I certify that the attached is a true and correct copy of HB 7 which was filed of record on FEB 8 1989 and referred to the committee on:

Betty Murray
Chief Clerk of the House

'89 FEB -8 AM 11:31

FILED FEB 8 1989

By Richard G Smith

A B. No. 7

A BILL TO BE ENTITLED

AN ACT

relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. Articles 1-12 of this Act may be cited as the Texas Workers' Compensation Act.

SECTION 1.02. DEFINITIONS. In this Act:

(1) "Adjuster" means a person licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(2) "Advisory council" means the Labor-Business Advisory Council on Workers' Compensation.

(3) "Agreement" means the resolution by the parties to a dispute based on a workers' compensation claim of one or more issues regarding the claim. The term does not include a settlement.

(4) "Benefit" means a benefit received by a claimant based on a compensable injury. The term includes a medical benefit, an income benefit, and a death or burial benefit.

(5) "Board" means the Texas Workers' Compensation Board.

(6) "Child" means a son, daughter, stepson, or

stepdaughter. The term includes an adopted child.

(7) "Commute" means to pay in a lump sum.

(8) "Compensable injury" means an injury that arises in the course and scope of employment for which compensation is payable under this Act.

(9) "Compensation" includes medical benefits, income benefits, death benefits, or burial benefits.

(10) "Covered employer" means an employer who has workers' compensation insurance coverage, either through self-insurance obtained as provided by this Act or through private insurance obtained from a licensed insurance carrier.

(11) "Dependent" means an individual who is classified as a dependent for federal income tax purposes under 26 U.S.C. Sec. 152.

(12) "Designated physician" means a physician who is appointed by the parties or the board to resolve a dispute as to the disability or impairment of an injured employee.

(13) "Disability" means the inability to obtain and retain substantial gainful employment because of the physical incapacity to perform the functions required for employment, when that incapacity was caused by a compensable injury.

(14) "Employee" means an individual who performs services for an employer for remuneration.

(15) "Employer" means a person that employs one or more employees.

(16) "Health care" includes all reasonable and necessary medical aid, examinations, treatments, diagnoses, and

evaluations. The term does not include vocational rehabilitation. The term includes:

(A) physical therapy rendered by a licensed physical therapist;

(B) medical, surgical, chiropractic, podiatric, nursing, and psychological services provided by a licensed health care practitioner or by a nonlicensed health care provider under the supervision of a physician;

(C) the services of a hospital or other health care facility;

(D) prescription drugs, medicines, and other remedies; and

(E) medical and surgical supplies, appliances, artificial members, and prosthetics.

(17) "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(18) "Health care practitioner" means a licensed individual who provides or renders health care.

(19) "Health care provider" means a health care facility or health care practitioner.

(20) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from the compensable injury and is reasonably presumed to be permanent.

(21) "Income benefit" means a payment made to an employee for disability or impairment.

(22) "Injury" means damage or harm by accident to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm, including occupational diseases or repetitive trauma injuries.

(23) "Insurance carrier" means:

(A) a person licensed by the State Board of Insurance to insure the payment of compensation to injured employees or the legal beneficiaries of deceased employees;

(B) a certified self-insurer under this Act; or

(C) a governmental entity that self-insures, either individually or collectively.

(24) "Intoxication" means physical or mental impairment resulting from the introduction into the body of:

(A) an alcoholic beverage, as that term is defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as those terms are defined by the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes);

(C) a dangerous drug, as defined by Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes);

(D) an abusable glue or aerosol paint, as defined by Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes); or

(E) any similar substance, the use of which is regulated under state law.

(25) "Legal beneficiary" means a spouse, child, grandchild, or other relative of a deceased employee who is eligible to receive benefits under this Act.

(26) "Maximum medical improvement" means the point after which further recovery from, or lasting improvement to, an injury can no longer reasonably be anticipated, based on reasonable medical probability.

(27) "Medical benefits" means the provision of health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational diseases before the employee knew or should have known the nature of the disability and its relationship to the employment; or

(B) promote recovery.

(28) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. The term includes other diseases or infections that naturally result from the work related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is a reasonable incident to a compensable injury or occupational disease.

(29) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership,

association, or other legal entity.

(30) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise in the course and scope of employment.

(31) "Settlement" means a final resolution of all the issues in a workers' compensation claim agreement.

(32) "Wages" includes every form of remuneration payable for a given period to an employee for personal services. The term includes salaries, commissions, vacation pay, dismissal wages, and the reasonable value of board, rent, housing, payments in kind, tips, and any other similar advantage received from or with respect to work performed for an employer.

(33) "Workers' compensation insurance coverage" includes coverage obtained through self-insurance.

ARTICLE 2. TEXAS WORKERS' COMPENSATION BOARD

SECTION 2.01. BOARD. (a) The Texas Workers' Compensation Board is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(c) A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

SECTION 2.02. APPLICATION OF SUNSET ACT. The board is subject to the Texas Sunset Act (Chapter 325, Government Code).

Unless continued in existence as provided by that Act, the board is abolished and this Act expires September 1, 2001.

SECTION 2.03. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A person is not eligible for appointment as a member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care or insurance;

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

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

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than remuneration or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An officer, employee, or paid consultant of an employer oriented association, a labor oriented association, or a Texas trade association in the field of law, health care, or insurance may not be a member of the board or an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of an employer oriented association, a labor oriented association, or a Texas trade association in the field of law, health care, or insurance may not be a board member and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for remuneration on behalf of a profession related to the operation of the board.

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

SECTION 2.04. TERMS; VACANCY. (a) Members of the board hold office for staggered terms of six years. Three members' terms expire February 1 of each odd-numbered year.

(b) If a vacancy occurs during a term, the governor shall appoint a replacement to fill the unexpired part of the term.

SECTION 2.05. CHAIRMAN. The board shall elect one of its members to serve as chairman for a term of two years. The chairman may vote on all matters before the board.

SECTION 2.06. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by Section 2.03 of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or incapacity; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

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

(c) If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 2.07. REMUNERATION. A member of the board may not receive remuneration for serving on the board. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the board, not to

exceed any limit established in the General Appropriations Act.

SECTION 2.08. MEETINGS. (a) The board shall meet at least once in each quarter of the calendar year.

(b) The board may meet at other times at the call of the chairman or as provided by the rules of the board.

