an office in this state and is licensed to do business in this state. The licensed adjuster or insurer who certifies said applicant under the provisions of this section of this Act shall be responsible for the loss or claims practices of the emergency license holder.

Within five days of any applicant commencing work as an adjuster hereunder, the employer of such adjuster shall certify to the commissioner such application without being deemed in violation of this Act, provided that the commissioner may, after notice and hearing, revoke said emergency license upon the grounds as otherwise contained in this Act providing for revocation of an adjuster's license.

The fee for an emergency license shall be in an amount not to exceed \$20 as determined by the board and shall be due and payable within 30 days of the issuance of such emergency license.

Licensed Adjusters Required: Insurers' Responsibility

Sec. 6. (a) An insurer shall not knowingly refer any claim or loss for adjustment in this state to any person purporting to be or acting as an insurance adjuster unless such person is currently licensed as such as required in this Act.

(b) Prior to referring any such claim or loss, the insurer shall ascertain from the commissioner whether the proposed insurance adjuster is currently licensed as such. Having once ascertained that a particular person is so licensed, the insurer may assume that such licensee will continue to be so licensed until the insurer has knowledge, or receives information from the commissioner, to the contrary.

Qualifications for Adjuster's License

Sec. 7. The commissioner shall license as an insurance adjuster only an individual who has otherwise complied with this Act, and who has furnished evidence satisfactory to the board that:

- (1) he is at least 18 years of age;
- (2) he is a bona fide resident of this state, or is a resident of a state or country which will permit residents of this state to act as insurance adjusters in such other state or country;
- (3) if he is a nonresident of the United States, he has complied with all federal laws pertaining to employment or the transaction of business in the United States;
- (4) he is a trustworthy person;
- (5) he has had experience or special education or training with reference to the handling of loss claims under insurance contracts of sufficient duration and extent to make him competent to fulfill the responsibilities of an insurance adjuster; and
- (6) he has successfully passed an examination as required by the commissioner in accordance

with this Act or has been exempted according to the provisions of this Act.

Continuing Education

Sec. 7A. The board may adopt a procedure for certifying and may certify continuing education programs. Participation in the programs is voluntary.

Special Licenses

Sec. 8. (a) If the board considers it necessary, a special insurance adjuster's license may be issued under this Act to any license applicant in the manner provided for the issuance of an insurance adjuster's license.

(b) A special insurance adjuster's license shall specifically limit the lines of insurance which may be handled by the licensee.

(c) No person who is acting under a special insurance adjuster's license may handle any other lines of insurance other than those lines specified in the license.

(d) Any person who violates the provisions of Subsection (c) of this section is subject to the penalty provided in Subsection (b) of Section 2 of this Act.

Advisory Board

Sec. 9. The commissioner, with the approval of the board, shall appoint an advisory board to make recommendations to him with respect to the scope, time and conduct of written examinations, and the times and places within the state where they shall be held, and such other matters as the commissioner may submit to the board for their recommendations. This advisory board shall consist of five members, namely, the chairman of the Joint Conference Committee on the Unauthorized Practice of Law of the State Bar of Texas and four members with knowledge and experience in the insurance adjusting profession, one member from a domestic insurance company authorized to do business in Texas, one member from a foreign insurance company licensed to do business in Texas, and two independent adjusters. The members of the advisory board shall serve without pay, but, upon authorization of the commissioner, shall be reimbursed for their reasonable expenses in attending meetings of the advisory board.

Examination for License

Sec. 10. (a) Each applicant for a license as an adjuster shall, prior to the issuance of such license, personally take and pass, to the satisfaction of the commissioner, an examination given by the commissioner as a test of his qualifications and competency; but the requirement of an examination shall not apply to any of the following:

- (1) an applicant who for the 90-day period next preceding the effective date of this Act has been

principally engaged in the investigation, adjustment, or supervision of losses and who is so engaged on the effective date of this Act;

(2) an applicant for the renewal of a license issued hereunder; or

(3) an applicant who is licensed as an insurance adjuster, as defined by this statute, in another state with which state a reciprocal agreement has been entered into by the commissioner;

(4) any person who has completed a course or training program in adjusting of losses as prescribed and approved by the commissioner and is certified to the commissioner upon completion of the course that such person has completed said course or training program, and has passed an examination testing his knowledge and qualification, as prescribed by the commissioner.

(b) Not later than the 30th day after the day on which a licensing examination is administered under this section, the commissioner shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commissioner shall send notice to the examinees of the results of the examination within two weeks after the date on which the commissioner receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commissioner shall send notice to the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination administered under this section, the commissioner shall send to the person an analysis of the person's performance on the examination.

Scope of Examination

Sec. 11. (a) Each examination for a license as an adjuster shall be as the board may prescribe and shall be of sufficient scope reasonably to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for, and of the duties and responsibilities of, and laws of this state, applicable to such a licensee.

(b) The board shall prepare and make available to applicants a manual or instructions specifying in general terms the subjects which may be covered in any examination for such a license.

Examination; Form; Time

Sec. 12. (a) The answers of the applicant to any such examination shall be written by the applicant under supervision of the commissioner. Any such written examination may be supplemented by oral examination.

(b) The examination shall be given at such times and places within this state as the board deems

necessary reasonably to serve the convenience of both the commissioner and applicants.

(c) The commissioner may require a waiting time of reasonable duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

(d) Scheduling and administration of examinations by persons approved by the board pursuant to Section 10(4) shall be effected by such persons.

Form of Adjuster's License

Sec. 13. The commissioner shall prescribe the form of the insurance adjuster's license. The license shall contain:

(1) the name of the insurance adjuster and the address of his place of business;

(2) date of issuance and date of expiration of the license; and

(3) firm or insurer with whom insurance adjuster is employed at time license is issued.

Fees for License and Examination; Insurance Adjusters' Fund

Sec. 14. (a) The commissioner shall collect in advance the following fees for an adjuster's license and examination:

(1) Insurance adjuster's license, each year, in an amount not to exceed \$50 as determined by the board.

(2) For each examination, given by the board, a fee, in an amount not to exceed \$50 as determined by the board.

(b) The fees prescribed in Subsection (1) of this section shall accompany the application for an original license or a renewal thereof.

(c) When collected, the fees provided for by this Act shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund; provided that no expenditure shall be made from said fund except under authority of the Legislature as set forth in the general appropriations bill.

Place of Business

Sec. 15. Every licensed adjuster shall have and maintain in this state a place of business accessible to the public. Such place of business shall be located where the adjuster principally conducts transactions under his license. The address of his place of business shall appear on all licenses of the licensee, and the licensee shall promptly notify the commissioner of any change thereof.

Expiration and Renewal of Licenses

Sec. 16. (a) Except as may be provided by a staggered renewal system adopted under Subsection (e) of this section, an adjuster's license shall expire one year next following the date of issuance.

(b) Subject to the right of the commissioner to suspend, revoke, or refuse to renew an adjuster's license, any such license may be renewed by filing, on the form prescribed by the commissioner, on or before the expiration date, a written request, by or on behalf of the licensee, for such renewal, accompanied by payment of the renewal fee.

(c) If the request and fee for renewal of an adjuster's license are filed with the commissioner prior to the expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license or until the expiration of five days after the commissioner has refused to renew the license and has mailed notice of such refusal to the licensee. Any request for renewal filed after the date of expiration may be considered by the commissioner as an application for a new license.

(d) An unexpired license may be renewed by paying the required renewal fee to the board before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a person's license, the commissioner shall send written notice of the impending license expiration to the licensee at his last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(e) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

Denial, Suspension, or Revocation of License

Sec. 17. The commissioner may deny, suspend, revoke, or refuse to renew any adjuster's license for any of the following causes:

(1) for any cause for which issuance of the license could have been refused had it been existent and been known to the board;

(2) if the licensee willfully violates or knowingly participates in the violation of any provision of this Act;

(3) if the licensee has obtained or attempted to obtain any such license through willful misrepresentation or fraud, or has failed to pass any examination required under this Act;

(4) if the licensee has misappropriated, or converted to his own use, or has illegally withheld moneys required to be held in a fiduciary capacity;

(5) if the licensee has, with intent to deceive, materially misrepresented the terms or effect of an insurance contract, or has engaged in any fraudulent transactions;

(6) if a licensee is convicted, by final judgment, of a felony; or

(7) if in the conduct of his affairs under the license, the licensee has shown himself to be, and is so deemed by the commissioner, incompetent, untrustworthy, or a source of injury to the public.

Procedure for Refusal, Suspension, or Revocation

Sec. 18. (a) The commissioner may revoke or refuse to renew any license of an adjuster immediately and without hearing, upon the licensee's conviction of a felony, by final judgment, in any court of competent jurisdiction.

(b) The commissioner may deny, suspend, revoke, or refuse to renew a license:

(1) by order or notice given to the licensee not less than 15 days in advance of the effective date of the order or notice, subject to the right of the licensee to demand in writing, a hearing, before the board after receipt of notice and before the effective date of the revocation. Pending such hearing, the license may be suspended.

(2) by an order after a hearing which is effective 10 days after the order is issued subject to appeal to a district court in Travis County.

Duration of Suspension

Sec. 19. (a) Every order suspending any such license shall specify the period during which the suspension shall be effective, which period shall in no event exceed 12 months.

(b) The holder of any such license which has been revoked or suspended shall surrender the license certificate to the commissioner at his request.

Reinstatement or Relicensing

Sec. 20. The commissioner shall not reinstate the license of, or reissue a license to, any licensee or former licensee, whose license has been suspended, revoked or renewal thereof refused until the cause for the suspension, revocation, or refusal of such license is no longer existing and subject to the approval of the commissioner.

Repeal

Sec. 21. All laws and parts of laws in conflict with this Act are hereby repealed. Upon the passage of this Act the provisions of The Private Investigators and Private Security Agencies Act, as amended (Article 4413 (29bb), Vernon's Texas Civil Statutes), will have no applicability to insurance adjusters licensed pursuant to this Act. Article 19.01(3), Title 122-A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is hereby expressly repealed.

Severability

Sec. 22. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1973, 63rd Leg., p. 1045, ch. 407, eff. Aug. 27, 1973. Amended by Acts 1975, 64th Leg., p. 656, ch. 273, § 1, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 750, ch. 181, § 1, eff. May 20, 1983; Acts 1983, 68th Leg., p. 3941, ch. 622, §§ 34, 73 to 77, eff. Sept. 1, 1983.]

Article 21.07—4 was not enacted as part of the Insurance Code of 1951.

Section 94 of Acts 1983, 68th Leg., p. 4002, provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 21.08. Renewal or Service Commissions to Agents of Life Companies Discontinuing Business in State; Statements and Reports

If any life insurance company now engaged or which hereafter may be engaged in the business of issuing policies of life insurance upon the lives of citizens of this State shall discontinue such business, it shall nevertheless continue to be liable for the payment of renewal or service commissions on policies of life insurance theretofore written in accordance with the terms of its agency contracts theretofore made with agents residing in the State of Texas.

Every such company shall furnish monthly to each person who may be entitled to receive service or renewal commissions from such company a statement showing such policies written by such person for such company as shall have terminated during the month for which the statement is made, and shall furnish to each such person not less than quarterly a detailed statement of all policies written by such person for such company on the lives of residents of the State of Texas, showing the policies in force, the policies which have terminated, and the reason for termination. Provided, however, that no such statements need be furnished after the period during which service or renewal commissions are payable has ended as to all of the policies written by such person for such company.

In any suit against any such company for the recovery of service or renewal commissions, it shall be presumed that all policies written in such company upon the lives of residents of Texas by the person bringing such suit have continued in effect unless and until the contrary is proven by the defendant by competent evidence.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.09. Resident Agents, Companies Excepted

Any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety, or fidelity insurance company, legally authorized to do business in this State is hereby prohibited from authorizing or allowing any person, agent, firm or corporation that is a nonresident of the State of Texas to issue, or cause to be issued, to sign or countersign, or to deliver, or cause to be delivered, any policy or policies of insurance on property, person or persons located in this State, except through regularly licensed local recording agents of such companies in Texas. By the term "Local Recording Agent" is meant a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier including Fidelity and Surety Companies to solicit business and to write, sign, execute and deliver policies of insurance and to bind companies on insurance risks, and who maintains an office and a record of such business and the transactions which are involved, who collects premiums on such business and otherwise performs the customary duties of a local recording agent representing an insurance carrier in its relation with the public.

This law shall not apply to property owned by the railroad companies or other common carriers. Upon oath made in writing by any person that he can not procure insurance on property through such agents in Texas it shall be lawful for any insurance company not having an agent in Texas to insure property of any person upon application of said person, upon his filing said oath with the county clerk of the county in which such person resides, and with the Board of Insurance Commissioners.

Countersigning may be effected manually or by stamp or by any other method of printing, if authorized by the agent in writing.

This Article shall not apply to insurance companies whose general plan of operation does not contemplate the use of local recording agents, and such companies may issue policies signed by any of their other resident licensed agents.

This Article shall not apply to bid bonds issued by any surety company authorized to do business in

the State of Texas in connection with any public or private contract.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1963, 58th Leg., p. 69, ch. 47, § 1; Acts 1979, 66th Leg., p. 448, ch. 205, § 1, eff. Aug. 27, 1979.]

Art. 21.10. Affidavit of Company

Before a certificate or license to any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company is issued authorizing it to transact business in this State, the Board shall require in every case, in addition to the other requirements already made and provided by the law, that each such insurance company shall file with the Board an affidavit that it has not violated any provision of Articles 21.09, 21.11, 21.12, and 21.13 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.11. Commissions to Non-Residents; Cancellation of Non-Resident Agent's License; Non-Resident Agent not to act as Excess Agent

Any person, agent, firm, or corporation licensed by the Board to act as a fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent in the State of Texas, is hereby prohibited from paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies covering property, person or persons in this State, to any person, persons, agent, firm or corporation that is a non-resident of this State, or to any person or persons, agent, firm or corporation not duly licensed by the Board as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent; excepting however, that on any policy of insurance originated by a Licensed Non-Resident Insurance Agent, as hereinafter defined, and covering property or persons in this State, a Texas local Recording Agent may divide the commission with the originating Licensed Non-Resident Insurance Agent, but in any such case the insurance company or carrier shall pay to the Texas Local Recording Agent through which such policy is issued, signed or countersigned, his minimum share, which shall be a sum not less than the amount of commission or brokerage required to be paid by the laws or regulations of the State of such originating Non-Resident Agent when a similar policy of insurance is originated by a Texas Local Recording Agent covering persons or property in such other State.

Nothing herein shall prevent a Texas Local Recording Agent from dividing with, or paying commissions to, another Texas local Recording Agent.

Nothing herein shall relieve any insurance company or carrier covered thereby from writing Texas risks through Texas agents as provided in Article 21.09, Insurance Code.

A Licensed Non-Resident Insurance Agent is any person, firm or corporation residing or domiciled in another State and having a Non-Resident Insurance Agent's license as is hereinafter authorized.

Upon application, in such form as the Board of Insurance Commissioners may require, a non-resident of this State who is duly licensed to transact insurance other than life under the laws of the State wherein such applicant resides, if such State does not prohibit residents of this State from acting as insurance agent therein, the Board of Insurance Commissioners may issue to such applicant a Non-Resident Agent's license.

The issuance of a Non-Resident Agent's license shall be for the purpose of permitting a Local Recording Agent of Texas to divide commission with an agent of another State on insurance covering property or persons in this State placed with or through a Local Recording Agent, and to permit an agent of another State, who qualifies and is licensed as a Non-Resident Agent, to inspect and service such risks in Texas, which license shall be subject to the same fees, qualifications, requirements and restrictions as apply to Local Recording Agents of this State, except that an office shall not be maintained in this State by a Non-Resident Agent and all such insurance transacted shall be through licensed Local Recording Agents as provided in Article 21.09 of the Texas Insurance Code; and provided further that a Non-Resident Agent shall transact all matters with the Board of Insurance Commissioners relating to rates and rate engineering and terminology of standard policy forms through Local Recording Agents, and nothing contained herein shall be construed as granting authority to a Non-Resident Agent to transact such matters directly with the Board of Insurance Commissioners; and, except that the Board of Insurance Commissioners, at its discretion, on payment by applicant of the examination fee, may enter into a reciprocal arrangement with the officer having jurisdiction of insurance business in any other State to accept in lieu of the written examination of such an applicant residing therein, a certificate of such officer to the effect that the applicant is licensed as an insurance agent in such State and has complied with its qualification standards in respect to the following:

- (a) Experience or training;
- (b) Reasonable familiarity with the broad principles of insurance, licensing and regulatory laws, and with provisions, terms, and conditions of the insurance which applicant proposes to transact; and
- (c) A fair and general understanding of the obligations and duties of an insurance agent.

Nothing contained herein shall be construed to permit any person or firm who is licensed solely as a broker in the State of his residence to be granted a Non-Resident license as referred to herein; provided further that nothing contained herein shall be construed to permit a holder of a Non-Resident Agent's license to act as an Excess Agent under the provisions of present Article 21.38 of the Insurance Code or to perform any of the acts permitted thereunder or to permit any person or firm who holds a Non-Resident Agent's license as authorized herein to engage in any form of direct solicitation of insurance within this State. A Non-Resident Agent's license shall be cancelled and not be subject to reissuance when it is found by the Board of Insurance Commissioners that such license was obtained or is being used for the purpose of transacting insurance through a Local Recording Agent in such a manner as to permit a Non-Resident Agent, by subterfuge, to transact insurance as a Local Recording Agent, and in which event the license of the Local Recording Agent likewise shall be cancelled and not be subject to reissuance and all insurance transacted under such arrangement shall be cancelled, provided further that the provisions of Sections 16 and 17, Article 21.14 of the Insurance Code shall apply to such cancellation.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 604, ch. 210, § 1.]

Art. 21.11-1. Cancellation of Agency Contracts by Fire and Casualty Insurance Companies

Sec. 1. (a) After an agency contract has been in effect for a period of two years an insurance company writing fire and casualty insurance in this state may not terminate an agency contract with any appointed agent unless the company gives the agent notice in writing of the termination at least six months in advance.

(b) The company shall renew all contracts for fire and casualty insurance for the agent during a period of six months from the effective date of the termination, but in the event any risk shall not meet current underwriting standards of the company, the company may decline its renewal, provided that the company shall give the agent not less than 60 days' notice of its intention not to renew the contract of insurance.

(c) No new business or increases in liability on renewal or in force business shall be written by the agent for the company after notice of termination without the written approval of the company.

(d) Nothing contained in this Act shall ever be deemed or construed to prohibit an amendment or addendum subsequent to the inception date of the original agency agreement providing in such subsequent amendment or addendum that the original agency agreement may be terminated at a sooner

time than is required by this Act provided the agent agrees in writing to such sooner termination.

Sec. 2. During the term of the contract the company shall not refuse to renew such business from the agent as would be in accordance with the company's current underwriting standards.

Sec. 3. The provisions of this article shall not apply to the termination of an agent's contract for insolvency, abandonment, gross and willful misconduct, or failure to pay over to the company money due to the company after his receipt of a written demand therefor, or after revocation of the agent's license by the State Board of Insurance; nor to the termination of agents where the policies and the insurance business is owned by the company and not by the agent.

Sec. 4. All existing contracts presently in effect between an agent and a company writing fire and casualty insurance in the State of Texas are subject to the provisions of this article.

Sec. 5. If it is found, after notice and an opportunity to be heard as determined by the board, that an insurance company has violated this article, the insurance company shall be subject to a civil penalty of not less than \$1,000 nor more than \$10,000, and it shall be subject to a civil suit by the agent for damages suffered because of the premature termination of the contract by the company.

[Acts 1971, 62nd Leg., p. 2951, ch. 977, § 1, eff. Aug. 30, 1971.]

Art. 21.11-2. Unearned Premiums Under Agency Contracts with Insolvent Insurers

Every agency contract entered into on and after the effective date of this Act by an insurance company writing fire and casualty insurance in Texas shall contain, or shall be construed to contain, the following provision:

Notwithstanding any other provision of this contract, the obligation of the agent to remit written premiums to the company shall be changed upon the commencement of delinquency proceedings as defined in Article 21.28, Insurance Code of Texas of 1951, as amended. Subsequent to the commencement of delinquency proceedings, the obligation of the agent to remit premiums shall be confined to premiums earned prior to the commencement of such proceedings. The agent shall not owe or remit to the company or to the Liquidator-Receiver any premiums that are unearned as of the date of the commencement of such delinquency proceedings, and any such unearned premiums in the possession of the agent on such date shall be returned promptly by the agent to the insured who paid them or, with the approval of the insured, be used to pur-

chase new coverage for the insured with a different insurer.

[Acts 1973, 63rd Leg., p. 1263, ch. 462, § 1, eff. Aug. 27, 1973.]

Art. 21.12. Board May Examine

The Board is hereby authorized, and it is made its duty, at the expense of the company investigating, to examine at the head office, located within the United States of America, all books, records and papers of such company and also any officers or employees thereof under oath, as to violations of this article or Articles 21.09, 21.10, 21.11, or 21.13 of this code and the Board is further empowered to examine person or persons, administer oaths, and send for papers and records, and failure or refusal upon the part of any life, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person or persons, agent, firm or corporation, licensed to do business in the State of Texas to appear before the Board when requested to do so, or to produce records and papers, or answer under oath, shall subject such fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person, persons, agent, firm or corporation to the penalties of Article 21.13 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.13. Penalty for Violation

Whenever the Board shall have or receive notice or information of any violation of any provision of Articles 21.09 to 21.12, inclusive, of this code, it shall immediately investigate, or cause to be investigated, such violation, and if a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company has violated any of such provisions, the Board shall immediately revoke its license for not less than three (3) months nor more than six (6) months for the first offense and, for each offense thereafter, for not less than one year; and if any person, agent, firm or corporation licensed by such Board as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent shall violate or cause to be violated any provision of Articles 21.09 to 21.12, inclusive, of this code, he shall, for the first offense, have his license revoked for all companies for which he has been licensed, for not less than three months, and for the second offense he shall have his license revoked for all companies for which he is licensed

and shall not thereafter be licensed for any company for one (1) year from date of such revocation.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.14. Licensing of Local Recording Agents and Solicitors; Life, Health and Accident Insurance Excepted; Other Exceptions

Classes of Agents

Sec. 1. Insurance agents, as that term is defined in the laws of this State, shall for the purpose of this article be divided into two classes: Local Recording Agents and Solicitors.

Definitions; Certain Orders, Societies or Associations Not Affected

Sec. 2. By the term "Local Recording Agent" is meant a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier, including fidelity and surety companies, to solicit business and to write, sign, execute, and deliver policies of insurance, and to bind companies on insurance risks, and who maintain an office and a record of such business and the transactions which are involved, who collect premiums on such business and otherwise perform the customary duties of a local recording agent representing an insurance carrier in its relation with the public; or a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier, including fidelity and surety companies, to solicit business, and to forward applications for insurance to the home office of the insurance companies and insurance carriers, where the insurance company's and insurance carrier's general plan of operation in this State provides for the appointment and compensation of agents for insurance and for the execution of policies of insurance by the home office of the insurance company or insurance carrier, or by a supervisory office of such insurance company or insurance carrier, and who maintain an office and a record of such business and the transactions which are involved, and who collect premiums on such business and otherwise qualify and perform the customary duties of a local recording agent representing an insurance carrier in its relation with the public.

By the term "Solicitor" is meant a person who is a bona fide solicitor in the office of, and engaged in the business of soliciting insurance on behalf of a local recording agent, and who offices with such local recording agent, and who does not sign and execute policies of insurance, and who does not maintain company records of such transactions. This shall not be construed to make a solicitor of a local recording agent, who places business of a class which the rules of the company or carrier require to be placed on application or to be written in a supervisory office.

By the term "Board", as used in this article, is meant the Board of Insurance Commissioners.

Where reference is made in this article to "Company" or "Carrier" such reference means any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, Lloyds or other insurance carrier licensed to transact business in the State of Texas other than as excepted herein.

Nothing contained in this article shall be so construed as to affect or apply to orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business, and the ladies' societies, or ladies' auxiliary to such orders, societies or associations, or any secretary of a Labor Union or organization, or any secretary or agent of any fraternal benefit society, which does not operate at a profit.

Application for License; To Whom License May be Issued

Sec. 3. (a) When any person, partnership or corporation shall desire to engage in business as a local recording agent for an insurance company, or insurance carrier, he or it shall make application for a license to the State Board of Insurance, in such form as the Board may require. Such application shall bear a signed endorsement by a general, state or special agent of a qualified insurance company, or insurance carrier that applicant or each member of the partnership or each stockholder of the corporation is a resident of Texas, trustworthy, of good character and good reputation, and is worthy of a license.

(b) The Board shall issue licenses to individuals or to individuals engaging as partners in the insurance business, provided the names of all persons interested in any such partnership are named in the license, and each named as active in the business of the partnership qualify, and it be established that none not active have interest in the partnership principally to have written and be compensated therefor for insurance on property controlled through ownership, mortgage or sale, family relationship, or employment; and provided further, that all licensed agents must be residents of Texas. Provided, that a person who may reside in a town through which the state line may run and whose residence is in the town in the adjoining state may be licensed, if his business office is being maintained in this state. All persons acting as agent or solicitor for health and accident insurance within the provisions hereof, and who represent only fire and casualty companies, and not life insurance companies, shall be required to procure only one license, and such license as is required under the provisions of this article.

(c) The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act¹ having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a local recording agent; and

(2) That every officer, director and shareholder of the corporation is individually licensed as a local recording agent under the provisions of this Insurance Code, except as may be otherwise permitted by this Section or Section 3a of this article; and

(3) That such corporation will have the ability to pay any sums up to Twenty-Five Thousand Dollars (\$25,000.00) which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as a local recording agent. The term "customer" as used herein shall mean any person, firm or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(a) An errors and omissions policy issued by an insurance company licensed to do business in the State of Texas insuring such corporation against errors and omissions in at least the sum of One Hundred Thousand Dollars (\$100,000.00), with no more than a Five Thousand Dollars (\$5,000.00) deductible feature; or

(b) A bond executed by such corporation as principal and a surety company authorized to do business in this state, as surety, in the principal sum of Twenty-Five Thousand Dollars (\$25,000.00), payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(c) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of this Code, having a fair market value of Twenty-Five Thousand Dollars (\$25,000.00) with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business, and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as

hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of a local recording agent without obtaining a local recording agent's license. The Board shall not require a corporation to take the examination provided in Section 6 of this Article 21.14.

If at any time, any corporation holding a local recording agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as a local recording agent shall be cancelled or denied in accordance with the provisions of Sections 16, 17 and 18 of this Article 21.14; provided, however, that should any person who is not a licensed local recording agent acquire shares in such a corporation by devise or descent, they shall have a period of ninety (90) days from date of acquisition within which to obtain a license as a local recording agent or to dispose of the shares to a licensed local recording agent except as may be permitted by Section 3a of this article.

Should such an unlicensed person, except as may be permitted by Section 3a of this article, acquire shares in such a corporation and not dispose of them within said period of ninety (90) days to a licensed local recording agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the Bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as a local recording agent shall file, under oath, a list of the names and addresses of all of its officers, directors and shareholders with its yearly application for renewal license.

Each corporation licensed as a local recording agent shall immediately notify the State Board of Insurance upon any change in its officers, directors or shareholders.

The term "firm" as it applies to local recording agents in Sections 2, 12 and 16 of this Article 21.14 shall be construed to include corporations.

¹ Civil Statutes, art. 1528e.

Persons Other Than Licensed Local Recording Agents Who May Share in Profits of Local Recording Agent

Sec. 3a. (1) Upon the death of a duly licensed local recording agent who is a member of an agency partnership, the surviving spouse and children, if any, of such deceased partner, or a trust for such surviving spouse and children, may share in the profits of such agency partnership during the lifetime of such surviving spouse or such children, as the case may be, if and as provided by a written partnership agreement, or in the absence of any written agreement, if and as agreed by the surviving partner or partners and the surviving spouse, the trustee, and the legal representative of the surviving child or children. Such surviving spouse and any such surviving children or trusts shall not be required to qualify as local recording agents to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent; provided, however, that a duly licensed local recording agent who is a member of an agency partnership may, with the approval of the other members of the partnership, transfer an interest in the agency partnership to his children or a trust for same, and may operate such interest for their use and benefit; and such children or trusts may share in the profits of such agency partnership. Such child or children or trusts shall not be required to qualify as a local recording agent to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent.

(2) Upon the death of a duly licensed local recording agent, who is a sole proprietorship, unless otherwise provided by the last will of such deceased agent, the surviving spouse and children, if any, of such deceased agent, or a trust for such spouse or children, may share in the profits of the continuance of the agency business of said deceased agent, provided such agency business is continued by a duly licensed local recording agent. Said surviving spouse, trusts or children, may participate in such profits during the lifetime of such surviving spouse and said children. Said surviving spouse, trusts or children shall not be required to qualify as local recording agents in order to participate in the profits of such agency, but shall not do or perform any act of a local recording agent in connection with the continuance of such agency business without first having been duly licensed as a local recording agent; provided, however, that a duly licensed local recording agent who is a sole proprietorship may transfer an interest in his agency to his children, or

a trust for same, and may operate such interest for their use and benefit; and such children may share in the profits of such local recording agency during their lifetime, and during such time shall not be required to qualify as a local recording agent in order to participate in such profits, but shall not do or perform any act of a local recording agent in connection with such agency business without first having been duly licensed as a local recording agent.

(3) Upon the death of a shareholder in a corporate licensed local recording agency, the surviving spouse and children, if any, of such deceased shareholder, or a trust for such surviving spouse and children, may share in the profits of such corporate agency during the lifetime of such surviving spouse or children, as the case may be, if and as provided by a contract entered into by and between all of the shareholders and the corporation. Any such surviving spouse, surviving children, or trusts shall not be required to individually qualify as a local recording agent in order to participate in such profits, but shall not do or perform any act of a local recording agency on behalf of such corporation without having qualified as a local recording agent; provided, however, that a shareholder in a corporate licensed local recording agent, may, if provided by a contract entered into by and between all of the shareholders and the corporation, transfer an interest in the agency to his children or a trust for same, and such children or trusts may share in the profits of such agency to the extent of such interest during their lifetime. Such children or trusts shall not be required to qualify as a local recording agent to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such corporation without having qualified as a local recording agent.

(4) Except as provided in Subsections (1), (2), and (3) above, and as may be provided in Section 6a, Article 21.14 of the Insurance Code, no person shall be entitled to perform any act of a local recording agent nor in any way participate as a partner or corporate shareholder in the profits of any local recording agent, without first having qualified as a duly licensed local recording agent and having successfully passed the examination required by the Insurance Code; provided, however, that all persons, or trusts for any person, that received licenses before March 1, 1963, as silent, inactive, or non-active partners, or who are silent, inactive, or non-active partners in an agency which was so qualified before such date, shall continue to receive licenses, or renewals thereof, as partners in such agency or in any successor agency, providing: (a) that such persons are members of an agency in which there is at least one partner who has qualified as a duly licensed local recording agent; (b) that such non-active partner or partners do not actively solicit insur-

ance; and (c) that such agency is not a limited partnership.

Acting Without License Forbidden

Sec. 4. (a) It shall be unlawful for any person, firm, partnership or corporation or any officer, director or shareholder of a corporation to act as a local recording agent or solicitor in procuring business for any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, Lloyds or other insurance carrier, until he or it shall have in force the license provided for herein.

(b) No insurer doing business in this state shall pay directly or indirectly any commission, or other valuable consideration, to any person, firm, partnership, or corporation for services as a local recording agent within this state, unless such person, firm, partnership, or corporation shall hold a currently valid license and appointment to act as a local recording agent as required by the laws of this state; nor shall any person, firm, partnership, or corporation other than a duly licensed and appointed local recording agent accept any such commission or other valuable consideration; provided, however, that nothing contained in this subsection shall prohibit an assigned risk pool or assigned risk plan, duly authorized to operate by the laws of this state, from paying commissions, or other valuable consideration, to a duly licensed person, firm, partnership, or corporation for services as a local recording agent.

(c) No licensed local recording agent, managing general agent, or surplus lines agent doing business in this state shall pay directly or indirectly any commission, or other valuable consideration, to any person, firm, partnership, or corporation for services as a local recording agent within this state, unless such person, firm, partnership, or corporation shall hold a currently valid license to act as a local recording agent as required by the laws of this state; nor shall any person, firm, partnership, or corporation other than a duly licensed local recording agent accept any such commission or other valuable consideration.

(d) No local recording agent doing business in this state shall pay directly or indirectly any commission, or other valuable consideration, to any person for services as a solicitor within this state, unless such person shall hold a currently valid license and appointment to act as a solicitor for such local recording agent as required by the laws of this state; nor shall any person other than a duly licensed and appointed solicitor accept any such commission or other valuable consideration.

Active Agents or Solicitors Only to be Licensed

Sec. 5. No license shall be granted to any person, firm, partnership or corporation, either as a local recording agent or solicitor, for the purpose of

writing any form of insurance, unless it is found by the State Board of Insurance that such person, firm, partnership or corporation, is or intends to be, actively engaged in the soliciting or writing of insurance from the public generally; that each person or individual of a firm is a resident of Texas, of good character and good reputation, worthy of a license, and is to be actively engaged in good faith in the business of insurance, and that the application is not being made in order to evade the laws against rebating and discrimination either for the applicant or for some other person, firm, partnership or corporation. Nothing herein contained shall prohibit an applicant insuring property which the applicant owns or in which the applicant has an interest; but it is the intent of this Section to prohibit coercion of insurance and to preserve to each citizen the right to choose his own agent or insurance carrier, and to prohibit the licensing of an individual, firm, partnership or corporation to engage in the insurance business principally to handle business which the applicant controls only through ownership, mortgage or sale, family relationship or employment, which shall be taken to mean that an applicant who is making an original application for license shall show the State Board of Insurance that he or it has a bona fide intention to engage in business in which at least twenty-five per cent (25%) of the total volume of premiums shall be derived from persons or organizations other than applicant and from property other than that on which the applicant shall control the placing of insurance through ownership, mortgage, sale, family relationship or employment; and which shall be taken to mean, in the case of application for renewal of license, that at least twenty-five per cent (25%) of applicant's total volume of premiums, during the year preceding such application for renewal, shall have been derived from persons other than applicant and from property other than that on which the applicant controlled the placing of insurance through ownership, mortgage, sale, family relationship or employment. Nothing herein contained shall be construed to authorize a corporation to receive a license as a solicitor.

Requirement as to Knowledge or Instruction for Local Recording Agent's License

Sec. 5a. (a) Every applicant for local recording agent's license from and after October 1, 1971, shall upon the successful passage of the examination for local recording agent's license as promulgated by the State Board of Insurance pursuant to the provisions of this Article 21.14 be issued a temporary local recording agent's license. The holder of a temporary local recording agent's license shall have the same authority and be subject to the same provisions of the law as local recording agents until such temporary license shall expire. Each such temporary license so issued shall expire upon the happening of any one of the following, whichever shall first occur, to wit:

- (i) The issuance of a local recording agent's license to such person;
- (ii) One year from date of issuance of the temporary local recording agent's license.

Each such person receiving a temporary license as set out above shall within one (1) year from the issue date of such temporary license complete to the satisfaction of the State Board of Insurance one of the following courses of study:

- (i) Classroom courses in insurance satisfactory to the State Board of Insurance at a school, college, junior college or extension thereof; or
- (ii) An insurance company or agents' association school approved by the State Board of Insurance; or
- (iii) A correspondence course in insurance approved by the State Board of Insurance.

Upon the successful completion of any one of the above courses of study within the one year period, the temporary agent shall then be entitled to receive from the State Board of Insurance his local recording agent's license.

(b) Provided, however, none of the provisions of this section shall apply to the following:

- (1) To any person holding a license as a local recording agent upon the effective date of this Act.
- (2) To any person applying for an emergency local recording agent's license under the provisions of Section 6a of Article 21.14 of the Insurance Code of Texas.
- (3) To any person who holds the designation Chartered Property and Casualty Underwriter (C.P.C.U.) from the American Institute for Property Liability Underwriters.
- (4) To any person who has a bachelor's degree from a four-year accredited college or university with a major in insurance.

(5) To any person who within two (2) years immediately preceding the filing of his application was a licensed agent in good standing in the state from which he moved to Texas, provided such state makes similar provision for those agents who may move from Texas to such state.

(6) To any person desiring to apply for a license to solicit and write exclusively all forms of insurance authorized to be solicited and written in Texas covering the ownership, operation, maintenance or use of any motor vehicle, its accessories and equipment, designed for use upon the public highways, including trailers and semitrailers. Such person shall continue to apply for and qualify to be licensed under the other provisions of Article 21.14 of the Insurance Code of Texas. Provided, such applicant shall be required to take and pass, to the satisfaction of the State Board of Insurance, an examination, promulgated by said Board, covering only those forms of insurance referred in this paragraph. Provided, when such

a person so applies and qualifies, he shall be issued a license which shall contain on the face of said license the following language: "Agent's license to solicit and write all forms of motor vehicle insurance only." An agent holding such a limited license hereby created shall solicit only those forms of insurance hereinabove provided, but shall be subject to all other laws relating to local recording agents.

(c) There is hereby created an Agents' Education Advisory Board whose duties shall be to advise with and make recommendations to the State Board of Insurance concerning the curriculum, course content and schools to be approved under Subsection (a) above. The members of said Advisory Board shall be appointed by the chairman of the State Board of Insurance and shall serve for one year, from September 1 to August 31, or until their successors are appointed. Said Advisory Board shall be composed of the following persons: Two (2) members, each of whom shall be a resident of Texas and have a minimum of ten (10) years' experience as an executive of a fire and casualty company doing business in Texas and whose company operates an agents' school; two (2) members, each of whom shall be a licensed local recording agent in Texas with a minimum of ten (10) years' experience as an agent; and one (1) member who shall be a teacher of insurance at a four-year accredited college or university in Texas. Said Advisory Board shall meet at the offices of the State Board of Insurance upon call of the chairman of the State Board of Insurance and the members of said Advisory Board shall be paid out of the Recording Agents License Fund for their actual and necessary expenses incurred in connection with their attendance at said meetings.

Continuing Education

Sec. 5b. The State Board of Insurance may adopt a procedure for certifying and may certify continuing education programs for agents. Participation in the programs is voluntary.

Examination Required; Exceptions

Sec. 6. If applicant for a local recording agent's license has not prior to date of such application, been licensed as a local recording agent, or if the applicant for a solicitor's license has not been licensed as a local recording agent or as a solicitor prior to date of such application, the Board of Insurance Commissioners shall require such applicant to submit to a written examination covering all kinds of insurance or contracts, which license if granted, will permit the applicant to solicit. Any applicant for local recording agent's license who has prior to the date of such application been licensed as a local recording agent, shall be entitled to a local recording agent's license without examination, provided the other requirements of this article are met.

Any applicant for solicitor's license who has been licensed as a local recording agent or as a solicitor prior to date of such application, shall be entitled to a solicitor's license without an examination, provided the other requirements of this article are met.

Death, Disability or Insolvency; Emergency License Without Examination

Sec. 6a. In event of death or disability of a local recording agent or in event a local recording agent is found to be insolvent and unable to pay for premiums coming to his hands as such local recording agent, the Board may issue to an applicant for local recording agent's license an emergency local recording agent's license for a period of ninety (90) days in any twelve (12) consecutive months and at the Board's option, an additional period up to ninety (90) days without an examination provided the other requirements of this article are met and if it is established to the satisfaction of the Board that such emergency license is necessary for the preservation of the agency assets of a deceased or disabled local recording agent or of an insolvent local recording agent.

Conduct of Examinations; Notice; Manual of Questions and Answers

Sec. 7. All examinations provided by this article shall be conducted by the State Board of Insurance, and shall be held not less frequently than one each sixty (60) days every year at times and places prescribed by the State Board of Insurance, of which applicants shall be notified by the State Board of Insurance in writing, ten (10) days prior to the date of such examinations, and shall be conducted in writing in either the English or Spanish language, except that the applicant upon notice to the State Board of Insurance shall be entitled to be examined in the county seat of the county of his residence. Provided, further, that printed copies of a manual of questions and answers thereto pertaining to the examination published under the direction of the State Board of Insurance shall be made available to all companies, general agents, and managers for the use of their prospective agents, to all agents for the use of their prospective solicitors in preparing for such examination. The questions to be asked on such examination shall be based upon the questions and answers contained in the manual.

Notice of Results; Exam Analysis

Sec. 7a. (a) Not later than the 30th day after the day on which a licensing examination is administered under this article, the commissioner of insurance shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commissioner of insurance shall send notice to the examinees of the results of the examination within two weeks after the date on which the com-

missioner of insurance receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commissioner of insurance shall send notice to the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails the licensing examination administered under this article, the commissioner of insurance shall send to the person an analysis of the person's performance on the examination.

Expiration of License; Renewal

Sec. 8. (a) Except as may be provided by a staggered renewal system adopted under Subsection (c) of this section, every license issued to a local recording agent shall expire two years from the date of its issue, unless an application to qualify for the renewal of any such license shall be filed with the State Board of Insurance and fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is denied. Every license issued to a solicitor for a local recording agent shall expire on the same date that the license of the local recording agent expires, unless an application to qualify for the renewal of the local recording agent's license and the solicitor's license shall be filed with the State Board of Insurance and fee paid on or before such date, in which event the solicitor's license sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

(b) An unexpired license may be renewed by paying the required renewal fee to the State Board of Insurance before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the State Board of Insurance the required renewal fee and a fee that is one-half of the original license fee. If a license had been expired for longer than 90 days but less than two years, the license may be renewed by paying to the State Board of Insurance all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his or its last known address. This subsection may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(c) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year

from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

Fees Payable Before Examination

Sec. 9. Applicants required to be examined shall, at time and place of examination, pay prior to being examined the following fees: For a local recording agent's license a fee in an amount not to exceed \$50 as determined by the State Board of Insurance and for a solicitor's license a fee in an amount not to exceed \$20 as determined by the State Board of Insurance. The fees paid under this section shall not be returned for any reason other than failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the State Board of Insurance and received board approval. A new fee shall be paid before each and every examination.

Renewal Fees

Sec. 10. (a) An applicant for the renewal of a local recording agent's license shall pay, at the time the renewal application is filed, a fee in an amount not to exceed \$50 as determined by the State Board of Insurance. An applicant for the renewal of a solicitor's license shall pay, at the time the renewal application is filed, a fee in an amount not to exceed \$20 as determined by the State Board of Insurance.

Issuance of License

Sec. 11. Whenever the provisions of this article have been complied with, the Board shall issue to any applicant the license applied for where such applicant shall have satisfactorily passed the examination given by the Board of Insurance Commissioners, and who shall possess the other qualifications required by this article.

Notice to Commissioner of Insurance of Appointment of Local Recording Agent by Insurance Company

Sec. 12. (a) After a person or firm shall be granted a license as a local recording agent in this state, he shall be authorized to act as such local recording agent in this state, only after and during the time such person or firm has been authorized so to do, by an insurance company or carrier having a permit to do business in this state; and when so authorized each company or carrier or its general or state or special agent making the appointment shall immediately notify the Commissioner of Insurance, on such form as the Commissioner may require, of the appointment. The agent shall be required to pay a fee of \$8.00 for each appointment applied for, which fee shall accompany the notice, and such person or firm shall be presumed to be the agent

for such company in this state until such company or its general or state or special agent shall have delivered written notice to the Commissioner of Insurance that such appointment has been withdrawn.

(b) Every insurance carrier shall, upon termination for cause of the appointment of any agent, immediately file with the State Board of Insurance a statement of the facts relative to the termination of the appointment and the date and cause thereof. The Board shall thereupon record the termination of the appointment of such agent to represent such insurance carrier in this state. The agent terminated for cause shall receive from the insurance carrier a copy of the notice sent to the State Board of Insurance.

(c) Any information, document, record or statement required to be made or disclosed to the Board pursuant to this Article shall be deemed confidential and privileged unless or until introduced as evidence in an administrative hearing.

(d) No liability may be imposed on any insurance carrier, its employees or agents, or any other person, acting without malice, providing the information required to be disclosed pursuant to this section.

Application for Solicitor's License

Sec. 13. When any local recording agent who has been appointed by an insurance carrier having a permit to do business in this State shall desire to appoint a solicitor in the operation of his business, he and a company jointly shall make application for a license for such solicitor to the Board of Insurance Commissioners, in such form as the Board may require.

Notice to Insurance Commissioners of Solicitor's Appointment; Authority to Solicit

Sec. 14. (a) No solicitor shall be authorized to solicit insurance until after the State Board of Insurance shall have been notified by a local recording agent of his appointment, and no local recording agent shall accept business tendered by a solicitor until such local recording agent has given notice to the State Board of Insurance of such solicitor's appointment as such, and until such solicitor has been licensed by the State Board of Insurance. No solicitor shall have outstanding at any time a notification of appointment from more than one local recording agent, and a solicitor shall solicit insurance only in the name of and for the account of the local recording agent by whom he has been appointed.

(b) Upon termination for cause of the appointment of any solicitor, the local recording agent shall immediately file with the State Board of Insurance a statement of the facts relative to the termination of the appointment and the date and cause thereof.

The Board shall thereupon record the termination of the appointment of such solicitor to represent such local recording agent. The solicitor terminated for cause shall receive from the local recording agent a copy of the notice sent to the State Board of Insurance.

(c) Any information, document, record or statement required to be made or disclosed to the Board pursuant to this Article shall be deemed privileged and confidential unless or until introduced into evidence in an administrative hearing.

(d) No liability may be imposed on any insurance carrier, its employees or agents, or any other person, acting without malice, providing the information required to be disclosed pursuant to this section.

Fire Insurance in Excess of Value, Writing of Forbidden

Sec. 15. It shall be unlawful for any local recording agent or solicitor for an insurance company or insurance carrier knowingly to grant, write or permit a greater amount of insurance against loss by fire than the reasonable value of the subject of insurance.

Suspension, Cancellation or Surrender of License

Sec. 16. The license of any local recording agent or solicitor shall be automatically suspended or cancelled if such local recording agent shall not have outstanding a valid appointment to act as an agent for an insurance company or insurance carrier or if such solicitor shall not have outstanding a valid appointment to act as a solicitor for a local recording agent. The license of any local recording agent or solicitor may be denied or a license duly issued may be suspended or revoked or the renewal thereof refused by the State Board of Insurance if, after notice and hearing as hereafter provided, it finds that the applicant, individually or through any officer, director, or shareholder, for or holder of such license:

- (1) Has wilfully violated any provision of the insurance laws of this state; or
- (2) Has intentionally made a material misstatement in the application for such license; or
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
- (4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurer or an insured or beneficiary; or
- (5) Has otherwise demonstrated lack of trustworthiness or competence to act as an insurance agent; or
- (6) Has been guilty of fraudulent or dishonest acts; or
- (7) Has materially misrepresented the terms and conditions of any insurance policies or contracts; or

(8) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by an insurance carrier for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to expire for the purpose of replacing such contract with another; or

(9) Is not of good character or reputation; or

(10) Is convicted of a felony; or

(11) Is guilty of rebating any insurance premium or discriminating as between assureds.

Notice and Hearing; Witnesses; Books; Records

Sec. 17. The Board shall neither refuse to issue nor to renew, nor to suspend, nor to revoke, any license provided for in this article for any of the causes enumerated herein, unless the applicant or the person accused has been given at least ten (10) days' notice in writing of the specific charge against him, and shall have been given a hearing before the Board. Upon the hearing of such proceeding the applicant or accused shall have the right to be represented by counsel and the Board shall, if it so requests, be represented by the District Attorney or the County Attorney of the county in which the hearing is held. The Board shall have the power to summon witnesses and require the production of books, records, and papers for the purpose of such hearing, and to administer oaths. Any District Court or any Judge of such Court in this State, in term time or in vacation, upon application by the accused or of the Board or a member thereof, may, by order duly entered, require the attendance of witnesses and production of relevant books, records and papers before the Board, in any hearing relating to the refusal, suspension, renewal, or revocation or issuing of any license provided for in this article, and may order the Sheriff or any other peace officer of the county wherein said order is made and entered, to serve such process as may be issued, in order to compel the attendance of witnesses before said Board, for which services so rendered by such officer or officers, the fees and mileage of the Sheriff for all witnesses shall be the same as allowed in criminal cases, and shall be paid from the fund of the Board as herein provided for; however, the officers shall make claim for fees as in criminal cases and be paid upon warrant drawn by the Comptroller as in criminal cases. If the applicant or the accused shall prevail at such hearing, the Board shall grant him the proper relief without delay. Any of the investigations, inquiries or hearings thus authorized may be entertained or held by or before any member or members of the Board of Insurance Commissioners, and the finding or order of such member or members, when approved and confirmed by the Board, shall be deemed a finding or order of the Board. The Board or any member thereof may hold any of such hearings provided for in this

article, in Austin or in the County seat of the County of the residence of the applicant or the accused, at the discretion of the Board. If the applicant or accused shall fail or refuse to appear for any hearing, after the notice provided herein, the Board shall have the authority to proceed with such hearing, and enter the proper orders the same as if the applicant or accused were present in person.

Appeal

Sec. 18. If the said Board shall refuse an application for any license provided for in this article, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit in any of the District Courts of Travis County, Texas, or in any District Court in the County of the applicant's residence, and not elsewhere within twenty (20) days from the date of the order of said Board, such appeal to the District Court shall be by a trial de novo, as such term is commonly used and intended in an appeal from justice court to county court. On the date of the rendition of any such order of the Board, a registered letter containing a copy of such order shall be mailed by the Board to the applicant or the accused involved.

Notice to Last Address

Sec. 19. Where notice to the applicant or accused is provided for in any part of this article; notice by registered mail to his last known address shall be sufficient.

Life, Health and Accident Insurance, Inapplicable to; Other Exceptions

Sec. 20. No provisions of this article shall apply to the Life, Health and Accident Insurance business or the Life, Health and Accident Department of the companies engaged therein, nor shall it apply to any of the following, namely:

(a) Any actual full-time home office or salaried traveling representatives of any insurance carrier licensed to do business in Texas.

(b) Any actual attorney in fact and its actual traveling salaried representative as to business transacted through such attorney in fact or salaried representative of any reciprocal exchange or interinsurance exchange admitted to do business in Texas.

(c) Any adjuster of losses, and/or inspector of risks, for an insurance carrier licensed to do business in Texas.

(d) Any General Agent or State Agent or Branch Manager representing an admitted and licensed insurance company or carrier, or insurance companies or carriers, in a supervisory capacity.

(e) The actual attorney in fact for any Lloyds.

(f) All incorporated or unincorporated mutual insurance companies, their agents and representatives, organized and/or operating under and by authority of Chapters 16 and 17 of this code.

(g) Nothing in this entire article shall ever be construed to apply to any member, agent, employee, or representative of any county or farm mutual insurance company as exempted under Chapters 16 and 17 of this code.

(h) Nothing in this article shall apply to the group motor vehicle insurance business or the group motor vehicle department of the companies engaged in that business.

Fees, Disposition of; Appropriations

Sec. 21. The fees herein provided for, when collected, shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund; provided that no expenditures shall be made from said fund except under authority of the Legislature as set forth in the General Appropriation Bill; provided further that no appropriation shall ever be made out of the General Revenue Fund for the purpose of administering this article or any provision thereof.

Rebates or Inducements Forbidden

Sec. 22. It shall be unlawful for any local recording agent to pay, allow, give or offer to pay, allow or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid employment or contract for service of any kind or anything of value whatsoever, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance for or on account of the solicitation or negotiation of contracts of insurance on property or risks in this State to any person, firm or corporation, other than a duly licensed solicitor appointed by such local recording agent, or to another local recording agent.

It shall be unlawful for any solicitor to pay, allow or give or offer to pay, allow or give, directly or indirectly, any rebate of premiums payable, any commission, or any paid employment or contract for service of any kind, or anything of value whatsoever, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance, for or on account of the solicitation or negotiation of contracts of insurance on property or risks in this State to any person, firm or corporation.

Repeal; Laws Not in Conflict Not Affected; Act Cumulative

Sec. 23. All laws or parts of laws pertaining to any phase of the insurance business, which are in conflict with this article, shall be and the same are hereby repealed; but all laws, Civil and Criminal, affecting insurance agents, and/or insurance companies or insurance carriers or the insurance busi-

ness, which are not in conflict herewith, shall not be affected by the provisions of this article; but this article shall be deemed cumulative of such laws.

Violation of Act

Sec. 24. Any person or any member of any firm, or any corporation, or any officer, director, shareholder or employee of any corporation who violates any of the provisions of Sections 4, 15 and 22 of this Article shall be guilty of a misdemeanor, and on conviction in a court of competent jurisdiction, shall be punished by a fine of not less than One Dollar (\$1.00) nor more than One Hundred Dollars (\$100.00).

Enforcement of Article

Sec. 25. The Attorney General, or any District or County Attorney, or the Board of Insurance Commissioners, may institute any injunction proceeding or such other proceeding to enforce the provisions of this article, and to enjoin any person, firm or corporation from engaging or attempting to engage in any of the business in violation of this article or any of the provisions thereof. The provisions of this section are cumulative of the other penalties or remedies provided for in this article.

Administration of Article

Sec. 26. The administration of the provision of this article shall be vested in the Board of Insurance Commissioners, and of the administrative officer of the various counties in which the violation of any provision of this article may occur; and the personnel charged with the direct supervision of the article, except the regularly elected law enforcement officers and their appointees, shall be responsible to and serve at the will of the Board of Insurance Commissioners. It shall be the duty of the Board of Insurance Commissioners and the Attorney General, and of the District and County Attorneys in counties where violations of this article may occur, to see that its provisions are at all times obeyed, and to make such investigations as will prevent or detect the violation of any provision thereof. The Board of Insurance Commissioners shall at once lay before the District or County Attorney of the proper county, any evidence which shall come to its knowledge, of criminality or threatened criminality under this article. In the event of the neglect or refusal of such Attorney to institute and prosecute such violation, or to enforce the other remedies provided by this article, the Board shall submit such evidence to the Attorney General, who is hereby authorized to proceed therein with all the rights, privileges and powers conferred by law upon District or County Attorneys. Provided, any person having knowledge of the violation of the provisions of this article may file a complaint for such violation with the proper officers as in other misdemeanor cases. The Board of Insurance Commissioners is

given the power and authority, as a requisite for granting or renewing a license to insurance companies or insurance carriers, their local recording agents or solicitors, to require answers under oath to any questions propounded by the said Board or under its authority, and touching any phase of insurance business in the State of Texas in which said insurance company or insurance carrier, or such person or firm, shall be engaged, and to require such person or firm seeking appointment as local recording agent to submit his books, records, and accounts, insofar as they may be material to any phase of insurance business, to examination and inspection by the Board or any person acting under its authority.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 665, ch. 308, §§ 4, 5; Acts 1963, 58th Leg., p. 961, ch. 385, § 1, eff. Aug. 23, 1963; Acts 1969, 61st Leg., p. 668, ch. 225, §§ 1 to 4, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2551, ch. 838, §§ 1 to 3, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 2373, ch. 731, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 359, ch. 176, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 386, ch. 192, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 389, ch. 193, § 8, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 834, ch. 310, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1030, ch. 461, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1170, ch. 569, §§ 1, 2, eff. June 11, 1979; Acts 1979, 66th Leg., p. 2043, ch. 800, § 1, eff. June 13, 1979; Acts 1983, 68th Leg., p. 3942, ch. 622, §§ 35, 78, 79, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4074, ch. 639, §§ 3 to 6, eff. June 19, 1983.]