SECTION 2.09. EXECUTIVE DIRECTOR; PERSONNEL. (a) The board shall appoint an executive director to administer this Act in accordance with the policies set by the board. The board shall organize the board's personnel into the administrative divisions the board determines necessary, which must include the divisions established by this Act. The board shall appoint the directors of the various divisions of the board. Appointments for the positions of executive director of the board and director of the hearings division must be made from nominees of the advisory council as provided by Section 3.02 of this Act. The executive director or the executive director's designee shall hire the other employees of the board.

(b) The executive director shall hire persons to conduct benefit review conferences and contested case hearings under this Act. The executive director shall determine reasonable qualifications for benefit review officers, who are not required to be licensed to practice law, and for hearings officers who conduct contested case hearings, who must be licensed to practice law in this state. The executive director also shall hire qualified persons licensed to practice law in this state to serve on agency appeals panels under Section 6.01(b) of this Act.

(c) The executive director or the executive director's

1 designee shall develop an intra-agency career ladder program. The
2 program shall require intra-agency postings of all nonentry level
3 positions concurrently with any public posting.
4 (d) The executive director or the executive director's
5 designee shall develop a system of annual performance evaluations.
6 All merit pay for board employees must be based on the system
7 established under this subsection.
8 (e) The executive director or the executive director's
9 designee shall prepare and maintain a written policy statement to
10 assure implementation of a program of equal employment opportunity
11 under which all personnel transactions are made without regard to
12 race, color, handicap, sex, religion, age, or national origin. The
13 policy statement must include:
14 (1) personnel policies, including policies related to
15 recruitment, evaluation, selection, appointment, training, and
16 promotion of personnel;
17 (2) a comprehensive analysis of the board's work force
18 that meets federal and state guidelines;
19 (3) procedures by which a determination can be made of
20 significant underuse in the board's work force of all persons for
21 whom federal or state guidelines encourage a more equitable
22 balance; and
23 (4) reasonable methods to appropriately address those
24 areas of significant underuse.
25 (f) A policy statement prepared under Subsection (e) of this
26 section must cover an annual period, be updated at least annually,
27 and be filed with the governor's office.

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

SECTION 2.10. GENERAL POWERS AND DUTIES OF BOARD. (a) The board may adopt rules as necessary for the implementation and enforcement of this Act.

(b) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board. The agency is composed of the board, the executive director, and the professional, technical, and clerical personnel appointed by the board or employed by the executive director.

(d) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(e) The board may accept gifts, grants, or donations as provided by rules adopted by the board.

SECTION 2.11. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

(a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board shall keep an information file about each written complaint filed with the board that is unrelated to a specific workers' compensation claim. If such a complaint is filed with the board, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(c) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on issues under the general jurisdiction of the board.

(d) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental handicap may be provided reasonable access to workers' compensation benefits.

ARTICLE 3. ADVISORY COUNCIL

SECTION 3.01. COUNCIL. (a) The Labor-Business Advisory Council on Workers' Compensation is composed of six members appointed by the board. The board shall select the members of the advisory council from names presented to the board from labor organizations and organizations that represent the business community of this state.

(b) Advisory council members serve for staggered terms of six years, with the terms of two members expiring February 1 of each odd-numbered year. A member of the advisory council may not receive remuneration for serving on the council. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory council, not to exceed the limit established for state officers in the General Appropriations Act.

SECTION 3.02. COUNCIL POWERS AND DUTIES. (a) The advisory council shall:

(1) provide information to the labor and business communities relating to the operation of the workers' compensation system;

(2) monitor the performance of that system in the implementation of legislative directives and board policies; and

(3) advise the board of any necessary changes to that system.

(b) The advisory council shall make recommendations and comments to the board relating to the adoption of board rules and policies and may draft proposed rules for the consideration of the board. The board shall cooperate with the advisory council and shall provide information and staff support as reasonably necessary and required by the advisory council.

(c) The advisory council shall develop a list of at least four nominees for the position of executive director of the board and for the position of the director of the hearings division of the board. To be included on the list, a nominee must receive the

support of not less than a majority of the membership of the advisory council.

(d) The advisory council shall make recommendations to the Texas Workers' Compensation Insurance Research Center on a periodic basis relating to the research agenda of that center.

ARTICLE 4. WORKERS' COMPENSATION COVERAGE

SECTION 4.01. VOLUNTARY COVERAGE; EMPLOYER ELECTION. (a) An employer may elect to obtain workers' compensation insurance coverage. Except for public employers covered under other law, an employer who elects to become a covered employer may obtain coverage through a licensed insurance carrier or through self-insurance as provided by Article 10 of this Act. An employer who elects to obtain coverage is subject to the provisions of this Act.

(b) An employer who does not elect to obtain coverage must notify the board in writing, as prescribed by board rule, that the person does not elect to obtain coverage. The board may prescribe forms to be used for the employer notification and may require the employer to provide reasonable information to the board about the nature of the employer's business.

(c) An employer shall notify each employee in writing as to whether or not the employer has workers' compensation insurance coverage. The employer shall notify a new employee at the time the employee is hired. A covered employer shall notify all employees at least annually. An employer who does not have workers' compensation coverage shall notify each employee individually at least semiannually and shall include in the notice a statement

prescribed by the board that explains to the employee the consequences of the employer's lack of coverage.

SECTION 4.02. EMPLOYEE ELECTION; WAIVER OF RIGHT TO COMPENSATION VOID. (a) Except as otherwise provided by this Act, unless the employee gives notice as provided by Subsection (b) of this section, an employee of a covered employer waives the employee's right of action at common law or under any statute of this state to recover damages for personal injuries or death sustained in the course of the employment.

(b) An employee who desires to retain the employee's right of action to recover those damages shall notify the employer in writing that the employee does not want to be covered under this Act and retains all rights of action. The employee shall notify the employer not later than the fifth day after the date the employee begins the employment. If the employer is not a covered employer at the time of the employment but later obtains workers' compensation insurance coverage, to retain the right of action the employee must notify the employer not later than the fifth day after the date on which the employee receives notice from the employer that the employer has obtained the coverage.

(c) An employee of a covered employer who elects to retain the right of action, and the legal beneficiaries of that employee, may bring a cause of action for damages for injuries sustained in the course of the employment under common law or under a statute of this state. Notwithstanding Section 4.03 of this Act, the cause of action is subject to all defenses available under the common law and the statutes of this state.

(d) An employee of a covered employer who does not elect to retain the right of action may not waive the employee's right to compensation under this Act.

SECTION 4.03. COMMON LAW DEFENSES. (a) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) The employer may defend the action on the ground that the injury was caused by an intentional act of the employee to bring about the injury or while the employee was in a state of intoxication.

SECTION 4.04. GENERAL APPLICATION; EXCEPTIONS. (a) This Act applies to actions to recover damages for personal injuries or death sustained by employees whose employers have workers' compensation insurance coverage.

(b) An employee is not entitled to benefits under this Act based on an injury that was caused by an intentional act of the employee to bring about injury or that occurred while the employee was in a state of intoxication.

(c) The following employees are not covered by this Act:

(1) domestic servants;

(2) casual employees engaged in employment incidental to a personal residence;

(3) except as provided by Section 4.05 of this Act, farm or ranch employees; or

(4) an employee covered by a method of compensation established under federal law.

(d) An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees otherwise exempted from coverage under Subsection (c) of this section. Self-insurance or purchase by the employer of workers' compensation insurance applicable to that employee or classification of employees constitutes acceptance by the employer and employee of the rights and responsibilities imposed under this Act as of the effective date of the certificate of authority to self-insure or the insurance policy and as long as the certificate or policy remains in effect. An employer who does not obtain coverage for exempt employees is not deprived of the common law defenses listed under Section 4.03 of this Act.

SECTION 4.05. APPLICATION TO FARM OR RANCH EMPLOYEES. (a) This Act applies to actions to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker covered by Subsection (b) of this section; or

(3) employed by an employer with a gross annual payroll for the preceding year in the amount provided by Subsection

(c) of this section.

(b) To be covered by this Act, a farm or ranch employee who is a seasonal worker must be employed on a truck farm, orchard, or vineyard or employed by an employer with a gross annual payroll for the preceding year in an amount provided by this subsection. The preceding year's gross annual payroll must be equal to or exceed the prior year's required payroll adjusted for inflation, but not less than $25,000. To adjust for inflation, the comptroller of public accounts shall develop a consumer price index for this state. The comptroller shall certify the applicable index factor to the board before October 1 of each year. The board shall adjust the gross annual payroll requirement accordingly. A seasonal worker is covered by this law as if the seasonal worker were a migrant worker if:

(1) the seasonal worker is working for a farmer, ranch operator, or labor agent who employs migrant workers; and

(2) the seasonal worker is doing the same work at the same time at the same location as migrant workers.

(c) To be covered by this law, a farm or ranch employee other than a migrant or seasonal worker must:

(1) for the years before 1991, be employed by an employer with a gross annual payroll for the preceding year of at least $50,000; and

(2) for 1991 and thereafter, be employed by an employer:

(A) with a gross annual payroll in the amount required for coverage of seasonal workers under Subsection (b) of

1 this section; or

2 (B) who employs three or more farm or ranch

3 employees other than migrant or seasonal workers.

4 (d) For purposes of Subsections (b) and (c) of this section,

5 the gross annual payroll of an employer includes any amount paid by

6 the employer to a labor agent for that agent's services and for the

7 services of migrant or seasonal workers, but does not include:

8 (1) wages paid to the employer or a member of the

9 employer's family, if the employer is a sole proprietor;

10 (2) wages paid to a partner or a member of a partner's

11 family, if the employer is a partnership; or

12 (3) wages paid to a shareholder or a member of a

13 shareholder's family, if the employer is a corporation in which all

14 shareholders are family members.

15 (e) If a labor agent furnishes migrant or seasonal workers,

16 the labor agent is liable under this law as if the labor agent were

17 the employer of the workers, without regard to the right of control

18 or other factors used to determine an employer-employee

19 relationship. However, if the labor agent is not a covered

20 employer, the person with whom the labor agent contracts for the

21 services of the migrant or seasonal workers is jointly and

22 severally liable with the labor agent in an action to recover

23 damages for personal injuries or death suffered by any of the

24 migrant or seasonal workers as provided by this Act. For that

25 purpose, the migrant or seasonal workers are considered the

26 employees of the person with whom the labor agent contracts, and

27 that person may obtain workers' compensation insurance coverage for

1 those workers as provided by this Act.

2 (f) A labor agent must notify each person with whom the
3 agent contracts of whether or not the agent is a covered employer.
4 If the agent is a covered employer, the agent must present evidence
5 of the workers' compensation insurance coverage to each person with
6 whom the agent contracts.

7 (g) If migrant or seasonal workers are covered by workers'
8 compensation insurance, the person with whom the labor agent
9 contracts is not liable in a separate action for injury or death
10 except to the extent provided by this Act.

11 (h) A person who subscribes to a workers' compensation
12 insurance policy covering farm or ranch employees may cover
13 himself, a partner, a corporate officer, or a family member in that
14 policy. The insurance policy must specifically name the individual
15 to be covered, and the elected coverage continues while the policy
16 is in effect and the named individual is endorsed on the policy. A
17 member of an employer's family is exempt from coverage under the
18 policy unless covered voluntarily as provided by this section.

19 (i) In this section:

20 (1) "Agricultural labor" means the planting,
21 cultivating, or harvesting of an agricultural or horticultural
22 commodity in its unmanufactured state.

23 (2) "Family" means persons related within the third
24 degree by consanguinity or affinity.

25 (3) "Labor agent" means a person who:

26 (A) is a farm labor contractor for purposes of
27 the federal Migrant and Seasonal Agricultural Worker Protection Act

(29 U.S.C.A. Sec. 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who labor for the benefit of a third party.

(4) "Migrant worker" means an individual who is employed in agricultural labor of a seasonal or temporary nature and who is required to be absent overnight from the worker's permanent place of residence.

(5) "Person" means an individual, corporation, or association.

(6) "Seasonal worker" means an individual who is employed in agricultural or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from the worker's permanent place of residence.

(7) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

(j) This section does not affect the application or interpretation of this Act as it relates to persons engaged in activities previously determined not to be farm or ranch labor.