Acts 1969, 61st Leg., p. 668, ch. 225, §§ 1 to 4, amended §§ 3 to 5 and 24 of this article, and § 5 provided:

"Precedent of Act in Cases of Conflict. The rights, power, authority and procedures created in the foregoing sections of this Act shall be deemed to be in addition to all of the rights, authorities and procedures now existing and conferred by the laws of the State of Texas, and any pre-existing Act which tends to hamper or limit the rights, authorities and procedures created in this Act shall be deemed to be superseded by the provisions hereof and, to the extent that any other law is in conflict with, or inconsistent with the provisions hereof, the provisions of the Act shall take precedence and be effective."

Section 94 of Acts 1983, 68th Leg., p. 4002, ch. 622 provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 21.15. Revocation of Agent's Certificate

Cause for the revocation of the certificate of authority of an agent or solicitor for an insurance company may exist for violation of any of the insurance laws, or if it shall appear to the Board upon due proof, after notice that such agent or solicitor has knowingly deceived or defrauded a policyholder or a person having been solicited for insurance, or that such agent or solicitor has unreasonably failed and neglected to pay over to the company, or its agent entitled thereto, any premium or part thereof collected by him on any policy of insurance or application therefor. The Board shall publish such revocation in such manner as it deems proper for the protection of the public; and no

person whose certificate of authority as agent or solicitor has been revoked shall be entitled to again receive a certificate of authority as such agent or solicitor for any insurance company in this State for a period of one year.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.15-1. Penalty for Acting As, or Assisting, Aiding or Conspiring With Anyone, Whose License to Act As Insurance Agent or Insurance Solicitor Has Been Revoked or Suspended

Sec. 1. It shall be unlawful for any person, whose license as an insurance agent or insurance solicitor has been suspended or revoked, to do or perform any of the acts of an insurance agent or insurance solicitor. Any person violating this section shall be guilty of a felony and upon conviction shall be punished by a fine of not more than Five Thousand Dollars (\$5,000) or be imprisoned for not more than two years, or be punished by both fine and imprisonment.

Sec. 2. It shall be unlawful for any insurance agent or insurance solicitor with a license to engage in the business of soliciting and writing insurance to assist, aid or conspire with a person, whose license as an insurance agent or insurance solicitor has been suspended or revoked, to engage in any acts as an insurance agent or insurance solicitor. Any person violating this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than One Thousand Dollars (\$1,000) or confined in jail for not more than six months, or be punished by both fine and confinement in jail.

[Acts 1969, 61st Leg., p. 2053, ch. 708, § 1, eff. June 12, 1969.]

Acts 1969, 61st Leg., p. 2053, ch. 708, § 2 provided: "This Act shall not preclude any or all other sanctions imposed by the Texas Penal Code."

Art. 21.15-2. Penalty for Soliciting Without Certificate of Authority

Whoever for direct or indirect compensation solicits insurance in behalf of any insurance company of any kind or character, or transmits for a person other than himself, an application for a policy of insurance to or from such company, or assumes to act in negotiation of insurance without a certificate of authority to act as agent or solicitor for such company, or after such certificate of authority shall have been canceled or revoked, shall be fined not more than one hundred dollars.

[1925 P.C.]

Art. 21.15-3. Agent Procuring by Fraudulent Representation; Penalty

Any such agent or solicitor who knowingly procures by fraudulent representations payment of an obligation for the payment of a premium of insur-

ance, shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

Art. 21.15-4. Agent or Physician Making False Statement; Penalty

Any solicitor, agent or examining physician who knowingly or wilfully makes any false or fraudulent statement or representation in or with reference to any application for insurance, shall be fined not less than one hundred nor more than five hundred dollars.

[1925 P.C.]

Art. 21.15-5. Conversion by Agent or Solicitor; Penalty

Any insurance agent or solicitor who collects premiums for an insurance company lawfully doing business in this State and who embezzles or fraudulently converts or appropriates to his own use, or with intent to embezzle takes, secretes, or otherwise disposes of or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies any money or substitutes for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, shall be punished as if he had stolen the same.

[1925 P.C.]

SUBCHAPTER B. MISREPRESENTATION AND DISCRIMINATION

Art. 21.16. Misrepresentation by Policyholder

Any provision in any contract or policy of insurance issued or contracted for in this State which provides that the answers or statements made in the application for such contract or in the contract of insurance, if untrue or false, shall render the contract or policy void or voidable, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract, unless it be shown upon the trial thereof that the matter or thing misrepresented was material to the risk or actually contributed to the contingency or event on which said policy became due and payable, and whether it was material and so contributed in any case shall be a question of fact to be determined by the court or jury trying such case.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.17. Notice of Misrepresentations

In all suits brought upon insurance contracts or policies hereafter issued or contracted for in this State, no defense based upon misrepresentations made in the applications for, or in obtaining or securing the said contract, shall be valid, unless the defendant shall show on the trial that, within a reasonable time after discovering the falsity of the

representations so made, it gave notice to the assured, if living, or, if dead, to the owners or beneficiaries of said contract, that it refused to be bound by the contract or policy; provided, that ninety days shall be a reasonable time; provided, also, that this article shall not be construed as to render available as a defense any immaterial misrepresentation, nor to in any wise modify or affect Article 21.16 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.18. Immaterial Misrepresentation

No recovery upon any life, accident or health insurance policy shall ever be defeated because of any misrepresentation in the application which is of an immaterial fact and which does not affect the risks assumed.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.19. Misrepresenting Loss or Death

Any provision in any contract or policy of insurance issued or contracted for in this State which provides that the same shall be void or voidable, if any misrepresentations or false statements be made in proofs of loss or of death, as the case may be, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract or policy, unless it be shown upon the trial of such suit that the false statement made in such proofs of loss or death was fraudulently made and misrepresented a fact material to the question of the liability of the insurance company upon the contract of insurance sued on, and that the insurance company was thereby misled and caused to waive or lose some valid defense to the policy.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.20. Misrepresentation of Policies

No life insurance company doing business in this State, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it, or benefits or advantages to be promised thereby, or the dividends or share of surplus to be received thereon.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.21. Unfair Competition and Unfair Practices

Declaration of Purpose

Sec. 1. The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress),¹ by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or

unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

115 U.S.C.A. §§ 1011-1015.

Definitions

Sec. 2. When used in this Act:

(a) "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and life insurance counselors.

(b) "Board" shall mean the Board of Insurance Commissioners of this state.

Unfair Methods of Competition and Unfair and Deceptive Acts or Practices Prohibited

Sec. 3. No person shall engage in this state in any trade practice which is defined in this Act as, or determined pursuant to this Act to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined

Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and False Advertising of Policy Contracts. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance;

(2) False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the busi-

ness of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading;

(3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure any person engaged in the business of insurance;

(4) Boycott, Coercion and Intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance;

(5) False Financial Statements.

(a) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive;

(b) Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer;

(6) Stock Operations and Advisory Board Contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, company stock or other capital stock, or benefit certificates or shares in any corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance. Provided, however, that nothing in this subsection shall be construed as prohibiting the issuing or delivery of participating insurance policies otherwise authorized by law.

(7) Unfair Discrimination.

(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

(8) Rebates.

(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract;

(b) Nothing in clause 7 or paragraph (a) of clause 8 of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

Power of Board

Sec. 5. The Board shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by Section 3 of this Act.

Hearings, Witnesses, Appearances, Production of Books and Service of Process

Sec. 6. (a) Whenever the Board shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in Section 4, and that a proceeding by it in respect thereto would be to the interest of the public, it shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than five days after the date of the service thereof;

(b) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the Board requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the Board shall permit any person to intervene, appear and be heard at such hearing by counsel or in person;

(c) Nothing contained in this Act shall require the observance at any such hearing of formal rules of pleading or evidence;

(d) The Board, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which it deems relevant to the inquiry. The Board, upon such hearing, may, and upon the request of any party, shall cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the Board shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the District Court of Travis County or the county where such party resides, on application of the Board, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof;

(e) Statements of charges, notices, orders, and other processes of the Board under this Act may be

served by anyone duly authorized by the Board, either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

Cease and Desist Orders

Sec. 7. (a) If, after such hearing under the terms of Section 6 of the Act, the Board shall determine that the method of competition or the act or practice in question is defined in Section 4 of this Article, or rules or regulations issued under this Article, or in Section 17.46 of the Business & Commerce Code, as amended, and that the person complained of has engaged in such method of competition, act or practice in violation of this Article or rules and regulations issued under this Article or of the Deceptive Trade Practices—Consumer Protection Act (Sections 17.41 et seq., Business & Commerce Code), as specified in Section 17.46 of the Business & Commerce Code, it shall reduce its findings to writing and issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice.

(b) Until a petition appealing from such order shall have been filed in a District Court of Travis County, Texas, in accordance with Subchapter F of Chapter 21 of the Insurance Code of this state,¹ or any amendment thereof, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside in whole or in part any order issued under this section.

(c) Any person who violates the terms of a cease and desist order under this section shall be given notice to appear and show cause, at a hearing to be held in conformity with Section 6 of this Article, why he should not forfeit and pay to the state a civil penalty of not more than \$1,000 per violation and not to exceed a total of \$5,000. In determining whether or not a cease and desist order has been violated, the Board shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the order.

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

¹ Article 21.80.

No Relief from Liability Under Other Laws

Sec. 8. No order of the Board under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

Certain Words Prohibited from Appearing on Policies of Insurance

Sec. 9. (a) Notwithstanding any other provision of the Insurance Code (Acts 1951, 52nd Legislature, page 868, Chapter 491) to the contrary, it is hereby declared to be unlawful for any company engaged in the business of life, accident or health insurance to issue or deliver in this state a policy containing the words "Approved by the Board of Insurance Commissioners" or words of a similar import or nature.

Penalty

Sec. 10. Any person who violates a cease and desist order of the Board under Section 7, while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of Texas a sum not to exceed Fifty Dollars (\$50.00), which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed Five Hundred Dollars (\$500.00).

Provisions of Act Additional to Existing Law

Sec. 11. The powers vested in the Board by this Act shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

Immunity from Prosecution

Sec. 12. If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perju-

ry, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the Insurance Code of this state. Any such individual may execute, acknowledge and file in the office of the Board a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

Rules and Regulations

Sec. 13. (a) The State Board of Insurance is authorized to promulgate and may promulgate and enforce reasonable rules and regulations and may order such provision as is necessary in the accomplishment of the purposes of this Article and Article 21.20, including, but not limited to, such express provision within the purposes of these Articles as it deems necessary or as is required to affect necessary uniformity with the laws of other states or the United States or in conformity with the adopted procedures of the National Association of Insurance Commissioners notwithstanding any previous definition or interpretation of terms used in these Articles had in or derived from the common law or other statutory law of this state.

(b) A petition may be submitted to the Board to adopt, amend, or repeal a regulation. The petition must be signed by 100 interested persons and supported by evidence that a particular act or practice has been or could be false, misleading or deceptive to the insurance buying public, or that an act or practice declared to be false, misleading, or deceptive by a regulation of the Board is not in fact false, misleading, or deceptive. Within 30 days after receipt of the petition the Board must either deny the petition or initiate hearing proceedings under this section.

(c) On denial of the petition the Board must state the reason or reasons for denial in writing. Denial is expressly authorized if the action sought by the petition would destroy uniformity with the laws of other states or of the United States or would not be in conformity with the adopted procedures of the National Association of Insurance Commissioners.

(d) If in response to the petition the Board determines to hold a hearing, such hearing shall be open to the public and any person may present testimony, data, or other information in writing or orally to the Board regarding the acts or practices under consideration.

(e) A person aggrieved by the denial of the hearing under Subsection (b) of this section or by the adoption, amendment, or repeal of a regulation or failure to issue a regulation under this section, may file a petition in a district court of Travis County for a declaratory judgment on the validity or applicability of a regulation adopted, amended, or repealed under this section or on the denial of a hearing under Subsection (b) of this section. The Board shall be made a party to the action. In a suit under this subsection the district court may issue injunctions.

(f) The action of the Board in adopting, amending, repealing, or failing to adopt a regulation or denying a hearing may be invalidated only if it is found that it:

- (1) violates a constitutional or state statutory provision;
- (2) exceeds the statutory authority of the Board;
- (3) is arbitrary or capricious or characterized by abuse of discretion or unwarranted exercise of discretion;
- (4) is so vague that it does not establish sufficiently definite standards with which conduct can be conformed;
- (5) is made on unlawful procedure; or
- (6) is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record as submitted.

Administrative Class Action

Sec. 14. (a) In connection with the issuance of a cease and desist order as provided in Section 7 of this Article or upon application of any aggrieved person, the Board may, after notice and hearing as provided in Section 6 of this Article, in connection with the issuance of a cease and desist order resulting from a finding that an insurer has engaged in a method of competition, act or practice in violation of this Article, rules or regulations issued under this Article, or Section 17.46, Business & Commerce Code, as amended, or upon finding by the Board that the aggrieved person and persons similarly situated were induced to purchase a policy of insurance as a result of the insurer engaging in a method of competition, act or practice in violation of this Article, rules or regulations issued under this Article or Section 17.46, Business & Commerce Code, as amended, the Board may require the insurer to account for all premiums collected for policies issued during the immediately preceding two years in connection with such acts in violation of this Article and require: (i) such insurer to give notice to all persons from whom such premiums were collected, and (ii) to refund the total of all premiums collected from each such person, electing to accept a premium refund in exchange for cancellation of the policy of insurance issued. Premiums so refunded shall be net of policy benefits actually paid by such

insurer while the policy of insurance was in force. The Board shall specify a reasonable time within which the insurer shall be required to make such premium refunds.

(b) If an insurer fails to comply with the Board's requirement to refund such premiums within the time specified, the Board may, in addition to any other sanctions provided for in the Insurance Code and other applicable laws, report such failure to the Attorney General and request the Attorney General to file a suit to enforce the Board's requirement for refund of premiums. Venue for such suit shall lie in the District Court of Travis County, Texas, and upon finding by the court that such requirement of the Board was lawfully entered and that the insurer has failed to comply with such requirement, the Court shall enter an appropriate order to enforce such Board order. The Court may enforce its order through contempt proceedings.

(c) Compliance or attempts to comply with the Board's requirement to refund premiums shall be an offer to compromise and shall be inadmissible as evidence. Compliance or attempts to comply with the Board's requirement for refund of premium shall not be considered as admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the Board's requirements of refund or premium may be introduced by the defendant for the purpose of establishing good faith or to show compliance with the Board's requirement.

Injunctions

Sec. 15. (a) If the Board has reason to believe that any person in the insurance business in this state is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this Article or by Section 17.46 of the Business & Commerce Code, as amended, and that proceedings would be in the public interest, the Board may request the Attorney General to bring an action in the name of the state against the person to restrain by temporary or permanent injunction the use of such method, act, or practice.

(b) An action brought under Subsection (a) of this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business, is doing business, or in the district court of the county where the transaction occurred or any substantial portion of the transaction occurred, or in a district court of Travis County. The court may issue appropriate temporary or permanent injunctions, and the injunctions shall be issued without bond.

(c) In addition to the request for a temporary or permanent injunction in a proceeding brought under Subsection (a) of this section, the Attorney General,

on a finding by the court that the defendant has engaged or is engaging in a practice declared to be unlawful by Article 17.46 of the Business & Commerce Code, as amended, this Article, or rules or regulations issued under this Article, may request a civil penalty of not more than \$2,000 per violation and not to exceed a total of \$10,000 to be paid to the state.

(d) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or restoration of money or property, real or personal, which may have been acquired by means of any act or practice restrained. Damages may not include any damages incurred beyond a point two years prior to the institution of the action.

(e) Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$10,000 per violation not to exceed \$50,000. In determining whether or not an injunction has been violated the court shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in such cases, the Attorney General with prior notice to the Board, acting in the name of the state, may petition for recovery of civil penalties under this section.

(f) An order of the court awarding civil penalties under Subsection (e) of this section applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in Subsection (e) of this section.

Relief Available to Injured Parties

Sec. 16. (a) Any person who has been injured by another's engaging in any of the practices declared in Section 4 of this Article or in rules or regulations lawfully adopted by the Board under this Article to be unfair methods of competition and unfair and deceptive acts or practices in the business of insurance or in any practice defined by Section 17.46 of the Business & Commerce Code, as amended, as an unlawful deceptive trade practice may maintain an action against the company or companies engaging in such acts or practices.

(b) In a suit filed under this section, any plaintiff who prevails may obtain:

- (1) three times the amount of actual damages plus court costs and attorneys' fees reasonable in relation to the amount of work expended;
- (2) an order enjoining such acts or failure to act;
- (3) any other relief which the court deems proper.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith or for the purpose of harassment, the court may award to the defendant reasonable attorneys' fees in relation to the amount of work expended.

(d) In an action under this section, damages may not include any damages incurred beyond a point two years prior to the institution of the action.

Class Actions

Sec. 17. (a) If a member of the insurance buying public has been damaged by an unlawful method, act, or practice defined in Section 4 of this Article or by the rules and regulations lawfully adopted by the Board under this Article or by any practice defined by Section 17.46 of the Business & Commerce Code, as amended, as an unlawful deceptive trade practice, the Board may request the Attorney General to bring a class action, or the individual damaged may bring an action on behalf of himself and others similarly situated, to recover damages and relief as provided in this section.

(b) A plaintiff who prevails in a class action under this section may recover:

(1) court costs and attorneys' fees reasonable in relation to the amount of work expended in addition to actual damages;

(2) an order enjoining the act or failure to act;

(3) any other relief which the court deems proper.

(c) On a finding by the court that an action under this section was brought by an individual plaintiff in bad faith or for the purpose of harassment, the court may award to the defendant reasonable attorneys' fees in relation to the work expended and court costs.

(d) In an action under this section, damages may not include any damages incurred beyond a point two years prior to the institution of the action.

(e) An action under this section may not be maintained if an administrative class action under Section 14 of this Article has been initiated or has resulted in a final determination regarding the same acts or practices and the same defendant in the action under this section.

Class Action: Procedure

Sec. 18. (a) The court shall permit one or more members of a class to sue or be sued as representative parties on behalf of the class only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) An action may be maintained as a class action if the prerequisites of Subsection (a) of this section are satisfied and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudication with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on ground generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of controversy concentrating the litigation of the claims in the particular forum; and

(D) the difficulties likely to be encountered in the management of a class action.

(c) In construing this section, the courts of Texas shall be guided by the decisions of the federal courts interpreting Rule 23, Federal Rules of Civil Procedure, as amended.

(d) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be maintained as a class action. An order under this subsection may be altered or amended before a decision on the merits. An order determining that the action may or may not be brought as a class action is an interlocutory order which is appealable and the procedures provided in Rule 385, Texas Rules of Civil Procedure, apply.

(e) If the action is permitted as a class action, the court shall direct to the members of the class the best notice practicable under the circumstances, in-

cluding individual notice to all members who can be identified through reasonable effort.

(f) The notice shall contain a statement that:

(1) the court will exclude the member notified from the class if he so requests by a specified date;

(2) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(3) any member who does not request exclusion, if he desires, may enter an appearance through counsel.

(g) A class action may not be dismissed, settled, or compromised without the approval of the court, and notice of the proposed dismissal, settlement, or compromise shall be given to all members of the class in such manner as the court directs.

(h) When appropriate, an action may be brought or maintained as a class action with respect to particular issues or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this section shall be construed and applied accordingly.

(i) The judgment in a class action shall describe those to whom the notice was directed and who have not requested exclusion and those the court finds to be members of the class. The court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

(j) In the conduct of a class action the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members or to the Attorney General of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; or

(5) dealing with similar procedural matters.

(k) The filing of a suit under this section tolls the statute of limitations for bringing a suit by an individual under Section 16 of this Article. An order of the court denying the bringing of a suit as

a class action does not affect the ability of an individual to bring the same or a similar suit under Section 16 of this Article.

Preliminary Notice

Sec. 19. (a) At least 30 days prior to the commencement of a class action suit for damages under Section 17 of this Article, the prospective plaintiff must notify the intended defendant of his complaint and make demand that the defendant provide relief to the prospective plaintiff and others similarly situated. A copy of the notice must also be sent to the commissioner of insurance.

(b) The notice must be in writing and sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, the intended defendant's principal place of business in this state, or if neither will effect notice, to the office of the Secretary of State of Texas.

(c) An action for injunctive relief under Section 17 of this Article may be commenced without compliance with Subsection (a) of this section. Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with the provisions of Subsection (a) of this section, the plaintiff may amend his complaint without leave of court to include a request for damages.

(d) No damages may be awarded to a class under Section 17 of this Article if within 30 days of receipt of the notice the intended defendant furnished the plaintiff, by certified or registered mail, return receipt requested, a written offer of settlement. The offer of settlement must include a statement that:

(1) all others similarly situated have been adequately identified or a reasonable effort to identify such others has been made, and a description of the class so identified and the method employed to identify them;

(2) all persons so identified have been notified that upon request the intended defendant will provide relief to them and all others similarly situated, and a complete explanation of the relief being afforded and a copy of the notice or communication which the intended defendant is providing to the members of the class;

(3) the relief being afforded the consumer has been, or if said offer is accepted by the consumer, will be given within a stated reasonable time; and

(4) the practice complained of has ceased.

(e) Attempts to comply with the provisions of this section by a person receiving a demand shall be an offer to compromise and shall be inadmissible as evidence. Attempts to comply with a demand shall not be considered an admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the provisions of this section may be introduced by a defendant for the purpose of establishing good faith or to show compliance with the provisions of this section.

Damages: Defense

Sec. 20. No award of damages may be given in any class action filed under Section 17 of this Article if the defendant:

(1) proves that the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid any error; and

(2) made restitution of any consideration received from any member of the class.

Venue

Sec. 21. Any action brought under this Article shall be commenced in a district court of Travis County, Texas, if the State Board of Insurance is a party thereto.

Voluntary Compliance

Sec. 22. (a) In the administration of this Article the Board may accept assurance of voluntary compliance with respect to any act or practice which violates this Article or regulations issued under this Article or any act declared to be unlawful in Section 17.46 of the Business & Commerce Code, as amended, from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with the Board.

(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this Article or regulations issued under this Article, or Section 17.46, Business & Commerce Code, as amended, restore to any person in interest any money which may have been acquired by means of acts or practices which violate this Article or regulations issued under this Article, or Section 17.46, Business & Commerce Code, as amended.

(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this Article or regulations issued under this Article or Section 17.46, Business & Commerce Code, as amended. However, unless an assurance has been rescinded by agreement, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this Article or regulations issued under this Article or Section 17.46, Business & Commerce Code, as amended.

(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurance of voluntary compliance shall in no way affect individual rights of action under this Article, except that the right of individuals with regard to money received pursuant to a stipulation in the voluntary compliance under Subsection (b) of this section are governed by the terms of the voluntary compliance.

Payment of Penalties, Costs, Etc.

Sec. 23. Those civil penalties, premium refunds, judgments, compensatory judgments, individual recoveries, orders, class action awards, costs, damages, or attorneys' fees which are assessed or awarded as provided in this Article shall be paid only from the capital or surplus funds of the offending insurance company, and no such payments shall take precedence over, be in priority to, or in any manner be applicable to the provisions of Article 21.28-B, Texas Insurance Code, known as the Loss Claimant's Priorities Act, Article 21.28-C, Texas Insurance Code, known as the Property and Casualty Insurance Guaranty Act, Article 21.28-E, Texas Insurance Code, known as the Texas Life, Health and Accident Guaranty Act, any other similar insurance guaranty act hereafter enacted by the Texas Legislature, or Article 21.39-A, Texas Insurance Code, known as the Asset Protection Act, and such special statutes and the priorities of funds created thereby shall be exempt from the provisions of this Article.

Application

Sec. 24. No remedy or civil penalty shall lie or exist by reason of any act or omission occurring prior to the effective date of this Act.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1957, 55th Leg., p. 401, ch. 198; Acts 1969, 61st Leg., p. 2051, ch. 706, § 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 335, ch. 143, § 2(a) to (c), eff. May 21, 1973.]

Art. 21.21A. Misrepresentations of Policy Terms; Penalty

Sec. 1. No insurer or agent thereof may make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon, nor may any such insurer or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for service of any kind, or any thing of value or inducement whatever, not specified in the policy; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurer or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy.

Sec. 2. No life, health, or casualty insurance corporation including corporations operating on the cooperative or assessment plan, mutual insurance companies, and fraternal benefit associations or societies, and any other societies or associations authorized to issue insurance policies in this state, and no officer, director, representative, or agent thereof or thereof, or any other person, corporation, or copartnership may issue or circulate or cause or permit to be issued or circulated any illustrated circular or statement of any sort misrepresenting the terms of any policy issued by any such corporation or association or any certificate of membership issued by any such society or corporation, or other benefits or advantages permitted thereby, or any misleading statement of the dividends or share of surplus to be received thereon, or may use any name or title of any policy or class of policy or class of policies, or certificate of membership or class of such certificate misrepresenting the true nature thereof. Nor may any such corporation, society, or association, or officer, director, agent, or representative thereof, or any other person, make any misleading representations or incomplete comparisons of policies or certificates of membership to any person insured in such corporation, association, or society, or member thereof, for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender said insurance or membership therein.

Sec. 3. If any person violates any of the provisions of this Article, the person shall, in addition to any other penalty specifically provided, be guilty of a Class A misdemeanor.

Sec. 4. The commissioner, upon giving 10 days' notice of hearing by certified mail, and upon hearing, may suspend or cancel the certificate, charter, permit, or license to engage in the business of insurance of any society, association, corporation, or person violating the provisions of this Article.

[1925 P.C. amended by Acts 1977, 65th Leg., p. 2084, ch. 834, § 1, eff. Aug. 29, 1977.]

Art. 21.21B. Repealed by Acts 1977, 65th Leg., p. 2085, ch. 834, § 2, eff. Aug. 29, 1977

Art. 21.21-1. Unauthorized Insurers False Advertising Process Act

Purpose of Act

Sec. 1. (a) The purpose of this Act is to subject to the jurisdiction of the State Board of Insurance of this state and to the jurisdiction of the courts of this state insurers not authorized to transact business in this state which place in or send into this state any false advertising designed to induce residents of this state to purchase insurance from insurers not authorized to transact business in this state. The Legislature declares it is in the interest

of the citizens of this state who purchase insurance from insurers which solicit insurance business in this state in the manner set forth in the preceding sentence that such insurers be subject to the provisions of this Act. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing, it exercises its powers to protect its residents and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Session, S. 340,¹ which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states; the authority provided herein to be in addition to any existing powers of this state.

(b) The provisions of this Act shall be liberally construed.

¹ 15 U.S.C.A. §§ 1011 to 1015.

Definitions

Sec. 2. (a) The term "foreign or alien insurer" shall mean any insurance company organized under the laws of any other state or territory of the United States or any foreign country.

(b) "Unfair Trade Practice Act" shall mean the Act of 1957, 55th Legislature, page 401, Chapter 198, also known as Article 21.21 of the Insurance Code.

(c) "Residents" shall mean and include person, partnership or corporation, domestic, alien or foreign.

Notice to Domiciliary Supervisory Official

Sec. 3. No unauthorized foreign or alien insurer shall make, issue, circulate or cause to be made, issued or circulated, to residents of this state any advertisement, estimate, illustration, circular, pamphlet, or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the Unfair Trade Practice Act, and whenever the State Board of Insurance shall have reason to believe that any such insurer is engaging in such unlawful advertising, it shall be its duty to give notice of such fact by registered mail to such insurer and to the insurance supervisory official of the domiciliary state of such insurer. For the purpose of this Section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

Action by State Board of Insurance

Sec. 4. If after thirty (30) days following the giving of the notice mentioned in Section 3 such insurer has failed to cease making, issuing, or circulating such false misrepresentations or causing the same to be made, issued or circulated in this state, and if the State Board of Insurance has reason to believe that a proceeding by it in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or doing any of the acts enumerated in Section 5, the said Board shall take action against such insurer under the Unfair Trade Practice Act.

Service Upon Unauthorized Insurer

Sec. 5. (a) Any of the following acts in this state, affected by mail or otherwise, by any such unauthorized foreign or alien insurer:

- (1) The issuance or delivery of contracts of insurance to residents of this state,
- (2) the solicitation of applications for such contracts,
- (3) the collection of premiums, membership fees, assessments or other considerations for such contracts, or
- (4) any other transaction of insurance business, is equivalent to and shall constitute an appointment of such insurer of the Commissioner of Insurance of this state and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in Section 3 hereof under the provisions of the Unfair Trade Practice Act, or in any action, suit or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices, or process is of the same legal force and validity as personal service of such statement of charges, notices or process in this state, upon such insurer.

(b) Service of a statement of charges and notices under said Unfair Trade Practice Act shall be made by any deputy or employee of the State Board of Insurance delivering to and leaving with the Commissioner of Insurance or some person in apparent charge of his office, two (2) copies thereof. Service of process issued by any court in any action, suit or proceeding to collect any penalty under said Act provided, shall be made by delivering and leaving with the Commissioner of Insurance, or some person in apparent charge of his office, two (2) copies thereof. The Commissioner shall forthwith cause to be mailed by registered mail one (1) of the copies of such statement of charges, notices or process to the defendant at its last known principal place of busi-

ness, and shall keep a record of all statements of charges, notices and process so served. Such service of statement of charges, notices or process shall be sufficient provided they shall have been so mailed and the defendant's receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing such letter showing a compliance herewith are filed with the Commissioner of Insurance in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

(c) Service of statement of charges, notices and process in any such proceeding, action or suit shall in addition to the manner provided in Subsection (b) of this Section be valid if served upon any person within this state who on behalf of such insurer is:

- (1) Soliciting insurance; or
- (2) Making, issuing, or delivering any contract of insurance; or

(3) Collecting or receiving in this state any premium for insurance; and a copy of such statement of charges, notices or process is sent within ten (10) days thereafter by registered mail by or on behalf of the Commissioner of Insurance to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance herewith, are filed with the Commissioner of Insurance in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

(d) No cease or desist order or judgment by default under this Section shall be entered until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.

(e) Service of process and notice under the provisions of this Act shall be in addition to all other methods of service provided by law, and nothing in this Act shall limit or prohibit the right to serve any statement of charges, notices or process upon any insurer in any other manner now or hereafter permitted by law.

Separability

Sec. 6. [Omitted].

Short Title

Sec. 7. This Act may be cited as the Unauthorized Insurers False Advertising Process Act.

[Acts 1961, 57th Leg., p. 235, ch. 122.]

Article 21.21-1 was not enacted as part of the Insurance Code of 1951.

Art. 21.21-2. Unfair Claim Settlement Practices**Short Title**

Sec. 1. This Act shall be known as the Unfair Claim Settlement Practices Act.

Prohibited Practices

Sec. 2. No insurer doing business in this state under the authority, rules and regulations of Subchapter G of Chapter 3 or Subchapters A, B and C of Chapter 5 of the Insurance Code, as amended,¹ shall engage in unfair claim settlement practices. Any of the following acts by an insurer, if committed without cause and performed with such frequency as determined by the State Board of Insurance as provided for in this Act, shall constitute unfair claim settlement practices:

(a) Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;

(b) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

(c) Failing to adopt and implement reasonable standards for prompt investigation of claims arising under its policies;

(d) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear;

(e) Compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;

(f) Failure of any insurer to maintain a complete record of all the complaints which it has received during the preceding three years or since the date of its last examination by the commissioner of insurance, whichever time is shorter. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and the time it took to process each complaint. For the purposes of this subsection, "complaint" means any written communication primarily expressing a grievance; or

(g) Committing other actions which the State Board of Insurance has defined, by regulations adopted pursuant to the rule-making authority

granted it by this Act, as unfair claim settlement practices.

¹ Article 3.70-1 et seq. or art. 5.01 et seq.

Periodic Reports

Sec. 3. If it shall be found by the State Board of Insurance, based on complaints of unfair claims settlement practices as defined in Section 2 of this Act, that an insurer is substantially out of line and should be subjected to closer supervision with respect to such practices, it may require such insurer to file a report at such periodic intervals as the board deems necessary. The board shall also devise a statistical plan for such periodic reports, which is to contain a minimum of the following information:

(a) The total number of written claims filed, including the original amount filed for by the insured and the classification by line of insurance of each individual written claim, for the past 12 month period or from the date of the insurer's last periodic report, whichever time is shorter;

(b) The total number of written claims denied, for the past 12 month period or from the date of the insurer's last periodic report, whichever time is shorter;

(c) The total number of written claims settled, including the original amount filed for by the insured, the settled amount, and the classification of line of insurance of each individual settled claim, for the past 12 month period or from the date of the insurer's last periodic report, whichever time is shorter;

(d) The total number of written claims for which lawsuits were instituted against the insurer, including the original amount filed for by the insured, the amount of final adjudication, the reason for the lawsuit and the classification by line of insurance of each individual written claim, for the past 12 month period or from the date of the insurer's last periodic report, whichever time is shorter; and

(e) All information required by Subsection (f) of Section 2 of this Act.

For the purposes of this section, "written claim" shall include only those claims reduced to writing and filed by a Texas resident with an insurer as defined in Section 2 of this Act. The board may, at any time, rescind the requirement to file periodic reports if it finds that such requirement is no longer necessary to accomplish the objectives set out in this Act.

Investigation Procedures

Sec. 4. (a) The commissioner is authorized to hire additional employees and examiners as needed for the effective enforcement of the provisions of this Act.

(b) The commissioner shall compile the information received from an insurer pursuant to Section 3

of this Act in such a manner as to enable him to compare it to a minimum standard of performance which shall be promulgated by the State Board of Insurance. If the commissioner, after such comparison is made, finds that the insurer falls below the minimum standard of performance, he shall cause an investigation to be made of said insurer as to the reason, if any, for said substandard performance.

(c) The commissioner shall also provide for the receiving and processing of individual complaints alleging violations of this Act by both insurers who are required to make periodic reports and those who are not required to make such reports. If the commissioner in his complaint experience determines that the number and type of complaints against an insurer do not meet the board's minimum standard of performance and/or are out of proportion to those against other insurers writing similar lines of insurance, he shall cause an investigation to be made of the respective insurer.

Hearings

Sec. 5. (a) Upon the receipt of the results of an investigation instituted pursuant to Section 4 of this Act, the commissioner shall review the results and shall determine whether, in the light of the standards set out in Section 2 of this Act, further action is required. If the commissioner deems further action necessary, he shall set a date for a public hearing to review the alleged violations of this Act. At such public hearings, the accused insurer shall be permitted to present his case with the assistance of counsel. Any evidence as to numbers and types of complaints or claims prepared by the commissioner, pursuant to Sections 3 and 4 of this Act, shall be admissible in evidence in such hearings or any judicial proceeding pursuant thereof. Notice as to the date of such hearing and the nature of the charges is to be given the insurer not later than 30 days prior to the date set for the hearing. Such hearings are to be conducted pursuant to the rules and regulations promulgated by the State Board of Insurance and the provisions of the Insurance Code, as amended. Provided, that no insurer shall be deemed in violation of this Act solely by reason of the numbers and types of such complaints or claims.

(b) Any insurer which is affected by any ruling or action of the commissioner shall have the right to have such ruling or action reviewed by the State Board of Insurance by making an application to the board as provided for in Article 1.04 of the Insurance Code, as amended.

Penalties: Judicial Review: Attorneys' Fees

Sec. 6. (a) The State Board of Insurance, upon finding an insurer in violation of the provisions of this Act, shall issue a cease and desist order to said insurer directing it to stop such unlawful practices. If the insurer refuses or fails to comply with said

order, the board shall have the authority to revoke or suspend the insurer's certificate of authority as provided for in the Insurance Code, as amended. The board shall also have the authority to limit, regulate, and control the insurer's line of business, the insurer's writing of policy forms or other particular forms, and the insurer's volume of its line of business or its writing of policy forms or other particular forms. The board shall use the above authority to the extent it deems necessary to obtain the insurer's compliance to its order. The attorney general shall offer his assistance if requested by the board to enforce the board's orders.

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

Specific Application

Sec. 7. The provisions of this Act are to specifically apply to the following insuring organizations: proprietorships, partnerships, corporations and unincorporated associations, stock and mutual life, health, accident, fire, casualty, fire and casualty, hail, storm, title, and mortgage guarantee companies; mutual assessment companies; local mutual aid associations; local mutual burial associations; statewide mutual assessment companies; stipulated premium companies; fraternal benefit societies; group hospital service organizations; county mutual insurance companies; Lloyds; reciprocal or inter-insurance exchanges and farm mutual insurance companies.

Rules and Regulations

Sec. 8. The State Board of Insurance is authorized and directed to issue such reasonable rules, and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.

Unconstitutional Application Prohibited

Sec. 9. This Act 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.

[Acts 1973, 63rd Leg., p. 735, ch. 319, § 1, eff. Aug. 27, 1973.]

Sections 2 to 4 of the 1973 Act provided:

"Sec. 2. Other Remedies. The provisions of this Act are in no way to reduce or eliminate any other remedies available to the State Board of Insurance under the laws of this state.

"Sec. 3. Control Over Conflicts. The provisions of the Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act

and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

"Sec. 4. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 21.21-3. Discrimination Against Handicapped Prohibited

An insurer who delivers or issues for delivery or renews any insurance in this state may not refuse to insure, refuse to continue to insure, limit the amount, extent, or kind of coverage available to an individual, or charge an individual a different rate for the same coverage solely because of handicap or partial handicap, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

[Acts 1983, 68th Leg., p. 4001, ch. 622, § 92, eff. Sept. 1, 1983.]

SUBCHAPTER C. RELATING TO LIFE, HEALTH AND ACCIDENT INSURANCE AND BENEFITS

Art. 21.22. Exemption of Insurance Benefits From Seizure Under Process

Sec. 1. No money or benefits of any kind to be paid or rendered on a weekly, monthly or other periodic or installment basis to the insured or any beneficiary under any policy of insurance 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, shall be liable to execution, attachment, garnishment or other process or be 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, except for premiums payable on such policy or a debt of the insured secured by a pledge thereof.

Sec. 2. Wherever any policy of insurance 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.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.23. Forfeiture of Beneficiary's Rights

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. When such is the case, the nearest relative of the insured shall receive said insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.24. Policies to Contain Entire Contract

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.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

SUBCHAPTER D. CONSOLIDATION, LIQUIDATION, REHABILITATION, REORGANIZATION OR CONSERVATION OF INSURERS

Art. 21.25. Mergers and Consolidations of Stock Insurers

Authority to Merge or Consolidate; Procedure

Sec. 1. Any two (2) or more insurance corporations doing a similar line of business, may merge or consolidate. The procedure for, the effect of, and the rights and duties of creditors, shareholders, and the corporations involved in such merger or consolidation shall be governed by applicable provisions of the "Texas Business Corporation Act," as amended, insofar as the same are not inconsistent with the provisions of this Act, and the Insurance Code of the State of Texas. Wherever in said "Texas Business Corporation Act" some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the Secretary of State such is to be vested in, required of, or performed by the Commissioner of Insurance insofar as such Act is applicable to insurance corporations under the provisions hereof.

Approval of Directors and Shareholders

Sec. 2. Before any such proposed plan of merger or consolidation is submitted to the shareholders for their approval, as provided under the "Texas Business Corporation Act," it shall first be approved by the Boards of Directors of the two or more corporations planning to merge or consolidate; and thereafter such plan shall be submitted to the shareholders of each of the corporations which are parties to the plan at separate regular or special meetings of the shareholders of the corporations, called in the manner provided by the By-Laws of the respective corporations and may be approved by the affirmative vote of the holders of two-thirds ($\frac{2}{3}$) of the shares of the capital stock of each of such corporations.

Filing; Hearing; Approval of Commissioner; Charter and License; Corporations Organized Under Laws of Other States

Sec. 3. After such plan has been approved as provided in Section 2 hereof, it shall then be filed with the Commissioner of Insurance. The Commissioner shall hold a hearing within fifteen (15) days of filing the plan and shall then give approval in writing to each insurer involved within fifteen (15) days after the hearing unless he finds the plan contrary to law or that it would not be in the best interests of the policyholders affected by the plan and would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere. The Commissioner of Insurance may extend the fifteen (15) day period within which he may affirmatively approve or disapprove such plan when such action is concurred in by representatives of applicants to the merger or consolidation. In the event of disapproval of the plan, he shall specify in detail his reasons therefor. The merger shall be effective upon the date specified in the proposed plan of merger; or where consolidation results, the new corporation shall be issued a charter and license upon submission of proper articles of incorporation to the Commissioner of Insurance, and upon his approval together with approval of the Attorney General in accordance with the procedure now required for the issuance of a new charter, and proof that it has capital and surplus of not less than the capital and surplus of the corporation involved in such consolidation having the largest capital and surplus, and it shall be effective upon such date of issuance. A merger or consolidation involving a corporation organized under the laws of another state shall not be effective until the merger or consolidation has been approved by the proper official of the domiciliary state of the out-of-state corporation, when such approval is required under the laws of such domiciliary state.

Outstanding Policies

Sec. 4. All policies of insurance outstanding against any corporation so merged or consolidated shall be assumed by the new or surviving corporation on the same terms under the same conditions as if such policies had continued in force in the original corporation, and such insurer shall carry out the terms of such policy and be entitled to all the rights and privileges thereof and the reserves accumulating on such policy prior to such merger or consolidation.

Investments; Acquisition of Excess Real Estate; Branch Offices

Sec. 5. In the event of the merger or consolidation of any two or more insurance corporations under the provisions of this Act, all investments of such corporations so absorbed, that were authorized

when made by the laws of the state in which such insurance corporations were organized, as proper securities or assets, including real property, for investment of funds of an insurance corporation and which are taken over by such new or surviving corporation by virtue of a merger or consolidation under the provisions of the Act, shall be, under the laws of this state, considered as valid securities or assets, including real property, of such new or surviving corporation by virtue of a merger or consolidation under the provisions of this Act, provided such investments are approved by the Commissioner of Insurance in this state, and the same are taken over on terms satisfactory to said Commissioner; provided, however, that in the event the new or surviving corporation acquires by virtue of such merger or consolidation real estate or property beyond or in excess of that permitted by the applicable Articles pertaining to owning or holding real estate, such new or surviving corporation shall sell and dispose of all such excess real estate within the time specified in such applicable Articles; provided that the new or surviving corporation shall not hold such property for a longer period unless it shall procure a certificate from said Commissioner that its interests will materially suffer by the forced sale thereof; in which event the time for the sale thereof may be extended to such time as the Commissioner shall direct in such certificate. Provided further, that this Section will not preclude the designation and use of such acquired excess real estate as branch offices in accordance with the applicable provisions of this Code.

Treasury Stock; Retirement and Cancellation

Sec. 6. If, after any merger or consolidation is completed, the new or surviving corporation acquires its own shares as a result of distribution of shares to the shareholders of the other corporation or corporations which are being merged or consolidated, or acquires its own stock as a result of purchase of stock of the dissenting shareholders, such stock may be held as treasury stock for a period of one (1) year, after which time such corporation shall retire and cancel such stock by proper charter amendment, if the same has not previously been reissued.

Purchase of Outstanding Stock; Conditions and Limitations

Sec. 7. One life insurance corporation may purchase or contract to purchase all or part of the outstanding stock of another life insurance corporation for purposes of merger or consolidation. The provisions contained in Article 3.39 of the Insurance Code which limit investments in the corporate stock of another corporation shall not apply provided that such purchase or contract to purchase shall be subject to the following conditions or limitations:

(a) The intention to merge or consolidate is evidenced by a resolution adopted by the Board of Directors of the purchasing corporation at or prior to the purchase of such stock or the execution of a contract to purchase such stock; and

(b) The purchasing corporation shall either (1) initially purchase or contract to purchase at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market or otherwise, at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of shares of stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized; and

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49-1 of this code; and

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49-1, as amended, of the Insurance Code; and

(e) The merger or consolidation shall become effective on or before December 31st in the second year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the merger or consolidation; and

(f) If the merger or consolidation fails to become effective within such time as may be finally

determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

Affect on Anti-Trust Statutes

Sec. 8. Nothing herein shall be construed as affecting, modifying, amending or repealing in any manner the Anti-Trust Statutes of this state.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1961, 57th Leg., p. 593, ch. 284, § 1; Acts 1977, 65th Leg., p. 222, ch. 107, § 1, eff. May 4, 1977.]

Art. 21.26. Purchase of Stock for Total Assumption Reinsurance

Sec. 1. Nothing in this Act or in the Insurance Code shall be construed as in any way affecting or limiting the right of a life insurance corporation organized or operating under Chapter Three (3) or Chapter Eleven (11) of the Insurance Code of the State of Texas to purchase or to contract to purchase all or part of the outstanding shares of another life insurance corporation, domestic or foreign, doing a similar line of business for the purpose of reinsuring all of the business of such other insurance corporation and assuming all of the liabilities and taking over all of the assets of such other corporation. The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:

(a) The intention to reinsure is evidenced by a resolution adopted by the Board of Directors of the reinsuring corporation at or prior to the purchase of such stock or the execution of a contract to purchase such stock; and

(b) The reinsuring corporation shall either (1) initially purchase or contract to purchase the number of shares of the stock of the other insurance corporation necessary to vote an approval of a total assumption reinsurance agreement under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of

shares of stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other insurance corporation was organized; and

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49-1 of this code; and

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49-1, Insurance Code, as amended, of the Insurance Code; and

(e) The reinsurance agreement shall become effective on or before December 31st in the second year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the reinsurance agreement; and

(f) If the reinsurance agreement fails to become effective within such time as may be finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

Sec. 2. All investments of such reinsured corporation shall be subject to Section 5 of Article 21.25 hereof, as if such corporation had been merged or consolidated.

Sec. 3. Nothing herein shall be construed as affecting, modifying, amending or repealing in any manner the Anti-Trust Statutes of this state.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 697, ch. 319, § 1; Acts 1961, 57th Leg., p. 593, ch. 284, § 2; Acts 1977, 65th Leg., p. 223, ch. 107, § 2, eff. May 4, 1977.]

Art. 21.27. Plan for Changing Stock Insurance Company to Mutual Insurance Company

Sec. 1. Any stock insurance company which is a domestic company, as defined by law, may become a mutual company owned and controlled by its policyholders, and to that end may carry out a plan for the acquisition of shares of its capital stock; provided, however, that such plan:

(1) Shall enable each stockholder to dispose of the same proportion of his holdings at the same price per share and on the same terms;

(2) Shall have been adopted by a vote of a majority of the directors of such corporation;

(3) Shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose;

(4) Shall have been approved by a majority vote of the policyholders voting at a meeting, called for the purpose of policyholders, each insured in at least One Thousand (\$1,000.00) Dollars and whose insurance shall then be in force and shall have been in force for at least one (1) year prior to such meeting; but no such meeting shall be called for such purpose nor shall such plan be submitted to the policyholders unless and until the plan shall first have been approved and adopted by a majority of the directors of such corporation and approved and adopted by its stockholders representing at least a majority of the capital stock of the corporation at meetings of the directors and stockholders, respectively, duly called and held for the purpose of considering the adoption of such plan, notice of such meeting shall be given by mailing such notice from the home office of such corporation at least thirty days prior to such meeting in a sealed envelope, postage prepaid, addressed to such policyholders at their last known postoffice addresses, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan; provided, however, that policyholders may vote in person, by proxy or by mail; that all votes shall be cast by ballot and the Chairman of the Board of Insurance Commissioners shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualification of the voters, and the canvass of the vote, and who shall certify to the Chairman of the Board of Insurance Commissioners and to the corporation the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the Chairman of the Board of Insurance Commissioners; that all necessary expenses incurred by the Chairman of the

Board of Insurance Commissioners shall be paid by the corporation as certified to by him; and

(5) Shall have been submitted to the Chairman of the Board of Insurance Commissioners and shall have been approved by him in writing, provided that every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the Chairman of the Board of Insurance Commissioners and provided that neither such plan, nor any such payment, shall be approved by the Chairman of the Board of Insurance Commissioners, unless at the time of such approvals respectively the corporation, after deducting the aggregate sum appropriated by such plan, to be paid in cash or other assets of the corporation, for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets sufficient to equal the entire liability of the corporation, including the net values of its outstanding contracts computed as required by law, and also all funds, contingent reserves, and a surplus over and above all liabilities of not less than Five Hundred Thousand (\$500,000.00) Dollars.

Acquisition of Shares in Trust; Appointment of Trustees

Sec. 2. If any insurance corporation shall determine to become a mutual insurance corporation in accordance with the provisions of Section 1 of this article, it may, in carrying out any plan to that end under such provisions, acquire any shares of its own stock by gift, bequest or purchase; and until all of such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to three trustees and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote, until all the capital stock of such corporation is acquired, and the purchase price therefor, including all annuity bonds issued on account thereof shall be fully paid off, whereupon the entire capital stock shall be retired and cancelled, and thereupon the corporation shall be and become a mutual insurance corporation without capital stock, and shall thereafter be controlled by the laws of Texas governing such mutual companies. Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under Section 1 of this article. Said trustees shall file with the corporation a verified acceptance of their appointments and declaration that they will faithfully discharge their duty as such trustees. All dividends and other sums received on said shares of stock so acquired, after

paying the necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are, or may become, policyholders of said corporation, and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation and be apportionable accordingly, as a part of said surplus among said policyholders.

Annuity Bonds in Payment of Stock

Sec. 3. The plan provided for in Section 1 of this article may provide that part or all of the purchase price of any part or all of the shares of stock of the corporation acquired by the corporation under the provisions of such plan may be paid by the corporation issuing its annuity bonds to be payable in such annual amounts, and to run for such number of years as may be provided for in said plan, provided that such annuity bonds issued by any such company shall expressly provide, on the face thereof, that they shall be payable only out of the surplus of the company remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets, as is provided by Article 11.16 of this code with respect to advances made to mutual life insurance companies; and provided that not more than three-fourths ($\frac{3}{4}$) of the net earnings of the corporation during any calendar year shall be used or applied to the payment of such annuities.

With the approval of the Chairman of the Board of Insurance Commissioners, the corporation issuing such annuity bonds, or any life insurance company may invest its funds in such annuity bonds, provided that no such company shall have so invested at any one time an amount in excess of ten (10%) per cent of its total admitted assets.

Distribution of Dividends

Sec. 4. All dividends or earnings accruing to the corporation as the result of the acquisition of any or all of the shares of its stock under the provisions of this article, shall be annually distributed among the policyholders of the corporation under terms and conditions to be approved by the Chairman of the Board of Insurance Commissioners.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.28. Liquidation, Rehabilitation, Reorganization or Conservation of Insurers

Definitions

Sec. 1. For the purposes of this Article:

(a) "Insurer" means and includes capital stock companies, reciprocal or interinsurance exchanges, Lloyd's associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assessment

associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of Texas Insurance Code of 1951, and all other organizations, corporations, or persons transacting an insurance business, unless such insurers are by statute specifically, by naming this Article, exempted from the operation of this Article.

(b) "Delinquency proceeding" means any proceeding commenced in any court of this State against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving such insurer.

(c) "Assets" means all property, real or personal, whether specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons, or a limited class or classes of persons. The word "assets," as used in this Article, includes all deposits and funds of a special or trust nature.

(d) "Liquidator" means the person designated by the Board of Insurance Commissioners as receiver, liquidator, rehabilitator, or conservator of all insurers as defined herein.

(e) "Board" means the Board of Insurance Commissioners of the State of Texas.

(f) "Court," unless the same clearly appears to the contrary from the text of this article, means the court in which the delinquency proceeding is pending.

General Procedures

Sec. 2. (a) Receiver Taking Charge. Whenever under the law of this State a court of competent jurisdiction finds that a receiver should take charge of the assets of an insurer domiciled in this State, the liquidator designated by the Board of Insurance Commissioners as hereinafter provided for shall be such receiver. The liquidator so appointed receiver shall forthwith take possession of the assets of such insurer and deal with the same in his own name as receiver or in the name of the insurer as the court may direct.

(b) Title in Receiver. The property and assets of such insurer shall be in the custody of the court as of the date of the commencement of such delinquency proceedings. The said receiver and his successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action of such insurer, wherever located, as of the date of entry of the order directing possession to be taken. Such title of the receiver shall relate back to the date of the commencement of the delinquency proceedings unless the court shall otherwise provide. The filing or recording of such an order in any record office of the State shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded by such insurer.

(c) Rights Fixed. The rights and liabilities of any such insurer and of its creditors, policyholders, members, officers, directors, stockholders, agents, and all other persons interested in its estate, shall, unless otherwise directed by the court, be fixed as of the date of the commencement of the delinquency proceedings, subject, however, to the provisions of Section 3 with respect to the rights of claimants holding contingent claims, and as otherwise expressly provided in this Article.

(d) Bonds. The receiver shall be responsible, on his official bond hereinafter provided for, for all assets coming into his possession. The court may require an additional bond, or bonds, from the said receiver, and, if deemed desirable for the protection of the assets, may require a bond, or bonds, of any special deputy liquidator, or other assistant or employee appointed by or under the authority of this Article.

(e) Conducting of Business. Upon taking possession of the assets of a delinquent insurer the receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer, or to take such steps as may be necessary to conserve the assets and protect the rights of policyholders and claimants for the purpose of liquidating, rehabilitating, reinsuring, reorganizing or conserving the affairs of the insurer.

(f) Inventory. An inventory in duplicate of the insurer's assets shall be prepared forthwith by the receiver, one of which shall be filed in the office of the Board and one in the office of the clerk of the court having jurisdiction, which inventories shall be open to inspection.

(g) Disposal of Property; Settling Claims. The receiver may, subject to the approval of the court, (1) sell or otherwise dispose of the real and personal property, or any part thereof, of an insurer against whom a proceeding has been brought under this Article, and (2) sell or compound all doubtful or uncollectible debts, or claims owed by or owing to such insurer, including claims based upon an assessment levied against a member of a mutual insurer, reciprocal exchange, or an underwriter at Lloyds. Whenever the amount of any such debt or claim owed by or owing to such insurer or the value of any item of property of the insurer does not exceed Five Hundred Dollars (\$500), exclusive of interest, the receiver may compromise or compound such debt or claim or sell such property upon such terms as he may deem for the best interests of said insurer without obtaining the approval of the court. The receiver may, subject to the approval of the court, sell or agree to sell, or offer to sell, any assets of such an insurer to such of its creditors who may desire to participate in the purchase thereof, to be paid for, in all or in part, out of dividends payable to such creditors, and, upon the application of the receiver, the court may designate representa-

tives to act for such creditors in the purchase, holding and/or management of such assets, and the receiver may, subject to the approval of the court, advance the expenses of such representatives against the security of the claims of such creditors.