(k) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this section is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of a person acting as an independent contractor. For the purposes of this section,

"independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of that employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

ARTICLE 5. BENEFITS

CHAPTER A. GENERAL PROVISIONS

SECTION 5.01. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b) of this section, a recovery of workers' compensation benefits under this Act is the exclusive remedy of an employee or legal beneficiary against the employer for a work related injury sustained by a covered employee.

(b) This section does not prohibit the recovery of exemplary damages by the legal beneficiaries of a deceased employee whose death was caused by an intentional act or omission of the employer, or by the employer's gross negligence. For the purposes of this section, "gross negligence" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

1 SECTION 5.02. EXEMPT FROM LEGAL PROCESS; ASSIGNABILITY. (a)
2 Benefits received under this Act are exempt from garnishment,
3 attachment, judgment, and other actions or claims.
4 (b) Except as provided by Subsection (c) of this section,
5 benefits are not assignable.
6 (c) A legal beneficiary may assign the right to death
7 benefits if the assignment is executed not later than six months
8 after the date on which the right to the death benefits is
9 established.
10 SECTION 5.03. CLAIMS. (a) Except as provided by board
11 rule, benefits are not subject to any lien or other claim. The
12 board may allow as a lien or claim against benefits:
13 (1) a fee for representing an employee;
14 (2) court ordered child support; or
15 (3) a subrogation interest established under this Act.
16 (b) The board by rule shall establish the priority of liens
17 and claims authorized under this section.
18 SECTION 5.04. NOTICE OF INJURY TO EMPLOYER. (a) An
19 employee who sustains a work related injury shall notify the
20 employer in writing not later than the 30th day after the date on
21 which the injury occurs. If the injury is an occupational disease,
22 the employee shall notify the employer not later than the 30th day
23 after the date on which the disease is first diagnosed as possibly
24 work related.
25 (b) An employee's failure to notify the employer as required
26 under Subsection (a) of this section relieves the employer and the
27 employer's insurance carrier of liability under this Act unless:

(1) the employer or carrier has actual knowledge of the injury;

(2) the board determines that good cause exists for failure to give notice in a timely manner; or

(3) the employer or carrier does not contest the claim.

SECTION 5.05. EMPLOYER RECORD. (a) Each employer shall maintain a record of all employee injuries reported by an employee or otherwise made known to the employer. Maintenance of a record as required by this section does not constitute an admission by the employer that the injury did occur or that any fact reported in the record is true.

(b) The employer shall allow the board reasonable access to the record.

(c) The board may adopt rules relating to the information that must be contained in an employer record.

SECTION 5.06. SPECIFIC RIGHTS OF EMPLOYER. (a) An employer may contest the compensability of an injury even if the insurance carrier has initiated payments to the claimant or has otherwise accepted liability for payment of the benefits as provided under Section 5.09(a) of this Act. An employer who desires to contest liability must request a benefit review conference under Section 6.02 of this Act on the issue of the compensability of the injury not later than the 30th day after the date on which the carrier accepts liability.

(b) The resolution of a dispute as to compensability is separate from the processing of the claim by the carrier, who may

not suspend the payment of benefits based on the employer's action.

(c) If the board determines that the injury was not compensable, the insurance carrier shall expunge the claim from the employer's loss records and shall reimburse the employer for the costs incurred by the employer in disputing the claim. The carrier may not reflect the loss or the expense of the claim in any information compiled for ratemaking purposes, and the State Board of Insurance may not consider those losses or expenses in establishing rates.

(d) An employer is entitled to notification of any benefit review conference, contested case hearing, or review by an agency appeals panel relating to a compensable injury incurred by an employee of that employer.

SECTION 5.07. EMPLOYER REPORT. (a) If an injury results in the absence of the employee from work for more than one day, the employer shall file a written report with the board and the insurance carrier not later than the eighth day after the last day on which the injured employee was at work.

(b) The report must include:

(1) the name and business address of the employer;

(2) a description of the nature of the employer's business;

(3) the name, age, and sex of the injured employee;

(4) the occupation of the employee;

(5) the date and time of the injury or date of the first distinct manifestation of an occupational disease;

(6) the nature and cause of the injury or disease; and

(7) any other information required by board rule.

(c) A report filed under this section does not constitute an admission by the employer of any information contained in the report.

(d) On receipt of the employer report, the board shall provide the employee with a written statement that briefly describes the procedures relating to workers' compensation benefits. The statement must include:

(1) the name of the board;

(2) the address of the board's main administrative office;

(3) the telephone number of a board office to call for assistance;

(4) a description of the services provided by the board; and

(5) a brief description of an employee's rights and responsibilities under this Act.

SECTION 5.08. VOCATIONAL REHABILITATION REFERRAL. (a) The board shall analyze each report of injury received under Section 5.07 of this Act to determine if the injured employee would be assisted by vocational rehabilitation. If the board determines that the injured employee would be assisted, the board shall notify the injured employee in writing of the services and facilities available through the Texas Rehabilitation Commission and shall notify that commission about the injured employee.

(b) The board shall cooperate with the Texas Rehabilitation Commission in the provision of services and facilities to employees

by that commission.

SECTION 5.09. INITIATION OF COMPENSATION; CARRIER'S REFUSAL. (a) An insurance carrier obligated to pay compensation under this Act shall pay promptly. If the carrier does not contest compensability of the injury on or before the 60th day after the date on which the carrier is notified of the injury, the carrier waives its right to contest the compensability. The initiation of payments by a carrier does not affect the right of the carrier to continue to investigate the compensability of the injury during the 60-day period. If the carrier does not initiate payment or file a notice of refusal in a timely manner as required by this Act, the carrier waives the right to contest the compensability of the injury under this Act. The carrier shall notify the board in writing of the initiation of payments in the manner prescribed by board rules.

(b) Not later than the 14th day after the date on which the insurance carrier is notified of the injury, the carrier either shall begin the payment of benefits as required under this Act or shall notify the board, the employer, and the employee in writing of its refusal to pay. A notice of refusal to pay must include a request for a benefit review conference under Section 6.02 of this Act.

(c) The carrier's notice must specify the grounds for the refusal. The grounds specified in the notice constitute the only basis for the carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered

1 at an earlier date.

2 SECTION 5.10. SUBROGATION. (a) If a third party is liable
3 to pay damages for an injury that is compensable under this Act,
4 the employee or legal beneficiary may seek damages from the third
5 party. An employee or legal beneficiary who seeks damages from a
6 third party remains entitled to pursue a claim for workers'
7 compensation benefits under this Act.

8 (b) An insurance carrier that is liable for the payment of
9 benefits to that employee is subrogated to the rights of the
10 employee or legal beneficiary against the third party.

11 (c) If a state special fund is liable for the payment of the
12 benefits, the board is subrogated to the rights of the employee or
13 legal beneficiary against the third party.

14 (d) If an employee or legal beneficiary recovers damages
15 from a third party, any benefits recovered by the employee or
16 beneficiary under this Act shall be offset by the amount of damages
17 recovered from the third party.

18 SECTION 5.11. SURVIVAL OF CAUSE OF ACTION. A right of
19 action survives in a case based on a compensable injury that
20 results in the employee's death.

21 [Sections 5.12-5.20 reserved for expansion]

22 CHAPTER B. MEDICAL BENEFITS

23 SECTION 5.21. ENTITLEMENT TO MEDICAL BENEFITS. (a) An
24 injured employee is entitled to all health care reasonably required
25 by the nature of the injury. The employee is specifically entitled
26 to health care that:

27 (1) relieves pain;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

(b) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

SECTION 5.22. CHOICE OF HEALTH CARE PROVIDER; EFFECT OF EMPLOYEE NONCOMPLIANCE. (a) The employee is entitled to the employee's initial choice of health care provider. An initial choice of a health care provider made by the employer or the insurance carrier, or medical treatment provided to an injured employee in an emergency situation, does not constitute the employee's choice for purposes of this section.

(b) A subsequent choice of health care provider by the employee is subject to the approval of the insurance carrier. The denial of approval by the insurance carrier of the employee's subsequent choice of health care provider is subject to review by the board.

(c) A referral made by the employee's initial choice of health care provider that is medically reasonable or necessary does not constitute a change in the employee's initial choice for the purposes of this section and is not subject to the approval of the insurance carrier.

(d) Except as otherwise provided by this Act, the board, after notice and hearing, may relieve an insurance carrier of liability for medical benefits furnished by a health care provider or other person that is selected by an employee in a manner inconsistent with the requirements of this section.

(e) The limitations imposed by this section do not apply:

(1) if surgical or other procedures require ancillary medical services; or

(2) when the employee desires a second opinion on the appropriateness of the diagnosis or treatment.

SECTION 5.23. REPORTS BY HEALTH CARE PROVIDER. The board by rule shall adopt reasonable requirements for reports required to be filed with the board by health care providers.

SECTION 5.24. BURDEN OF PROOF FOR CONTINUING MEDICAL BENEFITS. If, for two consecutive years, an employee does not receive health care for a compensable injury, whether or not paid for by the insurance carrier, the employee has the burden of proof to establish that any additional medical care is required and directly related to the compensable injury.

SECTION 5.25. REQUIRED MEDICAL PROCEDURES; AUTOPSY. (a) To resolve a medical dispute in a claim, a benefit review officer or hearings officer may require an employee to submit to a medical examination, including an examination by a designated physician, or to obtain health care considered reasonably necessary. Surgery may be required only if, based on reasonable medical evidence, the surgery will substantially improve the condition of the employee.

(b) After notice and hearing, a benefit review officer or hearings officer may order the legal beneficiaries of a deceased employee to permit an autopsy. A legal beneficiary is entitled to have a representative present at an autopsy ordered under this section.

(c) The board may require the insurance carrier to pay the

costs of a procedure required under this section.

(d) If a person fails or refuses to comply with a procedure ordered under this section, the board, after notice and hearing and for as long as the person remains out of compliance, may deny the person access to further proceedings before the board and may order the carrier to suspend or reduce income or death benefits.

SECTION 5.26. REQUIRED MEDICAL EXAMINATIONS. (a) The board may require the employee to submit to medical examinations if there is a dispute about the appropriateness of the health care received by the employee, the disability of the employee, the percentage of impairment caused by the compensable injury, or analogous issues.

(b) The insurance carrier may require the employee to submit to medical examinations conducted by a health care provider chosen by the carrier.

(c) The board shall adopt rules regulating the actions of the carrier under this section and establishing reasonable compliance requirements for employees.

(d) The employee is entitled to have a health care provider of the employee's choice present at the carrier's expense at an examination required by the insurance carrier.

SECTION 5.27. COMPENSABILITY OF HEART ATTACKS. A heart attack is a compensable injury under this Act only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and

(B) caused by a specific event;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than

the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors.

[Sections 5.28-5.40 reserved for expansion]

CHAPTER C. INCOME BENEFITS

SECTION 5.41. INCOME BENEFITS; DETERMINATION BY BOARD. (a) An employee is entitled to income benefits to compensate the employee for impairment or disability caused by the injury.

(b) Except as otherwise provided by this Act, income benefits shall be paid on a weekly basis. Entitlement to income benefits under this chapter terminates on the death of the employee.

(c) The board shall adopt rules and guidelines for the determination of the existence and degree of an employee's impairment or disability. An employee's impairment rating is based on the percentage of physical impairment caused by the injury, modified to reflect the effects that the employee's age, education, and work experience may have on the employee's ability to obtain or retain substantial gainful employment. Modifications must be based on objective criteria. The board by rule shall adopt formulas relating to modifications of impairment for the purposes of this Act. All determinations of impairment and disability must be made in accordance with the rules, guidelines, and formulas adopted by the board.

SECTION 5.42. TEMPORARY DISABILITY INCOME BENEFITS. (a) An employee who is totally or partially disabled by a compensable

injury is entitled to temporary disability income benefits beginning on the eighth day of disability. On the initiation of compensation as provided under Section 5.09(b), the insurance carrier shall pay temporary disability income benefits as provided by this section.

(b) Temporary disability income benefits continue until the earlier of:

(1) the employee reaching maximum medical improvement; or

(2) the expiration of 401 weeks.

(c) Except as provided by Subsection (e) of this section, temporary disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 5.48 of this Act.

(d) If the disability continues for at least 28 days, the employee is also entitled to temporary disability income benefits for the first seven days of disability.