(h) Depositories. All money collected by the receiver shall be forthwith deposited in any bank or banks in this State which are members of the Federal Deposit Insurance Corporation. The funds collected or realized from the assets of each insurer shall be kept separate and apart from all other funds. Whenever any account in any such bank exceeds the maximum amount insured by said Federal Deposit Insurance Corporation, the receiver is hereby authorized and directed to make such contracts and require such security as it may deem proper for the safeguarding of such deposit upon approval of the Board.

Claims

Sec. 3. (a) Time for Filing. Where a liquidation, rehabilitation, or conservation order has been entered in a proceeding against an insurer under this Article, all persons who may have claims against such insurer shall present proof of the same to the receiver at a place specified by him within a period of time to be specified by the court, in no event, however, less than ninety (90) days nor more than one (1) year after the date of the entry of the order specifying such time. The receiver shall notify all persons who may have claims against such insurer as disclosed by its books and records, to present proof of the same to him within the time as fixed. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

(b) Late Filing. Proofs of claims may be filed subsequent to the date specified but in no event later than one (1) year after the entry of the court's order specifying the time for filing claims. Claims filed subsequent to the date specified in the court's order, but prior to the expiration of one (1) year after the entry of such order, may participate only in future dividends. Claims which are not filed within the expiration of such one-year period shall not participate in any distribution of the assets by the receiver.

(c) Proof Necessary. A proof of claim shall consist of a written statement under oath signed by the claimant, setting forth the claim, the consideration therefor, and whether any, and if so, what securities are held therefor, and any right of priority of payment or other specific rights asserted by the claimant, and whether any, and if so, what payments have been made thereon, and such other matters as may be required by the court, and that the sum claimed is justly owing from the insurer to the claimant. Whenever a claim is founded upon an instrument in writing, such instrument, unless lost

or destroyed, shall be filed with the proof of claim. After the filing of such instrument, the receiver may in his discretion permit the claimant to substitute a true copy of such instrument, until the final disposition of the claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim.

(d) Contingent Claims. No contingent claim shall share in a distribution of the assets of an insurer in liquidation except that such claim shall be considered if properly presented, and may be allowed to share where (1) such claim becomes absolute against the insurer on or before the last day fixed for filing of proof of claims against the assets of such insurer, or (2) there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent. For the purposes of this Article, "contingent claim" means a claim for which the right of action is dependent upon the occurrence or nonoccurrence of some future event which may or may not happen.

(e) Third Party Claims. Where a liquidation, rehabilitation or conservation order has been entered in a proceeding against an insurer under this Article, any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim with the receiver, regardless of the fact that such claim may be contingent, and such claim may be approved (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such persons shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. No judgment against an insured taken after the date of the commencement of the delinquency proceedings shall be considered in the proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings shall be considered as conclusive evidence in the proceeding, either of the liability of such insured to such person upon such cause of action, or of the amount of damages to which such person is therein entitled.

(f) Offsets. In all cases of mutual debts or mutual credits between the insurer and another person in connection with any claim or proceeding under this Article, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (g).

(g) No Offsets. No offsets shall be allowed in favor of any person, however, where (1) the obligation of the insurer to such person would not at the date of the commencement of the delinquency proceedings or as otherwise provided in Section 2(c), entitle him to share as a claimant in the assets of such insurer, or (2) the obligation of the insurer to such person was purchased by or transferred to such person subsequent to the commencement of the delinquency proceedings or with a view of its being used as an offset, or (3) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or reciprocal exchange, or underwriters at Lloyds, or to pay a balance upon a subscription to the capital stock of a stock insurance corporation, or (4) the obligation of such person is as a trustee or fiduciary.

(h) Action on Claims. The receiver shall have the discretion to approve or reject any claim filed against the insurer. Objections to any claim not rejected may be made by any party interested, by filing the objections with the receiver, who shall forthwith present them to the court for determination after notice and hearing. Upon the rejection of each claim either in whole or in part, the receiver shall notify the claimant of such rejection by written notice. Action upon a claim so rejected must be brought in the court in which the delinquency proceeding is pending within three (3) months after service of notice; otherwise, the action of the receiver shall be final and not subject to review. Such action shall be de novo as if originally filed in said court and subject to the rules of procedure and appeal applicable to civil cases.

Actions

Sec. 4. (a) Injunctions. Upon an application by the receiver, the receivership court may, with or without notice, issue an injunction restraining the insurer named in the order, its officers, directors, stockholders, members, trustees, agents, servants, employees, policyholders, attorneys, managers, attorneys-in-fact, associate, deputy, substitute attorneys-in-fact, and all other persons from the transaction of its business or the waste or disposition of its property, or requiring the delivery of its property and/or assets to the receiver subject to the further order of the court.

(b) Other Orders. Such court may at any time during a proceeding under this Article issue such other injunctions or orders as may be deemed necessary to prevent interference with the receiver or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments, garnishments, or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

(c) No Preferences. Any claim, judgment, lien or preference against the insurer or its receiver obtained, after the date of receivership, in derogation of the terms of any such injunction or order of the receivership court may be denied by the receiver until proof of the justness of such claim, judgment, lien, preference or demand is made before and approved by the receivership court.

(d) Pending Lawsuits. No judgment or order rendered by any court of this State in any action pending by or against the delinquent insurer after the commencement of delinquency proceedings shall be binding upon the receiver unless the receiver shall have been made a party to such suit.

(e) One Year Extension. The receiver shall not be required to plead to any suit in which he may be a proper party plaintiff or defendant, in any of the courts in this State until one (1) year after the date of his appointment as receiver, and the provisions of Articles 2310 and 2311 of the Revised Civil Statutes of Texas of 1925, as amended, shall not apply to insolvent insurance companies being administered under this Article.

(f) New Lawsuits. The court of competent jurisdiction of the county in which the delinquency proceedings are pending under this Article shall have venue to hear and determine all action or proceedings instituted after the commencement of delinquency proceedings by or against the insurer or receiver.

Voidable Transfers

Sec. 5. (a) Transfers or Liens Voidable. Any transfer or lien upon the property or assets of an insurer which is made or created within four (4) months prior to the commencement of delinquency proceedings under this Article, with the intent of giving to any creditor or enabling him to obtain a greater percentage of his debt than of any other creditor of the same class, and which is accepted by such creditor, having reasonable cause to believe that such preference will occur, shall be voidable.

(b) Personal Liability. Every director, officer, agent, employee, stockholder, member, attorney-in-fact, associate, substitute or deputy attorney-in-fact, underwriter, subscriber, and any other person acting on behalf of such insurer, who shall be concerned in any such prohibited act or deed, and every person receiving thereby property of such insurer, or the benefit thereof, shall be personally liable therefor, and shall be bound to account to the receiver for the benefit of the creditors of the insurer.

(c) Avoiding and Recovery. The receiver in any proceeding under this Article, may avoid any transfer of, or lien upon the property or assets of an insurer which any creditor, stockholder or member of such insurer might have avoided, and may recov-

er the property so transferred or its value from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the commencement of proceedings under this Article. Such property or its value may be recovered from anyone who has received it, except a bona fide holder for value as above specified.

Priority of Claims for Wages

Sec. 6. All wages actually owed to employees of an insurer against whom a proceeding under this Article is commenced, for services rendered within three (3) months prior to the commencement of such proceeding not exceeding Three Hundred Dollars (\$300) to each employee shall be paid prior to the payment of every other debt or claim, and in the discretion of the court may be paid as soon as practicable after the proceeding has been commenced, except that at all times there shall be reserved such funds as will be sufficient for the expenses of administration by the receiver.

Assessments

Sec. 7. (a) Application. Within four (4) years from the date of an order of rehabilitation, or liquidation, of a domestic insurer, the receiver may make an application to the court to levy an assessment against the members of a mutual insurer, or the underwriters or members of a reciprocal exchange, or the underwriters at Lloyds. Such application shall set forth the reasonable value of the assets of such insurer, its probable liabilities, and the probable necessary assessment, if any, to pay all possible claims and expenses in full, including expenses of administration and collection.

(b) Levy. Upon such notice as may be designated by the court, the court shall proceed to consider such report and may levy one or more assessments. Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the estimated cost of collection and percentage of uncollectibility thereof. No such assessment shall be levied against any member or subscriber with respect to any policy which contains a nonassessable or noncontingent liability provision or provisions and which has been issued under authority granted by the Board.

(c) Collection. After the entry of such an order of assessment and the expiration of the time for appeal, the receiver shall proceed to collect such assessments, and for the purpose of such collection may bring suit for the same in any court of competent jurisdiction in the county in which such delinquency proceeding is pending.

(d) Provisions Cumulative. The provisions of this Section are cumulative of any other remedies for the levy and collection of assessments.

Distribution of Assets

Sec. 8. (a) Payments to Creditors. Under the direction of the court the receiver shall make payments and dividends to the creditors.

(b) Interest. Interest shall not accrue on any claim subsequent to the date of the commencement of delinquency proceedings.

(c) Foreign Claimants. If any claimant of another state or foreign country shall be entitled to or shall receive a dividend upon his claim out of a statutory deposit or the proceeds of any bond or other asset located in such other state or foreign country, then such claimants shall not be entitled to any further dividend from the receiver until and unless all other claimants of the same class, irrespective of residence or place of the acts or contracts upon which their claims are based, shall have received an equal dividend upon their claims; and after such equalization, such claimants shall be entitled to share in the distribution of further dividends by the receiver, along with and like all other creditors of the same class, wheresoever residing.

(d) Setoff by Receiver. Upon the declaration of a dividend, the receiver shall apply the amount of such dividend against any indebtedness owed to the insurer by the person entitled to such dividend.

(e) Unclaimed Funds. Unclaimed dividends on approved claims, unclaimed returned assessments, and all other unclaimed funds subject to distribution to claimants, policyholders or other persons, remaining in the receiver's hands after payment of the final dividend shall be delivered to the Board at the time the receivership is closed, or in the event a final dividend is paid less than ninety (90) days prior to the closing of the receivership, the receiver may continue the bank account or accounts of such receivership from which such funds might be paid, for a period of time not to exceed ninety (90) days from the date of the closing of said receivership, before the same are so delivered to the Board. Such funds shall be deposited by the Board in trust in a special account to be maintained with the State Treasurer.

(f) Recovery by Owner. On receipt of satisfactory written and verified proof of ownership within two (2) years from the date such funds are so deposited with the State Treasurer, the Board shall certify such facts to the Comptroller of Public Accounts, who shall issue proper warrant therefor in favor of the parties respectively entitled thereto, drawn on the State Treasurer.

(g) Declaration of Abandonment. After such funds have remained unclaimed for two (2) years, the Liquidator may initiate action to have them declared to be abandoned, and the property of the State Board of Insurance. Such action shall be commenced by the filing by the Liquidator, in the court of competent jurisdiction in the county in which the delinquency proceeding is, or was pend-

ing, of a notice of his intention to declare such funds to be abandoned, and that he is claiming the same as the property of the State Board of Insurance. Such action may be for all or any part of such funds accumulated in any one particular receivership. Such notice shall state the name or names of the person or persons entitled thereto, his or their last known address, and the nature or source and amount of the fund or funds. Upon the filing of such notice by the Liquidator, the court shall set a date for the hearing of the application, and shall make notation thereon of the date of such hearing, which date shall be at least twenty (20) days subsequent to the date of the filing of said notice. A copy of said notice, with the judge's notation thereon shall be posted on the courthouse door of said court for at least twenty (20) days before a hearing is had thereon. Notice of the filing of the application shall be published at least once, and at least ten (10) days prior to the date set for such hearing, in a newspaper of general circulation in the county where the application is pending. Such notice shall be addressed to the true owners of unclaimed funds in the particular receivership involved in the application and shall state generally that a hearing shall be had on the date specified for the purpose of declaring such funds to be abandoned and the property of the State Board of Insurance. Upon the hearing on such application of the Liquidator, proof to the satisfaction of the court:

(1) That such funds, or the checks therefor, had previously been sent by the Receiver to the last known address of the person or persons entitled thereto;

(2) That such funds, or the checks therefor, had been returned unclaimed or that the check or checks therefor had not been cashed;

(3) That the funds had been delivered to the Board as required by Subsection (e) above;

(4) That such money remained unclaimed with the Board for two (2) years; and

(5) That notice of the filing of the application has been published as herein provided, shall be prima facie evidence of the intention of the person or persons entitled thereto to abandon the same, and that the Board is the rightful owner thereof. Upon such finding by the court, the court shall be authorized to render judgment accordingly. Upon receipt of such judgment, the Board shall certify such fact to the Comptroller of Public Accounts, who shall issue proper warrant therefor to the State Board of Insurance. The Board shall forthwith deposit such funds in accordance with the provisions of Section 2(h) of this Article, except that such funds derived through any one insurer need not be kept separate from such funds derived through any other insurer.

(h) Use of Abandoned Funds. Such funds so deposited by the Board in accordance with Subsection (g) above may be expended by the Liquidator,

with the consent of the Board, for the purpose of paying expenses of the office of the Liquidator and/or Receiver that are not properly chargeable to any one receivership or conservatorship estate, and for the purpose of financing continued operation of any receivership or conservatorship then being administered by the Liquidator as Receiver or Conservator, when in the discretion of the Board it appears to be in the best interest of such receivership or conservatorship estate that it not be closed, and that additional administration be had thereon. Any funds so applied from this source to another receivership or conservatorship estate are to be repaid from the assets of the receivership or conservatorship estate to which they were applied before additional dividends are paid in any such receivership, or before the conservatorship is released for continued operation.

**Settlement of Claims; Abandoned Funds;
Re-opening of Receiverships**

Sec. 8A. Any and all assets other than cash remaining in the receiver's hands after payment of the final dividend may be conveyed, transferred or assigned to the State Insurance Liquidator and his successors in office, to be handled as a trust. The State Insurance Liquidator shall have authority to convey, transfer, and assign any assets, including causes of action, judgments, and claims, and to settle or release causes of action, judgments, claims, and liens on such terms and for such amounts as he deems for the best interest of such trust, whether such assets have heretofore or may hereafter come into his hands. From proceeds derived from any such assets the Liquidator shall defray the costs incident to the sale, settlement, release or other transaction whereby such proceeds are obtained, and deliver the remainder to the Board to be deposited by it in trust in a special account to be maintained with the State Treasurer to be handled, disposed of and used as follows:

An order directing disposition of such funds may be made by a court of competent jurisdiction of Travis County, Texas, upon application of the Liquidator, after notice and hearing. Notice shall be posted on the courthouse door of said court for at least twenty (20) days before a hearing is had on the Liquidator's application, and notice shall be published at least once, and at least ten (10) days prior to the date set for such hearing, in a newspaper of general circulation in Travis County. Such notice shall state the amount of the funds and the receivership from which they were derived. It shall be addressed to all persons having an interest, as claimant or otherwise, in the assets of the particular receivership involved in the application, and shall state generally that a hearing shall be had on the date specified for the purpose of determining the disposition to be made of such funds, including a

declaration that such funds are abandoned and the property of the State Board of Insurance.

If the court finds that funds derived from any receivership are sufficient to justify re-opening of the receivership and payment of a dividend, then such may be ordered, but otherwise, if such funds are insufficient for that purpose, the court may declare such funds abandoned and a certified copy of such judgment will be authority for the Comptroller of Public Accounts to issue a Warrant therefor to the State Board of Insurance. The Board shall forthwith deposit such funds in accordance with the provisions of Section 2(h) of this Article, except that funds derived from one insurer need not be kept separate from funds derived through any other insurer.

Such funds may be used as provided in Section 8(h) of this Article.

Closing

Sec. 9. (a) Excess Assets—Stock Companies. When the receiver shall have made provision for unclaimed dividends and all of the liabilities of a stock insurance company, he shall call a meeting of the stockholders of the insurer by giving notice thereof in one (1) or more newspapers in the county where the principal office of the insurer was located, and by written notice to the stockholders of record at their last known address. At such meeting, the stockholders shall appoint an agent or agents to take over the affairs to continue the liquidation for benefit of the stockholders. Voting privileges shall be governed by the insurer's by-laws. A majority of the stock shall be represented at the agent's appointment. Such agent or agents shall execute and file with the court such bond or bonds as shall be approved by it, conditioned on the faithful performance of all the duties of the trust. Under order of the court the receiver shall then transfer and deliver to such agent or agents for continued liquidation under the court's supervision all assets of insurer remaining in his hands, whereupon the receiver and the Board, and each member and employee thereof, shall be discharged from any further liability to such insurer and its creditors and stockholders; provided, however, that nothing herein contained shall be so construed as to permit the insurer to continue in business as such, but the charter of such insurer and all permits and licenses issued thereunder or in connection therewith shall be ipso facto revoked and annulled by such order of the court directing the receiver to transfer and deliver the remaining assets of such insurer to such agent or agents.

(b) Excess Assets—Other Companies. After the receiver shall have made provision for unclaimed dividends and all of the liabilities of any insurer other than a stock insurance company, he shall

dispose of any remaining assets as directed by the receivership court.

(c) No Limitation. Each receivership or other delinquency proceeding prescribed by this Article shall be administered continuously hereunder for whatever length of time is necessary to effectuate its purposes. No arbitrary period prescribed elsewhere by the laws of Texas limiting the time for the administration of receiverships or of corporate affairs generally shall be applicable thereto.

(d) Reopening. If after the receivership shall have been closed by final order of the court, the liquidator shall discover assets not known to him during receivership, he shall report his findings to the court. It shall be within the discretion of the court as to whether the value of the after-discovered assets shall justify the reopening of the receivership for continued liquidation.

Reinsurance

Sec. 10. (a) Reinsurer's Liability. If the receiver has claims under policies covered by reinsurance, there shall be no diminution of the liability of the reinsurer because of the delinquency proceeding against the delinquent company, regardless of any provisions in the reinsurance contract to the contrary.

(b) Notice to Reinsurer. The liquidator or receiver shall give written notice to the affected reinsurers of the pendency of a claim against the receiver under a policy covered by reinsurance within a reasonable time after such claim is filed in the delinquency proceeding, and during the pendency of such claim any affected reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where the claim is to be adjusted any defense or defenses which it may deem available to the delinquent company, the liquidator or the receiver. Subject to court approval, the expense thus incurred shall be chargeable against the delinquent company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the delinquent company solely as a result of the defense undertaken by the assuming insurer.

(c) Provided, however, that Article 6.16 of the Insurance Code of 1951, Acts Regular Session of the Fifty-second Legislature, 1951, Chapter 491, page 868, shall remain in full force and effect and shall govern as to those insurance companies affected thereby.

Evidence in Records

Sec. 11. (a) Records Admitted. All books, records, documents and papers of any delinquent insurer received by the liquidator and held by him in the course of the delinquency proceedings, or certified copies thereof, under the hand and official seal of the Board and/or liquidator, shall be received in

evidence in all cases without proof of the correctness of the same and without other proof, except the certificate of the Board and/or liquidator that the same was received from the custody of the delinquent insurer or found among its effects.

(b) Certificates. The liquidator shall have the authority to certify to the correctness of any paper, document or record of his office, including those described in (a) of this section, and to make certificates under seal of the Board and certified by the liquidator certifying to any fact contained in the papers, documents or records of the Liquidation Division; and the same shall be received in evidence in all cases in which the originals would be evidence.

(c) Prima-facie Evidence. Such original books, records, documents and papers, or certified copies thereof, or any part thereof, when received in evidence shall be prima-facie evidence of the facts disclosed thereby.

Liquidator, Assistants, Expense Accounts

Sec. 12. (a) Liquidator, Bond. The liquidator herein named shall be appointed by a majority of the Board of Insurance Commissioners, and shall be subject to removal by a majority of said Board, and before entering upon the duties of said office, shall file with the Board of Insurance Commissioners a bond in the sum of Ten Thousand Dollars (\$10,000), payable to the Board of Insurance Commissioners for the benefit of injured parties, and conditioned upon the faithful performance of his duties and the proper accounting for all moneys and properties received or administered by him.

(b) Appointments, Expenses. The Board shall have the power to appoint and fix the compensation of the liquidator and of such special deputy liquidators, counsel, clerks, or assistants, as it may deem necessary. The payment of such compensation and all expenses of liquidation shall be made by the liquidator out of funds or assets of the insurer on approval of the Board. An itemized report of such expenses, sworn to by the liquidator and approved by the Board, shall be presented to the court from time to time, which account shall be approved by the court unless objection is filed thereto within ten (10) days after the presentation of the account. The objection, if any, must be made by a party at interest and shall specify the item or items objected to and the ground of such objection. The court shall set the objection down for hearing, notifying the parties of the setting. The burden of proof shall be upon the party objecting to show that the items objected to are improper, unnecessary or excessive.

(c) Filing Reports. Said liquidator shall file reports with the Board of Insurance Commissioners upon its request showing the operation, receipts, expenditures, and general condition of any organization of which he may have charge at that time, and,

upon request, shall file a copy of said report with the court in which said receivership proceeding is pending. He shall also file a final report of each organization which he has liquidated or handled showing all receipts and expenditures, and giving a full explanation of the same and a true statement of the disposition of all of the assets of each organization.

Legislative Appropriations

Sec. 12A. It is the sense of the Legislature, as necessary to state policy, that facilities be immediately and continually available to meet any or all of the requirements of preparing for, placing in, continuing or completing any liquidation, rehabilitation, reorganization or conservation of insurers, and in order to make such provision and to provide that the Liquidator and employees be used for other Insurance Department duties when not involved in liquidation or conservation matters, the Legislature may make provisions for the Liquidator and employees and their expenses, in whole or in part, by making appropriations therefor, or by appropriating or permitting use of funds, other than funds or assets of insurers being liquidated, rehabilitated, reorganized or conserved, which are received by or made available to the Board, or by establishing disappearing or partially or wholly reimbursable revolving funds in the Appropriation Acts, notwithstanding any other provision of Article 21.28 of Chapter 21 of the Insurance Code.

The provisions of this Act are cumulative of existing law and in the event of conflict the provisions of this Act shall govern.

Ancillary Delinquency Proceedings

Sec. 13. Whenever under the laws of this State, a receiver is to be appointed in delinquency proceedings for an insurer domiciliary in another state, a court of competent jurisdiction in this State shall, on the petition of the Board of Insurance Commissioners of this State, appoint the liquidator herein provided as ancillary receiver in this State of such insurer. The Board shall file such petition (a) if it finds that there are sufficient assets of such insurer located in this State to justify the appointment of an ancillary receiver, or (b) if ten (10) or more persons resident in this State, having claims against such insurer, file a petition or petitions in writing with the Board, requesting the appointment of such ancillary receiver. Such ancillary receiver shall have the right to sue for and reduce to possession the assets of such insurer in this State, and shall have the same powers and be subject to the same duties with respect to such assets, as are possessed by a receiver of a domiciliary insurer under the laws of this State. The remaining provisions of this Article shall be applicable to the conduct of such ancillary proceedings.

Contracts with Foreign Receiver

Sec. 14. In cases where a receiver of any delinquent insurer has been appointed both in Texas and in some other state, the Texas receiver, either domiciliary or ancillary, may, under supervision of the Texas receivership court, contract with the receiver in such other state for the administration of the affairs of their respective receiverships in any manner consistent with this Article which will enable the respective receivers to coordinate their activities in the interest of efficiency and economy.

Borrowing on the Pledge of Assets

Sec. 15. For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this Article the receiver may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal or mixed of such insurer, and the receiver, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The receiver shall be under no obligation personally or in his official capacity as receiver to repay any loan made pursuant to this section.

Conflicts of Law

Sec. 16. In the event of conflict between the provisions of this Article and the provisions of any existing law, the provisions of this Article shall prevail, and all laws, or parts of law, in conflict with the provisions of this Article, are hereby repealed to the extent of such conflict.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 737, ch. 267; Acts 1961, 57th Leg., p. 997, ch. 435, § 1; Acts 1963, 58th Leg., p. 1309, ch. 499, § 1; Acts 1965, 59th Leg., p. 1520, ch. 661, § 1, eff. Aug. 30, 1965.]

Art. 21.28-A. Insurer Delinquencies and Prevention of Insurer Delinquencies; Supervision of Insurers and Proceedings, Conservatorships, Liquidations—Additional and Alternate Provisions

Purposes and Findings

Sec. 1. It is the sense of the Legislature that existing provisions and conditions of law and the ordered procedures of law are sometimes not adequate, nor appropriate under all circumstances, in respect of a need to remedy the financial condition and the management of certain insurers. Neither are the laws adequate for the rehabilitation of insurers who voluntarily request rehabilitation. A

void exists in the laws with respect to those insurers most susceptible to rehabilitation or the regaining of solvency. The Legislature finds and determines that the placing of an insurer in receivership often destroys or diminishes, or is likely to destroy or diminish, one or more of the following values or assets:

- (a) the value of the insurance account or in-force business of the insurer,
- (b) the value of the insurer as a going concern,
- (c) the value of its agency force, and
- (d) the value of other of its assets.

The Legislature declares that such values and assets should be preserved if the circumstances of the insurer's financial condition warrant an attempt to conserve or rehabilitate such insurer and such rehabilitation or conservation is otherwise feasible.

It is the purpose of the Legislature to provide for rehabilitation and conservation of insurers by authorizing and requiring the additional facility of supervision and conservatorship by the State Board of Insurance, to authorize action to resolve whether an attempt be made to rehabilitate and conserve an insurer, and to avoid, if possible and feasible, the necessity of temporary or permanent receivership. It is the further purpose of this Act to provide for protection of the assets of an insurer pending determination of whether or not an insurer can be successfully rehabilitated. It is not the sense of the Legislature that rehabilitation will be accomplished in every case, but it is the purpose of this Article to provide a facility and direction for attempting the rehabilitation without immediate resort to the harsher remedy of receivership. In the event that receivership ultimately becomes necessary, it is nevertheless the belief and finding of the Legislature that the preliminary supervision and conservatorship is preventive of a dissipation of assets and will thus benefit policyholders, creditors and owners; and the State Board of Insurance is directed, in its discretion, to the use of this authorization. The Legislature further finds that an insurer delinquency, or the state's incapacity to properly proceed in a threatened delinquency, directly or indirectly affects other insurers by creating a lack of public confidence in insurance and in insurance companies. As respects the state, insurer delinquencies are destructive of public confidence in the capacity of the state to regulate insurers. These and other harmful results of insurer delinquency are properly minimized by a further enactment designed to protect and in aid of insureds, creditors and owners. The Legislature intends and expects that the inappropriate as well as the appropriate concerns in respect of insurance and insurers will be reduced by the existence and operation of this law. The Legislature declares that it is a proper concern of this state and proper policy to attempt to correct or remedy insurer misconduct, ineptness or misfortune. It is the purpose of the Legislature to express, or to imply

from context when not expressed, an authorization, provision and enabling of the promulgation of rules and regulations by the State Board of Insurance as directed in these legislative findings and in the augmentation of this law; and to provide also for any other requisite administrative action. In consequence of the foregoing, the substance and procedure of this Article is here declared to be the public policy of this state and necessary to the public welfare. Such policy and welfare requires the availability of this law and the application of this law whenever circumstances warrant; and it is therefore a condition of doing an insurance business in this state; and it is made applicable and is a consequence of any other transactions in respect of an insurer or insurance. And in conjunction with existing law, the rationale is effected in the provision herein for a generally ordered sequence, and review at each such step, of supervision, concurrent conservation and rehabilitation (including reinsurance), and, as may at any time or ultimately be indicated or determined, cessation of the conservation by accomplishment of rehabilitation or by receivership and liquidation.

Definition, Application and Scope

Sec. 2. As used in this Article, the following words, terms and phrases (in single quotes in this Section of the Article but not in quotes in other Sections) include the meanings, significance or application described in this Section, except as another meaning is clearly requisite from the purposes or is otherwise clearly indicated by the context.

(a) "Insurance Company" (used interchangeably with "insurer") is any person, organization, association or company, (authorized or unauthorized, admitted or non-admitted) acting as an insurer, or as principal or agent of an insurer, including stock companies, reciprocals or inter-insurance exchanges, Lloyds associations, fraternal benefit societies, stipulated premium companies, and mutual companies of all kinds, including state-wide mutual assessment corporations, local mutual aids, burial associations, and county mutual insurance companies and farm mutual insurance companies.

(b) In respect of an insurance company or insurer, "insolvent" or "insolvency" and the phrases in further identity of insurer delinquency and threatened insurer delinquency, mean and include, and the conditions to which this Article is applicable include, but are not limited to, any one or more of the following circumstances or conditions.

(1) if an insurance company's required surplus, capital, or capital stock is impaired to an extent prohibited by law, or

(2) if an insurance company continues to write new business when it is not possessed of

the surplus, capital or capital stock which is required of it by law to permit it to do so, or

(3) if the business of any such insurance company is being conducted fraudulently, or

(4) if any such insurance company attempts to dissolve or liquidate without first having made provisions, satisfactory to the Commissioner of Insurance, for liabilities arising from policies of insurance issued by such company.

(c) "Exceeded its Powers" includes and means but is not limited to the following circumstances:

(1) if an insurance company has refused to permit examination of its books, papers, accounts, records, or affairs by the Commissioner of Insurance, his deputy, or duly commissioned examiners; or if any insurance company, organized in the State of Texas, has removed from the state such books, papers, accounts or records necessary for an examination of such insurance company, or

(2) if an insurance company has failed to promptly answer inquiries authorized by Article 1.25 of this Code, or

(3) if an insurance company has neglected or refused to observe an order of the Commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock, or surplus, or

(4) if an insurance company without first having obtained written approval of the Commissioner has by contract or otherwise: (i) totally reinsured its entire outstanding business, or (ii) merged or consolidated substantially its entire property or business with another insurer; or

(5) if any insurance company is continuing to write business after its license has been revoked or suspended.

(d) "Consent," as used in this Act, includes and means agreement to either supervision or conservatorship by the insurance company.

Notice to Comply With Written Requirements of Commissioner; Noncompliance; Taking Charge as Conservator

Sec. 3. If upon examination or at any other time it appears to or is the opinion of the Commissioner of Insurance that any insurance company is insolvent, or its condition is such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance, or if such company appears to have exceeded its powers (as defined herein) or has failed to comply with the law, or if such insurance company gives its consent (as defined herein), then the Commissioner of Insurance shall upon his determination (a) notify the insurance company of his determination, and (b) furnish to the insurance company a written list of the Commissioner's requirements to abate his determination, and (c) if the Commissioner makes a fur-

ther determination to supervise he shall notify the insurance company that it is under the supervision of the Commissioner of Insurance and that the Commissioner is applying and effecting the provisions of this Article. Such insurance company shall comply with the lawful requirements of the Commissioner of Insurance and if placed under supervision shall under supervision have sixty (60) days from the date of notice within which to comply with the requirements of the Commissioner, subject however to the provisions of this Article. In the event of such insurance company's failure to comply with in such time, the Commissioner of Insurance, acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, shall immediately, after due and proper notice and hearing, take charge as conservator of the insurance company and all of the property and effects thereof.

**Prohibited Acts During Sixty (60) Day Period
of Supervision**

Sec. 4. (a) During the period of supervision, the Commissioner may appoint a supervisor to supervise such insurance company and may provide that the insurance company may not do any of the following things, during the period of supervision, without the prior approval of the Commissioner or his supervisor:

- (1) Dispose of, convey or encumber any of its assets or its business in force;
 - (2) Withdraw any of its bank accounts;
 - (3) Lend any of its funds;
 - (4) Invest any of its funds;
 - (5) Transfer any of its property;
 - (6) Incur any debt, obligation or liability;
 - (7) Merge or consolidate with another company;
- or
- (8) Enter into any new reinsurance contract or treaty.

(b) The Liquidator of the State Board of Insurance, or his duly appointed deputy, may be appointed to serve as the supervisor.

Conservatorship or Liquidation

Sec. 5. If, after notice, and after hearing, at the conclusion of said sixty (60) day period, it is determined that such insurance company has failed to comply with the lawful requirements of the Commissioner, or upon consent by an insurance company, the Commissioner may appoint a conservator, who shall immediately take charge of such insurance company and all of the property, books, records, and effects thereof, and conduct the business thereof, and take such steps toward the removal of the causes and conditions, which have necessitated such order, as the Commissioner may direct. During the pendency of conservatorship, the conservator shall make such reports to the Commissioner

from time to time as may be required by the Commissioner, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of such insurance company, including claims or causes of action belonging to or which may be asserted by such insurance company, and to deal with the same in his own name as conservator, and shall be empowered to file, prosecute, and defend any suit or suits which have been filed or which may thereafter be filed by or against such insurance company which are deemed by the conservator to be necessary to protect all of the interested parties or any property affected thereby. If at the time of appointment of a conservator or at any time during the pendency of such conservatorship it appears that the interest of the policyholders or certificate holders of such insurance company can best be protected by reinsuring the same, the conservator may, with the approval of or at the direction of the Commissioner: (1) reinsure all or any part of such insurance company's policies or certificates of insurance with some solvent insurance company authorized to transact business in this state, and (2) to the extent that such insurance company in conservatorship is possessed of reserves attributable to such policies or certificates of insurance, the conservator may transfer to the reinsuring company such reserves or any portion thereof as may be required to consummate the reinsurance of such policies, and any such reserves so transferred shall not be deemed a preference of creditors. The liquidator of the State Board of Insurance, or his duly appointed deputy, may be appointed to serve as the conservator. If the Commissioner of Insurance, however, is satisfied that such insurance company is not in condition to continue business in the interest of its policy or certificate holders, under the conservator as above provided, the Commissioner of Insurance shall give notice to the Attorney General who shall thereupon apply to any Court in Travis County, Texas, having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such insurance company or to require it to comply with the law or to satisfy the Commissioner of Insurance as to its solvency, and to satisfy the requirement that its condition is such as to render the continuance of its business not hazardous to the public or to the holders of its policies or certificates of insurance. It shall be in the discretion of the Commissioner of Insurance to determine whether or not he will operate the insurance company through a conservator, as provided above, or report it to the Attorney General, as herein provided. When all the policies of an insurance company are reinsured or terminated, and all of its affairs concluded, as herein provided, the Commissioner of Insurance shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the insurance company so reinsured and liquidated. Where the Commissioner

of Insurance lends his approval to the merger, consolidation or reinsurance of all the policies of one insurance company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the insurance company from which the policies were merged, consolidated or reinsured, in the same manner as is provided for the charters of companies totally reinsured or liquidated. The cost incident to the supervisor's and conservator's service shall be fixed and determined by the Commissioner of Insurance and shall be a charge against the assets and funds of the insurance company to be allowed and paid as the Commissioner of Insurance may determine.

Out of State Companies

Sec. 6. This Article shall apply to insurance companies doing an insurance business but not domiciled in the State of Texas, whether authorized to do business in this state or not. In the event that the Commissioner of Insurance makes any of the findings provided for in Section 3 of this Article concerning any such insurance company or finds that any such insurance company is not possessed of the minimum surplus or capital or capital stock required by the Insurance Code of the State of Texas for similar type domestic companies, or if a conservator, rehabilitator, receiver, or liquidator has been appointed in the state of domicile, or if the insurance company gives its consent as defined herein, the Commissioner of Insurance shall have the same power and jurisdiction to appoint a supervisor or conservator as to the assets of such out of state insurer located in this state as provided herein for domestic insurance companies. In the event that any such out of state insurance company shall fail to comply with the provisions of Section 4 of this Article with respect to any of its assets or policies located within this state during any sixty (60) day period of supervision, such act or violation shall constitute sufficient grounds for the immediate revocation of its certificate of authority to do business in this state and for the immediate appointment of a conservator to take charge of its assets located within this state. Any supervisor or conservator appointed with respect to assets located in this state belonging to an out of state insurance company shall have all of the powers and authority provided for in Section 5 of this Article with respect to such assets located in this state and, in addition, may reinsure all or any part of such insurance company's policyholders or certificate holders located within this state with some solvent insurance company authorized to transact business in this state and may transfer to the reinsuring company, as reserve funds, assets or any portion thereof in his possession as may be required to consummate the reinsurance of such policies and any of such assets

transferred as reserve funds shall not be deemed a preference of creditors.

Review and Stay of Action

Sec. 7. During the period of supervision and during the period of conservatorship, the insurance company may request the Commissioner of Insurance or in his absence, the duly appointed deputy for such purpose, to review an action taken or proposed to be taken by the supervisor or conservator, specifying wherein the action complained of is believed not to be in the best interests of the insurance company, and such request shall stay the action specified pending review of such action by the Commissioner or his duly appointed deputy. Any order entered by the Commissioner appointing a supervisor and providing that the insurance company shall not do certain acts as provided in Section 4 of this Article, any order entered by the Commissioner appointing a conservator, and any order by the Commissioner following the review of an action of the supervisor or conservator as hereinabove provided shall be immediately reviewed by the State Board of Insurance upon the filing of an appeal by the insurance company. The Board shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter, and the requirement of ten (10) days notice set out in Article 1.04(d) of this Code may be waived by the parties of record. The Board may stay the effectiveness of any order of the Commissioner, pending its review of such order. Such appeal shall have precedence over all other business of a different nature pending before the Board, and in the public hearing any and all evidence and matters pertaining to the appeal may be submitted to the Board, whether included in the appeal or not, and the Board shall make such other rules and regulations with regard to such applications and their consideration as it deems advisable. If such insurance company be dissatisfied with any decision, regulation, order, rule, act or administrative ruling adopted by the State Board of Insurance, such dissatisfied insurance company after failing to get relief from the State Board of Insurance, may initiate an action by filing a petition setting forth the particular objection to such decision, regulation, order, rule, act or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as defendant. Notwithstanding any other statute or rule of procedure, the filing of a petition for the purpose of initiating such an action with respect to this article does not stay or vacate the decision, regulation, order, rule, act, or administrative ruling or either or all of them unless the court that acquires jurisdiction, after hearing and by order, specifically stays or vacates the decision, regulation, order, rule, act, or administrative ruling that is the subject of the action. The action shall not be limit-

ed to questions of law and the substantial evidence rule shall not apply, except as interpretation of the Constitution may require, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

Venue

Sec. 8. Except for causes of action based upon terms of an insurance policy or policy or policies issued by an insurance company placed in conservatorship, any suit filed against an insurance company or its conservator, after the entrance of an order by the Commissioner of Insurance placing such insurance company in conservatorship and while such order is in effect, shall be brought in a court of competent jurisdiction in Travis County, Texas, and not elsewhere. The conservator appointed hereunder for such company may file suit in any court of competent jurisdiction in Travis County, Texas, against any person for the purpose of preserving, protecting, or recovering any assets or property of such insurance company including claims or causes of action belonging to or which may be asserted by such insurance company.

Duration of Conservatorship

Sec. 9. As respects a conservatorship, the conservator shall serve for such time as is necessary to accomplish the purposes of the conservatorship as intended by this Act. If rehabilitated, the rehabilitated insurance company shall be returned to management or new management under such reasonable conditions as will best tend to prevent the defeat of the purposes for which it was placed in conservatorship.

Administrative Election of Proceedings

Sec. 10. (a) If the Commissioner determines to act under authority of this Article, or is directed by the State Board of Insurance or a court of competent jurisdiction to act under this Article, the sequence of his acts and proceedings shall be as set forth herein. However, it is a purpose and substance of this Article to authorize administrative discretion—to allow the State Board of Insurance and the Commissioner administrative discretion in the event of insurance company delinquencies—and in furtherance of that purpose, the Commissioner is hereby authorized in respect of insurance company delinquencies or suspected delinquencies to proceed

and administer either under this Article or under any other applicable law, or under this law in conjunction with other law, either as such law is now existing or as is hereafter enacted, and it is so provided.

Rules and Regulations

Sec. 11. The State Board of Insurance shall be empowered to adopt and promulgate such reasonable rules and regulations as may be necessary for the augmentation and accomplishment of this Act, including its purposes.

Other Laws; Conflicts

Sec. 12. Other statutes authorized for use and application in conjunction with this Article are Section 14 of Article 17.25, and Articles 14.33 and 22.22 of the Insurance Code. Also authorized for use, in conjunction with this Article, in delinquency proceedings or threatened insolvencies of insurers, or any other statutes or laws possible of application with this Act or in the procedures of this Act, or in augmentation of this Act whether or not directed as applicable by such other statute; but in the event of conflict between this Article and any other Article, the provisions of this Article shall govern.

[Acts 1967, 60th Leg., p. 671, ch. 281, § 1, eff. Aug. 28, 1967. Amended by Acts 1981, 67th Leg., p. 2641, ch. 707, § 4(29), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 284, ch. 57, § 1, eff. May 3, 1983.]

Acts 1967, 60th Leg., p. 677, ch. 281, §§ 2, 3 provided:

"Sec. 2. This Act shall be cumulative of all other laws, general and special, relating to the subject matter hereof, and if in conflict with any other laws, general and special, the provisions hereof shall control and govern.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 21.28-B. Loss Claimant's Priorities Act

Title

Sec. 1. This Article shall be known as the Loss Claimant's Priorities Act.

Purpose

Sec. 2. The purpose of this Article as amendatory of the Insurance Code is to provide for the protection of the person with a loss claim against an insurer subject to an insolvency, liquidation, or bankruptcy proceeding, by creating a preference in payment of his loss claim prior to, during or in respect of that proceeding. It is the sense of the Legislature that the purpose of insurance as an instrument of progress and as an invention of society is for the many to share the financial burdens of the few who suffer loss. An individual bands together with other individuals by the purchase of insurance to assure that the financial burdens in-

curred by his loss which he alone cannot bear will be shared by others; the private insurer accomplishes this purpose by collecting premiums from its policyholders for distribution to those policyholders who suffer a loss. The purpose for which private insurers exist and the reason for which an individual purchases insurance are defeated by the failure to give preference in the payment of loss claims over other claims. It is the purpose of this Article to establish a preference in the payment of the whole of the amount of loss claims against an insurer that is the subject of an insolvency, liquidation, or bankruptcy proceeding.

Definition

Sec. 3. As used in this Article, loss claim is the claim of an insured, a third party beneficiary, or any other person entitled thereto, under a contract of insurance or indemnification, for a loss arising within the terms of coverage provided in a contract of insurance or indemnification for an amount within the express limits of such insurance policy, but excluding a claim for unearned premium.

Scope and Application

Sec. 4. The provisions of this Article shall apply to all loss claims arising within the terms of coverage provided in any type of property-casualty insurance policy, including, but not limited to, insurance policies issued for the purpose of insuring those losses or risks mentioned or enumerated in the Insurance Code in Articles 6.03, 7.19-1, 8.01 (except Section 10 thereof), 16.01, and 17.01. The provisions of this Article shall apply to loss claims under all insurance policies issued by insurers organized or operating under Chapters 16, 17, 18, and 19 of the Insurance Code, any provisions of these Chapters to the contrary notwithstanding.

Consonant with the provision of Section 15, Article 1.10, Insurance Code, loss claims under insurance policies issued by insurers either organized or operating under Chapters 3, 9, 10, 11, 12, 13, 14, 20, and 22 of the Insurance Code, shall be excluded from the provisions of this Article. Provided, however, that the preceding exclusion shall not apply to loss claims under workmen's compensation insurance policies, and liability insurance policies issued by the insurers enumerated in the preceding exclusion, and loss claims under these insurance policies shall be entitled to the preference in payment of loss claims as provided in this Article.

Preference of Loss Claims

Sec. 5. The whole of the amount legally or lawfully determined to be due upon the loss claim, or any award or judgment thereon, shall be entitled to the same preference in payment in a liquidation proceeding, insolvency proceeding, or bankruptcy proceeding, or in the administration of liquidation, as is given by any law of this state or by the

Federal Bankruptcy Act to claims for wages. The expenses necessary to the administration of a liquidation proceeding, insolvency proceeding, or bankruptcy proceeding, shall be met before payment of loss claims. To the extent that any other law is in conflict with or inconsistent with the provisions of this Article, the provisions of this Article shall take precedence and be effected.

Unconstitutional Application Prohibited

Sec. 6. 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. [Acts 1967, 60th Leg., p. 431, ch. 196, § 1, eff. May 15, 1967.]

Section 2 of Acts 1967, 60th Leg., p. 432, ch. 196 amended article 17.22; section 3 thereof provides: "Severability Clause. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 21.28-C. Property and Casualty Insurance Guaranty Act

Title

Sec. 1. This article shall be known and may be cited as the "Texas Property and Casualty Insurance Guaranty Act."

Purpose

Sec. 2. This Act is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Scope

Sec. 3. This Act shall apply to all kinds of insurance written by stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not apply to insurance written by farm mutual insurance companies or title insurance companies or title insurance written by any insurer; and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance, nor to credit insurance that insures a lender against loss due to default by a borrower in the repayment of a loan secured by a second or junior lien mortgage, nor to home warranty insurance; and shall not apply to Mexican casualty insur-

ance companies or to policies of insurance issued by Mexican casualty insurance companies.

Construction

Sec. 4. This Act shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this Act

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

B. "Commissioner" is the Commissioner of Insurance of this State.

(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State. "Covered claim" shall also include seventy-five percent (75%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed Five Hundred Dollars (\$500). Individual "covered claims" shall be limited to Fifty Thousand Dollars (\$50,000) and shall not include any amount in excess of Fifty Thousand Dollars (\$50,000). "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys fees and expenses, court costs, interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act. With respect to a "covered claim" for unearned premiums, both persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an "impaired insurer" shall be considered to have "covered claims" under this Act. Where the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a "covered claim" under this Act.

(3) "Insurer" and "member insurer" includes all stock and mutual fire insurance companies,

casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and also includes all county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not include farm mutual insurance companies, title insurance companies, mortgage guaranty insurance companies or Mexican casualty insurance companies.

(4) "Impaired insurer" is (a) a member insurer which, after the effective date of this Act, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the Commissioner; or (b) after the effective date of this Act, a member insurer placed in conservatorship after it has been deemed by the Commissioner to be insolvent and which has been designated an "impaired insurer" by the Commissioner.

(5) "Payment of covered claims" is actual payment and also is utilization of funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities for covered claims.

(6) "Net direct written premiums" is the gross amount of premiums received from policies of insurance issued in this State to which this Act applies, less return premiums and dividends paid or credited to policyholders. The term does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for indemnity reinsurance ceded to other insurers.

(7) "Lines of business" is policies of insurance falling within one of the three following categories:

1. Workmen's Compensation insurance.
2. Automobile insurance.
3. All other insurance to which this Act applies.

(8) "Association" means the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

(9) "Account" means one of the four accounts created under Section 14 of this article.

(10) "Board" or "board of directors" means the board of directors of the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

Termination of Policies

Sec. 6. This Act shall apply to covered claims existing prior to the determination that an insurer is an impaired insurer and to covered claims arising within thirty (30) days after the determination of impairment, or before the policy expiration date if less than thirty (30) days after the determination of impairment, or before the insured replaces the poli-

cy or effects its cancellation, if he does so within thirty (30) days of the determination of impairment.

Upon the determination by the Commissioner that an insurer is an impaired insurer, the Commissioner shall notify the insureds of the impaired insurer of the determination and of their rights under this Act. Such notification shall be by mail at each insured's last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation printed in this State shall be sufficient.

Assessments

Sec. 7. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. The receiver or conservator shall advise the board of directors of the association of such estimates, and the board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need therefor arises for each impaired insurer.

When the board of directors shall determine that additional funds are needed in any of the three accounts, they shall advise the Commissioner who shall make such assessments as may be needed to produce the necessary funds. The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such line or lines of business during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the Commissioner determines that such insurer is no longer an impaired insurer.

It shall be the duty of each insurer to pay the amount of its assessment to the association within thirty (30) days after the Commissioner gives notice of the assessment, and assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising hereunder.

Funds advanced by the association under the provisions of the Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14A(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account the Commissioner shall assess member insurers to obtain the needed funds in the same manner as hereinbefore set out, provided, that he shall take into consideration the net direct written premium collected in the State of Texas for all lines of business covered by this article.

Penalty for Failure to Pay Assessments

Sec. 8. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any insurer who fails to pay an assessment when due, and the association shall promptly report to the Commissioner any such failure.

Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 9. Upon receipt from an insurer of payment of an assessment or partial assessment, the associa-

tion shall provide the insurer with a participation receipt which shall create a liability against the account for the line or lines of business for which the assessment was made. The account from which an advance is made to an impaired insurer for the payment of covered claims shall be regarded as a general creditor of the impaired insurer for the amount of funds so advanced; provided, however, that with reference to the remaining balance of any advances received by the receiver or conservator and not expended in payment of "covered claims" the claim of such account shall have preference over other general creditors. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from the association and shall make a final report of the expenditure and use of such funds to the Commissioner and to the association, which final report shall set forth the remaining balance, if any, from the moneys advanced. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the Commissioner or requested by the association. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund by line of business the remaining balance of such advances to the accounts maintained by the association.

Should the association at any time determine that there exist moneys in the account for any line of business in excess of those reasonably necessary for efficient future operation under the terms of this Act, it shall cause such excess moneys to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized in Section 15 of this article, which receipts were issued for an assessment on the same line of business as that for which the excess moneys are found to exist. If after such a distribution the association finds that an excess amount still exists in any such fund, or if there are no such participation receipts on which there is an outstanding balance, it shall cause such excess amount to be deposited with the State Treasurer for credit to the general fund of this State.

Payment of Covered Claims

Sec. 10. When an insurer has been designated by the Commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this Act. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from the association in the payment of claims, pending orderly liquidation or disposition

of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from those advanced by the association. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this Act.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from the association for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. This Act shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Commissioner, the conservator or the receiver elsewhere in the Insurance Code and other statutes of this State but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 11. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further, that in ancillary receiverships in this State, funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this State. Such funds received from the association shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer the conservator shall determine whether or not covered claims should or can

be provided for in whole or in part by reinsurance, assumption or substitution. Upon determination by the conservator that actual payment of covered claims should be made the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than ninety (90) days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from the association shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a liability insurance policy issued or assumed by such insurer shall (if such cause of action meets the definition of "covered claim") have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. In the proceedings of considering "covered claims" no judgment against an insured taken after the date of the commencement of the delinquency proceedings or

the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution.

Nonduplication of Recovery

Sec. 12. Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an impaired insurer, which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this Act shall be reduced by the amount of any recovery under such insurance policy.

Any recovery under this Act shall be reduced by the amount of recovery under any other insurance guaranty act, or its equivalent, in any other state. Any person having a covered claim who is a resident of another state shall not be entitled to payment under this Act unless and until he furnishes adequate sworn proof that he has exhausted any and all rights of recovery that he has in his state of residence and the state of residence of the insured under any insurance guaranty act or its equivalent; provided, however, that any nonresident holder of a covered claim for damage to property with a permanent location in this State shall be entitled to payment of the covered claim without first having exhausted his right of recovery in his state of residence.

Release from Conservatorship or Receivership

Sec. 13. An impaired insurer placed in conservatorship or receivership for which advances have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to the association the funds advanced by it; provided, however, the Commissioner may,

upon application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of advances. The Commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.

Advisory Association

Sec. 14. A. Creation of the Association. (1) There is hereby created a nonprofit legal entity to be known as the Texas Property and Casualty Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this State. The association shall perform its functions under the plan of operation established and approved as set out below and shall exercise its powers through a board of directors established as set out below. For the purposes of administration and assessment, the board shall establish four accounts:

- (a) the administrative account;
- (b) the workmen's compensation account;
- (c) the automobile account; and
- (d) the other lines of insurance account.

(2) The association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State.

B. Board of Directors. (1) The association shall exercise its powers through a board of directors consisting of eight (8) persons who shall be chosen from employees or officers of the member insurers and who shall be chosen to give fair representation to all member insurers giving due consideration to the various categories of premium income, geographical location, and segments of the industry represented in Texas. Members of the board shall be elected for overlapping four-year terms, with the terms of two of the members expiring each year. The initial membership of the board of directors shall consist of the industry representatives in the Texas Property and Casualty Advisory Association as it exists under this Act prior to the time this amendment takes effect, and those members shall serve out the terms for which they were elected to the advisory association. Their replacements shall be elected by the member insurers under procedures to be established in the plan of operation. All directors shall be eligible to succeed themselves in office.

(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.

C. Powers and Duties of Association. In addition to the powers and duties enumerated in other sections of this article, the association:

(1) May render assistance and advice to the Commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer;

(2) Shall have the standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this Act;

(3) May enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article;

(4) May sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;

(5) May employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;

(6) May negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association; and

(7) May take such legal action as may be necessary to avoid the payment of improper claims.

D. Plan of Operation. (1)(a) The association shall submit to the Commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.

(b) If the association fails to submit a suitable plan of operation within one hundred and eighty (180) days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the Commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the association and approved by the Commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under this section;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;

(e) establish any additional procedures for assessments under Section 7 of this article; and

(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

E. Prevention of Impairments. To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the Commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations and may request appropriate investigation and action by the Commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate.

(2) The board of directors shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. Such meetings shall not be open to the public and only members of the board of directors, members of the State Board of Insurance, the Commissioner, and persons authorized by the Commissioner shall attend such meetings. The board of directors shall, upon majority vote, notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors, and employees of an insolvent or impaired insurer (or an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

The board of directors shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, liquidator, or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator, or conservator appointed by the Commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

(3) The board of directors may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the Commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation, or individual recommendation by the board of directors or members to the Commissioner, liquidator, or conservator.

(4) The board of directors may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of member insurer impairments.

(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this article or exercised any of its powers under this article, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the Commissioner.

(6) Any insurer that has an officer, director, or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

(7) The association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

Recognition of Assessments in Premium Tax Offset

Sec. 15. Any assessment paid by an insurer under this Act shall be allowed to such insurer as a credit against its premium tax under Article 7064,

Revised Civil Statutes of Texas, 1925, as amended.¹ The tax credit referred to herein shall be allowed at a rate of twenty percent (20%) per year for five (5) successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years, and the balance of any assessment paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this Code.

¹ Transferred; see, now, art. 4.10 of this Code.

Immunity

Sec. 16. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this Act or its agents or employees, the advisory association or the Commissioner or his representatives for any action taken by them in the performance of their powers and duties under this Act.

Rules and Regulations

Sec. 17. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.

Advertising Prohibited

Sec. 17a. It shall be unlawful for any insurer required to participate in the association to advertise or use in any manner for promotional purposes the fact that its policies are protected under this Act, and such acts of advertisement or promotion shall constitute unfair methods of competition or unfair or deceptive acts or practices under Article 21.21, Insurance Code, and shall be subject to the provisions thereof.

Appeals

Sec. 18. Any action or ruling of the Commissioner under this Act may be appealed as provided in Article 1.04 of the Insurance Code. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

Certain Evidence Not Admissible; Unfair Practices

Sec. 19. (1) In any lawsuit brought by a conservator or receiver of an impaired insurer for the purpose of recovering assets of the impaired insurer, the fact that claims against the impaired insurer have been or will be paid under the provisions of this article shall not be admissible for any purposes and shall not be placed before any jury either by evidence or argument.

(2) The use in any manner of the protection afforded by this article by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Insurance Code, as amended, and shall be subject to the provisions thereof.

Control Over Conflicts

Sec. 20. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

Unconstitutional Application Prohibited

Sec. 21. This Act 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.