(e) An employee who returns to work or is offered a position of employment by the employer that the employee is capable of performing, but who has not reached maximum medical improvement, is entitled to temporary disability income benefits at the rate of 66-2/3 percent of the difference between the employee's average weekly wage and the average weekly earnings in the position that the employee is performing or has been offered.

SECTION 5.43. IMPAIRMENT INCOME BENEFITS. (a) After the employee has been certified by a physician as having reached maximum medical improvement, the certifying physician shall

evaluate the condition of the employee, using the guidelines adopted by the board, to determine the percentage of impairment caused to the employee by the injury. If the certification and evaluation are performed by a physician other than the employee's treating physician, the treating physician must concur in the determination. The certifying physician shall issue a written report to the insurance carrier certifying that maximum medical improvement has been reached and stating the percentage of impairment. The insurance carrier shall pay the employee impairment income benefits based on that percentage of impairment as modified under Section 5.41(c) or, if the carrier disputes the percentage of impairment, based on its assessment of the correct percentage.

(b) An employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement and continues until the earliest of:

(1) the death of the employee;

(2) the expiration of a period computed at the rate of four weeks for each percentage point of impairment as modified under Section 5.41 of this Act, but not to exceed 300 weeks; or

(3) the expiration of 401 weeks of receipt of all income benefits combined.

(c) The insurance carrier shall begin to pay the impairment income benefits not later than the fifth day after the date on which the carrier receives the physician's report.

(d) If the percentage of impairment is disputed, the board shall direct the employee to be examined by a designated physician

selected by the mutual agreement of the parties. If the parties are unable to agree on a designated physician, the board may direct the employee to be examined by a designated physician selected by the board. The designated physician shall report to the board in writing. The board shall base the award of impairment income benefits on the report of the designated physician.

(e) Impairment income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 5.48 of this Act.

SECTION 5.44. EXTENDED DISABILITY INCOME BENEFITS. (a) During the period that impairment income benefits are paid, the insurance carrier shall file written reports with the board that specify the employment status of the employee at six-month intervals and as of the 60th day before the date on which the impairment income benefits are scheduled to end. The board may order any evaluations of the employee considered necessary by the board to determine:

(1) the employee's ability to perform the functions reasonably required for employment; and

(2) the reasons for any extended unemployment.

(b) An employee is eligible for consideration for an extension of income benefits as provided by this section if the employee:

(1) as of the date of the payment of the final weekly impairment income benefit and because of continued disability has:

(A) not returned to employment; or

(B) returned to employment at not more than 30

percent of the employee's pre-injury wage; and

(2) has been eligible for and has received impairment income benefits for at least 104 weeks.

(c) The board may order the payment of extended disability income benefits to an employee determined by the board to meet the requirements imposed under Subsection (b) of this section. The board may order an initial payment of extended disability income benefits for a period not to exceed 52 weeks. At the expiration of each 52-week period thereafter, the board shall reevaluate the condition of the employee and may order the continued payment of extended disability income benefits for an additional 52-week period until the combined duration of the temporary disability income benefits, the impairment income benefits, and the extended disability income benefits received by that employee equals 600 weeks.

(d) Extended disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 5.48 of this Act.

SECTION 5.45. LIFETIME DISABILITY INCOME BENEFITS. Income benefits for disability shall be paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss or loss of use of both feet at or above the ankle;

(3) loss or loss of use of both hands at or above the wrist;

(4) loss or loss of use of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

(6) an injury to the skull resulting in incurable mental illness or mental retardation.

SECTION 5.46. ADVANCE OF BENEFITS BASED ON HARDSHIP. (a) The board may grant an employee who is suffering financial hardship advances against the amount of impairment income benefits to which the employee is entitled as provided by this section.

(b) An employee who desires an advance shall apply to the board on a form prescribed by the board describing the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the state average weekly wage as determined by the Texas Employment Commission. The board may not grant more than two advances to a particular employee based on the same injury.

SECTION 5.47. AVERAGE WEEKLY WAGE. (a) Except as otherwise provided by this section, the average weekly wage of an employee shall be computed as of the date of the compensable injury and equals the quotient of the amount of wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13.

(b) If the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, or if the wage at the time of injury has not been fixed or cannot be determined, the average weekly wage equals the usual wage that the employer pays a

similar employee for similar services or that are paid in that vicinity for the same or similar services provided for remuneration.

(c) In this subsection, "part-time employee" means an employee who, at the time of the compensable injury, was working less than the full-time hours or full-time workweek of a similar employee in the same employment, whether for the same or a different employer. The average weekly wage of a part-time employee who has voluntarily elected to limit the employee's work to part-time employment as a regular course of that employee's conduct shall be computed as provided by Subsections (a) and (b) of this section. For all other part-time employees, the average weekly wage shall be computed for the purpose of determining impairment income benefits, extended disability income benefits, lifetime income benefits, and death benefits as follows:

(1) if the employee has worked for the employer for at least 13 weeks immediately preceding the compensable injury, the average weekly wage equals the quotient of the amount of wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13 and adjusted to the weekly wage level the employee would have attained by working a 40-hour week at the same rate of pay; and

(2) if the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, the average weekly wage equals the weekly wage that the employer pays a similar employee for similar services in full-time employment or that are paid in that vicinity for the same or similar services provided for

compensation in full-time employment.

(d) In this subsection, "seasonal employee" means an employee who, as a regular course of that employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year. The average weekly wage of a seasonal employee shall be computed for the purpose of determining temporary disability income benefits as provided by Subsections (a) and (b) of this section, adjusted to reflect the wages the employee could reasonably have expected to earn during the period of temporary disability. The average weekly wage of a seasonal employee shall be computed for the purpose of determining impairment income benefits, extended disability income benefits, lifetime income benefits, or death benefits by dividing the amount of total wages earned by the employee during the 12 months immediately preceding the injury by 50.

(e) The average weekly wage for an employee who is a minor, apprentice, trainee, or student at the time of the injury, whose employment or earnings at the time of the injury are limited primarily because of apprenticeship, continuing formal training, or education intended to enhance the employee's future wages, and whose wages would reasonably be expected to change, based on a change of employment during the period in which impairment income benefits, extended disability income benefits, lifetime income benefits, or death benefits are payable, shall be adjusted to reflect the level of expected wages during that period for the purpose of computing those benefits. The adjustment shall not consider expected wage levels for a period occurring more than

three years after the date of the injury.