Severance Clause

Sec. 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 1362, ch. 360, § 1, eff. May 25, 1971. Amended by Acts 1975, 64th Leg., p. 56, ch. 32, § 3, eff. April 3, 1975; Acts 1975, 64th Leg., p. 1094, ch. 414, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1950, ch. 775, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2110, ch. 845, §§ 1 to 12, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1057, ch. 487, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2641, ch. 707, § 4(30), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 282, ch. 56, § 1, eff. May 3, 1983.]

Section 13 of Acts 1977, 65th Leg., p. 2120, ch. 845, provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 2 of the 1979 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 21.28-D. Life, Accident, Health, and Hospital Service Insurance Guaranty Association

Short Title

Sec. 1. This Act shall be known and may be cited as the Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act.

Purpose

Sec. 2. The purpose of this Act is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies; accident insurance policies; health insurance policies, annuity contracts, and supplemental contracts, and the holders of group hospital service contracts, subject to certain limitations, against failure in the performance of contractual obligation due to the impairment of the insurer issuing such policies or contracts. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, (2) members of the association are subject to assessment to provide funds to carry out the purpose of this Act, and (3) the association is authorized to proceed in the prescribed manner, in the detection and prevention of insurer impairments.

Scope

Sec. 3. (1) This Act shall apply to direct life insurance policies, accident insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life, accident or health insurance policies, group hospital service contracts and annuity contracts issued by any domestic member insurer and all such policies and contracts issued by a foreign or alien insurer on residents of this state at the time such insurer becomes an impaired insurer as defined in this Act.

(2) This Act shall not apply to:

(a) Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(b) Any kind of reinsurance contract or agreement between insurers, the terms of which do not create a direct liability of the assuming insurer, or the terms of which do not require the creation of a direct liability to the policyholder through issuance of an assumption certificate, or other written instrument;

(c) Any kind of insurance or annuities, the benefits of which are exclusively payable or determined by a separate account required by the terms of such insurance policy to be maintained by the insurer or by a separate entity;

(d) Any such policies or contracts issued by a foreign or alien insurer on nonresidents of this state at the time such insurer becomes an impaired insurer as defined in this Act;

(e) Any such policy or contracts of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statutes or regulations for residents of this state protection substantially similar to that provided by this Act for residents of other states;

(f) Any such policies or contracts issued by mutual assessment companies, local mutual aid associations, statewide mutual assessment compa-

nies, local mutual burial associations, stipulated premium insurance companies, fraternal benefit societies and assessment-as-needed companies, nor to such policies or contracts issued by insurers subject to the provisions of Chapter 360, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.28-C, Vernon's Texas Insurance Code).

Construction

Sec. 4. This Act shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this Act:

(1) "Account" means any of the three accounts created under Section 6 of this Act.

(2) "Association" means the Life, Accident, Health and Hospital Service Insurance Guaranty Association created under Section 6 of this Act.

(3) "Commissioner" means the Commissioner of Insurance of this state.

(4) "Contractual obligation" means any policy or contract benefit (including but not limited to death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations to the owner, beneficiary, assignee, certificate holder, or third-party beneficiary), arising from an insurance policy or annuity contract to which this Act applies, issued or assumed by an insurer who becomes an impaired insurer. A contractual obligation shall not include an amount in excess of \$300,000 in the aggregate under one or more covered policies on any one life; nor shall a contractual obligation include an amount in excess of \$300,000 in the aggregate under one or more annuity contracts within the scope of this Act issued to the same holder of individual annuity policies or to the same annuitant or participant under group annuity policies. If the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship of the impaired insurer, that portion of the expenses of administration incurred in the processing and payment of claims against the impaired insurer shall also be a contractual obligation under this Act.

(5) "Covered policy" means any policy or contract within the scope of this Act under Section 3.

(6) "Member insurer" means any insurance company authorized to transact in this state any kind of insurance to which this Act applies under Section 3.

(7) "Insolvent insurer" means a member insurer whose minimum free surplus, if a mutual company, or whose required capital, if a stock compa-

ny, becomes, after the effective date of this Act, impaired to the extent prohibited by law.

(8) "Impaired insurer" means:

(a) A member insurer which, after the effective date of this Act, is placed by the commissioner under an order of supervision, liquidation, rehabilitation, or conservation under the provisions of Article 21.28, Insurance Code, as amended, and Chapter 281, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.28-A, Vernon's Texas Insurance Code); and that has been designated an "Impaired Insurer" by the commissioner, or

(b) A member insurer determined in good faith by the commissioner after the effective date of this Act to be unable or potentially unable to fulfill its contractual obligations.

(9) "Premiums" means direct gross insurance premiums and annuity considerations collected from persons residing or domiciled in the State of Texas on covered contracts and policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in Section 9, "premiums" are those for the calendar year preceding the determination of insolvency or impairment.

(10) "State Board of Insurance" means the State Board of Insurance created under Article 1.02, Insurance Code, as amended.

Creation of the Association

Sec. 6. (1) There is created hereby a nonprofit legal entity to be known as the Life, Accident, Health and Hospital Service Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 10 below, and shall exercise its powers through a board of directors established under Section 7 below. For purposes of administration and assessment, the association shall establish three accounts:

- (a) The accident, health and hospital services account;
- (b) The life insurance account; and
- (c) The annuity account.

(2) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

Board of Directors

Sec. 7. (1) The State Board of Insurance shall appoint a board of directors of the association consisting of nine members, three of whom shall be

chosen from employees or officers chosen from the ten member companies having the largest total direct premium income based on the latest financial statement on file at date of appointment, and the remaining members shall be chosen from the other companies to give fair representation to all such member insurers based on due consideration of their varying categories of premium income and geographical location. Of the original board of directors, three members shall be designated to serve for a four-year term of office; three members shall be designated to serve for a two-year term of office; and three shall be designated to serve for a six-year term of office. At the expiration of the term of office of each director, the State Board of Insurance shall appoint a successor to serve for a six-year term of office. All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. Should any director cease to be an officer or employee of a member insurer during his term of office, such office shall become vacant until his successor shall have been appointed. All directors shall be eligible to succeed themselves in office.

(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.

Powers and Duties of the Association

Sec. 8. In addition to the powers and duties enumerated in other sections of this Act,

(1) If a member insurer becomes an insolvent insurer, as that term is herein defined, and has been designated an "Impaired Insurer" by the commissioner, the association shall, upon entry by a court of competent jurisdiction after the effective date of this Act of an order appointing a receiver, either temporary or permanent, to take charge of the assets of such insolvent insurer, subject to any reasonable conditions imposed by the association and approved by the commissioner, guarantee, assume or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of such insolvent insurer, and shall make or cause to be made prompt payment of the contractual obligations of such insolvent insurer.

(2) If a member insurer becomes an impaired insurer, as that term is herein defined, the association may, subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

- (a) guarantee or reinsure, or cause to be guaranteed or reinsured, the impaired insurer's covered policies; or

(b) provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate Subparagraph (a) above, and assure payment of the impaired insurer's contractual obligations pending action under Subparagraph (a) above, or

(c) loan money to the impaired insurer.

(3) In carrying out its duties under Paragraphs (1) and (2), above, the association may impose moratoriums or policy liens against the nonforfeiture values of any contractual obligation under a covered policy; and

(4) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(5) The association shall have standing to appear before any court in this state with jurisdiction over an insolvent insurer or an impaired insurer concerning which the association is or may become obligated under this Act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the insolvent insurer or the impaired insurer and the termination of the covered policies and contractual obligations.

(6) (a) Any person receiving benefits under this Act shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this Act whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this Act upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent insurer or the impaired insurer as that possessed by the person entitled to receive benefits under this Act.

(7) The contractual obligations of the insolvent insurer or impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the insolvent insurer or impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by Paragraph (3).

(8) The association may:

(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this Act;

(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under Section 9;

(c) borrow money to effect the purposes of this Act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(d) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;

(e) negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association;

(f) take such legal action as may be necessary to avoid payment of improper claims;

(g) exercise, for the purposes of this Act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

Assessments

Sec. 9. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall determine the amount necessary and the commissioner shall assess the member insurers, separately for each account, at such times and for such amounts as the board of directors finds necessary. All assessments ordered by the commissioner shall be payable to the association and the board of directors shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There shall be two classes of assessments, as follows:

(a) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular insolvent or impaired insurer;

(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under Section 8 with regard to an insolvent or impaired insurer.

(3) (a) The amount of any Class A assessment for each account shall be determined by the board of directors. The amount of any Class B assessment shall be divided among the accounts in the proportion that the premiums received by such insurer on all covered policies;

(b) Class A and Class B assessments against member insurers for each account shall be in the proportion that premiums received on all business

by each assessed member insurer on policies covered by each account bears to such premiums received on all business by all assessed member insurers;

(c) Assessments for funds to meet the requirements of the association with respect to an insolvent or impaired insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under Paragraph (2), above, and computation of assessments under this paragraph shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The commissioner may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the commissioner, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed one percent of such insurer's premiums on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in Paragraph (4), above, the amount by which such assessment is abated or deferred, may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this paragraph. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

(6) The board of directors may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer, the amount by which the assets exceed the amount the board of directors finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(7) The association shall issue to each insurer paying a Class B assessment under this Act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or date of issue.

(8) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who

fails to pay an assessment when due. Any insurer whose certificate of authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

(9) The provisions of this section shall be valid and enforceable so long as the provisions of Section 19 remain in full force and effect.

Plan of Operation

Sec. 10. (1) (a) The association shall submit to the commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner;

(b) If the association 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 association fails to submit suitable amendments to the plan, the commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under Section 7;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;

(e) establish any additional procedures for assessments under Section 9;

(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under Paragraph (8)(c) of Section 8 and Section 9, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under

this paragraph shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not less favorably and effective than that provided by this Act.

Duties and Powers of the Commissioner

Sec. 11. In addition to the duties and powers enumerated elsewhere in this Act,

(1) The commissioner shall:

(a) notify the board of directors of the existence of an insolvent or an impaired insurer not later than three days after a determination of impairment is made or after receipt of notice of impairment, whichever is earlier. The commissioner shall within three days notify the association of a member insurer placed under supervision pursuant to Article 21.28, Insurance Code, as amended, and Chapter 281, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.28-A, Vernon's Texas Insurance Code);

(b) upon request of the board of directors provide the association with a statement of the premiums for each member insurer;

(c) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the insolvent or impaired insurer to make good the impairment within a reasonable time. Notice to such insurer shall constitute notice to its shareholders, if any. The failure of such insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this Act.

(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture upon any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month. Any forfeiture paid under this section shall be paid by the member insurer to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

(3) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to appeal to the State Board of Insurance and to judicial review as provided in Sections (d) and (f), Article 1.04, Insurance Code, as amended.

Prevention of Impairments

Sec. 12. To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations and may request appropriate investigation and action by the commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate.

(2) The board of directors shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. The board of directors shall, upon majority vote, notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors and employees of an insolvent or impaired insurer (or an insurer the commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

The board of directors shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator or conservator appointed by the commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

(3) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the commissioner, liquidator or conservator shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation or individual recommendation by the board of directors or members to the commissioner, liquidator or conservator.

(4) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of member insurer impairments.

(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this Act or exercised any of its powers under this Act, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the commissioner.

(6) Any insurer that has an officer, director or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

(7) The association or any insurer assessed under this Act shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

Miscellaneous Provisions

Sec. 13. (1) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under Section 8. Records of all such negotiations or meetings shall be made public only upon the termination of a receivership, liquidation, rehabilitation, conservatorship proceeding involving the insolvent insurer or impaired insurer, or upon the order of a court of competent jurisdiction. Nothing in this paragraph shall limit the duty of the association to render a report of its activities under Section 14.

(2) For the purpose of carrying out its obligations under this Act, the association shall be deemed to be a creditor of the insolvent insurer or impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the asso-

ciation is entitled as subrogee pursuant to Paragraph (6) of Section 8. All assets of the insolvent insurer or impaired insurer attributable to covered policies and all assets to which covered policyholders are given a right of priority shall be used to continue all covered policies and to pay all contractual obligations of such insurer as required by this Act.

(3) (a) Prior to the termination of any receivership, liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the insolvent insurer or impaired insurer, and any other party with a bona fide interest in making an equitable distribution of the ownership rights of such insurer. In such a determination, consideration shall be given the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an insolvent or impaired insurer shall be made until and unless the total amount of assessments levied by the commissioner with respect to such insurer has been fully recovered by the association.

(4) The use in any manner of the protection afforded by this Act by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Texas Insurance Code, as amended, and shall be subject to the provisions thereof.

(5) (a) If an order for receivership, liquidation, rehabilitation, or conservatorship of a member insurer has been entered, the receiver appointed under such order shall have the right to recover on behalf of such insurer from any affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled it the amount of distributions, other than stock dividends paid by such insurer on its capital stock, at any time during the five years preceding the petition for receivership, liquidation, rehabilitation, or conservatorship, subject to the limitations of Subparagraphs (b) to (d), below:

(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. If two persons are liable with re-

spect to the same distributions, they shall be jointly and severally liable.

(d) The maximum amount recoverable under this paragraph shall be the amount needed in excess of all other available assets of the insolvent insurer or impaired insurer to pay the contractual obligations of such insurer.

(e) If any person liable under Subparagraph (c) is insolvent, all its affiliates as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code).

Examination of the Association; Annual Report

Sec. 14. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.

Tax Exemptions

Sec. 15. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

Immunity

Sec. 16. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents, or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken or not taken by them in the performance of their powers and duties under this Act.

Continuing to Write Insurance Policies

Sec. 17. Companies subject to the provisions of this Act shall not be liable for assessments for contractual obligations arising from insurance policies issued after the effective date of and while an impaired insurer is subject to an order by the commissioner of insurance placing an impaired insurer in conservatorship unless the commissioner, in his order appointing the conservator, directs the conservator to continue the issuance of insurance policies, under such terms and conditions as the commissioner may prescribe. The commissioner shall furnish a copy of such order to the board of directors of the association. In the event that the commissioner, in his original order appointing the conservator, directs the conservator to continue the issuance of

insurance policies in the impaired insurer, companies subject to the provisions of this Act shall not be liable for assessments for claims arising from insurance policies issued more than 90 days after the date of the commissioner's order appointing the conservator unless the commissioner, prior to the expiration of such 90 day period, determines, after public hearing, that it is in the best interests of the policyholders of the impaired insurer or in the public interest for the impaired insurer to continue the issuance of insurance policies. At least 10 days notice of such hearing shall be given to the board of directors of the association. The board of directors shall have the right to appear at and participate in the hearing. The conservator or his representative shall appear at such hearing and present evidence why it would be in the best interest of the policyholders of the impaired insurer to continue the issuance of policies.

Companies subject to the provisions of this Act shall not be liable for assessments for contractual obligations arising from insurance policies issued after the effective date of and while an impaired insurer is subject to an order by a court of competent jurisdiction placing an impaired insurer in temporary or permanent receivership.

Release from Conservatorship or Receivership

Sec. 18. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to the association the amount of Class B assessments paid to the association to carry out the duties of the association under Section 8 in relation to such insurer the amount paid; provided, however, the commissioner may, upon application of the board of directors of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.

Tax Write-Offs of Certificate of Contribution

Sec. 19. (1) Unless a longer period of time has been required by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an admitted asset in the form approved by the commissioner pursuant to Section 9, Paragraph (7), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

- 100 percent for the calendar year of issuance;
- 80 percent for the first calendar year after the year of issuance;

60 percent for the second calendar year after the year of issuance;

40 percent for the third calendar year after the year of issuance;

20 percent for the fourth calendar year after the year of issuance.

(2) The insurer may offset the amount written off by it in a calendar year under Paragraph (1), above, against its premium tax liability to this state accrued with respect to business transacted in such year. Provided, however, an insurer may not be required to write off in any one year, an amount in excess of its premium tax liability to this state accruing within such year.

(3) Any sums acquired by refund, pursuant to Paragraph (6) of Section 9, from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in Paragraph (2), above, and are not then needed for purposes of this Act, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

Rules and Regulations

Sec. 20. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.

[Acts 1973, 63rd Leg., p. 1052, ch. 408, § 1, eff. Aug. 27, 1973. Amended by Acts 1981, 67th Leg., p. 429, ch. 181, §§ 1, 2, eff. May 20, 1981; Acts 1983, 68th Leg., p. 3999, ch. 622, § 90, eff. Sept. 1, 1983.]

Sections 2 to 4 of the 1973 Act provided:

"Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of conflict only.

"Sec. 3. Except as provided in Section 9(9) of Article 21.28-D, as set out in Section 1, of this Act, it is provided that if any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions despite such invalidity.

"Sec. 4. Unconstitutional application prohibited. This Act 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 can not validly apply."

Section 3 of the 1981 amendatory act provides:

"If any provision of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

Art. 21.28-E. Life, Health and Accident Guaranty Act

Title

Sec. 1. This article shall be known and may be cited as the "Texas Life, Health and Accident Guaranty Act."

Purpose

Sec. 2. This Act is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Scope

Sec. 3. This Act shall apply to all kinds of insurance written by mutual assessment corporations, local mutual aid associations, local mutual burial associations, Statewide mutual assessment companies and stipulated premium insurance companies licensed to do business in this State.

Construction

Sec. 4. This Act shall be liberally construed to effect the purpose of Section 2, which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this Act

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

(B) "Commissioner" is the Commissioner of Insurance of this State.

(2) "Covered claim" is any policy benefit (including, but not limited to, death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations) to the owner, beneficiary, assignee, certificate holder, or third party beneficiary, arising from an insurance policy to which this Act applies, issued or assumed by an "insurer" (as defined herein), if such insurer becomes an "impaired insurer" after the effective date of this Act. "Covered claim" shall not include liabilities that are not policy benefits, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, penalty and bond premiums.

(3) "Insurer" is such mutual assessment corporations, local mutual aid associations, local mutual burial associations, Statewide mutual assessment companies and stipulated premium insurance companies, licensed to do business in this State.

(4) "Impaired insurer" is (a) an insurer which, after the effective date of this Act, is placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction and which has been determined an "impaired insurer" by the Commissioner; or (b) after the effective date of this Act, an insurer placed in conservatorship after it has been deemed by the Commissioner to

be insolvent or its condition such as to render the continuance of its business hazardous to the public or to holders of its policies or certificates of insurance and which has been determined an "impaired insurer" by the Commissioner.

(5) "Payment of covered claims" is actual payment and also is utilization of funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities for covered claims; and is also a utilization of future income, from assessments, pledged to retire liens against policies assumed or reinsured under such contracts of reinsurance or assumption of liabilities or substitution to provide for liabilities.

(6) "Net direct written premiums" is the gross amount of premiums collected on individual life and accident and health policies and certificates of group life and group accident and health insurance issued after the effective date of this Act, less premiums paid for reinsurance ceded, premium refunds, and dividends on said policies and certificates.

(7) "Lines of business" is policies of insurance falling within one of the two following categories:

1. Life Insurance.
2. Health and Accident Insurance.

Termination of Policies

Sec. 6. This Act shall apply to covered claims existing prior to the determination that an insurer is an impaired insurer and to covered claims arising within one hundred eighty (180) days after the determination of impairment, or before the policy expiration date if less than one hundred eighty (180) days after the determination of impairment, or before the insured replaces the policy or effects its cancellation, if he does so within one hundred eighty (180) days of the determination of impairment.

If the receiver or conservator of an impaired insurer has not provided for payment of covered claims of an impaired insurer within one hundred fifty (150) days after such insurer has been determined an "impaired insurer" by the Commissioner, the Commissioner shall notify the insureds of the impaired insurer of their rights under this Act. Such notification shall be by mail at each insured's last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation printed in this State shall be sufficient.

Assessments

Sec. 7. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of

additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. Thereafter, the Commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims. The Commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer.

The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such line or lines of business during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business written by the impaired insurer. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the Commissioner determines that such insurer is no longer an impaired insurer.

The Commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the conservator or receiver, as the case may be, within thirty (30) days after the Commissioner gives notice of the assessment, and assessments may be collected by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for pay-

ment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

The Association created in Section 14 shall issue to each insurer paying an assessment under this Act, a certificate of contribution in form prescribed by the Commissioner for the amounts so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or date of issue.

Penalty for Failure to Pay Assessments

Sec. 8. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any insurer who fails to pay an assessment when due.

Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 9. Upon receipt from an insurer of payment of an assessment or partial assessment, the receiver or conservator shall provide the insurer with a certificate of contribution which shall create a liability against the impaired insurer, and the holder of such certificate of contribution shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in "payment of covered claims" the holders of such certificates of contribution shall have preference over other general creditors and shall share pro rata with other holders of certificates of contribution. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the Commissioner, which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the Commissioner. Upon completion of the final report the receiver or conservator shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the certificates of contribution.

Payment of Covered Claims

Sec. 10. When an insurer has been designated by the Commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve

liabilities for all liabilities falling within the definition of "covered claim" as defined in this Act. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of covered claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this Act.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshaled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. This Act shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Commissioner, the conservator or the receiver elsewhere in the Insurance Code and other statutes of this State but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 11. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshaled by the receiver for payment to holders of covered claims; and provided further, that in ancillary receiverships in this State, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshaled by the receivers in other states for application to payment of covered claims within this State. Such funds received from assessments shall not be liable for any amount over and above that approved by the receiver for a covered claim and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his

action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption or substitution. Upon determination by the conservator that actual payment of covered claims should be made the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than ninety (90) days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from assessments shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshaled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution.

Nonduplication of Recovery

Sec. 12. Any recovery under this Act shall be reduced by the amount of recovery under any other insurance guaranty act, or its equivalent, in any other state. Any person having a covered claim who is a resident of another state shall not be entitled to payment under this Act unless and until he furnishes adequate sworn proof that he has

exhausted any and all rights of recovery that he has in his state of residence and the state of residence of the insured under any insurance guaranty act or its equivalent.

Release from Conservatorship or Receivership

Sec. 13. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to each holder of a certificate of contribution the assessment amount paid by the receipt holder or its assigns; provided, however, the Commissioner may, upon application of the advisory association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The Commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan. The Commissioner shall give ten (10) days notice of such hearing to the insurers to whom the certificates of contribution were issued for an assessment made for the benefit of the released insurer and the holders of the receipts shall be entitled to appear at and participate in such hearing.

Creation of Advisory Association

Sec. 14. There is created by this Act an advisory association to be known as the "Texas Life, Health and Accident Guaranty Association," herein called the "advisory association" to be composed of four insurers. The State Board of Insurance shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, two shall be appointed to serve for a one year term of office, and two shall be appointed to serve for a two year term of office. Subsequent members of the advisory association shall serve for the term of office as stated above and shall be elected by insurers, subject to the approval of the Commissioner.

The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this Act giving due consideration to the various categories of premium income, geographical location and segments of the industry represented in Texas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as the initial appointments.

The advisory association shall conduct its meetings in Austin, Texas, in the Insurance Building of the State of Texas. Meetings shall be held upon call by the Commissioner or upon written request of a majority of the members. Meetings shall not be

open to the public and only members of the advisory association, members of the State Board of Insurance, the Commissioner and persons authorized by the Commissioner shall attend such meetings.

The advisory association shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the advisory association when he determines that an insurer is insolvent or impaired and may call a meeting of the advisory association when he determines that a danger of insolvency or impairment of an insurer exists. The advisory association shall, upon majority vote, notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the advisory association any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors and employees of an insolvent or impaired insurer (or of an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the advisory association for conference or for the taking of testimony. Members of the advisory association shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Advisory association members shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of advisory association members.

The advisory association shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, the liquidator or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator or conservator to best protect the interests of persons holding covered claims against an impaired insurer and relating to the amount and timing of partial assessments and the marshaling of assets and the processing and handling of covered claims.

Reports or recommendations made by the advisory association to the Commissioner, liquidator or conservator shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the advisory association or the advisory association for any report, individual report, recommendation or individual recommendation by the advisory association or members to the Commissioner, liquidator or conservator.

Members shall serve without pay but their expenses in attending meetings shall be paid subject to the authorization of the Legislature in its appropriations bills or otherwise, and subject to the rules of the State Board of Insurance. Members shall serve until their successors are appointed.

Any insurer that has an officer, director or employee serving as a member of the advisory association shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

The advisory association or any insurer assessed under this Act shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code.

The State Board of Insurance shall within ninety (90) days after the effective date of this Act promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members.

Recognition of Assessments in Premium Tax Offset

Sec. 15. (1) Unless a longer period of time has been required by the Commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an admitted asset in the form approved by the Commissioner pursuant to Section 7, at percentages of the original face amount approved by the Commissioner, for calendar years as follows: 100 percent for the calendar year of issuance; 80 percent for the first calendar year after the year of issuance; 60 percent for the second calendar year after the year of issuance; 40 percent for the third calendar year after the year of issuance; 20 percent for the fourth calendar year after the year of issuance.

(2) The insurer may offset the amount written off by it in a calendar year under Paragraph (1), above, against its premium tax liability to this state accrued with respect to business transacted in such year. Provided, however, an insurer may not be required to write off in any one year, an amount in excess of its premium tax liability to this state accruing within such year.

Immunity

Sec. 16. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this Act or its agents or employees, the advisory association or the Commissioner or his representatives for any action taken by them in the performance of their powers and duties under this Act.

Rules and Regulations

Sec. 17. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.

Appeals

Sec. 18. Any action or ruling of the Commissioner under this Act may be appealed as provided in Article 1.04 of the Insurance Code. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

Control Over Conflicts

Sec. 19. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

Unconstitutional Application Prohibited

Sec. 20. This Act 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.

Severance Clause

Sec. 21. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 3378, ch. 1034, § 1, eff. June 16, 1971. Amended by Acts 1981, 67th Leg., p. 2643, ch. 707, § 4(31), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 4096, ch. 646, §§ 2, 3, eff. Aug. 29, 1983.]

SUBCHAPTER E. MISCELLANEOUS PROVISIONS**Art. 21.29. Must Publish Certificate**

Every insurance company doing business in this State, whether life, health, fire, marine or inland, shall publish annually, within thirty days after the issuance thereof, a certificate from the Board that such company has in all respects complied with the laws in relation to insurance.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.30. Publication of Notices

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

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.31. Unlawful Dividends

It shall not be lawful for any insurance company organized under the laws of this State to make any dividend, except from surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks and also the amount of all unpaid losses, whether adjusted or unadjusted, and all other debts due and payable, or to become due and payable, by the company. Any dividends made contrary to any provision of this article shall subject the company making them to a forfeiture of its charter; and the Board shall forthwith revoke its certificate of authority. The Board shall give such company at least ten (10) days' notice in writing of its intention to revoke such certificate, stating specifically the reasons why it intends to revoke same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.32. Unlawful Dividend

No life, health, fire, marine, or inland insurance company, organized under the laws of this state, shall make any dividend except from the surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks computed in the manner as provided elsewhere in this Code, and also there shall be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book-accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which after judgment has been obtained thereon shall have remained more than two years unsatisfied, and upon which interest shall not have been paid. In case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. Any dividend made contrary to the provisions of this Article shall subject the company making it to a forfeiture of its charter, and the Board shall forthwith revoke its certificate of authority.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 637, ch. 291, § 2.]

Art. 21.32A. Legality of Dividend

For the purpose of determining the legality of a dividend to shareholders paid by stock domestic

insurance companies authorized to transact life, accident, and health insurance business in Texas, all stock foreign and alien life, health, and accident insurance companies, stock insurance companies authorized to transact property and casualty business and fire insurance business and domestic Lloyds', reciprocals, and title insurance companies under the laws of the State of Texas, the "earned surplus" or "surplus profits arising from the business" of the insurance company may include the acquired "earned surplus" of an insurance subsidiary which has been acquired by the insurance company, to the extent allowed by an order of the commissioner made in accordance with the rules of the board but only to the extent that the "earned surplus" of the acquired subsidiary on the date of acquisition, and in existence on the date of the order, is not otherwise reflected in the "earned surplus" of the insurance company.

[Acts 1977, 65th Leg., p. 844, ch. 315, § 1, eff. Aug. 29, 1977.]

Art. 21.33. Extension of Powers

Corporations may be incorporated under the laws of this State to transact any one or more kinds of insurance business other than life, fire, marine, inland, lightning or tornado insurance business in the same manner, and by complying with the same requirements as prescribed by law for the incorporation of life insurance companies. No such company shall be incorporated having the power to do a fidelity and surety business or a liability insurance business with a paid-up capital stock of less than Two Hundred Thousand (\$200,000.00) Dollars.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.34. Association of Companies

In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this State until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the Board to do business in this State.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.35. Policies and Applications

Except as otherwise provided in this code, every contract or policy of insurance issued or contracted for in this State shall be accompanied by a written, photographic or printed copy of the application for such insurance policy or contract, as well as a copy of all questions asked and answers given thereto.

The provisions of Articles 21.16, 21.17, and 21.19 of this code shall not apply to policies of life insurance in which there is a clause making such policy indisputable after two (2) years or less, provided premiums are duly paid; provided further, that no defense based upon misrepresentation made in the application for, or in obtaining or securing, any contract of insurance upon the life of any person being or residing in this State shall be valid or enforceable in any suit brought upon such contract two (2) years or more after the date of its issuance, when premiums due on such contract for the said term of two (2) years have been paid to, and received by, the company issuing such contract, without notice to the assured by the company so issuing such contract of its intention to rescind the same on account of misrepresentation so made, unless it shall be shown on the trial that such misrepresentation was material to the risk and intentionally made.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.35A. Coverage Under Group Insurance and Group Hospital Plans for Psychological Services

Any person who is covered by a policy, contract, or certificate of group insurance or of a group hospital plan including but not limited to coverage issued by a company operating under Chapter 20, Insurance Code, as amended, and whose policy, contract, or certificate provides for services or partial or total reimbursement for services that are within the scope of practice of a licensed psychologist, is entitled to obtain these services or receive reimbursement for these services regardless of whether the services are performed by a licensed doctor of medicine or a licensed psychologist. This article applies to all policies, contracts, and certificates issued, renewed, modified, altered, amended, or reissued on or after the effective date of this article.

[Acts 1977, 65th Leg., p. 1389, ch. 556, § 1, eff. Aug. 29, 1977.]

Art. 21.36. Revocation of Certificate of Authority

Should any insurance company, except those designated in Article 3.61 of this code fail or neglect to pay off and discharge any execution, issued upon a valid final judgment against said company, within thirty (30) days after the notice of the issuance thereof, then in that event the certificate of authority of said company to transact business of insurance shall be revoked, cancelled and annulled, and said company shall be prohibited from transacting business of insurance in this State until said execution be satisfied.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.37. Officers, Directors or Trustees, Personal Non-Liability for Tax Payments

No officer, trustee, or director of any insurer shall, in complying with the statutes, be subject to any personal liability by reason of any payment, or determination not to contest payment, deemed by the board of directors or trustees to be in the corporate interest of such insurer, of any license, excise, privilege, premium, occupation, or other fee or tax to any State, territory, or political subdivision thereof, unless prior to such payment the statute, ordinance, or other law imposing such fee or tax shall have been expressly held invalid by the State Court having final appellate jurisdiction in the premises, or by the Supreme Court of the United States; provided, however, that nothing contained herein shall be construed as directly or indirectly limiting, minimizing, or interpreting the rights and powers of insurers and their officers, trustees, and directors heretofore existing.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.38. Repealed by Acts 1967, 60th Leg., p. 400, ch. 185, § 4, eff. May 12, 1967

Acts 1967, 60th Leg., p. 414, ch. 185, § 4, set out as a note under article 1.14-2, made licenses issued under article 21.38 effective until expiration according to their terms and made taxes, which accrued under article 21.38, payable at rates and in accordance with the provisions of article 21.38 as they existed before the act of 1967 became effective.

Art. 21.39. Loss or Claim Reserves

Every insurer shall maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such claims. The Board of Insurance Commissioners shall adopt each current formula for establishing reserves applicable to each line of insurance recommended by the National Association of Insurance Commissioners and all companies writing the line of insurance to which each such adopted formula is applicable shall establish reserves in compliance therewith.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1955, 54th Leg., p. 413, ch. 117, § 52.]

Art. 21.39-A. Asset Protection Act

Title

Sec. 1. This article shall be known and may be cited as the Asset Protection Act.

Purpose

Sec. 2. This Act is for the purpose of requiring insurers to have and maintain unencumbered assets

in an amount equal to reserve liabilities; to provide preferential claims against assets in favor of owners, beneficiaries, assignees, certificate holders, or third party beneficiaries of insurance policies; and to prevent the hypothecation or encumbrance of assets in excess of certain amounts without prior written order of the Commissioner of Insurance.

Scope

Sec. 3. This Act shall apply to all of the following types of domestic insurance companies and to all kinds of insurance written by such companies; and where used herein "insurer" shall mean: all domestic stock and mutual life, health and accident, fire, casualty, fire and casualty and title insurance companies, including mutual assessment companies, local mutual aid associations, local mutual burial associations, Statewide mutual assessment companies, stipulated premium insurance companies, fraternal benefit societies, group hospital service insurance companies, county mutual insurance companies, Lloyd's and reciprocal exchanges and mortgage guaranty insurance companies. This Act shall not apply to variable contracts for which separate accounts are required to be maintained and shall not apply to assessment as needed or farm mutual companies nor to insurance coverage written by assessment as needed or farm mutual companies. This Act shall not apply to an insurance company while subject to a conservatorship order issued by the Commissioner of Insurance nor to an insurance company while a court appointed receiver is in charge of its affairs.

Exception

Sec. 3A. (a) This Act shall not apply to those reserve assets of an insurer which are held, deposited, pledged, hypothecated, or otherwise encumbered as provided herein to secure, offset, protect, or meet those reserve liabilities of such insurer which are established, incurred, or required under the provisions of a reinsurance agreement whereby such insurer has reinsured the insurance policy liabilities of a ceding insurer, provided:

(1) the ceding insurer and the reinsurer are both licensed to transact business in this state;

(2) pursuant to a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the reserve liabilities required to be established by the reinsurer on the reinsured business are either (a) deposited by or are withheld from the reinsurer and are in the custody of the ceding insurer as security for the payment of the reinsurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the separate or joint control of the ceding insurer, or (b) are deposited and held in a trust account for such purpose and under such conditions with a state or national bank domiciled in this state.

(b) The Commissioner of Insurance shall have the right to examine any of such assets, reinsurance agreements, or deposit arrangements at any time in accordance with the authority to make examinations of insurance companies as conferred by other provisions of this code.

Definitions

Sec. 4. As used in this Act:

1. "Reserve liabilities" are those liabilities which are required to be established by the insurer for all of its outstanding insurance policies in accordance with the Insurance Code, as amended or as hereafter amended;
2. "Reserve assets" are those assets of an insurer which are authorized investments for policy reserves in accordance with the Insurance Code, as amended or as hereafter amended;
3. "Assets" are all property, real or personal, tangible or intangible, legal or equitable, owned by an insurer;
4. "Claimants" are any owners, beneficiaries, assignees, certificate holders, or third party beneficiaries of any insurance benefit or right arising out of and within the coverage of an insurance policy covered by this Act.

Prohibition of Hypothecation

Sec. 5. Every insurer subject to the provisions of this Act shall at all times have and maintain free and unencumbered assets in an amount equal to its reserve liabilities, and no such insurer shall pledge, hypothecate, or otherwise encumber its assets in an amount in excess of the amount of its capital and surplus; nor shall such insurer pledge, hypothecate or otherwise encumber more than ten per cent (10%) of its reserve assets as herein defined; provided, however, that the Commissioner of Insurance, upon application made to him, may issue a written order approving the hypothecation or encumbrance of any of the assets of such an insurer in any amount upon a finding that such hypothecation or encumbrance will not adversely affect the solvency of such insurer.

Any such insurer which shall pledge, hypothecate, or otherwise encumber any of its assets shall within (10) days thereafter report in writing to the Commissioner of Insurance the amount and identity of the assets so pledged, hypothecated, or encumbered and the terms and conditions of such transaction. In addition, each such insurer shall annually or more often if required by the Commissioner file with the Commissioner a statement sworn to by the chief executive officer of the insurer that (a) title to assets in an amount equal to the reserve liability of the insurer which are not pledged, hypothecated or otherwise encumbered is vested in the insurer, (b) the only assets of the insurer which are pledged, hypothecated or otherwise encumbered are as identified and reported in such sworn statement and no

other assets of the insurer are pledged, hypothecated or otherwise encumbered, and (c) the terms and provisions of any such transaction of pledge, hypothecation, or encumbrance are as reported in such sworn statement.

Any person, corporation, association or legal entity which accepts a pledge, hypothecation or encumbrance of any asset of an insurer as security for a debt or other obligation of such insurer not in accordance with the terms and limitations of this Act shall be deemed to have accepted such asset subject to a superior, preferential and automatically perfected lien in favor of claimants; provided, however, that such superior, preferential and automatically perfected lien in favor of claimants shall not apply to assets of an insurance company in conservatorship or receivership if the Commissioner of Insurance, in the conservatorship proceeding, or the court in which the receivership is pending, approves the pledge, hypothecation or encumbrance of such assets.

In the event of involuntary or voluntary liquidation of any insurer subject to this Act, claimants of such insurer shall have a prior and preferential claim against all assets of the insurer except those which have been pledged, hypothecated or encumbered in accordance with the terms and limitations of this Act. All claimants shall have equal status and their prior and preferential claim shall be superior to any claim or cause of action against the insurer by any person, corporation, association or legal entity.

Control Over Conflicts

Sec. 6. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes be accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

Unconstitutional Application Prohibited

Sec. 7. This Act 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.

Severance Clause

Sec. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end

the provisions of this Act are declared to be severable.

[Acts 1971, 62nd Leg., p. 1372, ch. 361, § 1, eff. May 25, 1971. Amended by Acts 1981, 67th Leg., p. 401, ch. 164, § 1, eff. Aug. 31, 1981.]

Art. 21.39-B. Restriction on Transactions with Funds and Assets

Sec. 1. Any director, member of a committee, or officer, or any clerk of a domestic company, who is charged with the duty of handling or investing its funds, shall not:

(1) deposit or invest such funds, except in the corporate name of such company, provided, however, that securities kept under a custodial agreement or trust agreement with a bank or trust company may be issued in the name of a nominee of such bank or trust company if such bank or trust company has corporate trust powers and is duly authorized to act as a custodian or trustee and is organized under the laws of the United States of America or any state thereof and either is a member of the Federal Reserve System or is a member of the Federal Deposit Insurance Corporation;

(2) borrow the funds of such company;

(3) be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; or

(4) take or receive to his own use any fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of such company.

Sec. 2. The State Board of Insurance may promulgate such regulations as may be deemed necessary to carry out the provisions of this article.

Sec. 3. The provisions of this article are applicable to all domestic insurance companies subject to regulation by the Insurance Code, as amended, and any provision of exemption or any provision of inapplicability or applicability limiting such regulation in any chapter of the code are not in limitation of the provisions of this article, and in the event of conflict between this article and any other article of the code or in the event of any ambiguity, the provisions of this article shall govern.

As used herein, the term "insurance companies" includes stock companies, reciprocals or inter-insurance exchanges, Lloyds associations, fraternal benefit societies, stipulated premium companies, and mutual companies of all kinds, including state-wide mutual assessment corporations, local mutual aids, burial associations, and county mutual insurance companies and farm mutual insurance companies and all other organizations, corporations, or persons transacting an insurance business, unless such insurance companies are by statute specifically, by naming this article, exempted from the operation of this article.

Sec. 4. (a) A domestic insurance company may evidence its ownership of securities through definitive certificates, or it may deposit or arrange for the deposit of securities held in or purchased for its general account or its separate accounts in a clearing corporation or the Federal Reserve Book Entry System. When securities are deposited with a clearing corporation directly or deposited indirectly through a participating custodian bank, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of member banks through which an insurance company holds securities in the Federal Reserve Book Entry System and the record of any custodian banks through which an insurance company holds securities in a clearing corporation shall at all times show that such securities are held for such insurance company and for which accounts thereof.

(b) As used herein, a clearing corporation is a corporation defined in Section 8.102(c) of the Business & Commerce Code.

(c) Whenever an insurance company is required to deposit securities as a condition of commencing or continuing to do an insurance business in this state, such deposit may be made through the use of a clearing corporation or the Federal Reserve Book Entry System. Securities deposited with a clearing corporation or held in the Federal Reserve Book Entry System and used to meet the deposit requirements under the insurance laws of this state shall be under the control of the commissioner and shall not be withdrawn by the insurance company without the approval of the commissioner. Any insurance company making a deposit in this manner shall provide to the commissioner evidence issued by its custodian or member bank through which such insurance company has deposited securities with a clearing corporation or in the Federal Reserve Book Entry System or when making the deposit directly with the clearing corporation as a participant, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or direct participant or member bank, and shall also provide to the commissioner evidence that the records of the custodian, participant, or member bank and clearing corporation reflect that such securities are held subject to the order of the commissioner.

[Acts 1975, 64th Leg., p. 464, ch. 198, § 1, eff. May 15, 1975. Amended by Acts 1983, 68th Leg., p. 1239, ch. 267, § 1, eff. Aug. 29, 1983.]

Art. 21.40. Certificates from Other States

The Board, in calculating the reserve liability of any such company, may accept the certificate of the officer of any other state charged with the duty of supervising such company as to any such company organized under the laws of such state; provided, such certificate shows that such liability has been computed in accordance with the provisions of Article 21.39 of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.41. Other Laws for Certain Companies

No provision of this chapter shall apply to companies carrying on the business of life or casualty insurance on the assessment or annual premium plan, under the provisions of this code.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.42. Texas Laws Govern Policies

Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same.

[Acts 1951, 52nd Leg., p. 868, ch. 491.]

Art. 21.43. Foreign Insurance Corporations

(a) It shall be unlawful, except as is provided for surplus lines in Articles 1.14-1 and 1.14-2 of this code, for any foreign insurance corporation of the type provided for in any chapter of this code to engage in the business of insuring others against losses which may be insured against under the laws of this state without initially procuring a certificate of authority from the commissioner of insurance permitting it to engage in those business activities.

(b) This article does not prohibit a foreign insurer from reinsuring a domestic insurer or prohibit the location in Texas of a company that does not directly insure either persons domiciled or other risks located in this state.

(c) The provisions of this code are conditions on which the foreign insurance corporations are permitted to do business in this state, and any of the foreign corporations engaged in issuing contracts or policies in this state are deemed to have agreed to these conditions as a prerequisite to the right to engage in business in this state.

(d) 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.

(e) A foreign casualty insurer may not be required to make or maintain the deposit required of domestic casualty insurers by Article 8.05 of this code if a similar deposit has been made in any state of the United States, under the laws of that state, in a manner that secures equally all the policyholders of the company who are citizens and residents of the United States. A certificate of the deposit under the signature and seal of the officer of the other state with whom the deposit is made must be filed with the board.

[Acts 1951, 52nd Leg., p. 868, ch. 491. Amended by Acts 1959, 56th Leg., p. 172, ch. 98, § 1; Acts 1963, 58th Leg., p. 1310, ch. 500, § 2, eff. June 11, 1963; Acts 1977, 65th Leg., p. 1101, ch. 403, § 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 403, ch. 167, § 1, eff. May 20, 1981; Acts 1983, 68th Leg., p. 1106, ch. 251, § 1, eff. May 27, 1983.]

Art. 21.44. Foreign Insurance Companies other than Life

No foreign insurance company other than one doing a life insurance business shall be permitted to do business within this State unless it shall have and maintain the minimum requirements of this Code as to capital or surplus or both, applicable to companies organized under this Code doing the same kind or kinds of insurance business.

[Acts 1955, 54th Leg., p. 413, ch. 117, § 53.]

Art. 21.45. Minimum Insurance to Be Maintained by Insurance Companies

Sec. 1. Every domestic insurance company, corporation, mutual life insurance company, state-wide mutual assessment company, mutual insurance company other than life operating under and governed by the provisions of Chapter 15 of the Insurance Code, Lloyds, reciprocal or interinsurance exchange, title insurance company, or other insurer which is by law required to be licensed by the Board of Insurance Commissioners of the State of Texas, shall maintain in force at all times not less than one hundred (100) Policy Holders or Certificate Holders nor less than Two Hundred Thousand Dollars (\$200,000) of insurance which has been written by said insurer or which has been acquired through reinsurance contracts; provided, however, that the

provisions of this Act shall not apply to any such insurer which has had paid to it by Policy Holders gross premium income in excess of Fifty Thousand Dollars (\$50,000) during its last preceding accounting year, or until two (2) years after its original certificate of authority has been issued; and further provided that the provisions of this Act shall not take effect as to any insurer which has heretofore been issued an original certificate of authority until one (1) year after the effective date of this Act.

Sec. 2. The Board of Insurance Commissioners shall report to the Attorney General the failure of any insurer to comply with the provisions of this Article, whereupon the Attorney General shall bring suit in any district court of Travis County, Texas, for the purpose of cancelling, forfeiting and revoking the charter, articles of association, or articles of agreement, and for the purpose of cancelling, forfeiting and revoking the certificate of authority of any such insurer.

Sec. 3. The local mutual aid associations and local mutual burial associations authorized to transact business under Chapters 12 and 14 of the Insurance Code, state-wide mutual assessment companies or associations authorized to transact business under Chapters 13 and 14 of the Insurance Code, farm mutual insurance companies authorized to transact business under Chapter 16 of the Insurance Code, county mutual fire insurance companies authorized to transact business under Chapter 17 of the Insurance Code, fraternal benefit societies authorized to transact business under Chapter 10 of the Insurance Code, and those associations which are authorized to transact business under the provisions of Article 14.17 of the Insurance Code, shall be exempt from the provisions of this Article.

[Acts 1955, 54th Leg., p. 1192, ch. 468, § 1.]

This article, added by Acts 1955, 54th Leg., p. 1192, ch. 468, as part of the Insurance Code of 1951, was designated as article 21.44. Section 2 of such 1955 Act provides that, "In the event another law passed at this session of the Legislature is also designated as Article 21.44 of the Insurance Code, the Article added by this Act shall be numbered Article 21.45 or the next succeeding number which is not assigned to some other statute enacted at this session." Acts 1955, 54th Leg., p. 413, ch. 117, § 53, and Acts 1955, 54th Leg., p. 993, ch. 364, § 1, both having been designated as art. 21.44, this article is designated art. 21.45, in accordance with the direction of section 2.

Art. 21.46. Retaliatory Provisions; Payment of Taxes, Fines, Penalties, etc.; Condition Precedent to Doing Business in State; Exemptions

Whenever by the laws of any other state or territory of the United States any taxes, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions are imposed upon any insurance company organized in this State and licensed and actually doing business in such other state or territory which, in the aggregate are in excess of the aggregate of taxes, licenses, fees,

fines, penalties, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon a similar insurance company of such other state or territory doing business in this State, the State Board of Insurance shall impose upon any similar company of such state or territory in the same manner and for the same purpose, the same taxes, licenses, fees, fines, penalties, deposit requirements or other obligations, prohibitions or restrictions; provided, however, the aggregate of taxes, licenses, fees, fines, penalties or other obligations imposed by this State pursuant to this Article on an insurance company of another state or territory shall not exceed the aggregate of such charges imposed by such other state or territory on a similar insurance company of this State actually licensed and doing business therein; provided, further, that wherever under any law of this State the basic rate of taxation of any insurance company of another state or territory is reduced if any such insurance company has made investments in Texas securities then in computing the aggregate Texas premium tax burdens of any such insurance company of any other state or territory each shall for purposes of comparison with the premium tax laws of their home states be considered to have assumed and paid an aggregate premium tax burden equal to the basic rate; provided, further, that for the purpose of this Section, an alien insurer shall be deemed a company of the State designated by it wherein it has

(a) established its principal office or agency in the United States, or

(b) maintains the largest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States, or

(c) in which it was admitted to do business in the United States.

Licenses and fees collected by the State Board of Insurance under this Article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

The provisions of this Section shall not apply to ad valorem taxes on real or personal property or to personal income taxes.

The provisions of this Act shall not apply to a company of any other state doing business in this State if fifteen per cent (15%) or more of the voting stock of said company is owned by a corporation organized under the laws of this State, and domiciled in this State; however, the prior provisions of this Act shall apply without exception to any and all person or persons, company or companies, firm or firms, association or associations, group or groups, corporation or corporations, or any insurance organization or organizations of any kind, which did not

qualify as a matter of fact, under the exception of this paragraph, on or before January 29, 1957.

[Acts 1957, 55th Leg., p. 1184, ch. 396, § 1, eff. Jan. 1, 1958. Amended by Acts 1983, 68th Leg., p. 3911, ch. 622, eff. Sept. 1, 1983.]

Art. 21.47. False Statement in Written Instrument; Penalty

Any person who knowingly or wilfully makes, files or uses any instrument in writing required to be made to or filed with the State Board of Insurance or the Insurance Commissioner, either by the Insurance Code or by rule or regulation of the State Board of Insurance, when the instrument in writing contains any false, fictitious, or fraudulent statement or entry with regard to any material fact, shall be fined not more than \$5,000 or imprisoned for not more than five years in the State penitentiary, or both.

[Acts 1971, 62nd Leg., p. 2449, ch. 789, § 2, eff. June 8, 1971.]

A former article 21.47, enacted by Acts 1957, 55th Leg., p. 1425, ch. 493, § 1, and amended by Acts 1961, 57th Leg., p. 884, ch. 387, § 1, was repealed by Acts 1971, 62nd Leg., p. 2449, ch. 789, § 1.

Art. 21.48. Insurance Company Insider Trading and Proxy Regulation Act

Title of Act

Sec. 1. This Article shall be known as the "Insurance Company Insider Trading and Proxy Regulation Act."

Statement of Beneficial Ownership of Equity Securities of Domestic Stock Companies; Form and Contents; Filing

Sec. 2. Every person who is directly or indirectly the beneficial owner of more than ten per cent of any class of any equity security (other than an exempted security) of a domestic stock insurance company, or who is a director or an officer of such a company, shall file with the State Board of Insurance on or before the first day of July 1966 and thereafter within ten days after he becomes such beneficial owner, director, or officer, a statement, in such form as such Board may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of such Board a statement, in such form as it may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

Recovery by Company of Profits Realized by Beneficial Owner From Purchase and Sale of Equity Securities; Suits

Sec. 3. For the purpose of preventing the unfair use of information which may have been obtained

by such beneficial owner, director, or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This Section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the State Board of Insurance by rules and regulations may exempt as not comprehended within the purpose of this Section.

Sale of Unowned Securities; Nondelivery of Owned Securities

Sec. 4. It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such company (other than an exempted security) if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this Section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

Solicitation of Proxy, Consent or Authorization With Respect to Unlisted Equity Securities; Disclosure by Companies in Absence of Proxy Solicitation by Management

Sec. 5. (1) It shall be unlawful for any person, in contravention of such rules and regulations as the State Board of Insurance may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any equity security (other than an exempted security) of a domestic stock insurance company not listed on a national securities exchange registered as such under the United

States Securities Exchange Act of 1934, as amended.

(2) Unless proxies, consents, or authorizations in respect of a security of a domestic stock insurance company subject to subsection (1) of this Section 5 are solicited by or on behalf of the management of such company from the holders of record of stock of such company in accordance with the rules and regulations prescribed under this Section 5 prior to any annual or other meeting, such company shall, in accordance with such rules and regulations prescribed by the Board, file with the Commissioner and transmit to all holders of record of such security, information substantially equivalent to the information which would be required to be transmitted if a solicitation were made.

Investment Accounts; Primary or Secondary Markets

Sec. 6. The provisions of Section 3 of this Article shall not apply to any purchase and sale, or sale and purchase, and the provisions of Section 4 of this Article shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The State Board of Insurance may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

Foreign or Domestic Arbitrage Transactions

Sec. 7. The provisions of Sections 2, 3 and 4 of this Article shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the State Board of Insurance may adopt in order to carry out the purposes of this Act.

Definitions

Sec. 8. When used in this Article:

(1) "Board" means the State Board of Insurance;

(2) "Commissioner" means the Commissioner of Insurance;

(3) "Person" shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization;

(4) "Equity security" shall mean any stock or similar security; or any security convertible, with or without consideration, into such a security, or

carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Board shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of the investors, to treat as an equity security;

(5) "Exempted security" or "exempted securities" shall mean such securities as the Board may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either conditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this Article which by their terms do not apply to an "exempted security" or to "exempted securities."

(6) "Officer" shall mean a president, vice-president, treasurer, actuary, secretary, controller, and any other person who performs for a domestic stock insurance company functions corresponding to those performed by the foregoing officers.

(7) Without limiting the generality thereof, the term "stock insurance company" shall include domestic title insurance companies, regulated by Chapter 9 of the Texas Insurance Code, and stipulated premium insurance companies, regulated by Chapter 22 of the Texas Insurance Code.

Registered Equity Securities

Sec. 9. The provisions of Sections 2, 3, 4 and 5 of this Article shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of Sections 2, 3, 4, and 5 of this Article except for the provisions of this subsection (b).

Rules and Regulations

Sec. 10. The State Board of Insurance shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in it by Sections 2 through 9 of this Article, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within its jurisdiction. No provision of Sections 2, 3, 4, and 5 of this Article imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the said Board, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by

judicial or other authority to be invalid for any reason.

Violations; Criminal Penalties

Sec. 11. Any person who wilfully violates any provision of this Article or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this Article, or any person who wilfully and knowingly makes, or causes to be made, any statement in any document required to be filed under this Article or any rule or regulation thereunder which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than ten thousand dollars, or imprisoned not more than two years, or both; but no person shall be subject to imprisonment under this Section 11 for the violation of any rule or regulation if he proves that he has no knowledge of such rule or regulation.

Violations; Civil Penalties; Injunction

Sec. 12. Any person wilfully violating any of the provisions of this Article or wilfully violating any rule or regulation of the Board promulgated hereunder, shall be subject to a civil penalty of not less than one hundred dollars nor more than one thousand dollars for each and every day of such violation, and for each and every act of such violation, to be recovered in any court of competent jurisdiction in Travis County, or in the county of the residence of the defendant or, if there be more than one defendant, in the county of the residence of any of them, or in the county in which the violation is alleged to have occurred, such suit to be instituted at the direction of the Board and conducted in the name of the State of Texas by the Attorney General. This penalty shall be in addition to any forfeiture or penalty that may be provided for by law. Any and all violations, and threatened violations, of this Article may be enjoined by any court of competent jurisdiction in which suit for penalty may be brought, and in such cases the court shall issue such writs or injunctions, prohibitory or mandatory, as the facts justify.

Purpose of Article

Sec. 13. It is the purpose of this Article to provide for the protection of the public interest, the investor, and the shareholder of domestic stock insurance companies by regulating proxy solicitation by domestic stock insurance companies and transactions by officers, directors and principal equity security holders of such companies and requiring appropriate reports thereof. To this end the misuse of information by certain insiders of domestic stock insurance companies shall be prevented and a full and fair disclosure of all material matters relevant to the exercise of the corporate franchise of a shareholder of such companies will be promoted and

the free exercise of such franchise will be insured. In exercising the authority granted by this Article to make rules and regulations the Board shall promote the purposes of this Article to prevent misuse of information and to encourage good faith dealing and full and fair disclosure.

Filing Rules and Regulations

Sec. 14. All rules and regulations promulgated by the State Board of Insurance under authority of this Article shall be filed with the Secretary of State, and no such rules or regulations shall be of any force or effect until so filed.

[Acts 1965, 59th Leg., p. 435, ch. 222, § 1, eff. May 21, 1965.]

Article 21.48, derived from Acts 1957, 55th Leg., p. 1425, ch. 493, § 2, and repealed by Acts 1961, 57th Leg., p. 884, ch. 387, § 3, provided penalties for false returns, reports and statements. See, now, art. 21.47.

Section 3 of the repealing Act of 1961 read as follows:

"Provided, however, the repeal of this Article shall not abate or affect offenses that have arisen under the provisions of this Article prior to the effective date of its repeal."

Art. 21.48A. Prohibiting Certain Practices Relating to Insurance of Real or Personal Property

Definitions

Sec. 1. (1) "Lender" means any person, partnership, corporation, association, or other entity, or any agent, loan agent, servicing agent, or any loan or mortgage broker, who lends money and receives or otherwise acquires a mortgage, lien, deed of trust, or any other security interest in or upon any real or personal property as security for such loan.

(2) "Borrower" means any person, partnership, corporation, association, or other entity, who has or acquires a legal or equitable interest in real or personal property which is or becomes subject to a mortgage, lien, security agreement, deed of trust, or other security instrument.

Prohibited Practices

Sec. 2. (a) No Lender shall require a fee of over Ten Dollars (\$10.00) for the substitution by the Borrower of an insurance policy for another insurance policy still in effect, or require any fee for the furnishing by the Borrower of an insurance policy for an existing policy upon termination of the existing policy, when such insurance policy is provided through an insurance company duly licensed to do business in the State of Texas pursuant to the provisions of this Insurance Code.

(b) No Lender shall directly or indirectly impose or require as a condition of any financing or lending of money or the renewal or the extension thereof, that the purchaser or borrower or his successors, shall procure any policy of insurance or the renewal or extension thereof, covering the property involved

in the transaction, from or through any particular agent or agents, solicitor or solicitors, insurer or insurers, or any other person or persons, or from or through any particular type or class of any of the foregoing.

(c) No Lender shall use or permit the use of any of the information taken from a policy of insurance insuring the property of a Borrower for the purpose of soliciting insurance business from the Borrower, or make any of such information available to any other person for any purpose, unless such Lender has first been furnished specific written authority from the Borrower permitting or directing such particular use or disclosure; provided, however, this paragraph shall not prevent a Lender who is a licensed local recording agent from selling insurance to a Borrower.

(d) No Lender may require a Borrower to furnish evidence of insurance more than fifteen (15) days prior to the termination date of an existing policy.

Exceptions

Sec. 3. Nothing contained in Section 2 hereof shall be deemed to prevent such Lender from:

(a) requiring evidence, to be produced prior to the commencement or renewal of the risk, that insurance with a fixed termination date providing adequate coverage has been obtained in an amount sufficient to cover the debt or loan and that it will not be cancelled without reasonable notice to the lender;

(b) requiring insurance in an insurer authorized to do business and having a licensed resident agent in this state;

(c) refusing to accept or approve insurance in any particular insurer on reasonable and nondiscriminatory grounds relating to its financial soundness, or its facility to service the policy;

(d) providing adequate insurance coverage to protect the Lender's security interest in any property in accordance with the terms of the mortgage, security agreement, deed of trust, or other security instrument should the Borrower fail to furnish an insurance policy meeting the requirements established by the Lender as authorized by this article within fifteen (15) days prior to the termination date of an existing policy, and in such instance the Lender shall be entitled to use any information contained in the existing policy for the purpose of determining adequate insurance coverage;

(e) requiring at or before the time of delivery of an insurance policy to the Lender by a local recording agent or insurer a statement in writing from the Borrower designating such agent or insurer as his agent for such purpose; provided, however, such statement shall not be required when an agent or insurer is furnishing a renewal

of an existing expiring policy provided by such agent or insurer;

(f) furnishing to any person, firm, or corporation who is or becomes the owner or holder of any note or obligation secured by a mortgage, security agreement, deed of trust, or other security instrument the policy of insurance or any information contained therein covering property which is security for such loan; or

(g) processing a claim under the terms of the insurance policy.

Violations, Enforcement, and Civil Remedies

Sec. 4. (a) The attorney general or the commissioner or board may institute any injunction or other proceeding to enforce the provisions of this article and to enjoin any person, partnership, corporation, association, or other entity from engaging or attempting to engage in any activity in violation of this article or any of its provisions. The provisions of this section are cumulative of the other penalties or remedies provided for by law.

(b) A Borrower may recover from any Lender who violates any of the provisions of this article civil damages in an amount equal to three (3) times the annual premium for the policy of insurance in force upon the mortgaged property. In the event that such policy of insurance be for a period of more than one (1) year, the annual premium shall be calculated by dividing the number of years of the duration of such policy into the total premium specified therein for such entire period.

Application to Title Insurance

Sec. 5. Nothing contained herein shall apply to title insurance.

[Acts 1965, 59th Leg., p. 280, ch. 120, § 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1447, ch. 428, §§ 1, 2, eff. June 2, 1969; Acts 1977, 65th Leg., p. 349, ch. 171, § 1, eff. Aug. 29, 1977.]

Art. 21.49. Catastrophe Property Insurance Pool Act

Declaration and Purpose

Sec. 1. It is hereby declared by the Legislature that an adequate market for windstorm, hail and fire insurance is necessary to the economic welfare of the State of Texas and that without such insurance the orderly growth and development of the State of Texas would be severely impeded. It is therefore the purpose of this Act to provide a method whereby adequate windstorm, hail and fire insurance may be obtained in certain designated portions of the State of Texas.

Name of Act

Sec. 2. This Act shall be known as the "Texas Catastrophe Property Insurance Pool Act."

Definitions

Sec. 3. In this Act, unless the context clearly dictates to the contrary:

(a) "Board" means the State Board of Insurance of the State of Texas.

(b) "Association" means the Texas Catastrophe Property Insurance Association as established pursuant to the provisions of this Act.

(c) "Plan of Operation" means the plan for providing Texas windstorm and hail insurance in a catastrophe area and Texas fire and explosion insurance in an inadequate fire insurance area which plan has been approved by the Board for operation by the Association pursuant to the provisions of this Act, which plan may, among other things, provide for limits of liability for each structure insured, and/or the corporeal movable property located therein.

(d) "Texas Windstorm and Hail Insurance" means deductible insurance against direct loss to insurable property as a result of windstorm or hail as such terms shall be defined and limited in policies and forms approved by the State Board of Insurance.

(e) "Texas Fire and Explosion Insurance" means insurance against direct loss to insurable property as a result of fire and explosion as such terms shall be defined and limited in policies and forms approved by the State Board of Insurance.

(f) "Insurable Property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein (as may be designated in the plan of operation) which property is determined by the Association, pursuant to the criteria specified in the plan of operation to be in an insurable condition against windstorm, hail and/or fire and explosion as appropriate, as determined by normal underwriting standards; provided, however, that insofar as windstorm and hail insurance is concerned, any structure located within the seacoast territory as defined by the State Board of Insurance in the General Basis Schedule, commenced on or after the 30th day following the publication of the plan of operation, not built or continuing in compliance with building specifications set forth in the plan of operation shall not be an insurable risk under the terms of this Act. A structure, or an addition thereto, which is constructed in conformity with plans and specifications that comply with the specifications set forth in the plan of operation at the time construction commences shall not be declared ineligible for windstorm and hail insurance as a result of subsequent changes in the building specifications set forth in the plan of operation. When repair of damage to a structure involves replacement of items covered in the building specifications as set forth in the plan of operation, such repairs must be completed in a manner to comply with such specifications for the structure

to continue within the definition of Insurable Property for windstorm and hail insurance. Nothing in this Act shall preclude special rating of individual risks as may be provided in the plan of operation.

(g) "Net Direct Premiums" means gross direct written premiums less return premiums upon canceled contracts (irrespective of reinsurance assumed or ceded) written on property in this State as defined by the Board of Directors of the Association.

(h) "Catastrophe Area" means a city or county in which it may be determined by the Board, after notice of not less than 10 days and a hearing, that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within such city or county, due to such insurable property being located within a city or county subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. Such designation shall be revoked by the Board if it determines, after notice of not less than 10 days and a hearing, that windstorm and hail insurance in such catastrophe area is no longer reasonably unavailable to a substantial number of owners of insurable property within such designated city or county. If the Association shall determine that windstorm and hail insurance is no longer reasonably unavailable to a substantial number of owners of insurable property in any designated catastrophe area or areas, then the Association may request in writing that the Board revoke the designation of any or all of such catastrophe areas and, after notice of not less than 10 days and a hearing, but within 30 days of such hearing, the Board shall either approve or reject the Association's request and shall, if such request be approved, revoke such designation or designations.

(i) "Inadequate Fire Insurance Area" means a city or county which is, or is within an area, designated as a catastrophe area, as defined in Paragraph (h), above, and in which it may be determined by the Board, after notice of not less than 10 days and a hearing, that fire and explosion insurance is not reasonably available to a substantial number of owners of insurable property within such city or county. Such designation shall be revoked by the Board if it determines, after 10 days' notice and a hearing, that fire and explosion insurance in such inadequate fire insurance area is no longer reasonably unavailable to a substantial number of owners of insurable property within such designated city or county. If the Association shall determine that fire and explosion insurance is no longer reasonably unavailable to a substantial number of owners of insurable property in any designated inadequate fire insurance area or areas, then the Association may request in writing that the Board revoke the

designation of any or all such inadequate fire insurance areas, and, after notice of not less than 10 days and a hearing, but within 30 days of such hearing, the Board shall either approve or reject the Association's request and shall, if such request is approved, revoke such designation or designations.

(j) "Insurance" as hereinafter used in this Act shall mean the types of insurance described in Paragraphs (d) and (e) of this Section 3.

(k) "Insurers" means all property insurers authorized to transact property insurance in this State and specifically includes and makes this Act applicable to county mutual companies, Lloyds and reciprocal or interinsurance exchanges, but shall not include (a) farm mutual insurance companies as authorized in Chapter 16 of this Code; (b) county mutual fire insurance companies which are writing exclusively industrial fire insurance policies as defined in Article 17.02 of this Code; and (c) any companies now operating under Chapters 12 and 13 of Title 78 of the Revised Civil Statutes of Texas, 1925, as amended, which have heretofore been repealed.

Creation of the Texas Catastrophe Property Insurance Association

Sec. 4. (a) The Association which is hereby created shall consist of all property insurers authorized to transact property insurance in this State, except those companies that are prevented by law from writing coverages available through the pool on a Statewide basis. Every such insurer shall be a member of the Association and shall remain a member of the Association so long as the Association is in existence, as a condition of its authority to transact the business of insurance in this State. Any insurer which ceases to be a member of the Association shall remain liable on contracts of insurance entered into during its membership in the Association to the same extent and effect as if its membership in the Association had not been terminated.

(b) The organizational plan of certain types of insurers precludes such insurers from writing insurance coverage for the State of Texas, any city, political subdivision or agency of the State. When insuring property of the State of Texas, any city, political subdivision or agency of the State, the Association shall not cause such policies to be issued in such companies, nor shall such companies be included as reinsurers for any policies of insurance in this category.

Operation of the Texas Catastrophe Property Insurance Association

Sec. 5. (a) The Association shall, pursuant to the provisions of this Act and the plan of operation, and with respect to insurance on insurable property, have the power on behalf of its members to cause to be issued policies of insurance to applicants, to

assume reinsurance from its members, and to cede reinsurance to its members and to purchase reinsurance on behalf of its members.

(b) On or before 10 days after the effective date of this Act the Board shall appoint a temporary board of directors of the Association which shall consist of seven representatives of members of the Association, selected so as to fairly represent various classes of member insurers. Such temporary board of directors shall prepare and submit a plan of operation and shall serve until the permanent board of directors shall take office in accordance with said plan of operation.

(c) All members of the Association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premiums of such member written in this State during the preceding calendar year bears to the aggregate net direct premiums written in this State by all members of the Association, as furnished to the Association by the Board after review of annual statements, other reports and other statistics the Board shall deem necessary to provide the information herein required and which the Board is hereby authorized and empowered to obtain from any member of the Association, provided, however, that a member shall, in accordance with the plan of operation, be entitled to receive credit for similar insurance voluntarily written in the area designated by the Board and its participation in the writings in the Association shall be reduced in accordance with the provisions of the plan of operation. Each member's participation in the Association shall be determined annually in the manner provided in the plan of operation. For purposes of determining participation in the Association, two or more members having a common ownership or operating in this State under common management or control shall be treated as if they constituted a single member. Any insurer authorized to write and engaged in writing any insurance, the writing of which required such insurer to be a member of the Association, who becomes authorized to engage in writing such insurance after the effective date of this Act shall become a member of the Association on the 1st day of January immediately following such authorization and the determination of such insurer's participation in the Association shall be made as of the date of such membership in the same manner as for all other members of the Association.

(d) On or before 45 days after the effective date of this Act, the temporary board of directors of the Association shall submit to the Board for review and approval a proposed plan of operation. Such proposed plan shall set forth the number, qualifications, terms of office, and manner of election of the members of the board of directors and shall provide for the efficient, economical, fair, and nondiscriminatory administration of the Association. Such pro-

posed plan may include a preliminary assessment of all members for initial expenses necessary to the commencement of operation, the establishment of necessary facilities, management of the Association, plan for assessment of members to defray losses and expenses, underwriting standards, procedures for the acceptance and cession of reinsurance, procedures for determining the amount of insurance to be provided to specific risks, time limits and procedures for processing applications for insurance, and for such other provisions as may be deemed necessary by the board of directors and the Board to carry out the purposes of this Act. The proposed plan shall be reviewed by the Board and approved, unless it finds that such plan does not properly fulfill the purposes of this Act. In the review of the proposed plan the Board may, in its discretion, consult with the directors of the Association and may seek any further information which it deems necessary for a decision. If the Board approves the proposed plan, it shall certify such approval to the directors and the plan shall become effective 10 days after such certification. If the Board disapproves all or any part of the proposed plan of operation, it shall return the same to the directors with its written statement setting forth the reasons for the disapproval and any recommendations it may wish to make. The directors may alter the plan in accordance with the recommendations of the Board or shall, within 15 days from the date of disapproval, return a new plan to the Board. In the event the Association has not proposed a plan satisfactory to the Board on or before the 14th day of May, 1971, the Board shall certify and adopt a plan under which the Association shall operate.

The Directors of the Association may, subject to the approval of the Board, amend the plan of operation at any time.

In the absence of an appeal, the Association shall adopt amendments to the plan proposed by the Board within 30 days.

Board Orders

Sec. 5A. (a) After notice and a hearing as provided in Subsection (b) of this section, the Board may issue any orders which it considers necessary to carry out the purposes of this Act including, but not limited to, maximum rates, competitive rates, and policy forms.

(b) Before an order is adopted by the Board, it shall post notice of a hearing on the order at the Secretary of State's office in the State Capitol and shall hold a hearing to consider the proposed order. Any person may appear and testify for or against the adoption of the order.

Eligibility: Application

Sec. 6. (a) Any person having an insurable interest in insurable property located in an area desig-

nated by the Board shall be entitled to apply to the Association for insurance provided for under the plan of operation and for an inspection of the property under such rules and regulations, including an inspection fee, if any, as determined by the Board of Directors of the Association and approved by the State Board of Insurance. The term "insurable interest" as used in this subsection shall be deemed to include any lawful and substantial economic interest in the safety or preservation of property from loss, destruction or pecuniary damage. Application shall be made on behalf of the applicant by a Local Recording Agent and shall be submitted on forms prescribed by the Association. The application shall contain a statement as to whether or not the applicant has or will submit the premium in full from personal funds, or if not, to whom a balance is or will be due.

(b) If the Association determines that the property is insurable, the Association, upon payment of the premium, shall cause to be issued a policy of insurance as may be provided in the plan for a term of one year.

In the event an agent or some other person, firm, or corporation shall finance the payment of all or a portion of the premium and there is a balance due for the financing of such premium and such balance, or any installment thereof, is not paid within 10 days after the due date, the agent or other person, firm, or corporation to whom such balance is due may request cancellation of the insurance by returning the policy, with proof that the insured was notified of such return, or by requesting the Association to cancel such insurance by notice mailed to the insured and any others shown in the policy as having an insurable interest in the property. Upon completion of cancellation, the Association shall refund the unearned premium, less any minimum retained premium set forth in the plan of operation, to the person, firm, or corporation to whom the unpaid balance is due. In the event an insured requests cancellation of insurance, the Association shall make refund of such unearned premium payable to the insured and the holder of an unpaid balance. The Local Recording Agent, who submitted the application, shall refund the commission on any unearned premium in the same manner.

(c) Any policy issued pursuant to the provisions of this Act may be renewed annually, upon application therefor, so long as the property continues to meet the definition of "insurable property" set forth in Section 3 of this Act.

(d) Deleted by Acts 1973, 63rd Leg., p. 1043, ch. 406, § 4.

Deletion of Coverages From Other Policies

Sec. 7. The Board shall prepare endorsements and forms applicable to the standard policies which it has promulgated providing for the deletion of

coverages available through the Association and shall promulgate the applicable reduction of premiums and rates for the use of such endorsements and forms.

Rates, Rating Plans and Rate Rules Applicable

Sec. 8. (a) The Association shall file with the Board every manual of classifications, rules, rates which shall include condition charges, every rating plan, and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the character and the extent of the coverage contemplated and shall be accompanied by the policies and endorsements forms proposed to be used, which said forms and endorsements may be designed specifically for use by the Association and without regard to other forms filed with, approved by, or promulgated by the Board for use in this State.

(b) For the purpose of making such filing the Association may utilize filings made by licensed rating organizations and it may utilize the loss or expense statistics or recommendations collected and furnished to the Board by an advisory organization authorized under Article 5.73, Insurance Code of Texas.

(c) Any filing made by the Association pursuant hereto shall be submitted to the Board and as soon as reasonably possible after the filing has been made the Board shall, in writing, approve, modify, or disapprove the same; provided that any filing shall be determined approved unless modified or disapproved within 30 days after date of filing.

(d) If at any time the Board finds that a filing so approved no longer meets the requirements of this Act, it may, after a hearing held on not less than 20 days' notice to the Association specifying the matters to be considered at such hearing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the Board finds that such filing no longer meets the requirements of this Act and shall be effective not less than 30 days after its issuance.

(e) All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to the past and prospective loss experience within and outside the State of hazards for which insurance is made available through the plan of operation, if any, to expenses of operation including acquisition costs, to a reasonable margin for profit and contingencies, and to all other relevant factors, within and outside the State.

(2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in such risks on the basis of

any or all of the factors mentioned in the preceding paragraph. Such rates may include rules for classification of risks insured hereunder and rate modifications thereof. All such provisions, however, as respects rates, classifications, standards and premiums shall be without prejudice to or prohibition of provision by the Association for consent rates on individual risks if the rate and risk are acceptable to the Association and as is similarly provided for, or as is provided for, in Article 5.26(a), Texas Insurance Code, and this provision or exception on consent rates is irrespective of whether or not any such risk would otherwise be subject to or the subject of a provision of rate classification or eligibility.

(3) Rates shall be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer.

(4) Commissions paid to agents shall be reasonable, adequate, not unfairly discriminatory and nonconfiscatory.

(f) For the purpose of this Act the applicant under Section 6(a) hereof shall be considered to have consented to the appropriate rates and classifications authorized by this Act irrespective of any and all other rates or classifications.

(g) All premiums written and losses paid under this Act as appropriate shall be included in applicable classifications for general rate making purposes.

(h) Except as the State Board of Insurance shall determine to be necessary after a hearing thereon, or except as provided in "consent to rate" statutes, any rates established under the provisions of the Insurance Code covering any risks or classes of risks which are located inland of the Intracoastal Canal on the Texas coastline (or inward of the boundary here authorized to be established by the State Board of Insurance amending such Intracoastal Canal boundary), may not be more than the maximum rates set by the Board under Subchapter C, Chapter 5, Texas Insurance Code,¹ for similar risks or classes of risks under the same lines and kinds of insurance. The maximum rates applicable to risks and classes of risks located inland of the Intracoastal Canal on the Texas coastline shall apply also to similar risks and classes of risks located seaward of the Intracoastal Canal if the property is protected by a sea wall constructed by the Corps of Engineers, or if it is determined by the Board that the property or risk is protected by other adequate structure or by any natural physical feature of the terrain that provides protection, and the State Board of Insurance may adjust rates to take into account the degree of such protection.

If valid flood or rising water insurance coverage exists and is maintained on any risk being insured in the pool the State Board of Insurance may provide for a rate and reduction in rate of premium as may be appropriate.

The State Board of Insurance may make provision by rule and regulation requiring catastrophe reserves in respect of the premium received on risks or classes of risks located seaward of the boundary of the Intracoastal Canal and may require catastrophe reserves on risks or classes of risks located inland of the boundary of the Intracoastal Canal and as such boundary may be amended. The amount required to be reserved for catastrophes (as such catastrophes are defined by the Board) shall be that portion of the pure premium as is actuarially made attributable, as ascertained by the Board, to prospective catastrophic loss. The portion of the pure premium attributable to prospective catastrophic loss shall not be income and shall be unearned until the occurrence of an applicable catastrophe as defined and shall be held in trust by the pool or trustee of the pool until losses are paid therefrom under such reasonable rules and regulations as the State Board of Insurance shall prescribe or approve.

¹ Article 5.25 et seq.

Appeals

Sec. 9. Any person insured pursuant to this Act, or his duly authorized representative, or any affected insurer who may be aggrieved by an act, ruling or decision of the Association, may, within 30 days after such act, ruling or decision, appeal to the Board. In the event the Association is aggrieved by the action of the Board with respect to any ruling, order, or determination of the Board, it may, within 30 days after such action, make a written request to the Board for a hearing thereon. The Board shall hear the Association, or the appeal from an act, ruling or decision of the Association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the Association making such request or the person, or his duly authorized representative, appealing from the act, ruling or decision of the Association. Within 30 days after such hearing, the Board shall affirm, reverse or modify its previous action or the act, ruling or decision appealed to the Board. Pending such hearing and decision thereon, the Board may suspend or postpone the effective date of its previous rule or of the act, ruling or decision appealed to the Board. The Association, or the person aggrieved by any order or decision of the Board may thereafter appeal to the District Court of Travis County, Texas, and not elsewhere, in accordance with Article 1.04(f) of the Insurance Code of Texas.

Immunity From Liability

Sec. 10. There shall be no liability on the part of and no cause of action of any nature shall arise against the Board or any of its staff, the Association or its agents or employees, or against any participating insurer or its agents or employees, for

any inspections made under the plan of operation or any statements made in good faith by them in any reports or communications concerning risks submitted to the Association, or at any administrative hearings conducted in connection therewith under the provisions of this Act.

Indemnification

Sec. 11. Each person serving as a director of the Association, each member of the Association, and each officer and employee of the Association shall be indemnified by the Association against all costs and expenses actually and necessarily incurred by him or it in connection with the defense of any action, suit, or proceeding in which he or it is made a party by reason of his or its being or having been a director or member of the Association, or an officer or employee of the Association except in relation to matters as to which he or it has been judged in such action, suit or proceeding to be liable by reason of misconduct in the performance of his or its duties as a director of the Association or a member or officer or employee of the Association, provided, however, that this indemnification shall in no way indemnify a member of the Association from participating in the writings, expenses, profits, and losses of the Association in the manner set out in this Act. Indemnification hereunder shall not be exclusive of other rights to which such member or officer may be entitled as a matter of law.

Annual Report

Sec. 12. The Association shall file in the office of the Board annually a statement which shall summarize the transactions, conditions, operations and affairs of the Association during the preceding year at such times and covering such periods as may be designated by the Board. Such statement shall contain such matters and information as are prescribed by the Board and shall be in such form as is required by it.

Effective Date

Sec. 13. This Act shall become effective from and after passage.

Conflicting Laws

Sec. 14. All laws or parts of laws in conflict herewith are hereby repealed to the extent necessary to accomplish the purposes of this Act.

Partial Invalidity

Sec. 15. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 16. [Emergency provision].

Codification

Sec. 17. This Act is hereby codified as Article 21.49 of the Texas Insurance Code.

Application of Act

Sec. 18. This Act does not apply to farm mutual insurance companies, as defined in Article 16.01 of the Insurance Code, nor does it apply to any existing company chartered under old Chapter 12, Title 78, Revised Civil Statutes of Texas, 1925, repealed by Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, Chapter 40.

Payment of Losses Exceeding \$100 Million in Year; Premium Tax Credit

Sec. 19. In the event any occurrence or series of occurrences within the defined catastrophe area results in insured losses of the association totaling in excess of \$100 million within a single calendar year, the proportion of the total loss allocable to each insurer shall be determined in the same manner as its participation in the association has been determined for the year under Subsection (c) of Section 5 of the Texas Catastrophe Insurance Pool Act, as amended, and any insurer which has paid its share of total losses exceeding \$100 million in a calendar year shall be entitled to credit the amount of that excess share against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended.¹ The tax credit herein authorized shall be allowed at a rate not to exceed 20 percent per year for five or more successive years following the year of payment of the claims. The balance of payments paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this Insurance Code.

¹Transferred; see, now, art. 4.10 of this Code.

[Acts 1971, 62nd Leg., p. 843, ch. 100, eff. April 29, 1971. Amended by Acts 1971, 62nd Leg., p. 2862, ch. 940, § 1, eff. June 15, 1971; Acts 1972, 62nd Leg., 4th C.S., p. 45, ch. 21, §§ 1, 2, eff. Nov. 2, 1972; Acts 1973, 63rd Leg., p. 1042, ch. 406, §§ 1, 3 to 5, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1043, ch. 406, §§ 3 to 5, eff. Aug. 27, 1973; Acts 1979, 66th Leg., p. 1599, ch. 675, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1114, ch. 254, § 1, eff. Aug. 29, 1983.]

Two other articles numbered 21.49 were added by Acts 1971, 62nd Leg., p. 1334, ch. 356, § 1, and Acts 1971, 62nd Leg., p. 2905, ch. 961, § 1, which were redesignated as articles 21.49-1 and 21.49-2, respectively.

Art. 21.49-1. Insurance Holding Company System Regulatory Act

Findings

Sec. 1. (a) It is hereby found and declared that it may not be inconsistent with the public interest

and the interest of policyholders and shareholders to permit insurers to:

(1) engage in activities which would enable them to make better use of management skills and facilities;

(2) have free access to capital markets which could provide funds for insurers to use in diversification programs;

(3) implement sound tax planning conclusions; and

(4) serve the changing needs of the public and adapt to changing conditions of the social, economic, and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

(b) It is further found and declared that the public interest and the interests of policyholders and shareholders are or may be adversely affected when:

(1) control of an insurer is sought by persons who would utilize such control adversely to the interest of policyholders or shareholders;

(2) acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this State;

(3) an insurer which is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or

(4) an insurer pays dividends to shareholders which jeopardize the financial condition of such insurer.

(c) It is hereby declared that the policies and purposes of this article are to promote the public interest by:

(1) facilitating the achievement of the objectives enumerated in Subsection (a);

(2) requiring disclosure of pertinent information relating to and approval of changes in control of an insurer;

(3) requiring disclosure and approval of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and

(4) providing standards governing material transactions between the insurer and its affiliates.

(d) It is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers. Therefore, this State shall exercise regulatory authority over domestic insurers and, unless otherwise provided in this article, not over non-domestic insurers, with respect to the matters contained herein.

Definitions

Sec. 2. As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) Affiliate. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) Commissioner. The term "Commissioner" shall mean the Commissioner of Insurance, his deputies, or the State Board of Insurance, as appropriate.

(c) Control. The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing, 10 percent or more of the voting securities or authority of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 3(i) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders or stockholders of the insurer that the person be deemed to control the insurer.

(d) Holding Company. The term "holding company" means any person who directly or indirectly controls any insurer.

(e) Controlled Insurer. The term "controlled insurer" means an insurer controlled directly or indirectly by a holding company.

(f) Controlled Person. The term "controlled person" means any person, other than a controlled insurer who is controlled directly or indirectly by a holding company.

(g) Insurance Holding Company System. The term "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(h) Insurer. The term "insurer" shall include all insurance companies organized or chartered under the laws of this State, or licensed to do business in this State, including capital stock companies, mutual companies, title insurance companies, fraternal benefit societies, local mutual aid associations, Statewide mutual assessment companies, county mutual insurance companies, Lloyds' Plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(i) Person. A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(j) Securityholder. A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(k) Subsidiary. A "subsidiary" of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(l) Voting Security. The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

(m) Notwithstanding any other provision of this article, the following shall not be deemed holding companies: the United States, a state or any political subdivision, agency, or instrumentality thereof, or any corporation which is wholly owned directly or indirectly by one or more of the foregoing.

(n) Notwithstanding any other provision of this article, this article shall not be applicable to any insurance holding company system in which the insurer, the holding company, if any, the subsidiaries, if any, the affiliates, if any, and each and every other member thereof, if any, is privately owned by not more than five (5) securityholders, each of whom is and must be an individual or a natural person, and the commissioner has found that it is not necessary that such holding company system be regulated under this article or certain provisions of this article and has issued a total or partial exemption certificate to such holding company which shall effect the exemption until revoked by the commissioner.

Registration of Insurers

Sec. 3. (a) Registration. Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the commissioner, except a foreign or non-domestic insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article. Any insurer which is subject to registration under this section shall register within 60 days after the effective date of this article or 15 days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of an insurance holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) Information and Form Required. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

(1) the identity of every member of the insurance holding company system;

(2) the capital structure, general financial condition, ownership and management of the insurer, its holding company, and the insurer's subsidiaries and, if deemed necessary in the judgment of the commissioner, any of its affiliates;

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its holding company, its subsidiaries, or its affiliates:

(i) loans, other investments, or purchases, sales or exchanges of securities of any of the affiliates by the insurer or of the insurer by any of its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management and service contracts and all cost-sharing arrangements; and

(vi) reinsurance agreements covering one or more lines of insurance of the ceding company;

(4) other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner; and

(5) such filing shall include a copy of the charter or articles of incorporation and bylaws of such insurer's holding company and such insurer's subsidiaries and, if deemed necessary in the judgment of the commissioner, any of its affiliates.

(c) Materiality. No information need be disclosed on the registration statement filed pursuant to Section 3(b), or the amendments thereto pursuant to Section 3(d), if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation, or order provided otherwise, either single transactions or the cumulative total of all transactions involving sales, purchases, exchanges, loans or extensions of credit, or investments, which involve either one-half of one percent or less of an insurer's admitted assets, or five percent or less of an insurer's surplus, determined by whichever is the lesser, as of the 31st day of December next preceding, shall not be deemed material for purposes of this section, but any such single transaction or the cumulative total of such transactions in excess of the lesser of such percentages shall be deemed material.

(d) Amendments to Registration Statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each such change or addition; provided, however, that subject to Subsection (c) of Section 4, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof; and provided further that any transaction authorized by Section 4(d) hereof need not be reported under this subsection.

(e) Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) Consolidated Filing. The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this State and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection (a) and to file all information and material required to be filed under this section.

(h) Exemptions. The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by

rule, regulation, or order shall exempt the same from the provisions of this section.

(i) Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

Transactions Within an Insurance Holding Company System

Sec. 4. (a) Transactions with Affiliates. Material transactions by registered insurers with their holding companies, subsidiaries, or affiliates shall be subject to the following standards:

- (1) the terms shall be fair and equitable;
- (2) charges or fees for services performed shall be reasonable;
- (3) the books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions;
- (4) expenses incurred and payments received shall be allocated to the insurer on an equitable basis in conformity with customary insurance accounting principles consistently applied; and
- (5) the insurer's surplus as regards policyholders following any dividends or distributions to the holding company or shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) Adequacy of Surplus. For the purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
- (2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves; and

(10) the quality and liquidity of investments in subsidiaries made pursuant to Section 6. The commissioner may treat any such investment as a nonadmitted or disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(c) Dividends and Other Distributions. (1) No insurer subject to registration under Section 3 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the commissioner shall have approved such payment within such 30-day period.

(2) For purposes of this section an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (i) 10 percent (20 percent if such insurer is a title insurer) of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life or title insurer, or the net investment income, if such insurer is not a life or title insurer, for the 12-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the commissioner has approved the payment of such dividend or distribution or (ii) the commissioner has not disapproved such payment within the 30-day period referred to above.

(d) Commissioner's Approval Required. (1) The prior written approval of the commissioner shall be required for the following transactions between a domestic insurer and any person in its holding com-

pany system: sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than either five percent of the insurer's admitted assets or 25 percent of the insurer's surplus, whichever is the lesser, as of the 31st of December next preceding; provided, however, that the commissioner must give his decision of either approval or disapproval within 90 days after notification by the insurer and his failure to so act within such 90 days shall constitute approval of the transaction.

(2) The following transactions between a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into any such transaction at least 30 days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:

(i) sales, purchases, exchanges, loans or extensions of credit, or investments, involving either more than one-half of one percent but less than five percent of the insurer's admitted assets, or more than five percent but less than 25 percent of the insurer's surplus, whichever is the lesser, as of the 31st day of December next preceding;

(ii) reinsurance treaties or agreements;

(iii) rendering of services on a regular or systematic basis; or

(iv) any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders or stockholders or of the public.

(3) Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of a non-controlled insurer, would be otherwise contrary to law.

(4) The commissioner, in reviewing transactions hereunder, shall consider whether the transactions comply with the standards set forth in Subdivision (a) hereof and whether they may adversely affect the interest of policyholders. Any disapproval by the commissioner of any such transactions shall set forth the specific reasons for such disapproval.

(5) The approval of any transaction under this section shall be deemed an amendment under Section 3(d) to an insurer's registration statement without further filing.

Acquisition or Retention of Control of or Merger With Domestic Insurer

Sec. 5. (a) Filing Requirements of Public Tenders or Offers. (1) Except as otherwise provided in Subsection (b) of this Section, no person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market

or otherwise, from the shareholders, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

(2) For purposes of this section a "domestic insurer" shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) Filing Requirements of Negotiated Agreements. No person who has executed or entered into a privately negotiated agreement or contract directly with shareholders of a domestic insurer to acquire any voting security of such insurer by which, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, shall consummate or make effective any such agreement or control, or acquire any further right, title, or interest in such voting security, or exercise any control over such insurer, until and unless such person has filed with the commissioner a statement containing the information required by Subsection (c) of this section and such agreement, contract, and acquisition has been approved by the commissioner in the manner hereinafter prescribed. The statement filed under this Subsection (b) shall be subject to public inspection at the office of the commissioner, and a copy thereof shall be sent to the insurer but shall not be required to be sent to the insurer's shareholders.

(c) Content of Statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in either Subsection (a) or (b) is to be effected (hereinafter called "acquiring party"), and

(i) if such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction

of crimes other than minor traffic violations during the past 10 years; and

(ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by Paragraph (i) of this subsection;

(2) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement, unless such acquiring party is an individual person in which case he shall provide such personal financial information as required by the commissioner;

(4) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in either Subsection (a) or (b), which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in either Subsection (a) or (b), and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in either Subsection (a) or (b) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements, or understanding with respect to any security referred to in either Subsection (a) or (b) in which any acquiring party is involved, including

but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in either Subsection (a) or (b) during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a description of any recommendations to purchase any security referred to in either Subsection (a) or (b) made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and contracts or agreements to acquire or exchange any securities referred to in either Subsection (a) or (b), and (if distributed) of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in either Subsection (a) or (b) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in either Subsection (a) or (b) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in either Subsection (a) or (b) is a corporation, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together

with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change.

(d) **Alternative Filing Materials.** If any offer, request, invitation, contract, agreement, or acquisition referred to in either Subsection (a) or Subsection (b) is proposed to be made by means of a registration statement under the Securities Act of 1933, as amended,¹ or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, as amended,² or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in either Subsection (a) or Subsection (b) may utilize such documents in furnishing the information called for by that statement.

(e) **Approval by Commissioner; Hearings.** (1) The commissioner shall approve any such acquisition of control referred to in either Subsection (a) or Subsection (b) unless, after a public hearing thereon, he finds that:

(i) after the change of control the domestic insurer referred to in either Subsection (a) or Subsection (b) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) the effect of such acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein;

(iii) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party;

(iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (a) are unfair and unreasonable to the securityholders of the insurer;

(v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair, prejudicial, hazardous, or unreasonable to policyholders or stockholders of the insurer and not in the public interest;

(vi) the competence, trustworthiness, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) such acquisition or merger would violate any law of this or any other state or of the United States.

(2) The public hearing referred to in Clause (1) hereof shall be held within 30 days after the statement required by either Subsection (a) or Subsection (b) is filed, and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement and to the domestic insurer. Not less than 10 days' notice of such public hearing shall be given by the person filing the statement to such other persons as may be designated by the commissioner. The insurer shall give prompt notice of the hearing to its securityholders as prescribed in Subsection (f) hereof. The commissioner shall make a determination within 30 days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments in connection therewith.

(f) **Mailings to Shareholders; Payment of Expenses.** Except as provided in Subsection (b), all statements, amendments, or other material filed pursuant to Subsection (a), (b), or (c), and all notices of public hearings held pursuant to Subsection (e), shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(g) **Exemptions.** The provisions of this section shall not apply to:

(1) any offers, requests, invitations, agreements, or acquisitions by the person referred to in Subsection (a) who is a broker-dealer under state or federal securities laws of any voting security referred to in Subsection (a) which, immediately prior to consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding and which acquisition is solely for resale under a plan approved by the commissioner that will not reasonably result in acquisition of control on resale and where during the period prior to resale no actual positive act of control by virtue of those shares is committed;

(2) any transaction which is subject to the provisions of: (i) Article 21.25, Sections 1 through 5, of this code, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article until the plan of merger or consolidation has been filed by the insurer with the Commissioner of Insurance in accordance

with such Article 21.25. After the filing of such plan of merger or consolidation the transaction shall be subject to the approval provisions of Subsection (e) of Section 5 of this article, but the Commissioner may exempt such transaction from any or all of the other provisions and requirements of Section 5 of this article if he finds that the notice, proxy statement, and other materials furnished to shareholders and security holders in connection with such merger or consolidation contained reasonable and adequate factual and financial disclosure, material and information relating to such transaction, (ii) Article 11.20 of this code, (iii) Article 11.21 of this code, (iv) Article 14.13 of this code, (v) Article 14.61 of this code, (vi) Article 14.63 of this code, (vii) Article 21.26 of this code, provided that the requirements of said article are fully complied with, (viii) Article 22.15 of this code, and (ix) Article 22.19 of this code, provided that the reinsurance is a total direct reinsurance agreement; or

(3) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(h) Retention of Control. (1) The following conditions affecting any controlled insurer, regardless of when such control has been acquired, are violations of this article: (i) the violation of this article, or other demonstration of untrustworthiness, by the insurer, its holding company or any controlling person, or any of the officers or directors of either; or (ii) the violation of any provision of Chapter 15 of the Business and Commerce Code, Chapter 785, Acts of the 60th Legislature, 1967, as amended,³ or any other antitrust law of this State by the insurer, the holding company or any affiliate. If, after notice and an opportunity to be heard the commissioner determines that any of the foregoing violations exists, he shall reduce his findings to writing and shall issue an order based thereon and cause the same to be served upon the insurer and upon all persons affected thereby directing any person found to be in violation hereof to take appropriate action to cure such violation. Upon the failure of any such person to comply with such order, Section 3 of Article 1.14 of this code shall become applicable to such person, as well as any other provisions of this article.

(2) The commissioner may require the submission of such information as he deems necessary to determine whether any retention of control complies with this article and may require, as a condition of approval of such retention of control, that all or any portion of such information be disclosed to the insurer's stockholders.

(i) Duty of Insurer. Unless subject to registration under Section 3, or unless it is a foreign insurer not subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article, or unless acquisition of its control is subject to Subsections (a), (b), (c), and (d) hereof, every authorized insurer shall, on or before November 1, 1971, or within 30 days after any event requiring notice hereunder, whichever is later, notify the commissioner in writing of the identity of any person whom the insurer then knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer.

(j) Violations. The following shall be violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed pursuant to this section; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(k) Jurisdiction; Consent to Service of Process. The courts of this State are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

¹ 15 U.S.C.A. § 77a et seq.

² 15 U.S.C.A. § 78a et seq.

³ Business & Commerce Code, § 15.01 et seq.

Subsidiaries of Insurers

Sec. 6. (a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize, acquire, invest in or make loans to one or more subsidiaries, and may loan to or invest in affiliates, as permitted by the investment provisions of the Insurance Code.

(b) Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of the Insurance Code, a domestic insurer may also:

(1) invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose amounts which in the aggregate do not exceed the lesser of five percent of the insurer's assets or 50 percent of the insurer's surplus as regards policyholders, but after such investments the insurer's surplus as regards policyholders must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there must be included (i) total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

(2) if the insurer's total liabilities, as calculated for National Association of Insurance Commissioners annual statement purposes, are less than 10 percent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, but after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a nonadmitted asset, must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(3) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, provided that such subsidiary or affiliate agrees to limit its investments in any particular asset so that such investments will not cause the amount of the total investment of the insurer to exceed the amount the insurer could have directly invested in such asset. For the purpose of this clause, "the total investment of the insurer" will include (i) any direct investment by the insurer in an asset and (ii) the insurer's proportionate share of any investment in such asset by any subsidiary or affiliate of the insurer, which must be calculated by multiplying the amount of the subsidiary's or affiliate's investment by the percentage of the insurer's ownership of such subsidiary or affiliate; and

(4) with the prior approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries and affiliates, but after such investment the insurer's surplus as regards policyholders must be reasonable in relation to the

insurer's outstanding liabilities and adequate to its financial needs.

(c) Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries and affiliates made under Subsection (b) hereof are not subject to any of the otherwise applicable restrictions or prohibitions contained in this code applicable to such investment of a company subject to this code, but such investments are subject to all of the provisions of Section 4 of this Act.

(d) Qualification of Investment. Whether any investment under Subsection (b) hereof meets the applicable requirements thereof is to be determined on a pro forma basis as of the time immediately after such investment is made, taking into account the insurer's assets, liabilities, and surplus as regards policyholders, the then outstanding principal balance of all previous investments in debt obligations of subsidiaries and affiliates, and the value of all previous investments in equity securities of subsidiaries and affiliates.

(e) Cessation of Control. If an insurer ceases to control a subsidiary, it must dispose of any investment therein made under Subsection (b) within three years from the time of the cessation of control or within such further time as the commissioner may prescribe and approve, unless at any time after the investment is made the investment otherwise meets the requirements of and qualifies for investment under any other section of this code, and the insurer has notified the commissioner thereof.

Valuation of Investment in a Subsidiary or Affiliate

Sec. 6A. (a) Valuation of an investment by an insurer in a subsidiary or affiliate of an insurer, which is not itself an insurer, shall be valued, subject to the additional provisions of this section, on the basis of the greater of:

(1) the net stockholder equity value owned by the insurer in the subsidiary or affiliate, adjusted to include the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer; or

(2) one of the following bases appropriate to each type of subsidiary or affiliate owned by it, provided, however, that an insurer shall not be required to value the stock of all its subsidiaries or affiliates on the same basis:

(i) the net worth of the subsidiary or affiliate determined in accordance with generally accepted accounting principles as of the end of its most recent fiscal year, provided, subject to the other provisions of this section, that the financial statements of the subsidiary or affiliate for its most recent fiscal year have been audited by an independent certified public accountant in

accordance with generally accepted auditing standards; or

(ii) a value equal to the cost of the stock of the subsidiary or affiliate, provided such value is determined and adjusted to reflect subsequent operating results in accordance with generally accepted accounting principles; or

(iii) the market value of the stock of the subsidiary or affiliate, if the stock is listed on a national securities exchange; or

(iv) the value, if any, placed on the stock of such subsidiary or affiliate by the National Association of Insurance Commissioners; or

(v) any other value which the insurer can substantiate to the satisfaction of the commissioner as being a reasonable value.

(b) Within 60 days after the effective date of this section, an insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of and basis of valuation used in accordance with the provisions of Subsection (a) hereof for each of its noninsurer subsidiaries and affiliates.

(c) Within 30 days after the acquisition of a noninsurer subsidiary or affiliate, an insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of and the basis of valuation used in accordance with the provisions of Subsection (a) for such subsidiary or affiliate.

(d) A valuation basis used for a subsidiary or affiliate shall thereafter be consistently used unless a change is substantiated as reasonable and on that basis is approved in writing by the commissioner.

(e) If a subsidiary or affiliate is valued on the basis of Subsection (a)(2)(i) and the books of the subsidiary or affiliate are not audited at the time the valuation is included in the insurer's annual statement, the insurer shall thereafter report and explain the difference, if any, between the value of the subsidiary or affiliate as reported in the annual statement and the value as determined by audit. Such report and explanation shall be made as soon as possible following such audit.

(f) If any subsidiary or affiliate, which is not itself an insurance company, is valued other than on a basis of market value as defined in Subsection (a)(2)(iii), there shall be deducted from otherwise determined value a sum equal to the value claimed for any of its assets which would not constitute admitted assets for the insurer if held directly by the insurer, if such assets

(1) are held by the subsidiary or affiliate but used, under a lease agreement or otherwise, significantly in the conduct of the insurer's business; or

(2) were acquired from or purchased for the benefit or use of the insurer by the subsidiary or

affiliate under specific circumstances that, in the opinion of the commissioner, support a reasonable finding that the primary purpose of such acquisition or purchase was the evasion or avoidance of the Insurance Code.

(g) The commissioner may, after notice and opportunity to be heard, determine that the basis used for valuation of the stock of any subsidiary or affiliate does not, under the specific circumstances of the case, reflect the value of the subsidiary or affiliate and may order either an adjustment in valuation or the use of one of the other specified bases of valuation.

Management of Controlled Insurers

Sec. 7. (a) Notwithstanding the control of an authorized insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this code.

(b) Nothing herein shall preclude an authorized insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of Paragraph (4) of Section 4(a) hereof.

Prohibition of Indirect Action

Sec. 8. No holding company or controlled person shall directly or indirectly or through another person do or cause to be done for or on behalf of the controlled insurer any act intended to affect, influence, change, or alter the insurance operations of the insurer which, if done by the insurer acting alone, would violate this code. Provided, however, this section shall not limit or prohibit such holding company or person within the holding company system from doing any type of business that would be normal and natural to such person if it were not within the holding company system so long as such business is conducted on behalf of such person.

Examination

Sec. 9. (a) Power of the Commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under other articles of this code relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under Section 3 to produce such records, books, or other information papers in the possession of the insurer, its holding company, its subsidiaries, or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, every holding company, every controlled person, subsidiary, or affiliate within the

insurance holding company system shall be subject to examination by order of the commissioner if he has cause to believe that the operations of such persons may materially affect the operations, management, or financial condition of any controlled insurer within the system and that he is unable to obtain relevant information from such controlled insurer. The grounds relied upon by the commissioner for such examination shall be stated in his order, which order shall be subject to judicial review only at the instance of the person sought to be examined. Such examination shall be confined to matters specified in the order. The cost of such examination shall be assessed against the person examined and no portion thereof shall thereafter be reimbursed to it directly or indirectly by the controlled insurer.

(b) Purpose and Limitation of Examination. The commissioner shall exercise his power under Subsection (a) above only if the examination of the insurer under other sections of this code is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) Use of Consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection (a) above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Expenses. Each registered insurer complying with the commissioner's order and producing for examination records, books, and papers pursuant to Subsection (a) above shall be liable for and shall pay the expense of such examination in accordance with Article 1.16 of this code.

Confidential Treatment

Sec. 10. All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 9 and all information reported pursuant to Section 3, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

Rules and Regulations

Sec. 11. The State Board of Insurance may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be consistent with and to carry out the provisions of this article and to govern the conduct of its business and proceedings hereunder. Respecting any other provisions of this article, the board shall not have any power or authority to change the meaning of any provision of this article by rule or regulation or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this article.

Injunctions: Prohibitions Against Voting Securities: Sequestration of Voting Securities

Sec. 12. (a) Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the State Board of Insurance or by the commissioner hereunder, the commissioner may apply to the district court for Travis County for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this article or any such rule, regulation, or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(b) Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the State Board of Insurance or the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this State have so ordered. If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the State Board of Insurance or the commissioner hereunder, the insurer or the commissioner may apply to the district court for Travis County or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of Section 5 or any rule, regulation, or order issued by the commissioner thereunder to

enjoin the voting of any such security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, and shareholders or the public may require.

(c) **Sequestration of Voting Securities.** In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the State Board of Insurance or the commissioner hereunder the district court for Travis County or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article. Notwithstanding any other provisions of law, for the purposes of this article the situs of the ownership of the securities of domestic insurers shall be deemed to be in this State.

Criminal Proceedings

Sec. 13. Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a wilful violation of this article, the commissioner may cause criminal proceedings to be instituted by the district attorney for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district attorney of Travis County against such insurer, or the responsible director, officer, employee, or agent thereof. Any insurer which wilfully violates this article may be fined not more than \$10,000. Any individual who wilfully violates this article may be fined not more than \$5,000 or, if such wilful violation involves the deliberate perpetration of a fraud upon an insurer, any subsidiary or policyholders, imprisoned not more than two years or both.

Receivership

Sec. 14. Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten its insolvency or make the further transaction of its business hazardous to its policyholders, creditors, shareholders, or the public, then the commissioner may proceed as provided in Articles 21.28 and 21.28-A of this code to take possession of the property of such domestic insurer and to conduct the business thereof.

Revocation, Suspension, or Non-renewal of Insurer's License

Sec. 15. Whenever it appears to the commissioner that any person has committed a violation of this

article which makes the continued operation of an insurer contrary to the interest of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusion of law.

Rescission, Revocation, and Reversal of Unauthorized Transactions

Sec. 16. Whenever it appears to the commissioner that any person has entered into any transaction or act without having first complied with the provisions of this article applicable to such transaction or act, and in violation hereof, or has obtained his approval of or acquiescence in a transaction or act subject to this article based upon a material fraudulent misrepresentation, misstatement, or omission, the commissioner may, after giving notice and an opportunity to be heard, determine and order that such transaction or act be set aside, rescinded, revoked, reversed, and rendered void and of no force or effect, and that the parties to such transaction or act shall be returned to the position they would have occupied had not such transaction or act occurred in violation of this article.

Judicial Review; Mandamus

Sec. 17. (a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the commissioner pursuant to this article may appeal therefrom under the procedures provided in Article 1.04 of this code.

(b) The filing of an appeal pursuant to this section shall stay the application of any such rule, regulation, order, or other action of the commissioner to the appealing party unless the court, after giving such party notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders, shareholders, creditors, or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this article may petition the district court for Travis County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

Applicability to Foreign Insurers

Sec. 18. Each Texas-licensed foreign insurer domiciled in a jurisdiction which has not, by statute or regulation, adopted controls considered by the Commissioner of Insurance of the State of Texas to be substantially similar to those contained in this Article shall be subject to all provisions of Article

21.49-1 of the Insurance Code the same as Texas domestic insurers and is, in the event of non-compliance therewith, subject to all of the remedies, penalties, and sanctions authorized by the Insurance Code, including, but not limited to, after notice and hearing, suspension or revocation of certificate of authority to do business in Texas. If, after the effective date of this Act, any domiciliary jurisdictions adopt controls considered by the Commissioner of Insurance of the State of Texas to be substantially similar to those contained in this Article, the commissioner may thereafter exempt insurers domiciled in said jurisdictions from the provisions of this Section 18 of Article 21.49-1.

[Acts 1971, 62nd Leg., p. 1334, ch. 356, § 1, eff. May 25, 1971. Amended by Acts 1973, 63rd Leg., p. 1066, ch. 409, §§ 1, 2, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 1074, ch. 412, §§ 1, 2, eff. June 14, 1973; Acts 1977, 65th Leg., p. 2195, ch. 868, §§ 1 to 5, eff. May 11, 1977.]

The 1971 Act added this article to the Insurance Code as art. 21.49.

Sections 2 and 3 of the 1971 Act provided:

"Sec. 2. All laws and parts of laws in this State inconsistent with this article are hereby superseded with respect to matters covered by this article.

"Sec. 3. If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and for this purpose the provisions of this article are severable."

Acts 1973, 63rd Leg., p. 1066, ch. 409, which by §§ 1 and 2 amended §§ 18 and 5(f), respectively, of this article, provided in § 3:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable."

Acts 1973, 63rd Leg., p. 1074, ch. 412, which by §§ 1 and 2 amended §§ 5(f) and 13, respectively, of this article, provided in § 3:

"The provisions of Section 2 hereof shall not be deemed to relieve any penalty against any person for acts committed prior to the effective date of this Act nor make lawful any act unlawful prior to the effective date of this Act."

Art. 21.49-2. Declination, Cancellation and Nonrenewal of Certain Policies

The State Board of Insurance is authorized and directed to prescribe, adopt, promulgate, and enforce reasonable rules and regulations as to the cancellation and the nonrenewal of family automobile and residential fire insurance and homeowners policies, including notice requirements thereof, applicable to all insurance companies writing the above-mentioned policies. The State Board of Insurance is also authorized, as it finds necessary, to prescribe, adopt, promulgate, and enforce reasonable rules and regulations as to the cancellation and the nonrenewal of all other policies of insurance regulated by the Board pursuant to Chapter 5, Texas Insurance Code, including notice requirements thereof, applicable to all such companies. The Board shall require a written statement of the reason or reasons for declination, cancellation, or nonrenewal of any of the policies covered by this

article to be given by the insurer to the policyholder or applicant upon request by the policyholder or applicant. There shall be no liability on the part of, and no cause of action shall arise against any insurer or agent or employees of the insurer or agent, for any statements, disclosures, or communications made in good faith by them under this article; except there shall be no immunity under this article for a disclosure of information known to be false or a disclosure with malice or wilful intent to injure any person. In prescribing and adopting such rules and regulations, the Board will give consideration to the reasonable needs of the public and to the operations of the insurance companies. The Board shall have authority to alter or amend, as it deems necessary, any and all of the rules and regulations prescribed and adopted by it.

[Acts 1971, 62nd Leg., p. 2905, ch. 961, § 1, eff. June 15, 1971. Amended by Acts 1983, 68th Leg., p. 4000, ch. 622, § 91, eff. Sept. 1, 1983.]

The 1971 Act added this article to the Insurance Code as art. 21.49.

Section 2 of the 1971 Act provided:

"If any word, sentence, or provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or application, and to this end the provisions of this Act are severable."

Art. 21.49-3. Medical Liability Insurance Underwriting Association Act

Short Title

Sec. 1. This Act shall be known as the "Texas Medical Liability Insurance Underwriting Association Act."

Definitions

Sec. 2. (1) "Medical liability insurance" means primary and excess insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering or the failure to render professional service by a health care provider or physician who is in one of the categories eligible for coverage by the association.

(2) "Association" means the joint underwriting association established pursuant to the provisions of this article.

(3) "Net direct premiums" means gross direct premiums written on automobile liability and liability other than auto insurance written pursuant to the provisions of the Insurance Code, less policyholder dividends, return premiums for the unused or unabsorbed portion of premium deposits and less return premiums upon cancelled contracts written on such liability risks.