(f) To expedite the payment of income benefits, the board may adopt rules establishing a presumption that the employee's last paycheck accurately reflects the employee's usual wage, or establishing other reasonable presumptions relating to the wages earned by an employee.

(g) If the methods adopted under Subsections (a) and (b) of this section cannot be applied, the board may determine the employee's average weekly wage by any method that it considers fair, reasonable, and consistent with the methods established under this section.

SECTION 5.48. MAXIMUM WEEKLY BENEFITS. (a) The maximum weekly benefit for temporary disability income benefits or lifetime disability income benefits is 100 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission. The maximum weekly benefit for extended disability income benefits is 66-2/3 percent of that average weekly wage.

(b) The maximum weekly benefit for impairment income benefits is 75 percent of the maximum weekly benefit for temporary disability income benefits.

(c) The board shall determine the maximum weekly income benefit for the succeeding fiscal year not later than September 1 of each year. The board shall round the maximum to the nearest whole dollar.

(d) The maximum weekly benefit in effect on the date of the injury is applicable for the entire period during which income

1 benefits are payable.

2 SECTION 5.49. CONTRIBUTING INJURY. (a) On the written
3 request of the insurance carrier, the board may order that income
4 benefits for impairment be reduced to the extent of a documented
5 impairment that results from an earlier compensable injury
6 affecting the same body part.

7 (b) The board shall consider the cumulative impact of the
8 two injuries on the employee's overall impairment in determining a
9 reduction under this section.

10 (c) If the combination of the two injuries results in an
11 injury compensable under Section 5.45 of this Act, the benefits for
12 that injury shall be paid as provided by Section 5.65 of this Act.

13 SECTION 5.50. OFFSETS. (a) To ensure that the amount
14 received by an employee in benefits under multiple employer
15 sponsored disability benefit programs or public disability benefit
16 programs does not exceed the employee's net average weekly wage
17 before the injury, adjusted for inflation, the board may order, on
18 a written request from the insurance carrier, that impairment
19 income benefits or extended disability income benefits be reduced
20 to the extent that the employee receives:

21 (1) board approved disability benefits for the injury
22 from a source other than workers' compensation or social security;
23 or

24 (2) social security retirement benefits.

25 (b) A reduction under this section is calculated on the
26 after-tax value of the workers' compensation benefits and the
27 offsetting benefits.

(c) An offset under this section does not reduce or eliminate a carrier's liability for continuing medical benefits.

(d) The board may not order a reduction under this section based on a disability program to which the employee has contributed.

SECTION 5.51. COMMUTING OF IMPAIRMENT INCOME BENEFITS. (a) Impairment income benefits may be commuted as provided by this section. Only impairment income benefits may be commuted. A commutation of impairment income benefits must be approved by the board.

(b) The parties may agree to a commutation of impairment income benefits if the employee:

(1) has returned to substantial gainful employment and has worked for at least six months; and

(2) has not required or obtained medical treatment for the injury for at least three months.

(c) The parties shall reduce the commutation agreement to writing and shall submit the agreement to the board for its approval. The board shall approve the settlement if the board determines that the settlement meets the requirements established under Subsection (b) of this section and is in the best interest of the employee.

(d) Impairment income benefits that are commuted under this section are subject to discounting for present payment at four percent, compounded annually.

[Sections 5.52-5.60 reserved for expansion]

CHAPTER D. DEATH AND BURIAL BENEFITS

SECTION 5.61. DEATH BENEFITS. (a) The insurance carrier shall pay death benefits to the legal beneficiary of the employee if the compensable injury results in death. Death benefits shall be calculated in the same manner as impairment income benefits.

(b) A person must file a claim for death benefits with the board not later than one year after the date on which the employee died. A failure to file a timely claim for death benefits bars the claim unless:

(1) the claimant is a minor or legally incompetent; or

(2) the board determines that a good cause exists for the delay.

SECTION 5.62. DISTRIBUTION OF DEATH BENEFITS. (a) Death benefits shall be paid to the legal beneficiaries according to the priority established by this section.

(b) If there is no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is an eligible child or grandchild, half of the death benefits shall be paid to the eligible spouse, and half shall be paid in equal shares to the eligible children. If a child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(d) If the employee is not survived by an eligible spouse, child, or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, stepparent, sibling, or grandparent of the deceased. If more than one of those dependents

survives the deceased, the death benefits shall be divided among them in equal shares.

(e) If the employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 5.65 of this article.

(f) For the purposes of this section:

(1) "Eligible spouse" means the surviving spouse of the deceased employee unless the spouse abandoned the employee for more than one year immediately preceding the death without good cause, as determined by the board.

(2) "Eligible child" means a child of the deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age;

(C) because of a physical or mental handicap, a dependent of the deceased employee at the time of death; or

(D) a child who is otherwise a dependent of the deceased employee at the time of death.

(3) "Eligible grandchild" means a grandchild who is a dependent of the deceased employee if:

(A) the grandchild is a minor; and

(B) the grandchild's parent is not an eligible child.

SECTION 5.63. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by board rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive the benefits until the child attains the age of 18 years. If at age 18 the child is enrolled as a full-time student in an accredited educational institution, the child is entitled to continue to receive the benefits until the earliest of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(d) A child who is eligible for death benefits because the child on the date of the employee's death is enrolled as a full-time student in an accredited educational institution is entitled to receive the benefits until the earlier of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(e) A child who is eligible for death benefits because the child on the date of the employee's death is a handicapped dependent is entitled to receive the benefits until the earlier of:

(1) the date on which the child is no longer handicapped; or

(2) the date on which the child dies.

(f) A child who is otherwise eligible for death benefits as a dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the death of the child; or

(2) the expiration of 360 weeks of death benefit payments.

(g) An eligible grandchild is entitled to death benefits until the grandchild dies or ceases to be a minor.

(h) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

(1) the death of the beneficiary; or

(2) the expiration of 360 weeks of death benefit payments.

SECTION 5.64. BURIAL BENEFITS. (a) If death results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $2,500.

(b) The carrier shall also pay the reasonable cost of transporting the body if the employee died away from the usual place of employment, not to exceed the cost equivalent to transporting the body to the employee's usual place of employment.

SECTION 5.65. SUBSEQUENT INJURY FUND. (a) The subsequent

injury fund is created as a special fund in the state treasury.