(4) "Board" means the State Board of Insurance of the State of Texas.

(5) "Physician" means a person licensed to practice medicine in this state.

(6) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as defined in Section 1.03(2), Medical Liability Insurance Improvement Act of Texas,¹ as a registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, optometrist, or not-for-profit nursing home, or a radiation therapy center that is independent of any other medical treatment facility and which is licensed by the Texas State Radiation Control Agency pursuant to the provisions of Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), and which is in compliance with the regulations promulgated by the Texas State Radiation Control Agency, a blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, or a nonprofit corporation which is organized for the delivery of health care to the public and which is certified under Article 4509a, Revised Civil Statutes of Texas, 1925,² or an officer, employee, or agent of any of them acting in the course and scope of his employment.

¹ Civil Statutes, art. 4590i.

² Repealed; see, now, Civil Statutes, art. 4495b.

Joint Underwriting Association

Sec. 3. (a) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing, within this state, on a direct basis, automobile liability and liability other than auto insurance on or after January 1, 1975, as provided in the Insurance Code, specifically including and applicable to Lloyds and reciprocal or interinsurance exchanges, but excluding farm mutual insurance companies as authorized by Chapter 16 of this code, and county mutual insurance companies as authorized by Chapter 17 of this code. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact such kind of insurance in this state. The purpose of the association shall be to provide medical liability insurance on a self-supporting basis. The association shall not be a licensed insurer within the meaning of Article 1.14-2, Insurance Code, relating to medical liability insurance for physicians as defined in this article.

(b) The association shall, pursuant to the provisions of this article and the plan of operation with respect to medical liability insurance, have the power on behalf of its members:

(1) to issue, or to cause to be issued, policies of insurance to applicants, including primary, excess, and incidental coverages and subject to limits as specified in the plan of operation; provided that no individual or organization may be insured by

policies issued by the association for an amount exceeding a total of \$750,000 per occurrence and \$1.5 million aggregate per annum;

(2) to underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;

(3) to either or both accept and refuse the assumption of reinsurance from its members; and

(4) to cede and purchase reinsurance.

(c)(1) The board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of operation consistent with the provisions of this article, to become effective and operative no later than 90 days after the effective date of this Act.

(2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical liability insurance, and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members and assessment of policyholders to defray losses and expenses, administration of the policyholder's stabilization reserve fund, commission arrangements, reasonable and objective underwriting standards, acceptance, assumption, and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(3) The plan of operation shall provide that any balance remaining in the funds of the association at the close of its fiscal year, meaning its then excess of revenue over expenditures after reimbursement of members' contributions in accordance with Section 4(b)(5) of this article by the association shall be added to the reserves of the association.

(4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the board, or shall be made at the direction of the board.

Eligibility for Coverage

Sec. 3A. (a) The board shall establish by order the categories of physicians and health care providers who are eligible to obtain coverage from the association and may, from time to time, revise its order to include or exclude from eligibility particular categories of such physicians and health care providers.

(b) If a category of physicians or health care providers has been excluded from eligibility to obtain coverage from the association, the board may determine, after notice of at least 10 days and a

hearing, that medical liability insurance is not available. On that determination, the category of physicians or health care providers is eligible to obtain insurance coverage from the association.

Procedures

Sec. 4. (a)(1) Any health care provider or physician included in one of the categories of health care providers eligible for coverage by the association shall, on or after the effective date of the plan of operation, be entitled to apply to the association for such coverage. Such application may be made on behalf of an applicant by an agent authorized pursuant to Article 21.14 of this code.

(2) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium, policyholder stabilization reserve fund charge, or assessment due from the applicant for prior insurance (as shown by the insured having failed to pay or make written objection to such charges within 30 days after billing) then the association, upon receipt of the premium and the policyholder stabilization reserve fund charge, or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical liability insurance for a term of one year.

(b)(1) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto shall be subject to Subchapter B of Chapter 5 of the Insurance Code, as amended,¹ giving due consideration to the past and prospective loss and expense experience for medical professional liability insurance within and without this state of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the board may require; provided, that if any article of the above subchapter is in conflict with any provision of this Act, this Act shall prevail.

(2) Within such time as the board shall direct, the association shall submit, for the approval of the board pursuant to Article 5.15 of the Insurance Code, an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association.

(3) Any deficit sustained by the association in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect, by one or more of the following procedures in this sequence:

First, a contribution from the policyholder's stabilization reserve fund until the same is exhausted.

Second, an assessment upon the policyholders pursuant to section 5(a) of this article;

Third, an assessment upon the members pursuant to Section 5(b) of this article. To the extent a member has paid one or more assessments and has not received reimbursement from the association in accordance with Subdivision (5) of this subsection, a credit against premium taxes under Article 7064, Revised Civil Statutes of Texas, 1925, as amended² shall be allowed. The tax credit shall be allowed at a rate of 20 percent per year for five successive years following the year in which said deficit was sustained and at the option of the insurer may be taken over an additional number of years.

(4) After the initial year of operation, rates, rating plans, and rating rules, and any provision for recoupment should be based upon the association's loss and expense experience, together with such other information based upon such experience as the board may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation in accordance with Section 3(c)(2) of this article and contributions from the policyholder's stabilization reserve fund, all members shall, on a basis authorized by the board, as long as the board deems it necessary, contribute to the financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members with interest at a rate to be approved by the board. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this code.

(c) Excess insurance coverage written for a health care provider or a physician by the association under this article shall be written on a following form basis to the primary insurance coverage of that health care provider.

¹ Article 5.13 et seq.

² Transferred; see, now, art. 4.10 of this Code.

Policyholder's Stabilization Reserve Fund

Sec. 4A. There is hereby created a policyholder's stabilization reserve fund which shall be administered as provided herein and in the plan of operation of the association. Each policyholder shall pay annually into the stabilization reserve fund a charge, the amount of which shall be established annually by advisory directors chosen by health care providers and physicians eligible for insurance

in the association in accordance with the plan of operation. The charge shall be in proportion to each premium payment due for liability insurance through the association. Such charge shall be separately stated in the policy, but shall not constitute a part of premiums or be subject to premium taxation, servicing fees, acquisition costs, or any other such charges. The policyholder's stabilization reserve fund shall be collected and administered by the association and shall be treated as a liability of the association along with and in the same manner as premium and loss reserves. The fund shall be valued annually by the board of directors as of the close of the last preceding year. Collections of the stabilization reserve fund charge shall continue until such time as the net balance of the stabilization reserve fund is not less than the projected sum of premiums to be written in the year following valuation date. The fund shall be credited with all stabilization reserve fund charges collected from policyholders and shall be charged with any deficit from the prior year's operation of the association.

Participation

Sec. 5. (a) Each policyholder shall have contingent liability for a proportionate share of any assessment of policyholders made under the authority of this article. Whenever a deficit, as calculated pursuant to the plan of operation, is sustained by the association in any one year, its directors shall levy an assessment only upon those policyholders who held policies in force at any time within the two most recently completed calendar years in which the association was issuing policies preceding the date on which the assessment was levied. The aggregate amount of the assessment shall be equal to that part of the deficit not recouped from the stabilization reserve fund. The maximum aggregate assessment per policyholder shall not exceed the annual premium for the liability policy most recently in effect. Subject to such maximum limitation, each policyholder shall be assessed for that portion of the deficit reflecting the proportion which the earned premium on the policies of such policyholder bears to the total earned premium for all policies of the association in the two most recently completed calendar years.

(b) All insurers which are members of the association shall participate in its writings, expenses, and losses in the proportion that the net direct premiums, as defined herein, of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the

insurer that may be required by the board. No member shall be obligated in any one year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of one percent of its surplus to policyholders and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subdivision, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this subdivision.

Directors

Sec. 6. The association shall be governed by a board of nine directors, to be elected annually by the members of the association. On or before 15 days after the effective date of this Act, the State Board of Insurance shall appoint a temporary board of directors of the association which shall consist of nine members who are representatives of the association, selected so as to fairly represent various classes of member insurers and organizations of insurers. Such temporary board of directors shall serve until the first annual meeting of the members of the association or until their successors have been elected in accordance with this section. The first elected board shall be elected at the annual meeting of the members, or their authorized representatives, which shall be held at a time and place designated by the board.

Appeals

Sec. 7. (a) Any person insured or applying for insurance pursuant to this Act, or his duly authorized representative, or any affected insurer who may be aggrieved by an act, ruling, or decision of the association, may, within 30 days after such act, ruling, or decision, appeal to the board of directors of the association. The board of directors of the association shall hear said appeal within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the person making such request or the duly authorized representative. Within 10 days after such hearing, the board of directors of the association shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board of directors of the association.

(b) In the event any person insured or applying for insurance is aggrieved by the final action of the board of directors of the association or in the event

the association is aggrieved by the action of the board with respect to any ruling, order, or determination of the board of directors of the association or the board, the aggrieved party may, within 30 days after such action, make a written request to the board for a hearing thereon. The board shall hear the association, or the appeal from an act, ruling, or decision of the association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the association making such request or the person, or his duly authorized representative, appealing from the act, ruling, or decision of the board of directors of the association. Within 30 days after such hearing, the board shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board. Pending such hearing and decision thereon, the board may suspend or postpone the effective date of its previous rule or of the act, ruling, or decision appealed to the board. The association, or the person aggrieved by any order or decision of the board, may thereafter appeal in accordance with Article 1.04(f) of the Insurance Code of Texas.

Privileged Communications

Sec. 8. There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, its agents or employees, an insurer, any licensed agent, or the board or its authorized representatives, for any statements made in good faith by them in any reports or communications, concerning risks insured or to be insured by the association, or at any administrative hearings conducted in connection therewith.

Annual Statements

Sec. 9. The association shall file in the office of the board, annually on or before the first day of March, a statement which shall contain information with respect to its transactions, condition, operations, and affairs during the preceding calendar year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the board. The board may, at any time, require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

Examinations

Sec. 10. The board shall make an examination into the affairs of the association at least annually. Such examination shall be conducted, the report thereon filed, and expenses borne and paid for, in the manner prescribed in Articles 1.15 and 1.16 of the Insurance Code.

Dissolution of the Association

Sec. 11. Upon the effective date of this article, the board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of suspension consistent with the provisions of this article, to become effective and operative on December 31, 1985, unless the board determines before that time that the association may be suspended or is no longer needed to accomplish the purposes for which it was created. The plan of suspension shall contain provisions for maintaining reserves for losses which may be reported subsequent to the expiration of all policies in force at the time of such suspension. If, after the date of suspension ordered by the board, the board finds, after notice and hearing, that all known claims have been paid, provided for, or otherwise disposed of by the association, relating to policies issued prior to such suspension, then the board may wind up the affairs of the association, relating to policies issued prior to such suspension, by paying all funds remaining in the association to a special fund created by the statutory liquidator of the board as a reasonable reserve to be administered by said liquidator for unknown claims and claims expenses and for reimbursing assessments and contributions in accordance with Section 4(b)(5) of this article. The board shall, after consultation with the representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan for distribution of funds, if any, less reasonable and necessary expenses, to the policyholders ratably in proportion to premiums and assessments paid during the period of time prior to suspension in which the association issued policies. When all claims have been paid and no further liability of this association exists, the statutory liquidator shall distribute all funds in its possession to the applicable policyholders in accordance with the plan promulgated by the board. If such reserve fund administered by the statutory liquidator proves inadequate, the association shall be treated as an insolvent insurer in respect to the applicable provisions of Articles 21.28, 21.28A and 21.28-C, Insurance Code, not inconsistent with this article. Notice of claim shall be made upon the board.

Authority of the Board Over Dissolution

Sec. 12. At any time the board finds that the association is no longer needed to accomplish the purposes for which it was created, the board may issue an order suspending the association as of a certain date stated in the order. As soon as may be reasonably practical after December 31, 1984, the board shall determine whether or not medical liabili-

ty insurance, is reasonably available to physicians, health care providers, or any category of physicians or health care providers in this state through facilities other than the association and the need for the continuation of the operation of the association as to physicians, health care providers, or any category of physicians or health care providers. The board shall not make such determination until a public meeting has been held. Prior notice of such meeting shall be given at least 10 days to the same persons or entities as are required for consultation in Section 11 of this article.

Termination of Policies

Sec. 13. After the date ordered for suspension by the board, no policies will be issued by the association. All then issued policies shall continue in force until terminated in accordance with the terms and conditions of such policies.

[Acts 1975, 64th Leg., p. 867, ch. 331, § 1, eff. June 3, 1975. Amended by Acts 1977, 65th Leg., p. 129, ch. 59, §§ 1, 2, eff. April 13, 1977; Acts 1977, 65th Leg., p. 2057, ch. 817, §§ 31.03 to 31.12, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 147, ch. 79, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3159, ch. 829, § 1, eff. June 17, 1981; Acts 1983, 68th Leg., p. 5027, ch. 904, § 1, eff. Aug. 19, 1983.]

Section 3 of the 1975 Act was repealed by Acts 1977, 65th Leg., p. 2064, ch. 817, § 41.03. Prior thereto it read:

"This Act shall take effect upon its passage; provided, however, that after December 31, 1977, no new policies will be issued by the association. All then issued policies shall continue in force until their expiration."

Art. 21.49-3a. Reactivation of Joint Underwriting Associations¹

Sec. 1. Subsequent to the suspension of the operation of the Joint Underwriting Association created by the Texas Medical Liability Insurance Underwriting Association Act (Article 21.49-3, Insurance Code), it may be reactivated in conformity with the terms of Section 3 of this article. The board may also, if it deems such action to be appropriate, direct the statutory liquidator to secure reinsurance for all claims which potentially might be brought on policies issued by the Joint Underwriting Association or take any other action which will reduce to a minimum the participation and activities of the Joint Underwriting Association until such time as the association may be reactivated under the terms of Section 3 of this article.

Sec. 2. All terms used in this article have the same meanings as those specifically set out in Section 2, Article 21.49-3, Insurance Code.

Sec. 3. The State Board of Insurance, after notice and hearing as hereinafter provided, is authorized to reactivate the Joint Underwriting Association created by Article 21.49-3, Insurance Code. A hearing to determine the need for reactivation shall be set by the State Board of Insurance on petition of the Texas Medical Association, the Texas Podiatry Association, or the Texas Hospital Association or as

many as 15 physicians or health care providers practicing or operating in this state, or such hearing may be set by the State Board of Insurance on its own finding that physicians or health care providers, or any category thereof, in this state are threatened with the possibility of being unable to secure medical liability insurance. At least 15 days prior to the date set, notice of the hearing shall be given to each insurer which, if reactivation is ordered, would be a member of the association as provided in Section 3(a), Article 21.49-3, Insurance Code. If the board finds that reactivation of the Joint Underwriting Association will be in the public interest, the board shall order the reactivation, designating the category or categories of physicians or health care providers who shall be eligible to secure medical liability insurance coverage from the association and specifying in the order a date not fewer than 15 nor more than 60 days thereafter on which the provisions of Article 21.49-3, Insurance Code, shall become effective as if the same had been reenacted to be effective on the date specified in the order.

[Acts 1983, 68th Leg., p. 5031, ch. 904, § 2, eff. Aug. 29, 1983.]

¹ Article heading editorially supplied.

Art. 21.49-4. Self-Insurance Trusts

(a) In this article:

(1) "Physician" means a person licensed to practice medicine in this state.

(2) "Dentist" means a person licensed to practice dentistry in this state.

(3) "Health care liability claim" means a cause of action against a physician or dentist for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(b) An incorporated association, the purpose of which, among other things, shall be to federate and bring into one compact organization the entire profession licensed to practice medicine and surgery or dentistry in the State of Texas and to unite with similar associations of other states to form a nationwide medical association or dental association, may create a trust to self-insure physicians or dentists and by contract or otherwise agree to insure other members of the organization or association against health care liability claims and related risks on complying with the following conditions:

(1) the organization or association must have been in continuing existence for a period of at least two years prior to the effective date of this Act;

(2) establishment of a health care liability claim trust or other agreement to provide coverage against health care liability claims and related risks; and

(3) employment of appropriate professional staff and consultants for program management.

(c) The trust may purchase, on behalf of the members of the organizing association, medical professional liability insurance, specific excess insurance, aggregate excess insurance, and reinsurance, as in the opinion of the trustees are necessary. The trust fund is further authorized to purchase such risk management services as may be required and pay claims that arise under any deductible provisions.

(d) The trust investment powers and limitations shall be the same as those of any state bank with trust powers. The trust shall adopt rules and regulations to guarantee all contingent liabilities in the event of dissolution.

(e) The trust is not engaged in the business of insurance under this code and other laws of this state and the provisions of any chapters or sections of this code are declared inapplicable to a trust organized and operated under this article, provided that the State Board of Insurance may require any trust created under this article to satisfy reasonable minimum requirements to insure the capability of the trust to satisfy its contractual obligations.

[Acts 1977, 65th Leg., p. 2063, ch. 817, § 31.13, eff. Aug. 29, 1977.]

Art. 21.49-4a. Coverage of Physicians Under Contracts of Professional Liability Insurance Issued by Health Care Liability Claim Trusts

Contracts of professional liability insurance issued by a health care liability claim trust created under Article 21.49-4, Insurance Code, may include any of the following:

(1) Coverage of professional associations and partnerships of physicians against health care liability claims and related risks where a majority of the persons having a proprietary interest in the professional association or partnership to be insured are members of the association that created such trust.

(2) Coverage of proprietary members, associates, and stockholders of such professional associations and partnerships and executive officers and directors thereof, with respect to potential vicarious liability for acts or omissions of others giving rise to health care liability claims and related risks.

(3) Coverage of insured physicians and, as applicable, insured professional associations and partnerships (including proprietary members, associates, and stockholders thereof and executive officers and directors thereof) with respect to liability on the part of any applicable insured arising out of:

(i) injuries to patients related to ownership, maintenance, or use of premises for the prac-

tice of medicine, including operations necessary or incidental thereto; or

(ii) service by an insured physician as a member of a duly established committee, board, or similar group of a hospital medical staff or of a professional association or society with respect to medical staff privileges, accreditation, or disciplinary matters relating to competency or patient safety and risk reduction programs; or

(iii) health care liability claims or related risks based in whole or in part upon any act or omission occurring prior to the date a contract of professional insurance is issued by such trust.

(4) Coverage of an applicant for membership in the association that created such trust, pending final action upon such application, with respect to health care liability claims and related risks, including coverages described in the preceding Subparagraphs (1), (2), and (3), as applicable.

[Acts 1979, 66th Leg., p. 335, ch. 152, § 1, eff. May 11, 1979.]

Art. 21.49-5. [Blank]

Art. 21.49-6. Self-Insurance Trusts for Banks

Definitions

Sec. 1. In this article:

(1) "Bank" means any bank chartered under the provisions of federal or state law.

(2) "Board" means the State Board of Insurance.

(3) "Trustees" means the trustees of a self-insurance trust created under this article.

Authorization to Create Trusts to Self-Insure Banks

Sec. 2. On approval of its plan of organization and operation as provided in Section 3 of this article, a group or association of banks or bankers, composed of any number of members, may create a trust to self-insure banks that are members of the group or association or any of whose officers are members of the group or association against losses resulting from dishonest acts and criminal acts of employees or losses resulting from robbery or both.

Plan of Organization and Operation

Sec. 3. Before organizing and operating a trust as provided in this article, the group or association proposing to organize the trust shall select trustees to administer the trust and shall prepare a detailed plan of organization and operation in the form and manner prescribed by the board. The plan shall be submitted to the board for examination, suggested changes, and final approval, and may be amended from time to time with the approval of the board.

Approval of Plan

Sec. 4. The board shall approve a self-insurance plan under this article only if it is satisfied that the trust has and will continue to possess the ability to pay valid claims made against it.

Creation of Trust Fund

Sec. 5. (a) The trustees of the self-insurance trust shall create a trust fund to pay claims made under the coverage provided in Section 2 of this article.

(b) The fund shall be under the administration and control of the trustees and shall be paid out on claims and shall be invested as provided in the plan.

Participation in Trust; Contributions

Sec. 6. Any bank that is a member or any of whose officers are members of the group or association organizing the trust may participate in the self-insurance trust by entering into contract or agreement with the trustees for insurance under the trust against losses resulting from dishonest acts or criminal acts of its employees or losses resulting from robbery, or both, and shall pay the required contribution to the trust fund.

Amount of Coverage

Sec. 7. The amount of coverage to be provided banks participating in the trust and the amount of contributions to be paid by those banks shall be determined by the trustees as provided in the plan.

Professional Staff and Consultants

Sec. 8. (a) The trustees shall employ appropriate professional staff and consultants for program management.

(b) Salaries for professional staff and consultants and for paying the costs of administering the trust program shall be paid from the trust fund; provided that, the total amount for payment of salaries and administration shall not exceed an amount fixed by the board but in no event to exceed 35 percent of the total amount of money in the trust fund in any one year.

Continuing Supervision

Sec. 9. A self-insurance trust approved by the board under the provisions of this article is subject to the continuing supervision of the board relating to its solvency and to approval of its policy forms, and the board may set certain minimum requirements to ensure the capability of the trust to satisfy its contractual obligations.

Rules

Sec. 10. The board may adopt necessary rules to carry out the provisions of this article.

Trust Not Engaged in Business of Insurance

Sec. 11. A self-insurance trust created under this article is not engaged in the business of insurance under this code and under other laws of this state, and the provisions of any chapters or articles of this code, including Article 21.28-C, are declared inapplicable to a trust organized and operated under this article.

[Acts 1977, 65th Leg., p. 1698, ch. 674, § 1, eff. June 15, 1977.]

Art. 21.49-7. [Blank]

Art. 21.49-8. [Blank]

Art. 21.49-9. Exclusionary Clauses in Health Insurance

No individual policy or group policy of accident or sickness insurance, including policies issued by companies subject to Chapter 20 of this code, delivered or issued for delivery to any person in this state, may include a provision that excludes or limits coverage of the insurer from paying benefits covered by The Medical Assistance Act of 1967, as amended (Article 695j-1, Vernon's Texas Civil Statutes).¹

[Acts 1979, 66th Leg., p. 1988, ch. 783, § 3, eff. Sept. 1, 1979.]

¹ Repealed; see, now, Human Resources Code, § 32.001 et seq.

Section 4 of the 1979 Act provided:

"Articles 21.49-9 and 21.49-10, Insurance Code, as added by this Act, apply to all accident and sickness policies issued or issued for delivery, renewed, extended, or amended in this state on or after January 1, 1980."

Art. 21.49-10. Payment to State

Each individual policy or group policy of accident or sickness insurance, including policies issued by companies subject to Chapter 20 of this Code, delivered or issued for delivery to any person in this state shall provide for payment to the Texas Department of Human Resources for the actual cost of medical expenses the department pays through medical assistance for a person insured by the contract if the insured is entitled to payment for the medical expenses by the insurance contract.

[Acts 1979, 66th Leg., p. 1988, ch. 783, § 3, eff. Sept. 1, 1979.]

Policies to which this article applies, see note under art. 21.49-9.

Art. 21.50. Mortgage Guaranty Insurance**Definitions**

Sec. 1. The definitions set forth herein shall govern the construction of the terms used in this Article but shall not affect any other provisions of this Code.

(a) "Mortgage guaranty insurance" means:

(1) Insurance against financial loss by reason of nonpayment of principal, interest and other

sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by an authorized real estate security constituting a lien or charge on real estate, provided the improvement on such real estate is a residential building or buildings designed for occupancy by not more than four families, or a condominium unit.

(2) Insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by an authorized real estate security constituting a lien or charge on real estate, provided the improvement on such real estate is a building or buildings designed for occupancy by five or more families or designed to be occupied for industrial or commercial purposes.

(3) Insurance against financial loss by reason of nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real estate, provided the improvement on such real estate is a building or buildings designed to be occupied for industrial or commercial purposes.

(b) "Authorized real estate security" for the purposes of Paragraphs (1) and (2) of Subdivision (a) of this section means either:

(1) A note, bond or other evidence of indebtedness, secured by a mortgage, deed of trust, wraparound mortgage or other instrument which constitutes or is considered by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Bank Board, their successors, or agency of this State or of the federal government to be the equivalent of a first lien or charge on real estate; provided:

(A) The real estate loan secured in such manner is a type of loan which a bank, savings and loan association, credit union or an insurance company, which is supervised and regulated by a department of this State or an agency of the federal government or a mortgage banker which is an approved seller-servicer of the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or their successors, is authorized to make, or a type of loan which is approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program.

(B) The improvement on such real estate is a building or buildings designed for occupancy as specified by Paragraphs (1) and (2) of Subdivision (a) of this section.

(C) The lien on such real estate may be subject and subordinate to the following:

(i) The lien of any public bond, assessment, or tax, when no installment, call or payment

of or under such bond, assessment or tax is delinquent.

(ii) Outstanding mineral, oil or timber rights, rights-of-way, easements or rights-of-way support, sewer rights, building restrictions or other restrictions or covenants, conditions or regulations of use, or outstanding leases upon such real property under which rents or profits are reserved to the owner thereof.

(2) A note, bond or other evidence of indebtedness secured by a proprietary lease and a stock membership certificate issued to a tenant stockholder or resident member of a fee simple cooperative housing corporation as defined in Section 216 of the United States Internal Revenue Code.¹

(c) "Contingency reserve" means an additional premium reserve established for the protection of policyholders against the effect of adverse economic cycles or losses.

¹ 26 U.S.C.A. § 216.

Qualifications of Insurers

Sec. 2. Qualifications for mortgage guaranty insurers shall be as follows:

(1) An insurer, in order to qualify for writing mortgage guaranty insurance, must have the same minimum capital and surplus as that required of a company by Chapter 8, Texas Insurance Code.¹

(2) A foreign or alien insurer writing mortgage guaranty insurance shall not be eligible for the issuance of a certificate of authority in Texas unless it has demonstrated a satisfactory operating experience in its state of domicile.

(3) A mortgage guaranty insurer which anywhere transacts any class of insurance other than mortgage guaranty insurance is not eligible for the issuance of a certificate of authority to transact mortgage guaranty insurance in this State nor for the renewal or continuance thereof.

(4) A mortgage guaranty insurer which anywhere transacts the classes of insurance defined in Paragraphs (2) and (3) of Subdivision (a) of Section 1 is not eligible for the issuance or continuance of a certificate of authority to transact in this State the class of mortgage guaranty insurance defined in Paragraph (1) of Subdivision (a) of Section 1.

¹ See art. 8.05.

Unearned Premium Reserve; Computation

Sec. 3. The unearned premium reserve on mortgage guaranty insurance shall be computed in accordance with the other applicable sections of this Code, except that on all policies covering a risk period of more than one year the unearned premium reserve shall be computed in accordance with stan-

dards promulgated by the State Board of Insurance after appropriate hearings.

Loss Reserve; Determination

Sec. 4. On such insurance, the case basis method shall be used to determine the loss reserve, which shall include a reserve for claims incurred but not reported.

Contingency Reserve; Withdrawals; Releases to Surplus

Sec. 5. In addition to the capital, surplus and reserves specified in Sections 2, 3 and 4 hereof, each mortgage guaranty insurer shall establish a contingency reserve, which shall be reported as a liability in the insurer's financial statements. To provide for and maintain such reserve, the company shall annually contribute to such reserve fifty per cent (50%) of the earned premiums on its mortgage guaranty insurance business. The earned premiums so reserved may be released to the insurer's surplus, annually, after they have been so maintained for 120 months. However, withdrawals may be made from such reserve by the insurer in any given year in which the insurer can demonstrate to the State Board of Insurance that the incurred losses for such year exceed thirty-five per cent (35%) of the corresponding earned premiums for such year. The amount so withdrawn and released for such losses shall reduce any subsequent annual release to surplus from the established contingency reserve by an amount equal to the amount so withdrawn, and any balance in excess of the normal annual release from such reserve shall carry over and be deducted from subsequent annual releases.

Outstanding Total Liability; Limit

Sec. 6. A mortgage guaranty insurer shall not at any time have outstanding a total liability, net of reinsurance, under its aggregate mortgage guaranty insurance policies exceeding 25 times its capital, surplus and contingency reserve, such liability to be computed on the basis of the insurer's liability under its election as provided in Section 7 and such liability for leases to be computed on the basis of the insurer's liability as determined by the State Board of Insurance. In the event that any insurer has outstanding total liability exceeding 25 times its capital, surplus and contingency reserve, it shall cease transacting new mortgage guaranty business until such time as its total liability no longer exceeds 25 times its capital, surplus and contingency reserve.

Limit on Coverage to Amount of Indebtedness; Election to Pay Entire Indebtedness

Sec. 7. A mortgage guaranty insurer shall limit its coverage, net of reinsurance, for the class of insurance defined in Paragraphs (1) and (2) of Subdivision (a) of Section 1 to a maximum of twenty-five

per cent (25%) of the entire indebtedness to the insured, or in lieu thereof, a mortgage guaranty insurer may elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

Loans Secured by Properties in Single-housing or Contiguous Tracts; Limit

Sec. 8. A mortgage guaranty insurer shall not insure loans secured by properties in a single housing tract or a contiguous tract in excess of ten per cent (10%) of the insurer's capital, surplus and contingency reserve. In determining the amount of such risk, applicable reinsurance in any assuming insurer authorized to transact mortgage guaranty insurance in this State shall be deducted from the total direct risk insured. "Contiguous," for the purposes of this section, means not separated by more than one-half mile.

Advertising of "Insured Loans"

Sec. 9. No bank, savings and loan association or insurance company, or an approved seller-servicer of the Federal National Mortgage Association, any of whose authorized real estate securities are insured by a mortgage guaranty insurance company, may state in any brochure, pamphlet, report or any form of advertising that the real estate loans of the bank, savings and loan association, insurance company or an approved seller-servicer of the Federal National Mortgage Association are "insured loans" unless the brochure, pamphlet, report or advertising also clearly states that the loans are insured by private insurers and the names of the private insurers are given and shall not make any such statement at all unless such insurance is by an insurer certificated to write in this State.

Application of Other Laws

Sec. 10. All the applicable provisions of this Code and of other statutes of this State, except as the same may be in conflict herewith, shall apply to the operation and conduct of mortgage guaranty insurance business.

[Acts 1971, 62nd Leg., p. 1066, ch. 222, § 1, eff. Aug. 30, 1971. Amended by Acts 1973, 63rd Leg., p. 22, ch. 19, § 1, eff. March 28, 1973; Acts 1983, 68th Leg., p. 5395, ch. 998, § 1, eff. Aug. 29, 1983.]

Art. 21.51. Penalty for Violating Insurance Laws

Whoever violates any provision of the laws of this State regulating the business of life, fire, or marine insurance, shall, where the punishment is not otherwise provided for, be fined not less than five hundred not [nor] more than one thousand dollars.

[1925 P.C.]

Art. 21.52. Right to Select Practitioner under Health and Accident Policies

Definitions

Sec. 1. As used in this article:

(a) "health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract, providing benefits for medical or surgical expenses incurred as a result of an accident or sickness;

(b) "doctor of podiatric medicine" includes D.P.M., podiatrist, doctor of surgical chiropody, D.S.C., and chiropodist;

(c) "doctor of optometry" includes optometrist, doctor of optometry, and O.D.;

(d) "doctor of chiropractic" means a person who is licensed by the Texas Board of Chiropractic Examiners to practice chiropractic;

(e) "licensed dentist" means a person who is licensed to practice dentistry by the State Board of Dental Examiners;

(f) "audiologist" means a person who has received a master's or doctorate degree in audiology from an accredited college or university and is certified by the American Speech-language and Hearing Association; and

(g) "speech-language pathologist" means a person who has received a master's or doctorate degree in speech-language pathology from an accredited college or university and is certified by the American Speech-language and Hearing Association to restore speech loss or correct a speech impairment.

Application of this Article

Sec. 2. This article applies to and embraces all insurance companies, associations, and organizations, whether incorporated or not, which provide health benefits, accident benefits, or health and accident benefits for medical or surgical expenses incurred as a result of an accident or sickness. Without limiting the foregoing, this article specifically applies to the insurance companies, associations, and organizations which come within the purview of the following designated chapters of the Insurance Code: Chapter 3, pertaining to life, health and accident insurance companies; Chapter 8, pertaining to general casualty companies; Chapter 10, pertaining to fraternal benefit societies; Chapter 11, pertaining to mutual life insurance companies, Chapter 12, pertaining to local mutual aid associations; Chapters 13 and 14, pertaining to statewide mutual assessment companies, mutual assessment companies, and mutual assessment life, health and accident associations; Chapter 15, per-

taining to mutual insurance companies writing other than life insurance; Chapter 18, pertaining to underwriters making insurance on the Lloyd's Plan; Chapter 19, pertaining to reciprocal exchanges; and Chapter 22, pertaining to stipulated premium insurance companies. This article also applies to health maintenance organizations established pursuant to Chapter 214, Acts of the 64th Legislature, Regular Session, 1975 (Articles 20A.01-20A.33, Insurance Code), as now or hereafter amended.

Selection of Practitioners

Sec. 3. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state by any insurance company, association, or organization to which this article applies may select a licensed doctor of podiatric medicine, a licensed dentist, or a doctor of chiropractic to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that practitioner, a licensed doctor of optometry to perform the services or procedures scheduled in the policy which fall within the scope of the license of that doctor of optometry, an audiologist to measure hearing for the purpose of determining the presence or extent of a hearing loss and to provide aural rehabilitation services to a person with a hearing loss if those services or procedures are scheduled in the policy, or a speech-language pathologist to evaluate speech and language and to provide habilitative and rehabilitative services to restore speech or language loss or to correct a speech or language impairment if those services or procedures are scheduled in the policy. The payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine, a licensed doctor of optometry, a licensed doctor of chiropractic, a licensed dentist, an audiologist, or a speech-language pathologist. There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine, a doctor of optometry, a doctor of chiropractic, a licensed dentist, an audiologist, or a speech-language pathologist which fall within the scope of his license or certification and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provisions of this policy. Any presently approved policy form containing any

provision in conflict with the requirements of this Act shall be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance or by the filing of new or revised policy forms for approval by the State Board of Insurance.

Sec. 4. Deleted by Acts 1983, 68th Leg., p. 2067, ch. 380, § 2. See note, post.

[Acts 1977, 65th Leg., p. 1102, ch. 404, § 1, eff. June 15, 1977. Amended by Acts 1979, 66th Leg., p. 16, ch. 8, § 1, eff. March 7, 1979; Acts 1979, 66th Leg., p. 340, ch. 155, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1037, ch. 467, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 2067, ch. 380, § 2, eff. Sept. 1, 1983.]

Section 2 of the 1977 Act provided:

"All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

Section 2 of Acts 1979, 66th Leg., p. 1038, ch. 467, provided:

"The provisions of Section 3, Article 21.52, Insurance Code, relating to certain insurance coverage of services of a licensed dentist are applicable only to policies delivered, renewed, or issued for delivery in this state more than 90 days after the effective date of this Act."

Section 3 of the 1983 amendatory act provides:

"The exemptions and exceptions in Articles 13.09 and 21.41 of the Insurance Code do not apply to this article."

Art. 21.53. Dental Care Benefits; Insurance Policies and Employee Benefit Plans

Text of article as added by Acts 1983, 68th Leg., p. 345, ch. 78, § 1

Definitions

Sec. 1. As used in this article:

(a) "health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract providing benefits for dental care expenses incurred as a result of an accident or sickness;

(b) "employee benefit plan" means any plan, fund, or program heretofore or hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, dental care benefits in the event of accident or sickness;

(c) "dental care services" means any services furnished to any person for the purpose of preventing, alleviating, curing, or healing human dental illness or injury;

(d) "dentist" means any person who furnishes dental care services and who is licensed as a dentist by the State of Texas.

Prohibited Provisions

Sec. 2. No health insurance policy or employee benefit plan which is delivered, renewed, issued for delivery, or otherwise contracted for in this state shall:

(a) prevent any person who is a party to or beneficiary of any such health insurance policy or employee benefit plan from selecting the dentist of his choice to furnish the dental care services offered by said policy or plan or interfere with said selection provided the dentist is licensed to furnish such dental care services in this state;

(b) deny any dentist the right to participate as a contracting provider for such policy or plan provided the dentist is licensed to furnish the dental care services offered by said policy or plan;

(c) authorize any person to regulate, interfere, or intervene in any manner in the diagnosis or treatment rendered by a dentist to his patient for the purpose of preventing, alleviating, curing, or healing dental illness or injury provided said dentist practices within the scope of his license; or

(d) require that any dentist furnishing dental care services must make or obtain dental x-rays or any other diagnostic aids for the purpose of preventing, alleviating, curing, or healing dental illness or injury; provided, however, that nothing herein shall prohibit requests for existing dental x-rays or any other existing diagnostic aids for the purpose of determining benefits payable under a health insurance policy or employee benefit plan.

Nothing herein shall prohibit the predetermination of benefits for dental care expenses prior to treatment by the attending dentist.

Mandatory Provisions

Sec. 3. Any health insurance policy or employee benefit plan which is delivered, renewed, issued for delivery, or otherwise contracted for in this state shall, to the extent that it provides benefits for dental care expenses:

(a) disclose, if applicable, that the benefit offered is limited to the least costly treatment;

(b) define and explain the standard upon which the payment of benefits or reimbursement for the cost of dental care services is based, such as "usual and customary," "reasonable and customary," "usual, customary, and reasonable," fees or words of similar import or specify in dollars and cents the amount of the payment or reimbursement for dental care services to be provided. Said payment or reimbursement for a noncontracting provider dentist shall be the same as the payment or reimbursement for a contracting pro-

vider dentist; provided, however, that the health insurance policy or the employee benefit plan shall not be required to make payment or reimbursement in an amount which is greater than the amount so specified or which is greater than the fee charged by the providing dentist for the dental care services rendered.

Provisions in Conflict With Article

Sec. 4. Any provision in a health insurance policy or employee benefit plan which is delivered, renewed, issued for delivery, or otherwise contracted for in this state which is contrary to this article shall to the extent of such conflict be void.

Certain Exemptions and Exceptions Not Applicable; Article Not Applicable to Health Maintenance Organizations

Sec. 5. The exemptions and exceptions in Articles 13.09 and 21.41 of the Insurance Code do not apply to this article. The provisions of this article do not apply to health maintenance organizations as defined and regulated by Chapter 20A of the Insurance Code.

Type of Benefits Not Mandated

Sec. 6. The provisions of this article do not mandate that any type of benefits for dental care expenses be provided by a health insurance policy or an employee benefit plan.

Construction of Article to Permit Certain Conduct

Sec. 7. The provisions of this article do not prohibit the following conduct and shall be construed to provide that:

(a) a dentist may contract directly with a patient for the furnishing of dental care services to said patient as may be otherwise authorized by law;

(b) any person providing a health insurance policy or employee benefit plan, or an employer, or an employee organization may:

(1) make available to its insureds, beneficiaries, participants, employees, or members information relating to dental care services by the distribution of factually accurate information regarding dental care services, rates, fees, location, and hours of service, provided such distribution is made upon the request of any dentist licensed by this state; or

(2) establish an administrative mechanism which facilitates payment for dental care services by insureds, beneficiaries, participants, em-

ployees, or members to the dentist of their choice; or

(3) pay or reimburse, on a nondiscriminatory basis, its insureds, beneficiaries, participants, employees, or members for the cost of dental care services rendered by the dentist of their choice.

[Acts 1983, 68th Leg., p. 345, ch. 78, § 1, eff. Jan. 1, 1984.]

For text of article as added by Acts 1983, 68th Leg., p. 3061, ch. 526, § 1, see art. 21.53, post

Section 2 of the 1983 Act provides:

"This Act takes effect on January 1, 1984, and is applicable to health insurance policies and employee benefit plans which are delivered, renewed, issued for delivery, or otherwise contracted for in this state on or after January 1, 1984."

Art. 21.53. Amusement Ride Safety Inspection and Insurance Act

Text of article as added by Acts 1983, 68th Leg., p. 3061, ch. 526, § 1

Short Title

Sec. 1. This article may be cited as the Amusement Ride Safety Inspection and Insurance Act.

Definitions

Sec. 2. In this article:

(1) "Amusement ride" means any mechanical device or devices that carry or convey passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement, but such term does not include (A) any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator, or (B) nonmechanized playground equipment, including but not limited to swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical-fitness devices.

(2) "Board" means the State Board of Insurance.

Administration and Enforcement

Sec. 3. The board shall administer and enforce this article. The board shall establish reasonable and necessary fees in an amount not to exceed \$20 per year for each amusement ride covered by this Act. Funds raised through said fees shall be deposited in the State Treasury and shall be credited to

the account of the board for administration of this Act.

Amusement Ride Operation Requirements

Sec. 4. A person may not operate an amusement ride unless he:

(1) has the amusement ride inspected at least once annually for safety by an insurer or a person with whom the insurer has contracted and obtains from that insurer or person a written certificate that the inspection has been made and that the amusement ride meets the standards for coverage and is covered by the insurance required by Subsection (2) of this section;

(2) has an insurance policy currently in force written by an insurance company authorized to do business in this state, a surplus lines insurer as defined by Article 1.14-2 of this code, or an independently procured policy subject to Article 1.14-1 of this code, in an amount of not less than \$1 million per occurrence insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride;

(3) files with the board, in the manner required by this article, the inspection certificate and the insurance policy required by this section or a photocopy of such a certificate or policy authorized by the board; and

(4) files with each sponsor, lessor, landowner, or other person responsible for an amusement ride being offered for use by the public a certificate stating that the insurance required by Subdivision (2) of this section is in effect.

Filing Affidavit

Sec. 5. The documents required by Subdivision (3) of Section 4 of this article must be filed with the board before July 1 of each year, but if the amusement ride is inspected under Subdivision (3) of Section 4 more than once a year, the inspection certificate must be filed not later than 15 days after each inspection and the insurance policy must be filed before July 1 of each year.

Board Information Request

Sec. 6. The board may request from the sponsor, lessor, landowner, or other person responsible for an amusement ride being offered for use by the public information concerning whether or not insurance in the amount required by this article is in effect on the amusement ride. The sponsor, lessor, landowner, or other person to whom the information request is made shall respond to the board within 15 days after the request is made.

Denial of Entry to Amusement Rides

Sec. 7. The owner or operator of an amusement ride may deny entry to the ride to any person if in the owner's or operator's opinion the entry may jeopardize the safety of the person who desires to enter or the safety of other patrons of the amusement ride.

Injunctions

Sec. 8. The district attorney of each county in which an amusement ride is operated or the attorney general on request of the commissioner of insurance or one of his agents may seek an injunction against any person operating an amusement ride in violation of this article.

Penalties

Sec. 9. (a) A person commits an offense if he fails to comply with any requirement under Section 4 or 5 of this article.

(b) A sponsor, lessor, landowner, or other person responsible for an amusement ride being offered for use by the public commits an offense if he fails to provide the required information or provides false information under Section 6 of this article.

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

(d) Each day a violation of this article is committed constitutes a separate offense.

[Acts 1983, 68th Leg., p. 3061, ch. 526, § 1, eff. Aug. 29, 1983.]

For text of article as added by Acts 1983, 68th Leg., p. 345, ch. 78, § 1, see art. 21.53, ante

Art. 21.54. Product Liability Risk Retention Groups

Purpose

Sec. 1. The purpose of this article is to regulate the formation and operation of risk retention groups in this state formed under the provisions of the federal Product Liability Risk Retention Act of 1981 (Public Law 97-45)¹ and to protect the public by the appropriate regulation of these risk retention groups.

¹ 15 U.S.C.A. § 3901 et seq.

Definitions

Sec. 2. In this article:

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

(2) "Commissioner" means the commissioner of insurance of the State of Texas.

(3) "Insurance commissioner" means the commissioner, director, or superintendent of insurance in any other state.

(4) "Completed operations liability" means liability, including liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability, arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:

- (A) a person who performs that work; or
- (B) a person who hires an independent contractor to perform that work.

(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk that is determined to be insurance under the law of this state.

(6) "Product liability" means the liability for personal injury or property damage that arises from the manufacture, design, import, distribution, packaging, labeling, lease, or sale of a product as defined by the law of this state.

(7) "Risk retention group" means a corporation or other limited liability association taxable as a corporation or as an insurance company formed under this article:

(A) that is organized for the primary purpose of assuming and spreading the product liability or completed operations liability risk exposure of its members;

(B) whose primary activity consists of assuming and spreading all or any part of the product liability or completed operations liability risk exposure of its group members; and

(C) that is composed of members each of whose principal activity consists of the manufacture, design, import, distribution, packaging, labeling, lease, or sale of a product.

(8) "Service provider" means a person providing insurance-related services or management services to or for a risk retention group, including an agent, claims appraiser or adjuster, insurer, actuary, or financial or management consultant.

(9) "Another state" means the District of Columbia or any state of the United States.

Risk Retention Groups Chartered in This State

Sec. 3. (a) A person or entity may not engage in business as a risk retention group unless the person or entity has complied with this article.

(b) Except as required by this article, a risk retention group seeking to be chartered in this state must be chartered and licensed as an insurance company authorized by Chapters 2 and 8 of this code and must comply with all of the laws, rules, regulations, and requirements applicable to insurers chartered and licensed under those chapters.

Risk Retention Groups Not Chartered in This State

Sec. 4. (a) A risk retention group chartered in another state, Bermuda, or the Cayman Islands and seeking to do business as a risk retention group in this state must:

- (1) register with the commissioner;
- (2) designate the commissioner as its agent for service of process and receipt of legal documents;
- (3) file with the commissioner not later than March 1 of each year its annual statement as filed with the insurance commissioner of another state in which it is chartered;
- (4) file with the commissioner a copy of the last examination, if any, made of the risk retention group, certified by the insurance commissioner of another state in which it is chartered;
- (5) file with the commissioner not later than March 1 of each year a product liability loss experience data report;
- (6) file with the commissioner not more than 30 days after filing with the insurance commissioner of another state in which it is chartered or of another state conducting any examination or investigation of its financial condition or impairment a copy of each and every document filed by it in connection with the examination or investigation; and
- (7) file with the commissioner not more than 30 days after filing with the commissioner of another state in which it is chartered any document concerning its financial condition.

(b) A risk retention group chartered in Bermuda or the Cayman Islands, in addition to the requirements of Subsection (a) of this section, must:

- (1) be chartered or licensed and authorized to do business under the laws of Bermuda or the Cayman Islands before January 1, 1985;
- (2) file with the commissioner a copy of the certification filed with the insurance commissioner of at least one other state, or the District of Columbia, showing that it satisfies the capitalization requirements of the district or of that state, together with evidence that the certification has been accepted by the insurance commissioner of

the district or of that state as meeting the requirements of the district or of that state; and

(3) file with the insurance commissioner of another state in which it certifies its capitalization a waiver of any secrecy laws of the jurisdiction in which it is chartered.

Agents

Sec. 5. (a) A person who is a resident of this state, who is acting or offering to act as an agent for a risk retention group, and whose activities include the solicitation, negotiation, or placement of insurance on behalf of a risk retention group operating in this state, or any of its members in this state, must obtain a license as an agent under Article 21.14 of this code.

(b) An agent licensed by another state and residing outside of this state may act as an agent for a risk retention group operating in this state, or any of its members in this state, in the same manner as a resident agent on obtaining a license under the provisions of Article 21.14 of this code relating to licensing of nonresident agents.

(c) An agent licensed as provided by Subsection (a) or (b) of this section must report to the commissioner not later than March 1 of each year the activities and scope of services being provided to the risk retention group.

(d) Before placing business with a risk retention group, each agent shall secure from the appropriate insurance regulatory authority a certified copy of the certificate of authority verifying that the insurer is authorized in its domiciliary jurisdiction to write the product liability or completed operations insurance policy proposed to be procured from it by the agent.

(e) Every policy or contract of insurance placed by an agent with a risk retention group chartered or licensed in this state shall have printed on its face in not less than 10-point bold red type the following statement:

"THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK RETENTION GROUP LICENSED IN THE STATE OF TEXAS, BUT IN THE EVENT OF INSOLVENCY, THIS RISK RETENTION GROUP IS NOT PROTECTED BY ANY GUARANTY FUND IN THE STATE OF TEXAS."

(f) Each policy or contract of insurance placed by an agent with a risk retention group not chartered or licensed in this state shall have printed on its face in not less than 10-point bold red type, the following statement:

"THE INSURANCE HEREBY EVIDENCED IS WRITTEN BY A RISK RETENTION GROUP NOT LICENSED BY THE STATE OF TEXAS, NOT SUBJECT TO ITS SUPERVISION, AND NOT PROTECTED, IN THE EVENT OF THE INSOLVENCY, BY ANY GUARANTY FUND IN THE STATE OF TEXAS."

Other Service Providers

Sec. 6. (a) A service provider that is not a licensed agent must:

(1) register with the commissioner; and

(2) report, not later than March 1 of each year in which any activities or services are provided, the activities and scope of services that it is providing to the risk retention group.

(b) This section may not be construed to allow service providers whose activities otherwise require licensing in another state to act on behalf of a risk retention group without such a license.

Taxes

Sec. 7. (a) The tax provided by Article 4.10 of this code is imposed on each risk retention group.

(b) A risk retention group is subject to taxation under and is considered to be an insurer for the purpose of assessing and collecting taxes as provided by Article 4.10 of this code.

(c) An agent shall report and pay the taxes on the premiums for risks that he has placed with or on behalf of a risk retention group that is not chartered in this state as provided by Article 1.14-2 of this code.

Restrictions

Sec. 8. A risk retention group may not:

(1) insure risks other than those of its member companies;

(2) provide an insurance or insurance-related service other than for product liability or completed operations unless the risk retention group obtains a certificate of authority in this state and becomes subject to all the laws and regulations of this state with respect to those additional lines of insurance and related services; or

(3) exclude any person from membership in the group solely to provide for members of the group a competitive advantage over the person.

Exemption From Compulsory Associations

Sec. 9. A risk retention group, with respect to its product liability or completed operations insurance, may not be a member of or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state, nor may a risk retention group or its insured receive any benefit from any guaranty fund or similar mechanism for claims arising out of the operations of the risk

retention group for product liability or completed operations insurance.

Countersignatures Not Required

Sec. 10. A policy or contract of insurance issued to a risk retention group or any member of that group is not required to be countersigned as provided by Article 21.14 of this code.

Unfair Claims Settlement Practices

Sec. 11. A risk retention group doing business in this state is subject to Article 21.21-2 of this code.

Examination for Financial Impairment

Sec. 12. (a) A risk retention group chartered in this state must submit to examination to determine its financial condition as considered necessary by the commissioner. The examination shall be conducted in accordance with the laws, rules, regulations, and procedures applicable to insurers licensed in this state under Articles 1.15, 1.16, and 1.19 of this code.

(b) A risk retention group that is not chartered in this state but is doing business in this state must submit to the same type of examination as if it were chartered in this state if:

- (1) the commissioner has reason to believe the risk retention group is or may be in a hazardous financial condition; and
- (2) the insurance commissioner of another state in which the group is chartered has not begun or has refused to initiate an examination of the group comparable in scope to an examination by this state.

Delinquency Proceedings

Sec. 13. (a) A risk retention group chartered and licensed in this state is subject to Article 21.28-A of this code and must comply with all lawful orders issued in any delinquency proceeding commenced by the commissioner.

(b) A risk retention group not chartered in this state but doing business in this state is subject to Article 21.28-A of this code and must comply with a lawful order issued in any delinquency proceeding commenced by the commissioner relating to its operations and financial affairs in this state.

Penalties

Sec. 14. (a) A risk retention group that is chartered and licensed under Section 3 or 4 of this article and that violates this article is subject to all sanctions and penalties applicable to an insurer that holds a certificate of authority under Chapters 2 and 8 of this code including revocation of its license and the right to do business in this state.

(b) A risk retention group doing business in this state that is not chartered or licensed under Section

3 or 4 of this article is considered an unauthorized insurer and is subject to Articles 1.14, 1.14-1, 21.28, and 21.28-A of this code.

Rules

Sec. 15. The board may adopt rules relating to risk retention groups that are necessary to carry out this article.

[Acts 1983, 68th Leg., p. 4991, ch. 893, § 1, eff. June 19, 1983.]

Arts. 21.55 to 21.76. [Blank]

Art. 21.77. Group Marketing of Motor Vehicle Insurance

Purpose

Sec. 1. The purpose of this article is to authorize the writing of motor vehicle insurance covering persons over 55 years of age in this state on a group marketing basis subject to the conditions stated in this article and to set forth the terms and conditions under which insurance covering persons over 55 years of age on a group marketing basis may be written.

Definitions

Sec. 2. As used in this article:

- (1) "Group motor vehicle insurance" means all motor vehicle insurance covering persons over 55 years of age that is offered by a licensed insurer in this state on a group marketing plan to an eligible group as defined in this article.
- (2) "Group marketing" means the marketing of group motor vehicle insurance by a licensed insurer otherwise engaged in insuring independent individual risks to an eligible group on a guaranteed basis under a single insurance program without individual underwriting selection or individual proof of insurability.

Eligible Group

Sec. 3. Any group, to be eligible for group marketing, must have been in existence for at least six months before the purchase of the insurance and must be a group organized for a purpose other than to become an insurance group under this Act, and the group may include any group that will be actuarially credible for underwriting purposes.

Eligible Members of Group

Sec. 4. Eligible members of a group shall include all members in good standing in the group who are over 55 years of age and lawful drivers.

Conditions

Sec. 5. (a) Group motor vehicle insurance may be issued in this state provided the conditions in this section are met.

(b) The insurer and the group insured must accept all members who are eligible and wish to participate in the plan.

(c) To qualify to write the group insurance defined in this article, an insurer must also be engaged in the business of writing the type of coverage offered for insureds other than group and may not be organized solely for the purpose of furnishing coverage to such groups.

(d) Each member of the group shall be issued a policy on forms prescribed for issue in this state by the State Board of Insurance.

(e) Insurance must be provided by individual policies to each member of the group under an agreement whereby the premiums on the policies will be paid to the insurer periodically by the group.

(f) An insurer may not cancel the insurance of an individual member of the group except for the non-payment of premiums by the member or unless the insurance for the entire group is cancelled, and in such cases, notice of cancellation as provided in like nongroup policies shall be given to each member.

(g) The plan shall provide that only those motor vehicles owned by members of the group or their spouses jointly or severally shall be eligible for coverage.

Maintenance of Records

Sec. 6. Every insurer writing insurance under a group marketing plan shall keep and maintain separate experience data on this type of business, including complete records of premium income, losses, and expenses so that the experience may be fairly ascertained.

Rates

Sec. 7. Rates for the type of business authorized under this article shall be determined, fixed, prescribed, and promulgated in the manner provided in Article 5.01, Insurance Code, as amended, so far as it is applicable.

Policy Forms

Sec. 8. All policy forms for insurance written under this article shall be prescribed by the board as provided in Article 5.06, Insurance Code.

Rules

Sec. 9. The board may make any rules necessary to carry out the provisions of this article.

Construction of Other Provisions

Sec. 10. The provisions of Article 21.02 of this code may not be construed to apply to groups

participating in group plans approved under this article.

[Acts 1979, 66th Leg., p. 1028, ch. 461, § 1, eff. Aug. 27, 1979.]

SUBCHAPTER F. JUDICIAL REVIEW

Art. 21.80. Judicial Review of Board Action

Except where otherwise provided for under the provision of the Insurance Code, if any insurance company or other party at interest be dissatisfied with any decision, regulation, order, rate, rule, act, or administrative ruling adopted by the Board of Insurance Commissioners, such dissatisfied company or party at interest after failing to get relief from the Board of Insurance Commissioners, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act, or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the Board of Insurance Commissioners as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1955, 54th Leg., p. 933, ch. 364, § 1. Renumbered from art. 21.44 by Acts 1981, 67th Leg., p. 201, ch. 94, § 6, eff. Aug. 31, 1981.]

CHAPTER TWENTY-TWO. STIPULATED PREMIUM INSURANCE COMPANIES

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- 22.23. Issuance of Life Insurance Policies and Annuity Contracts by Stipulated Premium Companies.

Art. 22.01. Who May Incorporate

Sec. 1. Any five (5) or more, but not to exceed thirty-five (35), citizens of this state may associate themselves for the purpose of forming a stipulated premium life insurance company or a stipulated premium accident insurance company or a stipulated premium life and accident, health and accident, or life, health and accident insurance company. In order to form such a company, the incorporators shall sign and acknowledge its articles of incorporation and file the same in the office of the State Board of Insurance. Such articles shall specify:

1. The name and place of residence of each of the incorporators;
2. The name of the proposed company, which shall contain the words "Insurance Company" as a part thereof, and the name selected shall not be so similar to the name of any other insurance company as to be likely to mislead the public;
3. The location of its home office;
4. The kind or kinds of insurance business it proposes to transact;
5. The amount of its capital stock, not less than Fifteen Thousand Dollars (\$15,000.00); all of which capital stock must be fully subscribed and paid up and in the hands of the corporators before said articles of incorporation are filed. Such stipulated premium insurance company shall not be incorporated unless at the time of incorporation such company is possessed of at least Seven Thousand Five Hundred Dollars (\$7,500.00) surplus, in addition to its capital; provided the amount of such surplus need not be stated in its articles of incorporation. Such minimum capital and surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this state or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter; and shall not include any real estate; provided, however, fifty per cent (50%) of the minimum capital may be invested in first mortgage real estate loans. After the granting of charter, the surplus may be invested as otherwise provided in this Chapter. Notwithstanding any other provisions of this Chapter, such minimum capital shall at all times

be maintained in cash or in the classes of investments described in this article;

6. The period of time it is to exist, which shall not exceed five hundred (500) years;
7. The number of shares of such capital stock;
8. Such other provisions not inconsistent with the law as the corporators may deem proper to insert therein.

Sec. 2. Every stipulated premium company incorporated or transacting business in this state shall be subject to the provisions of this Chapter 22, unless otherwise expressly provided by this Code and no other insurance law of this state shall apply to any corporation chartered under this Chapter and no law hereafter enacted shall apply to stipulated premium companies unless they be expressly designated therein.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.02. Shares of Stock

The stock of any stipulated premium company shall be of par value. Each share shall be for not less than One Dollar (\$1.00) nor more than One Hundred Dollars (\$100.00). Such stipulated premium companies may issue and dispose of their authorized shares having a par value for money or those notes, bonds and mortgages, of which Art. 22.01 of this Chapter authorizes for minimum capital and such shares shall thereafter be nonassessable. In the event all of the shares of stock, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares of stock are sold and issued, the company shall file with the State Board of Insurance, within ninety (90) days after the issuance of such shares, a certificate authenticated by a majority of the directors setting forth the number of shares so issued and the actual consideration received by the company for such shares.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.03. Application, Charter and Organization

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

1. An application for charter on such form and including therein such information as may be prescribed by the Board;
2. The articles of incorporation as provided in this Code;
3. An affidavit made by two (2) or more of its incorporators that all of the stock has been subscribed in good faith and fully paid for, as required by law, in the amount of not less than Fifteen Thousand Dollars (\$15,000.00) capital and that such company is possessed of at least Seven

Thousand Five Hundred Dollars (\$7,500.00) surplus, as required by law, in addition to its capital, which affidavit shall state that the facts set forth in the application and the articles of incorporation are true and correct and that the capital and surplus is the bona fide property of such company. The State Board of Insurance may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter or follow the procedure hereinafter set forth;

4. A charter fee of Twenty-five Dollars (\$25.00).

Sec. 2. When such application for charter, articles of incorporation, affidavit, and charter fee are filed with the State Board of Insurance, the Board may set a date for a public hearing of the same, which date shall be not less than ten (10) nor more than thirty (30) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing and shall furnish a copy of such notice to the Attorney General of Texas and to all interested parties, including any parties who have theretofore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings, and no such application shall be granted except when same is adequately supported by competent evidence. Any interested party shall have the right to oppose or support the granting or denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

Sec. 3. In considering any such application the Board shall, within thirty (30) days after public hearing, determine whether or not:

(a) The minimum capital and surplus as required by law is the bona fide property of the company;

(b) The proposed officers, directors and managing executives have sufficient insurance experience ability and standing to render success of the proposed company probable;

(c) The applicants are acting in good faith.

Sec. 4. If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing, giving the reason therefor. Otherwise, the Board shall approve the application and submit such

application, together with the articles of incorporation and the affidavit, to the Attorney General for examination. If the application, articles of incorporation, the affidavit and the procedure and action thereon shall be found by the Attorney General to be in accordance with the law of this state, he shall attach thereto his certificate to that effect, whereupon all such documents shall be deposited with the Board. Upon receipt by the Board of such documents so certified by the Attorney General, the Board shall record the same in a book kept for that purpose, and upon receipt of a fee of One Dollar (\$1.00), it shall furnish a certified copy of the same to the incorporators, upon which they shall become a body politic and corporate and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt by-laws for the government of the company, and elect a Board of Directors, not less than five (5), composed of stockholders; which Board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this state. The Board of Directors so elected shall serve until the second Tuesday in April thereafter, on which date, annually thereafter, there shall be held a meeting of the stockholders at the home office, and a Board of Directors elected for the ensuing year. If the stockholders fail to elect directors at any such annual meeting, directors may be elected at a special meeting of the stockholders called for that purpose. The directors shall choose a President from their own number, and all other officers shall be chosen in accordance with the by-laws of the company, and none of such officers need be either a director or a stockholder except as required by the by-laws of such company. The duties and compensation of officers of such company shall be in accordance with the by-laws of the company, or, to the extent of the absence of provisions governing the same in the by-laws, then the duties and compensation of officers shall be defined and fixed by the directors. The directors shall keep a full and correct record of their transactions to be open during business hours to the inspection of stockholders. The directors shall fill any vacancy which occurs in the Board or in any office of such company. A majority of the Board shall be a quorum for the transaction of such business. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum.

At any regular or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorpora-

tion; and such amendment, accompanied by a copy of such resolution duly certified by the President and Secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock shall in no case be reduced to less than the minimum amount of fully paid up capital stock required by applicable provisions of law. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidence of stock in exchange for new certificates issued in lieu thereof. The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.04. Amendment of Charter

At any regular or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the President and Secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock may in no case be reduced to less than One Hundred Thousand Dollars (\$100,000.00) except for the purpose of avoiding insolvency as provided in Art. 22.12 of this Chapter, but in such event never less than Fifteen Thousand Dollars (\$15,000.00). A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as evidence of stock in exchange for new certificates transferable on its books, in accordance with this Chapter and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all

rights of the former holder of the stock transferred, by reason of such ownership.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.05. Original Examination and Certificate

When the application for charter, articles of incorporation, affidavit, and charter fee are filed with the State Board of Insurance and before the hearing required by Article 22.03 of this Code, the Board shall make or cause to be made at the expense of the company a full and thorough examination thereof. After the hearing under Article 22.03 of this Code, if the Board finds that all of the capital stock of the company amounting to not less than the minimum amount required by law has been fully paid up and is in the custody of the officers either in cash or securities of the class such companies are authorized by this Chapter to invest or loan their funds, and if the State Board of Insurance makes the other findings required by Section 3 of Article 22.03 of this Code favorably to the applicant, on compliance with the other requirements of this article and Article 22.03 of this Code, it shall issue forthwith to such stipulated premium company a temporary certificate of authority limiting the activities of such stipulated premium company solely to the negotiating and obtaining of a direct reinsurance agreement with a company chartered and doing business under the provisions of Chapter 14 of this code on the effective date of this Act. Such certificate of authority shall terminate twelve (12) months from its date, unless renewed by the State Board of Insurance for an additional period of twelve (12) months, provided that such stipulated premium company has not theretofore consummated a direct reinsurance agreement with such a company doing business under the provisions of Chapter 14 of the Insurance Code.

Before such temporary certificate of authority is issued, not less than two (2) officers of such company shall execute and file with the State Board of Insurance a sworn schedule of all the assets of the company exhibited to the Board upon such examination showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company, and are worth the amount stated in such schedule.

In the event a direct reinsurance agreement be not so consummated within such twelve (12) months period, unless renewed by the State Board of Insurance for an additional period of twelve (12) months, the certificate of authority shall automatically terminate and the incorporators of such stipulated premium company shall forthwith surrender its charter to the State Board of Insurance for cancellation.

In the event a direct reinsurance agreement as provided in this Chapter is consummated with such

a company doing business under the provisions of Chapter 14 of this code, the State Board of Insurance shall forthwith and in accordance with the provisions of Article 22.15 of this Code issue to such a company a regular certificate of authority to transact business in the State of Texas. Likewise, such certificate of authority shall provide for the type of insurance business which may be written by the stipulated premium company; if the Chapter 14 company was engaged in the life business or was a burial association, the stipulated premium company shall be entitled and authorized to write life insurance policies as regulated by the provisions of this Chapter, and if the Chapter 14 company was permitted by its charter to write accident insurance, or health and accident insurance, or life, health and accident insurance, then the stipulated premium company shall be so permitted.

As such stipulated premium company thereafter directly reinsures additional Chapter 14 companies chartered and doing business under the provisions of Chapter 14 of this Code, its regular certificate of authority shall be amended to write any type of such insurance coverage as those authorized for any such Chapter 14 company whose policies are so assumed by the stipulated premium company.

Any stipulated premium company holding a permanent certificate of authority on the effective date of this Act, and which permanent certificate of authority limits the territory of operation or writing of business of such company to an area or territory less than the entire State of Texas may, at any time thereafter, make application for, and thereafter be entitled to receive a permanent certificate of authority to operate and issue policies of insurance as so previously authorized (or as may thereafter be authorized by compliance with the provisions of this Chapter 22), anywhere within the State of Texas. [Acts 1961, 57th Leg., p. 345, ch. 180, § 1. Amended by Acts 1967, 60th Leg., p. 1831, ch. 708, § 2, eff. June 17, 1967; Acts 1983, 68th Leg., p. 3906, ch. 622, § 14, eff. Sept. 1, 1983.]

Art. 22.06. Shall File Annual Statement

Each stipulated premium company shall after the first day of January of each year and before the first day of April prepare under oath of two (2) of its officers and deposit in the office of the State Board of Insurance a statement accompanied with the fee for filing annual statements of Twenty Dollars (\$20.00) showing the condition of the stipulated premium company on the 31st day of December next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, monies received, and how expended during the year, and the number and amount of its policies in force on that date and the total amount of its policies in force, except that insureds under family group policies as defined in

Art. 22.11, Section 1(b) of this Code will be accounted for only if a reserve is required as to such insured under said Art. 22.11, Section 1(b). The form of such annual statement shall be prepared and determined by the State Board of Insurance. Filing fees collected by the State Board of Insurance under this article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to filing fees under this article.

[Acts 1951, 52nd Leg., p. 868, ch. 491, art. 22.06. Amended by Acts 1961, 57th Leg., p. 345, ch. 180, § 1; Acts 1983, 68th Leg., p. 3911, ch. 622, § 16, eff. Sept. 1, 1983.]

Art. 22.07. May Reinsure; Required Reinsurance

Sec. 1. Any stipulated premium company may reinsure on an individual indemnity policy basis with any legal reserve company authorized to write life, health and accident insurance in this state having a capital and surplus or surplus of at least Two Hundred Thousand Dollars (\$200,000.00) any risk or part of a risk which the stipulated premium company may issue or assume, and upon such reinsurance proper credit therefor may be taken against the aggregate reserves required by Art. 22.11 of this Chapter.

Sec. 2. Until the surplus of any stipulated premium company is at least Fifty Thousand Dollars (\$50,000.00), no such stipulated premium company shall insure any life for more than One Thousand Dollars (\$1,000.00) in the event of death from natural causes nor more than Two Thousand Dollars (\$2,000.00) in the event of death from accidental causes, unless such stipulated premium company reinsures the amount of coverage above One Thousand Dollars (\$1,000.00) in the event of natural death and the amount of coverage above Two Thousand Dollars (\$2,000.00) in the event of accidental death with a legal reserve company authorized to write life, health and accident insurance in this state having a capital and surplus or surplus of at least Two Hundred Thousand Dollars (\$200,000.00); provided, however, the provisions of this Section of this Art. 22.07 shall not apply to policies of insurance assumed by a stipulated premium company pursuant to the provisions of Art. 22.15 of this Chapter.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.08. Dividends; How Paid

No stipulated premium company shall declare or pay any dividends to its stockholders except from the profits made by said company not including surplus arising from the sale of stock, and shall pay no dividends except stock dividends until: (a) the capital of said stipulated premium company shall be at least One Hundred Thousand Dollars (\$100,000.00); (b) the deficiency reserve as permitted by this Chapter has been retired; and (c) capital of said stipulated premium company is maintained at not

less than One Hundred Thousand Dollars (\$100,000.00). Thereafter cash dividends may be paid in accordance with this Chapter.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.09. Compensation of Officers and Others; Including Pensions

(a) No stipulated premium company shall pay any salary, compensation or emolument to any officer, trustee, or director thereof, nor any salary, compensation or emolument amounting in any year to more than Ten Thousand Dollars (\$10,000.00) to any person, firm or corporation, unless such payment be first authorized by a vote of the Board of Directors of such company, or by a committee of such Board charged with the duty of authorizing such payments. The limitation as to time contained herein shall not be construed as preventing any stipulated premium company from entering into contracts with its agents for the payment of renewal commissions.

(b) The stockholders of any such stipulated premium company may authorize the inauguration of a plan or plans for the payment of pensions, retirement benefits or group insurance to its officers and employees. The stockholders may delegate to the Board of Directors authority and responsibility for the preparation, inauguration, putting into effect, final approval and administration of any such plan or plans or any amendments thereof.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.10. To Deposit Funds in Name of Company

Any director, member of a committee, or officer, or any clerk of a stipulated premium company, who is charged with the duty of handling or investing its funds, shall not deposit or invest such funds, except in the corporate name of such company; shall not borrow the funds of such company; shall not be interested in any way in any loan, pledge, security or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, a loan made by or on behalf of such company.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.11. Reserves

Individual and Group Life Policies; Amount of Reserves; Calculation

Sec. 1. (a) Each stipulated premium individual life policy shall be reserved and each stipulated premium company shall maintain reserves on such individual life policies in accordance with any reserve standards adopted by the company and approved by the State Board of Insurance, provided such reserves are at least equal, in the aggregate, to reserves based on the 1956 Chamberlain Reserve

Table with interest not to exceed three and one-half per cent (3½%) per annum. Any stipulated premium company is hereby authorized to use the 1956 Chamberlain Reserve Table.

(b) Family group life policies, upon which a group premium is charged and under which there is a varying benefit dependent upon the sequence of deaths, shall be reserved and each stipulated premium company shall, at the election of the stipulated premium company, maintain reserves on such family group policies in either one of the following methods of calculation: (1) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Section on individual life policies on the lives of the then living two (2) oldest members of each such family group; the amount of insurance for such two (2) members shall be based on the assumption that the elder of such members will be the first to die; or (2) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Section on individual life policies on the lives of the then living members of such family group; the amount of insurance for each such member of the family group shall be based on the assumption that each such member will be the first to die. Each such stipulated premium company shall be permitted to select the method it shall use to calculate such reserves.

Health, Accident and Sickness Policies

Sec. 2. All health, accident and sickness policies shall be reserved by the stipulated premium company and each stipulated premium company shall maintain reserves on such policies in the same manner as is required by the companies writing such coverage under the provisions of Chapter 3 of the Insurance Code of Texas, except that an unearned premium reserve shall not be required to be maintained during the first policy year.

Reinsurance Agreements; Deficiency Reserve

Sec. 3. (a) On all policies of a Chapter 14 company assumed under a direct reinsurance agreement as in this Chapter provided by a stipulated premium company, such stipulated premium company shall at the effective date of such reinsurance agreement calculate the amount of the required reserves in accordance with the provisions of this Article and shall also calculate and determine the amount of the net assets transferred to the stipulated premium company under such reinsurance agreement. In the event the net assets of the Chapter 14 company are insufficient to equal the amount of the required reserve, the difference shall be designated and carried as a deficiency reserve. Such deficiency reserve shall be allowed without creating the insolvency of the stipulated premium company, but the stipulated premium company must reduce said deficiency so determined by at least ten per cent (10%)

thereof during each year following the date of the reinsurance agreement, but commencing such reduction as to the next succeeding annual statement filing date so that at the date of the eleventh annual statement filing date after the effective date of said reinsurance agreement, the deficiency reserve will be fully paid and satisfied, together with assumed rate of interest thereon; provided, however, that such required reduction in the deficiency reserve shall never exceed the cumulative aggregate amount of ten per cent (10%) per annum.

(b) In the event the annual required reduction of the deficiency reserve is not accomplished as of December 31st of each year involved, the Board of Directors of the stipulated premium company shall by appropriate action increase rates by advancing the age of the insureds at issue date, or by some other equitable rate adjustment, so as to correct the failure to reduce the amount of the deficiency. In the event of the failure of the Board of Directors of the stipulated premium company to so act within thirty (30) days following the calculation of reserves, the stipulated premium company shall be dealt with in accordance with this Chapter as if it were insolvent.

Reserve Liability; Computation

Sec. 4. The State Board of Insurance, as soon as practical, in each year, shall compute or cause to be computed the reserve liability of each stipulated premium company which has outstanding policies of insurance. In making such computations, the said Board may use group methods and approximate averages for fractions of a year or otherwise. Such reserve liability shall be computed upon the net premium basis in accordance with the reserve table and interest rate adopted by the stipulated premium company and approved by the State Board of Insurance and such reserve liability may be calculated on not more than a one-year preliminary term basis with allowance for the permissive deficiency reserve provided for in this Chapter 22.

Securities; Class and Character

Sec. 5. Having determined the required reserve on all policies in force, but excluding the permissive deficiency reserves authorized by this Chapter 22, the State Board of Insurance shall require that the stipulated premium company have in securities of the class and character required by the laws of this state the amount of said reserves less the permissive deficiency reserves after all the debts and claims against it and the minimum capital required by this Chapter have been provided.

Increase of Rates on Policies; Insolvency

Sec. 6. In the event the stipulated premium company does not have the required reserves, less any permissive deficiency reserve, plus the minimum capital required by this Chapter, the Board of Di-

rectors of the stipulated premium company shall by appropriate action increase rates on policies in force by advancing the age of the insureds at issue date or by some other equitable rate adjustment so as to correct such reserve inadequacy. In the event of the failure of the Board of Directors of the stipulated premium company to so act within thirty (30) days following the calculation of reserves as of the date in this Chapter provided, the stipulated premium company shall be dealt with in accordance with this Chapter as if it were insolvent under the provisions of Art. 22.12 of this Chapter.

Premiums on Life Policies

Sec. 7. Premiums charged on all life policies issued by stipulated premium companies shall be at least equal to the renewal net premium calculated in accordance with the reserve standard adopted by the stipulated premium company and approved by the State Board of Insurance.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1. Amended by Acts 1983, 68th Leg., p. 4096, ch. 646, § 1, eff. Aug. 29, 1983.]

Art. 22.12. Impairment of Capital Stock

Any stipulated premium company transacting business within this state, whose capital stock shall become impaired to the extent of thirty-three and one-third per cent (33⅓%) thereof, computing its liabilities in the manner provided for in this Chapter of this Code, shall make good such impairment within sixty (60) days by:

- (a) a reduction of its capital stock (provided such capital stock shall in no case be less than the minimum amount required of a stipulated premium company by this Chapter); or
- (b) by rate adjustment where permitted by policy contract; or
- (c) by both such methods; and failing to make good such impairment within said time shall forfeit its right to write new business in this state until said impairment shall have been made good.

The State Board of Insurance may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty per cent (50%) thereof; computing its reserve liability in the manner provided by this Chapter for the computation of such reserve liability. No stipulated premium company shall write new business unless it is possessed of the minimum capital required by this Chapter 22, except to the extent it may be otherwise expressly authorized by this Chapter of this Code.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.13. Policy Form Approval**Life Policy Forms**

Sec. 1. (a) Every policy of life insurance issued by a stipulated premium company shall state on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid. An application for each policy must be signed by the applicant, unless the applicant is a minor, in which event the application may be signed by a parent or guardian. The policy, or the policy and the application if a copy of the application is attached to the policy, shall constitute the entire contract. If the policy is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the contestable period, the application shall so state in not less than ten (10) point type in language approved by the State Board of Insurance. All statements in the application shall in the absence of fraud be regarded as representations and not warranties. All conditions of the policy must be stated therein. Each policy must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two (2) years from date of issue, except for nonpayment of premiums. It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on premium rates in force at the time of the death of the insured. No policy nor the application therefor shall contain language or be in such form as to mislead the applicant or policyholder as to the type of insurance afforded nor as to his rights or benefits.

(b) It shall be unlawful for any stipulated premium company to assume liability on a life insurance risk on any one life in an amount in excess of Ten Thousand Dollars (\$10,000.00).

(c) The approval of life policy forms shall be made in accordance with the provisions of Article 3.42 of Chapter 3 of this Code.

Health, Accident, Sickness and Hospitalization Policies

Sec. 2. (a) All health, accident, sickness and hospitalization policies shall be issued in accordance with the provisions of Article 3.70, of Chapter 3 of this Code.

(b) All health, accident, sickness and hospitalization policies issued, reinsured or assumed by a stipulated premium company shall contain therein a premium redetermination clause so as to permit a rate readjustment by action of the Board of Directors of the stipulated premium company.

(c) The approval of health, accident, sickness and hospitalization policy forms shall be made in accordance with the provisions of Article 3.42 of Chapter 3 of this Code.

Readjustment of Premiums

Sec. 3. Each stipulated premium company shall provide in all policies of insurance issued, reinsured, or assumed by it for an increase or readjustment, not inconsistent with the provisions of this Chapter, of the rates of premium on any such insurance contracts, to be effectuated by resolution of its Board of Directors, whenever in their discretion such action becomes necessary. The Board of Directors shall have power in making any comprehensive readjustment of any class or classes of its policies, that any insured required to pay an increased premium may, at his option, in lieu thereof, or in combination therewith, consent to a reduction of the corresponding insurance benefits proportionate to the value of the increased premiums. Such requirement as to such policy provisions shall not apply to policy forms under which the premium for life insurance requires the payment of a premium for life insurance alone sufficient to maintain reserves at least equal to those computed on the basis of the 1958 Commissioners Standard Ordinary Table of Mortality with interest not to exceed three and one-half per cent (3½%) per annum and upon which the right to adjust rates has been relinquished by the stipulated premium company, provided that the stipulated premium company is possessed of free and unencumbered surplus in at least the amount of Fifty Thousand Dollars (\$50,000.00) at the date of issuance of each such policy.

Designation of Beneficiaries

Sec. 4. The designation of all beneficiaries under policies issued by stipulated premium companies shall comply with the provisions of Art. 3.49-1 and Art. 3.49-2 of Chapter 3 of this Code.

Reductions or Increases

Sec. 5. A. Any policy may provide for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service or aerial flight in time of peace or war; or in case of death of the insured by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided in any life policy, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy.

B. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least

120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) shall not exceed five years from issue date. This Subparagraph A of Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

C. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Subparagraph C of this Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

D. The provisions of Section 5 of this Article 22.13 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 1(b) of Article 22.11 of this Insurance Code.

E. The provisions of this Section 5 of this Article 22.13 shall not apply to health and accident policies.

Certain Words Prohibited from Appearing on Policies

Sec. 6. No policy of insurance shall be approved for issuance of a stipulated premium company which shall contain thereon the words, "Approved by the State Board of Insurance," or words of a similar import or nature, and it shall be unlawful for any stipulated premium company to ever issue a policy containing such words or words of a similar import or nature.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1. Amended by Acts 1969, 61st Leg., p. 2309, ch. 780, §§ 1, 2, eff. June 14, 1969; Acts 1975, 64th Leg., p. 1035, ch. 400, § 2, eff. Nov. 1, 1975; Acts 1983, 68th Leg., p. 4105, ch. 646, § 4, eff. Aug. 29, 1983.]

Section 1 of the 1975 Act amended art. 14.20. Section 3 of said Act provided:

"The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

Art. 22.14. Licensing of Agents

All agents of stipulated premium companies shall be licensed in accordance with the provisions of Art. 21.07 of Chapter 21 of this Code.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.15. Direct Reinsurance of Mutual Assessment Companies Regulated by Chapter Fourteen (14) of this Code

Authority

Sec. 1. Any burial association, local mutual aid association, state-wide mutual assessment corporation, or any other similar concern by whatsoever name or class designated, that is regulated by the provisions of Chapter 14 of this Code, may directly reinsure itself into a stipulated premium company chartered under the provisions of this Chapter.

Submission of Reinsurance Agreement to Board; Approval

Sec. 2. When it shall be determined by a majority vote of the Board of Directors of the company or association regulated by the provisions of Chapter 14 to submit the proposed direct reinsurance agreement to the members of the company or association regulated by the provisions of Chapter 14 of this Code, said Board of Directors shall prepare in detail plans for making such reinsurance, and such reinsurance agreement shall be submitted to the State Board of Insurance. The State Board of Insurance shall determine whether such reinsurance agreement complies with the provisions of this Chapter, and if such reinsurance agreement be in compliance with the provisions of this Chapter, the State Board of Insurance shall approve the same for submission to the members of the company or association regulated by the provisions of Chapter 14 of this Code.

Membership Meeting; Notice

Sec. 3. After approval of the State Board of Insurance, the Board of Directors of the company or association regulated by the provisions of Chapter 14 of this Code shall, in accordance with the by-laws, call a meeting of its membership, and shall mail to each member a copy of the proposed direct reinsurance agreement and enclose therewith a copy of the notice of membership meeting to be held not earlier than fifteen (15) days after the date of mailing of the notice and reinsurance agreement.

Ratification or Rejection; Vote; Procedure; Certification of Results

Sec. 4. Such meeting of the membership shall be held for the purpose of ratification or rejection of the direct reinsurance agreement. Members may vote in person, by proxy to whomever the member may designate or by mail. All votes shall be cast by ballot. The Chairman of such meeting shall supervise and direct the method of procedure of said meeting and shall appoint an adequate number of inspectors to conduct the voting at said meeting; said inspectors shall have full power and authority to determine all questions concerning the verification of the ballots, the qualifications of the voters, the canvassing of the ballots and the ascertainment

of the validity thereof. At the conclusion of said meeting, the inspectors shall certify under oath the result thereof to the State Board of Insurance and to the assuming stipulated premium company. A two-thirds ($\frac{2}{3}$ rds) majority vote cast by those participating in said meeting in person, by proxy or by ballot shall be sufficient and adequate for the purpose of ratification of such reinsurance agreement.

Cessation of Business; Transfer of Assets; Assumption of Policy Liabilities; Surrender of Certificate of Authority

Sec. 5. Provided such reinsurance agreement be approved by the members in accordance with the provisions of this Art. 22.15, the company or association regulated by the provisions of Chapter 14 of this Code shall cease to do business and all of its assets be transferred to the assuming stipulated premium company and thereupon become its sole and exclusive property. All policy liability will be assumed by the stipulated premium company in accordance with the provisions of said reinsurance agreement; all other liabilities shall be assumed by the stipulated premium company in accordance with the method and mode of payment thereof. The company or association regulated by the provisions of Chapter 14 of this Code shall thereafter forthwith surrender its certificate of authority and charter to the State Board of Insurance, which shall dissolve the same, and the company's or association's corporate existence shall cease.

Approval of Agreement; Assumption Certificate; Calculation of Net Assets, Required Reserves and Deficiency Reserve; Apportionment of Net Assets

Sec. 6. Such reinsurance agreement shall provide that the stipulated premium company will assume the policies of the company or association regulated by the provisions of Chapter 14 of this Act subject to the provisions of this Chapter. Immediately following approval by the membership of such reinsurance agreement, the stipulated premium company shall issue to each such member a certificate of assumption setting forth the terms of the assumption, and the reserve and interest table under which such policy is assumed. The agreement shall also provide for the calculation at the effective date of such reinsurance agreement of the following:

(a) The amount of the net assets, both mortuary and expense funds, of the company or association regulated under the provisions of Chapter 14 of this Code, which are to be transferred to the stipulated premium company after the payment of all liabilities; and

(b) The amount of the required reserves to be established under the reserve and interest table used in such reinsurance agreement; and

(c) The amount of the deficiency reserve, if any, resulting from the calculations of items (a) and (b) of this Section 6.

Such deficiency reserve shall be permitted in accordance with the provisions of Art. 22.11 of this Chapter, but must thereafter be reduced in compliance with said Art. 22.11, or said reinsurance agreement may provide for immediate rate adjustments, in accordance with accepted actuarial practices and standards, so as to eliminate said deficiency at the time of reinsurance or during the period allowed in Art. 22.11 for curing of the said reserve deficiency. The sum total of the net assets of the company or association regulated by the provisions of Chapter 14 of this Code shall be apportioned for reserve calculation purposes among the members assessed as follows: The percentage of the whole of the net assets allotted to any individual member shall be calculated with the amount of the required reserve for such individual insured under such reinsurance agreement as the numerator and the total of all of the required reserve for all the members under such reinsurance agreement as the denominator.

Each such reinsurance agreement shall also provide that each policyholder who is dissatisfied with such reinsurance agreement and who does not desire to accept the assumption certificate offered by the stipulated premium company, shall be entitled to receive, if he shall so request in writing to the stipulated premium company within sixty (60) days following the mailing of the assumption certificate, the amount of the reserve under his policy reduced by the deficiency reserve, if any, as applicable to such policy.

Submission of Facts to Board

Sec. 7. Within ninety (90) days following such membership meeting, all facts in connection therewith, including the accounting thereof and the calculation of the required reserves, shall be submitted under oath to the State Board of Insurance.

Binding Effect of Contract

Sec. 8. Such reinsurance contract shall become binding upon both companies parties hereto at the effective date thereof immediately following the ratification by the membership of the company or association regulated under the provisions of Chapter 14 of this Code.

Readjustment of Premiums of Life Policies

Sec. 9. In the event the premiums charged on any life policy assumed by the stipulated premium company shall be less than the renewal net premium calculated in accordance with such reserve standard adopted by the reinsurance agreement, the rate shall be adjusted to an amount at least equal to the renewal net premium calculated in accordance with the reserve standards adopted by such reinsurance

agreement based upon the insured's age at issue by the Chapter 14 Company, except that if the gross premium charged upon any family group policy so reinsured by the stipulated premium company is less than such renewal net premium for such policy or contract such rate may at the option of the stipulated premium company be not adjusted provided:

(a) The permissive deficiency reserve of the business of the Chapter 14 Company is less than 25% of the required reserve on such business to be reinsured, including the permissive deficiency premium reserve to be maintained as hereafter in this Section provided;

(b) The gross premium at time of reinsurance by the stipulated premium company of all family group policies is at least equal in the aggregate to 120% of the required net premiums upon such family group policies to be reinsured by the stipulated premium company; and

(c) There shall be maintained on each such policy contract a permissive deficiency premium reserve in addition to all other reserves required by law and for each such policy or contract the permissive deficiency premium reserve shall be the present value, according to such standard, of an annuity, the amount of which shall equal the difference between the premium charged and such net premium and the term of which in years shall equal the number of annual premiums for the remainder of the premium paying period. Such permissive deficiency premium reserve shall be included as a part of such permissive deficiency reserve and shall be reduced in like manner as in this Chapter provided for the permissive deficiency reserve.

"Net Assets" Defined

Sec. 10. The words "net assets" as used in this Chapter shall mean the funds of the company available for the payment of its obligations in this state, including uncollected premiums not more than three months past due after deduction from such funds all unpaid losses and claims and claims for losses and all other debts.

Advanced Approval for Adjustment of Life Insurance Rates

Sec. 11. Any Section or provision of this Act notwithstanding, no life insurance rates may be adjusted without the advanced approval of the State Board of Insurance, on notice to the policyholder.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1. Amended by Acts 1965, 59th Leg., p. 1530, ch. 668, § 1, eff. Aug. 30, 1965.]

Art. 22.16. Applicability of Texas Business Corporation Act

Insofar as the same are not inconsistent with or contrary to any applicable provision of this Chapter

or any other insurance law applicable to stipulated premium companies, or any amendments thereto, the provisions of the Texas Business Corporation Act shall apply to and govern stipulated premium companies, provided, however, that wherever said Texas Business Corporation Act imposes some duty, authority, responsibility, power; or some act is vested in, required of, or is to be performed by the Secretary of State, such is hereby vested in, required of, or shall be performed by the State Board of Insurance.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.17. Limitation of Authority

No stipulated premium company may ever use in its advertising or representation of its policies the words: "legal reserve company," "stock company," "old line legal reserve company," or any other words of like import whereby the public might be led to believe that policies of stipulated premium companies provide non-forfeiture values. All stipulated premium company policies and application forms must contain on the face thereof and immediately after the name of the company, the following language: "A Stipulated Premium Company." Each stipulated premium company policy shall provide on the front thereof that the premium is subject to readjustment, unless such policy is not subject to a premium readjustment under the provisions of Section 3 of Art. 22.13 of this Chapter.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.18. Other Laws to Govern

Sec. 1. The following Articles of this Code, to wit: Article 1.14, Article 1.15, Article 1.16, Article 1.19, Article 1.24, Article 3.13, Article 3.39, Article 3.40, Article 3.61, Article 3.62, Article 3.63, Article 3.67, Article 21.21, Article 21.25, Article 21.26, Article 21.28, Article 21.32, Article 21.39, Article 21.45, and Article 21.47, shall apply to and govern stipulated premium companies and each company shall comply with the provisions thereof.

Sec. 2. Stipulated premium companies shall be regulated by the Texas Securities Act, same being Acts 1957, 55th Legislature, pages 575 et seq., Chapter 269,¹ and shall pay premium taxes in like manner, as a company chartered and doing business under the provisions of Chapter 3 of this Code.

Sec. 3. Until such time as a stipulated premium company shall have and be possessed of capital of at least One Hundred Thousand Dollars (\$100,000.00) and free and unencumbered surplus in at least the amount of One Hundred Thousand Dollars (\$100,000.00), it shall be unlawful for any stipulated premium company to make a public offering, as

defined in the Texas Securities Act, of any of its capital stock.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1. Amended by Acts 1967, 60th Leg., p. 816, ch. 343, § 1, eff. Aug. 28, 1967.]

¹ Civil Statutes, art. 581-1 et seq.

Art. 22.19. Total or Partial Direct Reinsurance Agreements

Sec. 1. Total or partial direct reinsurance agreements may be made and entered into between stipulated premium companies chartered under the provisions of this Chapter provided: (a) The assuming company is authorized to transact the kinds of insurance provided by the policies assumed; and (b) No total direct reinsurance agreement shall be made until the contract therefor has been submitted to and approved by the State Board of Insurance as protecting fully the interests of all the policyholders assumed.

Sec. 2. Any stipulated premium company may enter into total or partial direct reinsurance agreements with any legal reserve life insurance company lawfully doing business in this state upon compliance with the following terms and conditions:

(a) Such reinsurance agreement must be approved by a majority vote of the respective Boards of Directors of the respective companies parties thereto.

(b) In the event of the direct reinsurance of health, accident or sickness policies, the assuming company must assume the exact policy obligations of the stipulated premium policies; in the event the stipulated premium policy is non-cancellable or guaranteed renewable the assuming company may include in its assumption certificate a premium redetermination clause in lieu of the clause contained in the policy by reason of Art. 22.13 of this Chapter.

(c) In the event of the direct reinsurance of life policies or a combination of life and health, accident or sickness, such reinsurance agreement shall contain provisions in compliance with the following:

(1) In the event the assuming legal reserve company issues an assumption certificate providing whole life coverage for the life benefit, the policyholder shall not have the right to receive his individual reserve in cash by surrendering the assumption certificate;

(2) In the event the reserves and premium under the stipulated premium policy are inadequate to provide whole life coverage under the legal reserve assumption certificate and a term coverage assumption is afforded, the following options shall be afforded to each policyholder affected thereby so that he may select any one of the following: (a) The amount of the individual reserve, reduced by the deficiency reserve,

if any, shall be paid in cash to the legal owner and holder of the policy upon its surrender and if the same be requested within sixty (60) days following mailing of notice of the options afforded to the policyholder; (b) An assumption certificate of another stipulated premium company chartered and doing business pursuant to the provisions of this Chapter; or (c) The legal reserve company's certificate of assumption predicated upon term coverage, but which term coverage shall be renewable for the life of the insured without evidence of insurability and the rate for which shall be based on the legal reserve table selected by the assuming company at the attained age of the insured at the date of the renewal increased by an appropriate expense factor. Each affected policyholder shall have the right to exercise his option within sixty (60) days following the date the assumption certificate of the legal reserve company is mailed to the policyholder.

In the event the term coverage is afforded by the legal reserve company, the individual reserve, less the amount of the deficiency, if any, of each policyholder shall be used by the assuming company either: (a) As a reserve credit to permit the legal reserve assumption certificate to be back dated as far as the reserve credit will permit; or (b) As an annuity to reduce the required premium during the initial period of the term coverage.

(d) Each such reinsurance agreement shall be submitted in advance to and approved by the State Board of Insurance as to compliance with the provisions of this Section of this Art. 22.19 prior to the same becoming effective.

Sec. 3. In the event of a total direct reinsurance agreement under the provisions of Section 1 or Section 2 of this Art. 22.19, the reinsured stipulated premium company shall forthwith surrender its certificate of authority to the State Board of Insurance and proceed by action of its stockholders and Board of Directors to effect its dissolution.

Sec. 4. All partial direct reinsurance agreements shall be filed with the State Board of Insurance prior to the effective date of said agreement and the assuming company shall furnish an assumption certificate to the policyholder to be attached to his policy.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.20. Conversion to Chapter Three (3) Company

At such time that a stipulated premium company shall be possessed with at least One Hundred Thousand Dollars (\$100,000.00) in capital and at least One Hundred Thousand Dollars (\$100,000.00) in free and unencumbered surplus and additionally shall have on hand sufficient reserves so as to reserve all of its policies under the provisions of Chapter 3 of

this Code, the stockholders of the stipulated premium company may convert the stipulated premium company into a legal reserve company under the provisions of Chapter 3 of this Code. Within thirty (30) days following such conversion, the converted company shall furnish to each and every policyholder a certificate of assumption whereby the policy liability is assumed by the converted company and which said assumption certificate shall contain all of the provisions required by Chapter 3 of this Code. In consummating said conversion, each and every of the requirements of Chapter 3 of this Code shall be complied with and the State Board of Insurance shall approve such conversion only after determining that said converted company has complied with said Chapter 3 of this Code.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.21. Formation of Additional Associations Prohibited

From and after the effective date of this Act, no local mutual aid association or local mutual burial association may be organized under and pursuant to the provisions of Art. 12.05 of the Insurance Code of Texas. The provisions of this Art. 22.21 shall not, however, be applicable to:

(1) any company or association which holds a temporary or other certificate of authority at the effective date of this Act; or

(2) any company or association for which an application to the Commissioner of Insurance or the State Board of Insurance for a temporary or other certificate of authority is pending at the effective date of this Act.

[Acts 1961, 57th Leg., p. 345, ch. 180, § 1.]

Art. 22.22. Insolvency; Conservatorship; Receiver

If, upon an examination or at any other time, it appears to the Commissioner of Insurance that any stipulated premium company be insolvent, or its condition be, in the opinion of the Commissioner, such as to render the continuance of its business hazardous to the public, or to holders of its policies, or if such company appears to have exceeded its powers or failed to comply with the law, then the Commissioner of Insurance shall notify the company of his determination and said company shall have thirty (30) days under the supervision of the Commissioner of Insurance within which to comply with the requirements of the Commissioner of Insurance, and in the event of its failure to comply within such time, the Commissioner of Insurance, acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, shall immediately take charge of such company, and all of the property and effects thereof.

If the Commissioner of Insurance is satisfied that such company can best serve its policyholders and

the public through its continued operation by the conservator under the direction of said Commissioner of Insurance pending the election of new directors and officers by the shareholders in such manner as the Commissioner of Insurance may determine, the same shall be done, and the conservator may, with the approval of the Commissioner of Insurance, reinsure any part of such company's policies or certificates of insurance with some solvent insurance company authorized to transact business in this State. The conservator may transfer to the reinsurance company such assets or portions thereof as may be required to reinsure such policies. If the Commissioner of Insurance, however, is satisfied that such company is not in condition to satisfactorily continue business in the interest of its policyholders and shareholders under the conservator as above provided, the Commissioner of Insurance shall proceed to reinsure the outstanding policies in some solvent company, authorized to transact business in this State, or the Commissioner of Insurance shall proceed through such conservator to liquidate such company, or the Commissioner of Insurance may give notice to the Attorney General who shall thereupon apply to any court in Travis County having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such company or to require it to comply with the law or to satisfy the Commissioner of Insurance as to its solvency. The Court may, in its discretion, appoint agents or receivers to take charge of the effects and wind up the business of the company under usages and practices of equity; and may make disposition of the business and policies of the company as in the discretion of the court may seem proper. No suit for receiver shall be filed against any such company, nor shall any receiver be appointed, except upon the application therefor by the Attorney General, and in no event shall any receiver for any such company be appointed until after reasonable notice has issued and a hearing had before the court.

It shall be in the discretion of the Commissioner of Insurance to determine whether or not he will operate the company through a conservator, as provided above, or proceed to liquidate the company, or report it to the Attorney General, as herein provided.

When all the policies of a company are reinsured or liquidated, and all of its affairs concluded, as herein provided, the Commissioner of Insurance shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the company so reinsured and liquidated. Where the Commissioner of Insurance lends his approval to the merger, reinsurance or consolidation of the policies of one company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the

charter of the company from which the policies were merged, reinsured or consolidated, in the same manner as is provided for the charters of companies totally reinsured or liquidated. The cost incident to the conservator's services shall be fixed and determined by the Commissioner of Insurance and shall be a charge against the assets and funds of the company to be allowed and paid as the Commissioner of Insurance may determine.

[Acts 1965, 59th Leg., p. 1638, ch. 705, § 2, eff. Aug. 30, 1965.]

Art. 22.23. Issuance of Life Insurance Policies and Annuity Contracts by Stipulated Premium Companies

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00 may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that:

(1) no individual life shall be insured for more than \$5,000.00,

(2) each such policy shall be reserved and reinsured as required under the provisions of Chapter Three of this Insurance Code, and

(3) each such life policy shall be issued only upon an endowment or limited pay basis.

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, may issue annuity contracts as authorized and permitted under the provisions of Chapter Three of this Insurance Code. Reserves on such contracts shall be maintained in accordance with the statutes governing reserves on equivalent contracts issued by legal reserve companies, as such laws now exist or as they may hereafter be amended. Any insurer which elects to write annuity contracts under authority of this Article shall thereafter be required to maintain capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, and any such company shall be regarded as insolvent which fails to maintain capital and unencumbered surplus of at least a combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities.

[Acts 1971, 62nd Leg., p. 1311, ch. 346, § 2, eff. May 24, 1971. Amended by Acts 1975, 64th Leg., p. 1126, ch. 425, § 1, eff. June 19, 1975.]

CHAPTER TWENTY-THREE. NON-PROFIT LEGAL SERVICES CORPORATIONS

Art.

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- 23.02. Supervision; Requirements.
- 23.03. Attorneys Under Contract.

Art.

- 23.04. Officers; Employees Bond.
- 23.05. Claims; Cancellation of Certificate of Authority.
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- 23.23. Regulation of Agents.
- 23.24. Hazardous Financial Condition.
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- 23.26. Application of Other Laws.

Chapter 23 was added by Acts 1975, 64th Leg., p. 126, ch. 60, § 1.

Art. 23.01. Incorporation; Definitions

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

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

(1) "Attorney" means a person currently licensed by the Supreme Court of Texas to practice law.

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

(3) "Benefit certificate" means a writing setting forth the benefits and other required matters issued to a participant under a group contract for legal services and also an individual contract for legal services issued to a participant.

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

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

(6) "State Board of Insurance" means all of the insurance regulatory officials whose duties and functions are designated by the Insurance Code

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

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.02. Supervision; Requirements

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

(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.

(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.

(4) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the State Board of Insur-

ance 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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.03. Attorneys Under Contract

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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.04. Officers: Employees Bond

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.

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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.05. Claims; Cancellation of Certificate of Authority

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. 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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.06. Dissolution

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. 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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.07. Method of Dissolution

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. 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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.08. Fees; Taxes

(a) The State Board of Insurance shall charge a fee of \$50 for filing the annual statement of each corporation operating under this chapter; an application fee of \$100 for each corporation applying under this chapter; and a fee of \$25 for the issuance of each certificate of authority to the corporation. The fees collected by the Board under this subsection shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund, and Article 1.31A of this code applies to fees collected under this subsection.

(b) The State of Texas by and through the State Board of Insurance shall annually determine the rate of assessment and collect as determined by the Board, on an annual or semiannual basis, a maintenance tax in an amount not to exceed one percent of the correctly reported gross revenues received by all corporations issuing prepaid legal services contracts in this state. The tax required by this article is in addition to all other taxes now imposed or that may be subsequently imposed and that are not in conflict with this article. The State Board of Insurance, after taking into account the unexpended funds produced by this tax, if any, shall adjust the rate of assessment each year to produce the amount of funds that it estimates will be necessary to pay all the expenses of regulating nonprofit legal services corporations during the succeeding year. The taxes collected shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be spent as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance. Article 1.31A of this code applies to taxes collected under this section. The State Board of Insurance may elect to collect on a semiannual basis the tax assessed under this article only from insurers whose tax liability under this article for the previous tax year was \$2,000 or more. The State Board of Insurance may prescribe and adopt reasonable rules to implement such payments as it deems advisable, not inconsistent with this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 3942, ch. 622, § 36, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5013, ch. 902, § 1, eff. Sept. 1, 1983.]

Art. 23.09. Applications

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. Such corporation shall

be governed by this chapter and 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. 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. 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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.10. Corporations Non-Profit; Funds; Investments

The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit nonmembership 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. 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 80 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. 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. 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, and refunds of fees paid into such fund; and to the extent approved by the State Board of Insurance, 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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.11. Authority to Contract

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, 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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.12. Limitations

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. 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. 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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.13. Contingent Liabilities

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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.14. Supervision

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, rate schedule, and the sufficiency of expense fund shall first be approved by the State Board of Insurance as adequate, fair, and reasonable and not excessive before such corporation shall engage in business. The State Board of Insurance shall have continuing control over the plan of operation of such corporation and its rate schedule of charges to participants. No change in such plan or rate schedule shall be effectuated without its first being filed and approved by the State Board of Insurance.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.15. Approval of Rates

The State Board of Insurance shall likewise approve the ratio of benefits to be paid to anticipated revenues from the rate schedule proposed to be used if such be found to be actuarially sound. No prepaid legal services contract or benefit certificate thereunder shall be issued by corporations complying with this chapter without such finding. 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. 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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.16. Benefit Certificates and Legal Services Contracts

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. 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 de-

scribe their benefits and not be unjust, misleading, or deceptive.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.17. Bank Deposits

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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.18. Finance Procedures

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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.19. Participation Contracts; Agreements with Insurers

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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.20. Expenses of Directors: Meetings

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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.21. Examination of Books and Records

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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.22. Complaints

The State Board of Insurance shall refer any complaints received by it concerning the performance of any attorney connected with any corporation complying with this chapter to the Supreme Court of the State of Texas or to any person designated by the Supreme Court to receive attorney grievances from the public.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.23. Regulation of Agents

(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. An agent means a natural person who solicits legal services contracts or enrolls applicants.

(b) The Commissioner of Insurance shall collect in advance from agents of corporations complying with this chapter a license fee in an amount not to exceed \$50 as determined by the State Board of Insurance and 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.

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

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and payment of a renewal fee in an amount not to exceed \$50 as determined by the State Board of Insurance.

(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 his or its license is in force, if he or it so desires. Any such agent and the corporation complying with this chapter involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it

to act as agent for an additional corporation complying with this chapter. Such notice must set forth the corporation or corporations complying with this chapter which the agent is then licensed to represent and shall 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 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.

(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.

(g) An unexpired license must be renewed by paying the required renewal fee to the State Board of Insurance before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the State Board of Insurance the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the State Board of Insurance all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his last known address. This section may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(h) The State Board of Insurance by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from its issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent

renewal of the license, the total license renew fee is payable.

(i) Not later than the 30th day after the day on which a licensing examination is administered under this article, the commissioner of insurance shall send notice to each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commissioner of insurance shall send notice to the examinees of the results of the examination within two weeks after the date on which the commissioner of insurance receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the commissioner of insurance shall send notice to the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this article, the commissioner of insurance shall send to the person an analysis of the person's performance on the examination.

(j) The State Board of Insurance may waive any license requirement for an application with a valid license from another state having license requirements substantially equivalent to those of this state.

(k) The State Board of Insurance may adopt a procedure for certifying and may certify continuing education programs for agents. Participation in the programs is voluntary.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 459, ch. 212, § 3, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 3944, ch. 622, §§ 37, 80, 81, eff. Sept. 1, 1983.]

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 23.24. Hazardous Financial Condition

(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.

(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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.25. Management and Exclusive Agency Contracts

(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.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.26. Application of Other Laws

(a) Corporations complying with this chapter shall be subject to and are required to comply with the provisions of the Texas Miscellaneous Corporation Laws Act¹ and the Texas Non-Profit Corporation Act² 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, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 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, 3.14, 21.21, 21.21-2, 21.25, 21.28, 21.28A, and 21.47 and Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of the Insurance Code, as amended.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 672, ch. 263, § 1, eff. Aug. 31, 1981.]

¹ Civil Statutes, art. 1302-1.01 et seq.

² Civil Statutes, art. 1396-1.01 et seq.

CHAPTER TWENTY-FOUR. FINANCING OF INSURANCE PREMIUMS

Art.

- 24.01. Definitions.
- 24.02. License; Offices.
- 24.03. License Application; Fees; Action by Board.
- 24.04. License Provisions; Posting; Change of Location; Other Business.
- 24.05. Grounds for Revocation of License; Procedure.
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- 24.15. Services Charges; Limitation of Charges; Computation.
- 24.16. Prepayment; Refund.
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- 24.18. Assignments.
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- 24.20. Authority of Licensed Local Recording Agents to Charge Interest to Certain Purchasers of Insurance.
- 24.21. Transfer of Records and Funds.
- 24.22. Existence of Agreement; Notification of Insurers.

Chapter 24 was added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1.

Art. 24.01. Definitions

In this chapter:

(1) "Insurance premium finance company" means:

(A) a person engaged in the business of making loans under this chapter by entering into premium finance agreements with insureds or prospective insureds, except that the preparation and delivery of a premium finance agreement or disclosure statement required by Sec-

tion (f), Article 24.11 of this chapter by an insurance agent on behalf of the insured is not doing business as an insurance premium finance company;

(B) a person engaged in the business of acquiring premium finance agreements from insurance agents or brokers or other premium finance companies; or

(C) an insurance agent or broker making loans under this chapter who holds premium finance agreements made and delivered by insureds payable to him or her or his or her order.

(2) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of premium on an insurance contract.

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

(4) "Licensee" means an insurance premium finance company holding a license issued by the board under this chapter.

(5) "Annual percentage rate" means the annual percentage rate of finance charge as determined in accordance with the Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A. Section 891 et seq.) and Regulation Z (12 C.F.R. 226.1 et seq.) promulgated under that Act.

(6) "Insured" means a person who enters into a premium finance agreement with an insurance premium finance company.

(7) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity, however organized.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.02. License; Offices

(a) A person, without first obtaining a license from the board as provided in Section (d), Article 24.03 of this chapter, may not negotiate, transact, or engage in the business of insurance premium financing in this state or contract for, charge, or receive directly or indirectly on or in connection with any insurance premium financing any charges, whether for interest, compensation, consideration, expense, or otherwise, that in the aggregate are greater than the person would be permitted by law to charge if the person were not a licensee under this chapter. A license issued under this chapter allows the holder to maintain only one office from which business may be conducted. The board may issue more than one license but not more than 60 licenses to any one person on compliance with this chapter for each license.

(b) Any bank or savings and loan association doing business under the laws of this state or the United States is entitled to receive a license on notification to the board of its intention to operate under this chapter. The board shall immediately issue a license to that bank or savings and loan association.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.03. License Application; Fees; Action by Board

(a) Each application for a license to engage in the business of insurance premium financing must be in writing and in the form prescribed by the board. It must be accompanied by an investigation fee in an amount not to exceed \$400 as determined by the board.

(b) Within 90 days after receipt of an application, the board shall notify the applicant that:

- (1) the application has been approved and a license will be issued on payment of the appropriate license fee; or
- (2) the application has been denied.

(c) The board may refuse to issue a license if it finds that:

- (1) the financial responsibility, experience, character, or general fitness of the applicant or any person associated with the applicant does not command the confidence of the community and does not warrant the belief that the business will be conducted honestly, fairly, and efficiently; or
- (2) the applicant does not have available for the operation for the business net assets of at least \$25,000.

(d) After approval and on receipt of the license fee, the board shall execute the license to engage in the business of a premium finance company at the location specified in the application and shall transmit the license to the applicant.

(e) The refusal of the board to issue a license does not entitle the applicant to a return of any part of the investigation fee that accompanied the application.

(f) The fee for each license may be in an amount not to exceed \$200 as determined by the board and shall be paid to the board. Except as may be provided by a staggered renewal system adopted under Section (j) of this article, each license shall be issued for the calendar year and shall remain in force until December 31 of each year, unless suspended, revoked, or surrendered in accordance with Article 24.05 of this chapter. If a license is granted after June 30 of any year, the fee may be in an amount not to exceed \$100 as determined by the board for that year.

(g) Any person holding a license under Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as

amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), on the effective date of this chapter is required only to pay the license fee required under this article and is not required to pay the investigation fee required by Section (a) of this article.

(h) Fees collected under this article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to fees collected under this article.

(i) An unexpired license may be renewed by paying the required renewal fee to the board before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the board the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the board all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner of insurance shall send written notice of the impending license expiration to the licensee at his last known address. This section may not be construed to prevent the board from denying or refusing to renew a license under applicable law or rules of the State Board of Insurance.

(j) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is less than one year from the issuance or anniversary date, the license fee shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On each subsequent renewal of the license, the total license renewal fee is payable.

(k) The board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980. Amended by Acts 1983, 68th Leg., p. 3944, ch. 622, §§ 38, 82, 83, eff. Sept. 1, 1983.]

Sections 2 and 4 of the 1979 Act provided:

"Sec. 2. Beginning November 1, 1979, the license fee for a license to engage in the business of insurance premium financing shall be paid to the State Board of Insurance."

"Sec. 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 1980.

"(b) Section 1 of this Act to the extent that it relates to the collection of license fees, the deposit of those fees in the State Treasury, and the use of those fees and Section 2 of this Act take effect November 1, 1979.

"(c) The provisions of this Act shall not apply to arrangements and accounts covered by Chapter 15 of Subtitle 3, Title 79, Interest-Consumer Credit-Consumer Protection, Revised Civil Statutes of Texas, 1925, as amended by Senate Bill Number 811, Acts of the 66th Legislature, Regular Session, 1979 [Civil Statutes, art. 5069-15.01 et seq.]"

Section 94 of the 1983 amendatory act provides:

"The fees prescribed by law before the effective date of this Act shall remain in effect and shall apply until the State Board of Insurance adopts fees as provided by this Act."

Art. 24.04. License Provisions; Posting; Change of Location; Other Business

(a) A license issued under this chapter must state the name and address of the licensee. The license shall be conspicuously posted in the specified office of the licensee. Except as provided in this chapter, the license is not transferable or assignable. Before a licensee changes an office from one location to another, the licensee shall give written notice of the change to the board which, if it approves the change, shall issue an endorsement indicating the change and the date of the change. The licensee shall attach the endorsement to the license for that office. The endorsement constitutes authority for the operation of the business under the license at the new location.

(b) A licensee may conduct the business of premium financing under this chapter in any office, suite, room, or place of business in which any other business is solicited or engaged in or in association or conjunction with any other business, unless the board:

(1) finds, after a hearing, that the conduct by the licensee of the other business in the particular licensed office has concealed evasions of this chapter; and

(2) orders the licensee in writing to stop conducting the business of premium financing in that office.

(c) A licensee may not conduct the business of premium financing provided for by this chapter under any name or at any place of business other than that stated in the license. The preparation and delivery of a premium finance agreement by an insurance agent on behalf of the insured does not constitute doing business as an insurance premium finance company, unless the agreement is held for the benefit of the agent in accordance with Article 24.01(1)(C) of this chapter.

(d) Nothing in this chapter limits the premium financing of any licensee to residents of the community in which the licensed office is situated or prohibits the licensee from conducting premium financing by mail.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.05. Grounds for Revocation of License; Procedure

(a) After notice and hearing, the board may revoke or suspend any license issued under this chapter if it finds:

(1) that the licensee has violated this chapter or any rule lawfully made by the board under this chapter; or

(2) the existence of any fact or condition that, if it had existed at the time of the original application for the license, clearly would have warranted the board to refuse to issue the license.

(b) The board, after notice and hearing, may suspend or revoke a license if it learns from the commissioner of insurance or from any other source that the licensee has failed to return all amounts due from the insurance premium finance company to the person whose insurance policy has been canceled as required by Section (g), Article 24.17 of this chapter.

(c) Any licensee may surrender any license by delivering to the board written notice that the licensee surrenders the license. The surrender of a license does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender.

(d) A revocation, suspension, or surrender of any license does not affect the obligation of any insured under a lawful premium finance agreement previously acquired or held by the licensee.

(e) If the board revokes or suspends a license, it shall immediately execute in duplicate a written order to that effect and shall file one copy of that order in the office of the secretary of state and mail one copy to the licensee.

(f) The board may reinstate a suspended license or issue a new license to a person whose license has been revoked if no fact or condition then exists that clearly would have justified the board in refusing originally to issue the license under this chapter.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.06. Examinations, Investigations, and Use of Fees

(a) The board may make examinations or investigations necessary to determine whether a licensee is in compliance with this chapter or whether a licensee has conducted himself or herself so as to justify the revocation of his or her license. The board or its duly authorized representatives may require the attendance of any person, may examine the person under oath, and may compel the production of all relevant books, records, accounts, and documents.

(b) All reports of examinations or investigations and all correspondence and memoranda concerning or arising out of those examinations or investiga-

tions, including any duly authenticated copy or copies of those reports in the possession of any licensee or the board, are confidential communications, are not subject to subpoena, and may not be made public, except in connection with a hearing under Article 24.05 of this chapter and any appearance in connection with such a hearing. Information obtained in the course of these examinations or investigations may be made available to other governmental agencies when the information involves matters within the scope or jurisdiction of those agencies.

(c) In addition to the investigation and license fees set forth in Article 24.03 of this chapter, each licensee shall pay to the board an amount assessed by the board to cover the direct and indirect cost of examinations and investigations made under this article and a proportionate share of general administrative expense attributable to the regulation of the persons licensed under this chapter.

(d) Fees collected under this chapter shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. The board may use any portion of those fees to enforce this chapter. The board may employ persons as necessary to examine or investigate and make reports on alleged violations of this chapter or on compliance with the other provisions of this code by persons licensed under this chapter and may pay the salaries and expenses of those persons and of all office employees and the expenses necessary to enforce this chapter.

(e) If any residue of those funds remains after the amounts necessary to carry on the work, examinations, and investigations and to employ the persons as authorized by this chapter have been paid, the residue shall be carried over from year to year and used in the enforcement of this chapter. All funds collected under this provision must be deposited in the State Treasury in the State Board of Insurance operating fund and shall be paid out for salaries, traveling expenses, office expenses, and other expenses incurred by the board under this chapter.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980. Amended by Acts 1983, 68th Leg., p. 3945, ch. 622, § 39, eff. Sept. 1, 1983.]

Art. 24.07. Hearings and Investigations; Subpoena Power

In conducting a hearing or investigation under this chapter, the board or any person duly designated by it may:

- (1) subpoena witnesses;
- (2) take depositions of witnesses residing outside of the state in the manner provided for in civil actions in district courts;

(3) pay to those witnesses the fees and mileage for their attendance as provided for witnesses in civil actions in district courts; and

(4) administer oaths.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.08. Violations

(a)(1) A person commits an offense if the person:

(A) intentionally, knowingly, recklessly, or negligently engages in the operation of a premium finance company without first obtaining a license;

(B) intentionally, knowingly, recklessly, or negligently acts in violation of this chapter;

(C) intentionally or knowingly omits to state any material fact necessary to give the board any information lawfully required of the person; or

(D) refuses to permit any lawful investigation or examination under this chapter.

(2) An offense under this chapter is a Class B misdemeanor.

(b) A premium finance company's taking or receiving from or charging an insured a greater charge than authorized by this chapter does not invalidate the premium finance agreement or the principal balance payable under the agreement but may be adjudged a forfeiture of all charges that the premium finance agreement carries with it or that have been agreed to be paid on the agreement. If a greater charge has been paid by an insured, the person paying the charge or the person's legal representative may recover from the premium finance agency twice the entire amount of the charges paid if action is brought within two years after the day on which the payment was made.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.09. Rules

The board may adopt and enforce rules necessary to carry out this chapter. Those rules may contain the classifications, differentiations, or other provisions and may provide for the adjustments and exceptions for any class of transactions that are necessary to carry out the purposes of this chapter, to prevent circumvention or evasion of this chapter, or to facilitate compliance with this chapter. Those rules may not contain any classification, differentiation, or other provision with respect to or provide for any adjustment or exception for any class of transaction that would result in less stringent disclosure requirements than afforded that class of transaction under the Federal Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.;

18 U.S.C.A. Section 891 et seq.) and the applicable portions of Regulation Z (12 C.F.R. 226.1 et seq.).

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.10. Licensee's Books and Records

(a) The licensee shall keep and use books, accounts, and records in enough detail to enable representatives of the board to determine whether the licensee is complying with this chapter and with the rules and regulations lawfully made by the board. The licensee shall preserve and keep available for inspection those books, accounts, and records, including cards used in a card system, if any, for at least four years after the final entry of any premium finance agreement is recorded in those books, accounts, and records.

(b) On or before the first day of April of each year each licensee shall file with the board a report giving the information that the board requires concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee in the state.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 415, ch. 173, § 1, eff. May 20, 1981.]

Art. 24.11. Written Premium Finance Agreement

(a) A premium finance agreement shall be in writing on a form approved by the board.

(b) The agreement shall be dated and signed by the insured. If the agreement contains policies for other than personal, family, or household purposes and if the premiums for the policies exceed \$1,000, it may be signed on behalf of the insured by the insured's agent.

(c) The agreement must contain:

(1) the name and business address of the insurance agent or insurance broker negotiating the related insurance contract;

(2) the name and residence or business address of the insured as specified by the insured;

(3) the name and place of business of the premium finance company to which payments are to be made;

(4) a description of each insurance contract involved;

(5) the amount of the premium for each insurance contract;

(6) the total amount of the premiums for all insurance contracts;

(7) the amount of the down payment;

(8) the principal balance (difference between items (6) and (7));

(9) the total amount of the finance charge, with a description of each amount included, using the term "finance charge"; and

(10) the balance payable by the insured (sum of items (8) and (9)).

(d) The premium finance agreement in addition must contain the following items as applicable:

(1) the finance charge expressed as an annual percentage rate, using the term "annual percentage rate";

(2) the number of installments required, the amount of each installment expressed in dollars, and the due date or period of each installment;

(3) the amount or method of computing the amount of any default or delinquency charge that is payable in the event of late payment; and

(4) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

(e) The disclosures required to be given shall be made clearly, conspicuously, and in meaningful sequence. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this chapter. All numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10-point type, 75/1,000 inch computer type, or elite size typewritten numerals or shall be legibly handwritten.

(f) It shall be a violation of this Act for any licensee to take an insurance premium finance agreement that has not been fully completed and executed at the time the insurance premium finance agreement is executed. The insurance agent is responsible for the completion of the insurance premium finance agreement and for delivery to the insured any and all disclosure statements that are required by any existing law.

(g) If, in a premium finance agreement, changes in an insured's policy due to amending of the rate classification by endorsement or otherwise result in an increased principal balance and the amount under the previous contract has not been fully paid, the subsequent increase may at the insured's option be included in and consolidated with the previous contract, if so provided in the premium finance agreement.

(h) Those additions may be accomplished by a memorandum of agreement between the agent and the insured, if before the first scheduled payment date of the amended transaction the premium finance company gives to the insured the following information in writing:

(1) the amount of the premium increase;

(2) the down payment on increase;

(3) the principal amount of increase;

(4) the total amount of finance charge on increase;

(5) the total of additional balance due;

(6) the outstanding balance of original agreement;

(7) the consolidated agreement balance;

(8) the annual percentage rate of finance charge on additional balance due;

(9) the revised schedule of payments;

(10) the amount or method of computing the amount of any default, deferment, or similar charges authorized in Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), payable in the event of late payments; and

(11) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.12. Application of Truth-in-Lending Act

A transaction, although subject to this chapter, is also subject to the Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A. Section 891 et seq.) and those applicable portions of Regulation Z (12 C.F.R. 226.1 et seq.) adopted under that Act.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.13. Deceptive Advertising

A licensee may not advertise or cause to be advertised in any manner whatsoever any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of any premium finance agreement. If rates or charges are stated in advertising, the licensee shall express them in terms of a simple annual percentage rate as defined by federal law.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.14. Rebate of Finance Charge; Filing of Premium Finance Agreement

(a) A premium finance company or an employee of such a company may not pay or allow or offer to pay or allow in any manner whatsoever to an insurance agent or broker or any employee of an insurance agent or broker or to any other person any consideration or compensation whatsoever, either from the charge for financing specified in the premium finance agreement or otherwise, or give or offer to give any valuable consideration or inducement of any kind directly or indirectly to an insurance agent or broker or any employee of an insurance agent or broker other than an article of merchandise not exceeding \$1 in value on which there is an advertisement of the premium finance company, except that nothing in this article prevents payments by a premium finance company under contractual arrangements with a validly organized and operating associ-

ation of insurance agents or its subsidiary, so long as no part of any funds received under the agreement is distributed to any insurance agent or broker or employee of any insurance agent or broker or inures directly to the benefit of any member of the association or employee of the member. All of those contractual agreements must be in writing and are not valid until approval of the board has been received.

(b) Filing of a premium finance agreement or a financing statement is not necessary to perfect the validity of such an agreement as a secured transaction against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns of the insured or any other party.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.15. Services Charges; Limitation of Charges; Computation

A premium finance company may not take or receive from an insured a greater rate or charge than is provided by Chapters 3 and 4, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq. and Article 5069-4.01 et seq., Vernon's Texas Civil Statutes). Those charges begin on the date from which the insurance company requires payment of the premium and payment was made to the insurance company for the financed policy or on the effective date of the policy, whichever is earlier. The finance charge shall be computed on the balance of the premiums due after subtracting the down payment made by the insured in accordance with the premium finance agreement. On insurance premium finance agreements made under this chapter, no insurance charges or any other charge or fee, except those authorized by this chapter, are permitted.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.16. Prepayment; Refund

Notwithstanding the provisions of any premium finance agreement to the contrary, any insured may pay it in full at any time before the maturity of the final installment of the balance of the agreement, and if the insured does so and the agreement included an amount for a charge, the insured shall receive for the prepayment either by cash or by renewal a refund credit in accordance with the provisions for refunds contained in Section (6), Article 3.15, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.15, Vernon's Texas Civil Statutes), and the regulations issued under that article. Where the amount of the credit for anticipation of payments is less than \$1, no refund need be made.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.17. Default and Cancellation; Right to Cancel; Refund

(a) A premium finance agreement may provide for the payment of a default charge by the insured as provided in Section (5), Article 3.15, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.15, Vernon's Texas Civil Statutes), the Insurance Code, and the regulations issued under those statutes.

(b) A premium finance agreement may contain a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement. An insurance contract or contracts may not be canceled by the premium finance company unless the cancellation is effectuated in accordance with this section.

(c) If the insured fails to make the payments at the time and in the amount provided in the premium finance agreement, the premium finance company shall mail to the insured a written notice of the intent of the premium finance company to cancel the insurance contract because of the default in payments by the insured unless the default in payments is cured within a time certain stated in the notice. That time may not be earlier than the 10th day after the date on which the written notice was mailed. The premium finance company shall also mail a copy of the notice to the insurance agent or insurance broker indicated on the premium finance agreements.

(d) After expiration of the period given to cure the default, the premium finance company may cancel the insurance contract or contracts by mailing to the insurer a notice of cancellation. The insurance contract shall be canceled as if the notice of cancellation had been submitted by the insured, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at the insured's last known address and to the insurance agent or insurance broker indicated on the premium finance agreement.

(e) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply where cancellation is effected under this section. The insurer shall give the prescribed notice on behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day on which it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

(f) Whenever a financed insurance contract is canceled, and the premium finance agreement con-

tains an assignment or power of attorney for the benefit of the premium finance company, the insurer shall return whatever unearned premiums are due under the insurance contract directly to the premium finance company within 60 days after receipt of a copy of the notice of cancellation from the premium finance company only if such company timely notified the insurer of the existence of the premium finance agreement in accordance with the provisions of Article 24.22 herein. In the event that the premium finance company fails to comply with the provisions of Article 24.22 herein, the insurer may satisfy any legal obligation it has to return the unearned premiums due under the insurance contract to the insurance premium finance company by returning said unearned premiums through the insurance agent or agencies writing the insurance. Provided, however, the insurer may deduct from the unearned premiums returned directly to the premium finance company the amount of unearned commissions due from the agent or agency writing the insurance if the insurer notifies such agent or agency that such unearned commissions should be returned to the premium finance company. The insurer except for the Texas Catastrophe Property Insurance Association, the Texas Automobile Insurance Plan, and the Texas Medical Liability Insurance Underwriting Association shall be liable for the return of unearned commission to the premium finance company if the agent has not returned the same to the premium finance company within 120 days after the agent has been notified of the cancellation.

(g) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured. No refund is required if it amounts to less than \$1.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 2663, ch. 718, § 2, eff. Aug. 31, 1981.]

Art. 24.18. Assignments

Unless the insured has notice of actual or intended assignment of a premium finance agreement, payment under the agreement by the insured to the last known holder of the agreement is binding on all subsequent holders or assignees.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.19. Restrictions on Premium Finance Agreements

(a) A premium finance agreement may not contain any provision by which, in the absence of default of the insured, the premium finance company holding the agreement may arbitrarily and without reasonable cause accelerate the maturity of any part or all of the amount owing thereunder. Rea-

sonable cause without limitation includes a proceeding in bankruptcy, receivership, or insolvency being instituted by or against the insured or the insolvency of or suspension of business or cessation of the right to conduct business by an insurance company writing policies that are financed for the insured under the premium finance agreement.

(b) A licensee may not take:

(1) any instrument in which the borrower waives any right accruing to the borrower under this chapter;

(2) any instrument that has not been fully completed and executed by the insured;

(3) an assignment of wages as security for any insurance premium finance agreement made under this chapter;

(4) a lien on real estate as security for any insurance premium finance agreement made under this chapter, except such a lien as is created by law on the recording of an abstract of judgment; or

(5) any confession of judgment or any power of attorney running to the licensee or to any third person to confess judgment or to appear for a borrower in a judicial proceeding.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.20. Authority of Licensed Local Recording Agents to Charge Interest to Certain Purchasers of Insurance

Notwithstanding any other provision of law, any person, partnership, or corporation duly licensed as a local recording agent under Article 21.14, Insurance Code, as amended, may enter into or establish a written agreement with any purchaser of insurance from the agent providing for the payment of interest to the agent in an amount not to exceed the greater of a rate allowed by Article 1.04 of this Title¹ or the rate of one percent a month, on any amount due and owing to the agent for insurance purchased by the purchaser. In those instances the claim or defense of usury is prohibited.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 286, ch. 111, § 25, eff. May 8, 1981.]

¹ So in enrolled bill; probably should refer to Civil Statutes, art. 5069-1.04.

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or

amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 24.21. Transfer of Records and Funds

(a) There shall be transferred to the State Board of Insurance from the consumer credit commissioner all records collected under Chapter 12, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-12.01 et seq., Vernon's Texas Civil Statutes), necessary to insure the continuous regulation of insurance premium finance companies by the State Board of Insurance. This transfer shall be made no later than January 1, 1980.

(b) The consumer credit commissioner and the State Board of Insurance shall cooperate to ensure an orderly transition period. It is the intent and desire of the legislature that the consumer credit commissioner and the State Board of Insurance consult with the state auditor, the comptroller of public accounts, the Legislative Budget Board, and any other state agency for the orderly transfer of all funds and records as outlined in Subsection (a) of this section from the consumer credit commissioner to the State Board of Insurance.

[Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.22. Existence of Agreement; Notification of Insurers

Any premium finance company which enters into a premium finance agreement under the provisions of this chapter shall notify the insurer whose premiums are being financed of the existence of such agreement within a reasonable period of time not to exceed 30 days after the date such agreement is received by the premium finance company.

[Acts 1981, 67th Leg., p. 2663, ch. 718, § 1, eff. Aug. 31, 1981.]

CHAPTER 25. JOB PROTECTION INSURANCE

Art.

- 25.01. Definitions.
- 25.02. Authorized Coverages; Limitations.
- 25.03. Capital and Surplus.
- 25.04. Certificate of Authority.
- 25.05. Other Laws to Govern.
- 25.06. Agents' Licenses.
- 25.07. Retaliatory Provisions; Applicability and Exceptions.
- 25.08. Guaranty Fund; Exception.
- 25.09. Prohibited Acts.
- 25.10. Penalties.

Art. 25.01. Definitions

In this chapter:

(1) "Job protection insurance" means the business of providing indemnity to conductors, engineers, motormen, brakemen, switchmen, firemen, dispatchers, clerks, operators, trackmen, signalmen, and maintenance of way personnel of steam and electric railways and to bus drivers and truck drivers employed by common carriers for loss of position arising from discharge or suspension, which indemnity is payable in installments that do not exceed the average monthly wage of the insured; but shall not apply to job benefit funds administered by and through labor unions for their members only.

(2) "Board" means the State Board of Insurance.

(3) "Carrier" has the meaning provided by Article 1.14 of this code.

(4) "Insured" means one whose indemnification against income loss is provided by virtue of his membership in a company or association that offers a job protection insurance plan.

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

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Art. 25.02. Authorized Coverages; Limitations

(a) The kinds of insurance to be written by domestic and foreign insurance carriers operating under this chapter are as follows:

(1) to provide indemnity to conductors, engineers, motormen, brakemen, switchmen, firemen, dispatchers, clerks, operators, trackmen, signalmen, and maintenance of way personnel of steam and electric railways and to bus drivers and truck drivers employed by common carriers for loss of position arising from discharge or suspension, which indemnity is payable in installments that do not exceed the average monthly wage of the insured; and

(2) to insure such persons against bodily injury or death by accident or against disability on account of sickness or accident, to grant specific hospital benefits and medical, surgical, and sick-care benefits to persons and their families, and to provide reimbursement of funeral expenses in an amount not to exceed \$200 to any person in conjunction with this coverage.

(b) Any coverage that is not authorized by Subdivisions (1) and (2) of Section (a) of this article is specifically prohibited.

(c) On or after the effective date of this chapter, an insurance carrier may not write the coverages

specified in Subdivisions (1) and (2) of Section (a) of this article except by complying with this chapter.

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Art. 25.03. Capital and Surplus

Domestic and foreign insurance carriers operating under this chapter shall maintain the minimum capital and surplus required by Article 2.02 of this code.

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Art. 25.04. Certificate of Authority

(a) An insurance carrier may not be granted a certificate of authority to operate under this chapter unless:

(1) it or a predecessor carrier was writing the insurance coverages authorized by Subdivisions (1) and (2) of Section (a), Article 25.02, of this chapter on or before January 1, 1920, in at least one state; and

(2) it has policyholders in this state on the effective date of this chapter and provides proof of that fact to the board.

(b) If a domestic or foreign carrier has complied with the requirements of this chapter and all other requirements imposed on the company by law; 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 that 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 the kind or kinds of business in this state specified in the certificate. The certificate shall continue in full force and effect on the condition that the company continue to comply with the laws of this state.

(c) Domestic and foreign insurance carriers not meeting the requirements of this article must comply with the requirements of Chapters 2 and 8 of this code in order for those carriers to be permitted to write the insurance coverages authorized by Article 25.02 of this code.

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Art. 25.05. Other Laws to Govern

Chapters 2 and 8 and Article 4.10 of this code, and all other provisions of the Insurance Code, if not in conflict with this chapter, shall apply to and govern any insurance carrier operating under this chapter.

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Art. 25.06. Agents' Licenses

Any individual who solicits insurance, as defined in Article 21.02 of this code, on behalf of an insurance carrier operating exclusively under this chapter, must comply with the requirements of Article 21.07 of this code, except that no written examination is required for issuance of the license.

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Art. 25.07. Retaliatory Provisions; Applicability and Exceptions

Article 21.46 of this code, with the exception of the minimum capital and surplus requirements specified in that article, applies to any carrier operating under this chapter.

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Art. 25.08. Guaranty Fund; Exception

Coverages provided under this chapter are not subject to the guaranty funds provided in this code unless specifically indicated in the laws governing those funds.

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Art. 25.09. Prohibited Acts

A person may not engage in any of the following acts:

- (1) providing any of the coverages indicated in Article 25.02 of this code without initially having obtained a certificate of authority to provide those coverages from the board; or
- (2) soliciting insurance for a carrier authorized to provide insurance coverage under this chapter without initially having obtained an insurance agent's license.

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Art. 25.10. Penalties

(a) The board may refuse to issue or renew a certificate of authority or a license, or may suspend or revoke a certificate of authority or a license if, after notice and hearing, the board finds that the applicant or licensee has violated this chapter or any other provision of this code.

(b) A person commits an offense if the person knowingly or intentionally violates Article 25.09 of this chapter.

(c) An offense under Section (b) of this article is a Class B misdemeanor. Venue for the offense is in Travis County.

[Acts 1983, 68th Leg., p. 3887, ch. 621, § 1, eff. Aug. 29, 1983.]

Sections 2 to 5 of Acts 1951, 52nd Leg., p. 868, ch. 491, enacting the Insurance Code, provided:

Sec. 2. **SUBSTANTIVE LAW PRESERVED.**—Nothing contained in this Act shall be held or construed to effect any substantive change in the laws existing prior to the passage of this Act, or to affect or impair any act done, or right vested or accrued; or any proceeding, suit, or prosecution had or commenced in any cause, be it before the courts or the Board of Insurance Commissioners. But every such act done, or right vested or accrued, or proceeding, suit, or prosecution had or commenced shall remain in full force and effect to all intents as if the laws repealed by this Act had remained in force. No offense committed and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the effective date of this Act shall be discharged or affected by this Act. Prosecutions and suits for such offenses, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if prior laws repealed by this Act had not been repealed. It is hereby declared that the Board of Insurance Commissioners, its officers, the term of its officers together with their powers and duties, as they existed prior to the passage of this Act, are expressly continued, and all existing licenses and certificates and other records of such Board are expressly continued to the date on which they would automatically expire by their own terms unless revoked or suspended according to law.

Sec. 3. **SEVERABILITY.**—If any part, section, subsection, paragraph, sentence, clause, phrase, or word contained in this Act shall be held by the Courts to be unconstitutional, such holding shall not affect the validity of the remaining portions of the Act, and the Legislature hereby declares that it would have passed such remaining portions despite such invalidity.

Sec. 4. **REPEAL OF CONFLICTING LAWS.**—In connection with the general purpose of this Bill the following Statutes and Acts, together with all laws or parts of laws in conflict herewith, are hereby repealed:

Articles 4680, 4682, Subdivisions 1–20, 4683, 4684, 4685, 4687, 4689, 4691, 4692, 4693, 4694, 4695, 4696, 4697, 4698, 4699, 4700, 4701, 4702, 4703, 4707, 4709, 4710, 4711, 4712, 4713, 4714, 4715, 4716, 4717, 4718, 4719, 4720, 4721, 4722, 4723, 4724, 4727, 4728, 4731, 4732, 4734, 4735, 4737, 4738, 4739, 4741, 4743, 4745, 4746, 4747, 4749, 4750, 4751, 4753, 4754, 4755, 4756, 4757, 4759, 4760, 4761, 4762, 4763, 4764, 4765, 4767, 4768, 4770, 4771, 4772, 4773, 4774, 4775, 4776, 4777, 4778, 4779, 4780, 4801, 4803, 4804, 4805, 4806, 4807, 4810, 4812, 4814, 4815, 4818, 4819, 4823, 4829, 4830, 4832, 4834, 4835, 4836, 4837, 4838, 4839, 4840, 4841, 4842, 4843, 4844, 4845, 4846, 4847, 4848, 4849, 4850, 4851, 4852, 4853, 4854, 4855, 4856, 4857, 4878, 4879, 4880, 4881, 4882, 4883, 4884, 4885, 4886, 4887, 4888, 4889, 4890, 4892, 4893, 4894, 4895, 4896, 4897, 4898, 4899, 4900, 4901, 4903, 4904, 4905, 4908, 4909, 4910, 4911, 4913, 4914, 4915, 4916, 4917, 4918, 4919, 4920, 4921, 4922, 4923, 4924, 4927, 4928, 4931, 4969, 4970, 4971, 4972, 4973, 4974, 4975, 4976, 4977, 4978, 4979, 4980, 4981, 4982, 4983, 4984, 4985, 4986, 4987, 4988, 4989, 4990, 4991, 4992, 4994, 4995, 4996, 4997, 4998, 4999, 5000, 5001, 5002, 5003, 5004, 5005, 5007, 5008, 5009, 5010, 5011, 5012, 5024, 5028, 5030, 5034, 5035, 5036, 5037, 5038, 5039, 5040, 5041, 5042, 5043, 5044, 5045, 5046, 5047, 5048, 5049, 5050, 5051, 5052, 5054, 5055, 5056, 5057, 5059, 5060, 5061, 5062, 5063, 5064, 5065, 5066, 5067 and 5068 of Title 78, Revised Civil Statutes of Texas, and all amendments to said Title and Articles, together with certain Acts from Titles 32, 61, 71 and 122, Revised Civil Statutes of Texas:

Acts of 1927, 40th Legislature, Page 329, Chapter 224, Sections 1–5 (Arts. 4679a, 4679b, 4679c, 4679d Sec. 6, 4679d Sec. 6A, 4679d Sec. 6B, 4681, 4682a);

- Acts of 1927, 40th Legislature, Page 373, Chapter 253, as amended by Acts of 1937, 45th Legislature, Page 671, Chapter 335, and as amended, Acts of 1949, 51st Legislature, Page 847, Chapter 462, Sec. 1 (Art. 4682b, Sections 1, 1A, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11-a);
- Acts of 1943, 48th Legislature, Page 607, Chapter 352 (Art. 4686, Secs. 1, 2);
- Acts of 1947, 50th Legislature, Page 428, Chapter 235 (Art. 4688, Art. 4748);
- Acts of 1931, 42nd Legislature, Page 252, Chapter 152, Sections 2, 3, 3-A, and as amended by Acts of 1939, 46th Legislature, Page 385, Chapter 2, Sections 1, 2 (Arts. 4690, 4690a, 4690b, 4690c);
- Acts of 1945, 49th Legislature, Page 207, Chapter 160 (Art. 4698a, Sections 1-12);
- Acts of 1949, 51st Legislature, Page 998, Chapter 539 (Art. 4698b, Sections 1-4);
- Acts of 1927, 40th Legislature, Page 155, Chapter 104, Section 1, as amended by Acts of 1935, 44th Legislature, Page 492, Chapter 205 (Art. 4704, Sections 1-6, Art. 4708);
- Acts of 1949, 51st Legislature, Page 1105, Chapter 564 (Art. 4705);
- Acts of 1943, 48th Legislature, Page 61, Chapter 54 (Art. 4706);
- Acts of 1949, 51st Legislature, Page 815, Chapter 439, Section 1 (Art. 4720);
- Acts of 1931, 42nd Legislature, Page 96, Chapter 62, Section 1 (Art. 4726);
- Acts of 1943, 48th Legislature, Page 304, Chapter 198, Section 1 (Art. 4729);
- Acts of 1947, 50th Legislature, Page 352, Chapter 200, Section 1 (Art. 4730);
- Acts of 1941, 47th Legislature, Page 1358, Chapter 620, Section 1 (Art. 4730a);
- Acts of 1947, 50th Legislature, Page 330, Chapter 189, Section 1 (Art. 4732, Subdivisions 6, 7 and 8);
- Acts of 1945, 49th Legislature, Page 152, Chapter 102, Section 1 (Art. 4732, Subdivision 12);
- Acts of 1941, 47th Legislature, Page 519, Chapter 315, Section 1 (Art. 4733, Sections 1, 2 and 3);
- Acts of 1931, 42nd Legislature, Page 135, Chapter 91, Section 1 (Art. 4736);
- Acts of 1931, 42nd Legislature, Page 328, Chapter 195 (Art. 4736a, Sections 1 and 2);
- Acts of 1943, 48th Legislature, Page 206, Chapter 125, Section 1 (Art. 4740);
- Acts of 1941, 47th Legislature, Page 486, Chapter 304, Section 1 (Art. 4742);
- Acts of 1945, 49th Legislature, Page 137, Chapter 93, Section 1 (Art. 4744);
- Acts of 1947, 50th Legislature, Page 351, Chapter 199, Section 1 (Art. 4752);
- Acts of 1935, 44th Legislature, Page 713, Chapter 307 (Art. 4758);
- Acts of 1931, 42nd Legislature, Page 172, Chapter 101, Section 6 (Art. 4764a, Section 6);
- Acts of 1947, 50th Legislature, Page 366, Chapter 208, Section 1 (Art. 4764a, Sections 1, 2, 3 and 4);
- Acts of 1947, 50th Legislature, Page 428, Chapter 235, Section 3 (Art. 4764a, Section 5);
- Acts of 1941, 47th Legislature, Page 111, Chapter 89 (Art. 4764b, Sections 1, 2, 3, 4, 6, 7, 7a, 8 and 9);
- Acts of 1943, 48th Legislature, Page 603, Chapter 348 (Art. 4764b, Section 5);
- Acts of 1947, 50th Legislature, Page 330, Chapter 189 (Art. 4764b, Section 2, Subsection e);
- Acts of 1949, 51st Legislature, Page 132, Chapter 81 (Art. 4764c, Sections 1-16);
- Acts of 1949, 51st Legislature, Page 813, Chapter 438, Section 1 (Art. 4766);
- Acts of 1939, 46th Legislature, Page 384, Chapter 1 (Art. 3920);
- Acts of 1947, 50th Legislature, Page 532, Chapter 312 (Art. 4800);
- Acts of 1943, 48th Legislature, Page 580, Chapter 341, Sections 1, 3, 4, and 6 (Arts. 4802, 4809, 4811, 4816);
- Acts of 1947, 50th Legislature, Page 498, Chapter 293, Sections 1, 2 (Arts. 4808, 4817);
- Acts of 1929, 41st Legislature, Second Called Session, Page 28, Chapter 16, Sections 1, 2, 3 and 4 (Arts. 4825, 4826, 4827 and 4828);
- Acts of 1931, 42nd Legislature, Page 71, Chapter 48, Sections 1 through 6 (Arts. 4820, 4821, 4822, 4824, 4831, 4831a);
- Acts of 1933, 43rd Legislature, Page 853, Chapter 243, Sections 1, 2 (Art. 4838a);
- Acts of 1936, 44th Legislature, Third Called Session, Page 2040, Chapter 495, Article IV, Section 5d (Art. 4858);
- Acts of 1937, 45th Legislature, Page 16, Chapter 14, Section 1 (Art. 4858a);
- Acts of 1929, 41st Legislature, First Called Session, Page 189, Chapter 75, Sections 1 through 10 (Art. 4859e);
- Acts of 1933, 43rd Legislature, Page 856, Chapter 245, as amended, Acts of 1935, 44th Legislature, Page 651, Chapter 264, Section 1-2a, as amended, Acts of 1941, 47th Legislature, Page 860, Chapter 535, Section 1 (Art. 4859f, Sections 1 through 6, inclusive, 6a, 6b, 7 through 20, inclusive);
- Acts of 1929, 41st Legislature, First Called Session, Page 90, Chapter 40, as amended, Acts of 1929, 41st Legislature, Second Called Session, Page 99, Chapter 60, Section 1; Acts of 1947, 50th Legislature, Page 430, Chapter 236, Sections 1, 1a (Arts. 4860a-1 through 4860a-6, inclusive; 4860a-6a; 4860a-7 through 4860a-18, inclusive; 4860a-18a; 4860a-19);
- Acts of 1937, 45th Legislature, Page 184, Chapter 99, as amended, Acts of 1949, 51st Legislature, Page 826, Chapter 446, Section 1 (Art. 4860a-20, Sections 1 through 26, inclusive);
- Acts of 1947, 50th Legislature, Page 739, Chapter 367, Section 1 (Art. 4860a-20, Sections 1a, 2a);
- Acts of 1931, 42nd Legislature, Page 200, Chapter 118 (Art. 4871a, Sections 1-4, inclusive);
- Acts of 1929, 41st Legislature, Page 563, Chapter 274, and as amended by Acts of 1931, 42nd Legislature, Page 334, Chapter 201; Acts of 1933, 43rd Legislature, Page 577, Chapter 190, and Acts of 1935, 44th Legislature, Page 550, Chapter 235 (Arts. 4875a-1 through 4875a-31, inclusive, Vernon's R.C.S.);
- Acts of 1937, 45th Legislature, Page 29, Chapter 24, as amended by Acts of 1945, 49th Legislature, Page 214, Chapter 161, Section 3 (Art. 4902);
- Acts of 1935, 44th Legislature, Page 192, Chapter 77, Section 1 (Art. 4891);
- Acts of 1945, 49th Legislature, Page 214, Chapter 161, Sections 1, 2 and 4 (Art. 4905A, Art. 4905B and Art. 4905C);
- Acts of 1931, 42nd Legislature, Page 290, Chapter 171, Section 1 (Art. 4907);
- Acts of 1943, 48th Legislature, Page 614, Chapter 355, Section 1 (Art. 4912);
- Acts of 1937, 45th Legislature, Page 30, Chapter 25, Section 1 (Art. 4918a);
- Acts of 1941, 47th Legislature, Page 796, Chapter 494 (Art. 4918b);
- Acts of 1937, 45th Legislature, Page 1255, Chapter 472, Sections 1 and 2 (Arts. 4925, 4926);
- Acts of 1949, 51st Legislature, Page 835, Chapter 453, Sections 1 and 2 (Arts. 4929, 4929a);
- Acts of 1927, 40th Legislature, Page 48, Chapter 33, Section 1 (Art. 4930);
- Acts of 1949, 51st Legislature, Page 1360, Chapter 618, Section 1 (Art. 4932);
- Acts of 1939, 46th Legislature, Page 394, Chapter 4, Section 1 (Art. 4993);
- Acts of 1943, 48th Legislature, Page 436, Chapter 295, and as amended, Acts of 1949, 51st Legislature, Page 1067, Chapter 551 (Art. 5012a);
- Acts of 1929, 41st Legislature, Page 77, Chapter 40, and as amended, Acts of 1931, 42nd Legislature, Page 449, Chapter 269 (Art. 1302a, Section 23);
- Acts of 1933, 43rd Legislature, Page 750, Chapter 222 (Art. 1302a, Section 2), and Acts of 1945, 49th Legislature, Page 383, Chapter 245 (Art. 1302a, Section 24a);
- Acts of 1929, 41st Legislature, First Called Session, Page 32, Chapter 11, Section 1 (Arts. 5013, 5014, 5015, 5016, 5017a, 5017b, 5017c, 5017e, 5018, 5018a, 5018b, 5019, 5019a, 5020, 5021, 5022, 5022a, 5022b, 5022c, 5022d, 5023, 5023a);
- Acts of 1943, 48th Legislature, Page 605, Chapter 350, Section 1 (Art. 5017);

Acts of 1943, 48th Legislature, Page 606, Chapter 351, Section 1 (Art. 5017d);
 Acts of 1939, 46th Legislature, Page 417, Chapter 8 (Arts. 5025, 5026, 5027, 5029, 5029a, 5031, 5032, 5033, 5033a);
 Acts of 1939, 46th Legislature, Page 123, Chapter 1, as amended,
 Acts of 1943, 48th Legislature, Page 371, Chapter 249 (Art. 4590a, Sections 1, 1-a, 2 to 15, inclusive);
 Acts of 1929, 41st Legislature, First Called Session, Page 5, Chapter 3, Section 1 (Art. 5053);
 Acts of 1947, 50th Legislature, Page 956, Chapter 410 (Art. 5053a);
 Acts of 1927, 40th Legislature, Page 269, Chapter 190 (Senate Bill 12), Section 1, as amended, Acts of 1939, 46th Legislature, Page 425, Chapter 10, Section 1 (Art. 5057a);
 Acts of 1935, 44th Legislature, Page 227, Chapter 91, Section 1 (Art. 5058);
 Acts of 1931, 42nd Legislature, Page 150, Chapter 96, as amended, Acts of 1935, 44th Legislature, Page 204, Chapter 83, Sections 1-3 (Art. 5062a);
 Acts of 1941, 47th Legislature, Page 374, Chapter 212 (Art. 5062b, Sections 1-27);

Acts of 1927, 40th Legislature, Page 348, Chapter 234 (Art. 5068a, Sections 1-2);
 Acts of 1933, 43rd Legislature, Page 356, Chapter 138, Sections 1-5, as amended, Acts of 1935, 44th Legislature, Page 679, Chapter 289, Sections 1, 2, 3, 4, 5, 7 and 7a, as amended, Acts of 1949, 51st Legislature, Page 384, Chapter 204 (Art. 5068b, Sections 1-5, 7 and 7a);
 Acts of 1939, 46th Legislature, Page 389, Chapter 3 (Art. 5068c, Sections 1-6);
 Acts of 1945, 49th Legislature, Page 51, Chapter 34, Section 1 (Art. 5068d);
 Acts of 1949, 51st Legislature, Page 1355, Chapter 617, Sections 1-8 (Art. 5068e, Sections 1-8);
 Acts of 1939, 46th Legislature, Page 401, Chapter 6, Sections 1 to 35, inclusive, as amended by Acts of 1941, 47th Legislature, Page 871, Chapter 542, Section 1 (Art. 5068-1 Vernon's);
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TITLE 78

INSURANCE

Art.

4679 to 4768. Repealed.

4769. Tax on insurance organizations not organized under laws of Texas.

4769½. Additional tax on insurance organizations not organized under laws of Texas.

4769a. Report of premiums; annual tax; report of investments; payment of tax; exclusiveness.

4770 to 5068-7. Repealed.

Arts. 4679 to 4768. Repealed by Acts 1951, 52nd Leg., p. 868, ch. 491, § 4, eff. Sept. 7, 1951

Art. 4769. Tax on insurance organizations not organized under laws of Texas

Section 1. Every group of individuals, society, association or corporation (all of which shall be deemed included in the term "insurance organization" wherever used in this Act) not organized under the laws of this State and transacting the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, or for mutual benefit, or protection in this State shall on or before the first day of March of each year file its annual statement showing the gross amount of premiums collected during the year ending December 31st, preceding, from persons residing or domiciled in this State on policies of insurance, and showing in separate columns the first-year premiums and the renewal premiums collected on such Texas policies, and each such insurance organization, except local mutual aid associations, fraternal benefit societies, and fraternal insurance associations or societies that limit their membership to one (1) occupation, shall pay an annual tax of 3.3% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas on policies of insurance. Each such insurance organization shall also report to the Board of Insurance Commissioners on or before the first day of March of each year the amount that it had invested on the 31st of December, preceding, in Texas securities as defined by Article 4766 of the Revised Civil Statutes of Texas, 1925, as amended, and the amount that it had invested on said date in similar securities in the State in which it had its highest percentage of admitted assets invested, and in computing the amount of such investments it shall include as a part thereof that percentage of its investments in bonds of the United States of America that it reserves on policies of insurance issued on the lives of persons residing or domiciled in Texas are of its total reserves on all policies outstanding, but in no event shall it include any amount of such bonds in excess of the amount thereof reported by said Company as Texas Securities in its Texas tax return covering the year 1946. If the report of such insur-

ance organization as of December 31st, preceding, shows that such organization, had invested in such Texas securities an amount which is more than seventy-five per cent (75%) and not more than eighty per cent (80%) of the amount that it had invested in similar securities in the State in which it then had the highest percentage of its admitted assets invested, its tax shall be 3.025% of such gross premium receipts; if the report shows that such insurance organization had invested in such Texas securities on such date an amount which is more than eighty per cent (80%) and not more than eighty-five per cent (85%) of the amount that it had invested in similar securities in the State in which it then had the highest percentage of its admitted assets invested, its tax shall be 2.75% of such gross premium receipts; if the report shows that such insurance organization had invested in such Texas securities on such date an amount which is more than eighty-five per cent (85%) and not more than ninety per cent (90%) of the amount that it had invested in similar securities in the State in which it then had the highest percentage of its admitted assets invested, its tax shall be 2.2% of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of ninety per cent (90%) of the amount that it had invested in similar securities in the State in which it then had the highest percentage of its admitted assets invested, its tax shall be 1.925% of such gross premium receipts; provided, however, that all such insurance companies whose gross premium receipts are less than Four Hundred and Fifty Thousand Dollars (\$450,000) for the preceding year ending December 31st, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax of $\frac{55}{60}$ of 1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas except as to first-year premiums as provided herein; provided, however, that the gross premium taxes herein imposed shall not be applicable to first-year premiums; and provided further that where any policy is written on a term plan only the premium collected during the first year shall be deducted on such policy or any renewal, extension or substitution thereof by the company issuing such term policy, and provided further that the amount of examination and valuation fees paid in such taxable year to or for the use of the State of Texas by any insurance organization hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance organization for such taxable year. Such gross premium receipts so reported shall not include premiums received from

other licensed companies for reinsurance of business in Texas and there shall be no deduction for premiums paid for reinsurance. If any such insurance organization does more than one (1) kind of insurance business, then it shall pay the tax herein levied upon the gross premiums on each kind of insurance written. The report of the gross premium receipts and the invested assets shall be made upon the sworn statement of two (2) principal officers.

A quarterly prepayment of premium tax must be made on March 1st, May 15th, August 15th, and November 15th by all insurers with net tax liability for the previous calendar year in excess of \$1,000. The tax paid on each date must equal one-fourth of the total premium tax paid for the previous calendar year. Should no premium tax have been paid during the previous calendar year, the quarterly payment shall equal the tax which would be owed on the gross premium receipts during the previous calendar quarter ending March 31st, June 30th, September 30th, or December 31st at the minimum tax rate specified by law. The State Board of Insurance is authorized to certify for refund to the State Treasurer any overpayment of premium taxes that results from the quarterly prepayment system herein established.

The State Board of Insurance may establish such rules, regulations, minimum standards, or limitations which are fair and reasonable as may be appropriate for the augmentation and implementation of this Article.

Upon receipt by it of the sworn statement above provided, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by such insurance organizations which shall be paid to the State Treasurer on or before the fifteenth day of March, following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this State during the calendar year ending December 31st, in which such premiums were collected, or for that portion of the year during which the insurance organization transacted business in this State. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State from any such insurance organization, not organized under the laws of this State, except, and only except unemployment compensation taxes levied under Senate Bill No. 5, passed at the Third Called Session of the Forty-fourth Legislature and amendments thereto;¹ and the fees provided for under Article 3920 of the Revised Civil Statutes of Texas, 1925, and amendments thereto; and in the case of companies operating under Article 4742 of the Revised Civil Statutes of Texas, 1925, the deposit fees prescribed by that Article and amendments thereto; and in case of companies writing workman's com-

pensation insurance, the taxes otherwise provided by law on account of such business; and no other taxes shall be levied or collected by the State or any county, city, or town, except State, county and municipal ad valorem taxes upon real or personal properties of such insurance organizations.

Sec. 1A. (a) The premium tax imposed by Section 1 of this Act may be paid under protest as provided by Subchapter B, Chapter 112, Tax Code.²

(b) If no payment under protest is made, a suit for refund must be filed within four years from the date the tax is due and payable. This Act may not be construed as a waiver of any defense, immunity, or jurisdictional bar available to the state or its officers or employees, including obtaining legislative authorization to sue.

[Acts 1949, 51st Leg., p. 1362, ch. 619, § 1. Amended by Acts 1951, 52nd Leg., p. 702, ch. 402, § 1; Acts 1933, 68th Leg., p. 1369, ch. 283, § 4, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 3997, ch. 622, § 87, eff. Sept. 1, 1983.]

¹ Article 5221b-1 et seq.

² Tax Code, § 112.051 et seq.

Section 5 of Acts 1983, 68th Leg., p. 1373, ch. 283, provides:

"This bill shall be implemented as follows:

"On November 15, 1983, the estimated tax must be paid for the fourth quarter of 1983. On February 15, 1984, the estimated tax must be paid for the first quarter of 1984. On March 1, 1984, the remaining unpaid tax for 1983 must be paid. On May 15, August 15 and November 15, 1984, the estimated tax for the second, third, and fourth quarters of 1984, respectively, must be paid."

Art. 4769¹/₂. Additional tax on insurance organizations not organized under laws of Texas

In addition to all other taxes, there is hereby levied an additional tax for the years 1950 and 1951, upon every group of individuals, society, association, or corporation upon which a tax is levied by Chapter 619, Acts, Regular Session, Fifty-first Legislature.¹

The tax shall be paid at the same time, in the same manner, and subject to all the same terms, conditions, obligations and penalties as is provided for the payment and collection of the tax levied in the aforesaid Chapter 619, Acts, Regular Session, Fifty-first Legislature.

The tax hereby levied for the year 1950, shall be ten per cent (10%) of three-fourths (³/₄) of the amount of tax levied and due for the calendar year 1950 under the aforesaid Chapter 619, Acts, Regular Session, Fifty-first Legislature. The tax hereby levied for 1951 shall be two-thirds (²/₃) of ten per cent (10%) of the amount of tax levied and due for the calendar year 1951 under the aforesaid Chapter 619, Acts, Regular Session, Fifty-first Legislature.

[Acts 1950, 51st Leg., 1st C.S., p. 10, ch. 2. Art. XVII, § 3.]

¹ Arts. 4769, 4769a note.

Repeal

This article is repealed in so far as it levies a tax on premium receipts for the year 1951 by Acts 1951, 52nd Leg., p. 695, ch. 402, § XXI (§ 2).

Art. 4769a. Report of premiums; annual tax; report of investments; payment of tax; exclusiveness

Section 1. Every group of individuals, society, association, or corporation (all of which shall be deemed included in the term "insurance organization" wherever used in this Act) transacting the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, or for the mutual benefit, or protection in this State shall on or before the first day of March of each year file its annual statement showing the gross amount of premiums collected during the year ending December 31, preceding, from persons residing or domiciled in this State on policies of insurance, and showing in separate columns the first year premiums and the renewal premiums collected on such Texas policies, and each such insurance organization, except local mutual aid associations, fraternal benefit societies, and fraternal insurance associations or societies that limit their membership to one occupation, shall pay an annual tax of three and five-tenths per cent (3.5%) of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas on policies of insurance. Each such insurance organization shall also report to the Board of Insurance Commissioners on or before the first day of March of each year the amount that it had invested on the 31st of December, preceding, in Texas securities as defined by Article 4766 of the Revised Civil Statutes of Texas, 1925, as amended, and the amount that it had invested on said date in similar securities in the state in which it had its highest percentage of admitted assets invested, and in computing the amount of such investments in such other state it shall include as a part thereof that percentage of its investment in bonds of the United States of America purchased between December 8, 1941, and the termination of the war in which the United States is now engaged that its reserves on policies of insurance issued on the lives of persons residing or domiciled in such state are of its total reserves on all policies outstanding. If the report of such insurance organization as of December 31, preceding, shows that such organization had invested in Texas securities as defined by Article 4766 of the Revised Civil Statutes of Texas, 1925, as amended, an amount which is not less than seventy-five per cent (75%) nor more than eighty per cent (80%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be three per cent (3%) of such gross

premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty per cent (80%) and not more than eighty-five per cent (85%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be two and seventy-five one-hundredths per cent (2.75%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-five per cent (85%) and not more than eighty-eight per cent (88%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be two and twenty-five one-hundredths per cent (2.25%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of eighty-eight per cent (88%) and not more than ninety per cent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be one and seventy-five one-hundredths per cent (1.75%) of such gross premium receipts; if the report shows such insurance organization had invested in such Texas securities on such date an amount which is in excess of ninety per cent (90%) of the amount that it had invested in similar securities in the state in which it then had the highest percentage of its admitted assets invested, its tax shall be ninety-five one hundredths of one per cent (.95 of 1%) of such gross premium receipts; provided, however, that all such insurance companies whose gross premium receipts are less than Four Hundred Fifty Thousand Dollars (\$450,000) for the preceding year ending December 31st, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax of five-eighths of one per cent ($\frac{5}{8}$ of 1%) of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas except as to first year premiums as provided herein; provided, however, that the gross premium taxes herein imposed shall not be applicable to first year premiums; and provided further that where any policy is written on a term plan only the premium collected during the first year shall be deducted on such policy or any renewal, extension or substitution thereof by the company issuing such term policy. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance of business in Texas and there shall be no deduction for premiums paid for reinsurance. If any such insurance organization does more than one kind of insurance business, then it shall pay the tax herein levied upon the gross premiums on each kind of insurance written. The report of the gross premium receipts

and the invested assets shall be made upon the sworn statement of two (2) principal officers.

Upon receipt by it of the sworn statement above provided, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by such insurance organization which shall be paid to the State Treasurer on or before the fifteenth day of March, following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this State during the calendar year ending December 31, in which such premiums were collected, or for that portion of the year during which the insurance organization transacted business in this State. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State from any such insurance organization, foreign or domestic, except, and only except unemployment compensation taxes levied under Senate Bill No. 5, passed at the Third Called Session of the Forty-fourth Legislature and amendments thereto; and the fees provided for under Article 3920 of the Revised Civil Statutes of Texas, 1925, and amendments thereto; and in the case of companies operating under Article 4742 of the Revised Civil Statutes of Texas, 1925, the deposit fees prescribed by that Article and amendments thereto; and in case of companies writing workmen's compensation insurance, the taxes otherwise provided by law on account of such business; and no other taxes shall be levied or collected by the State or any county, city, or town except State, county, and municipal ad valorem taxes upon real or personal properties of such insurance organization.

Sec. 1A. (a) The premium tax imposed by Section 1 of this Act may be paid under protest as provided by Subchapter B, Chapter 112, Tax Code.¹

(b) If no payment under protest is made, a suit for refund must be filed within four years from the date the tax is due and payable. This Act may not be construed as a waiver of any defense, immunity, or jurisdictional bar available to the state or its officers or employees, including obtaining legislative authorization to sue.

Sec. 2. This Act shall apply to the premiums collected during 1945 and subsequent years and shall not affect the obligation of any such insurance organization for the payment of any taxes that have accrued on premium receipts for insurance issued during 1944 or in prior years, but the obligation as now provided by law for the payment of such taxes shall continue in full force and effect. No such insurance organization shall receive a permit to do

business in Texas until all premium taxes due by it to the State of Texas are paid.

Sec. 3. This Act shall not in any manner affect the obligation of any such insurance organization to make investments in Texas securities in proportion to the amount of Texas reserves as required by Article 4765 of the Revised Civil Statutes of Texas, 1925, as amended.

Sec. 4. Article 7064a and Article 4769 of the Revised Civil Statutes of Texas, 1925, as amended, are repealed except for the continuing obligation of any such insurance organization for the payment of any taxes that have accrued under the provisions of either of said Articles. This Act shall be cumulative of all other laws but shall repeal Article 4758, Revised Civil Statutes of 1925, as amended; and shall repeal all other laws only in so far as they levy any tax on any of the organizations affected by this Act or otherwise conflict with this Act, except as provided herein.

Sec. 5. If any section, paragraph, sentence or clause of this Act shall be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining portions of this Act, but the remainder of the Act shall be given effect as if such invalid, unconstitutional, or inoperative portion had not been included.

[Acts 1945, 49th Leg., p. 442, ch. 279. Amended by Acts 1983, 68th Leg., p. 3997, ch. 622, § 88, eff. Sept. 1, 1983.]

¹ V.T.C.A. Tax Code, § 112.051 et seq.

Repeal

This article is repealed by Acts 1949, 51st Leg., p. 1362, ch. 619, § 4, and Acts 1949, 51st Leg., p. 1365, ch. 620, § 4 "in so far as it applies to any group of individuals, society, association, or other corporation organized under the laws of this State except for the continuing obligation of any such insurance organization for the payment of any and all taxes that have accrued under the provisions and said House Bill No. 23, known as Chapter 279, Page 442, Acts of the Regular Session of the Forty-ninth Legislature. This Act shall be cumulative of all other laws and shall repeal any other law only in so far as said law shall levy any tax on any of the insurance organizations affected by this Act, or otherwise conflict with this Act, except as provided for herein."

Arts. 4770 to 5068-7. Repealed by Acts 1951, 52nd Leg., p. 868, ch. 491, § 4, eff. Sept. 7, 1951

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