(b) If a covered employee dies without a legal beneficiary, or no claims for death benefits are made in a timely manner, the insurance carrier shall pay to the board for deposit in the subsequent injury fund an amount equal to 360 weeks of the death benefits otherwise payable.

(c) If a subsequent compensable injury, together with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime disability income benefits under Section 5.45 of this Act, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund shall compensate the employee for the remainder of the benefits to which the employee is entitled under Section 5.45 of this Act.

ARTICLE 6. ADJUDICATION OF DISPUTES

SECTION 6.01. HEARINGS DIVISION; APPEALS PANEL. (a) The hearings division of the board shall conduct benefit review conferences and contested case hearings related to workers' compensation claims. A final decision made in a contested case hearing may be appealed by a party to the claim to an agency appeals panel as provided by Section 6.04 of this Act.

(b) An appeals panel is composed of three persons. Members of an appeals panel may not conduct benefit review conferences or contested case hearings. The board by rule shall provide for appeals hearings, which shall be conducted in Travis County.

SECTION 6.02. BENEFIT REVIEW CONFERENCES. (a) On receipt of a request from a party, the board may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) The board by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may proceed directly to a contested case hearing. Except as otherwise provided by law or board rule, unless a benefit review conference is conducted as provided by this section the parties are not entitled to a contested case hearing on the claim.

(c) A benefit review conference is a nonadversarial, informal, dispute resolution proceeding designed to:

(1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues; and

(3) mediate and resolve the dispute by mutual agreement of the parties in accordance with the purposes of this Act and the policies of the board.

(d) A claimant may request a benefit review conference at any time. An insurance carrier may request a benefit review conference to attempt to resolve any disputed issue related to the payment of benefits. An employer may request a benefit review conference only to contest compensability. An employer who elects

1 to request a benefit review conference must request the conference
2 not later than the 30th day after the date on which the insurance
3 carrier accepts the compensability of the injury. A party may be
4 represented at a benefit review conference by an attorney or other
5 representative designated by the party.
6 (e) A party that desires a benefit review conference must
7 file a written request for the conference with the board in the
8 form prescribed by the board. Unless the benefit review officer
9 determines that good cause exists for the selection of a different
10 location, a benefit review conference may not be conducted at a
11 site more than 75 miles from the claimant's residence.
12 (f) The board shall send written notice of the benefit
13 review conference to the parties to the claim and the employer. A
14 party who fails to attend the conference without good cause as
15 determined by the benefit review officer waives the right to a
16 contested case hearing on the claim.
17 (g) The benefit review officer shall assist in the
18 adjustment of the claim. The officer may not take testimony or
19 make a formal record. The officer shall assist in the resolution
20 of disputed issues consistent with the purposes of this Act and the
21 policies of the board. The officer may recommend to the director
22 of the hearings division approval or disapproval of any agreement
23 reached by the parties.
24 (h) A benefit review conference is not subject to:
25 (1) common law or statutory rules of evidence or
26 procedure; or
27 (2) the Administrative Procedure and Texas Register

Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement, or in a settlement, the benefit review officer shall reduce the agreed issues or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement. Except as otherwise provided by board rule, an agreement is binding as to the resolved issues and takes effect on the date signed. A settlement must be approved by the director of the hearings division and takes effect on the date it is approved by that director.

(j) If the dispute is not entirely resolved at the benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not settled at the conference. The report must include:

(1) a statement of each resolved issue;

(2) the officer's recommendations regarding the payment or denial of benefits;

(3) the officer's basis for those recommendations; and

(4) a statement of the procedures required to request a contested case hearing.

(k) The benefit review officer shall file the signed agreement or the report with the director of the hearings division not later than the seventh day after the date on which the benefit review conference is concluded. The division director shall furnish a copy of the report to the claimant, the employer, and the

1 insurance carrier not later than the seventh day after the receipt
2 of the report by the director.
3 SECTION 6.03. CONTESTED CASE HEARING. (a) A party to a
4 claim for which a benefit review conference is held or a party
5 eligible to proceed directly to a contested case hearing as
6 provided by Section 6.02(b) of this Act is entitled to a contested
7 case hearing. If a benefit review conference is held, the hearing
8 shall consider only the issues not resolved at the benefit review
9 conference. Unless the board determines that good cause exists for
10 a longer period, the party must request the hearing in writing not
11 later than the 45th day after the date on which the benefit review
12 conference report is sent to the party.
13 (b) A contested case hearing shall be conducted by a
14 division hearings officer but may not be conducted by the same
15 person who conducted a benefit review conference on the claim.
16 Except as otherwise provided by this section, the hearing shall be
17 conducted in accordance with Sections 13-15, Administrative
18 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
19 Civil Statutes). Unless the hearings officer determines that good
20 cause exists for the selection of a different location, a contested
21 case hearing may not be conducted at a site more than 75 miles from
22 the claimant's residence.
23 (c) The hearings officer shall issue a written decision that
24 includes findings of fact and conclusions of law and shall file the
25 decision with the division not later than the 15th day after the
26 date on which the hearing is concluded. The division shall notify
27 each party in writing of the decision not later than the seventh

day after the date on which the decision of the hearings officer is received by the division.

(d) The decision of the hearings officer is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal except as to nonessential medical services.

SECTION 6.04. REVIEW BY AGENCY APPEALS PANEL. (a) A party that desires to appeal the decision of the hearings officer shall file a written appeal request with the hearings division not later than the 30th day after the date on which the notice of the decision of the hearings officer is sent, and shall on the same date serve a copy of the appeal request on the other party. The respondent party shall file a written response with the division not later than the 30th day after the date on which the appeal request is served, and shall on the same date serve a copy of the response on the appellant party.

(b) An appeal request or response must clearly and concisely rebut or support the decision of the hearings officer and must cite statutes, case law, and evidence in support of the party's position.

(c) The division director shall assign the appeal to an appeals panel.

(d) The appeals panel shall consider:

(1) the record developed at the contested case hearing; and

(2) the written appeal and response filed with the division.

(e) The appeals panel may consider any new evidence

presented to the panel by a party and may allow oral argument.

(f) The appeals panel may:

(1) affirm the decision of the hearings officer;

(2) reverse that decision and render a new decision; or

(3) reverse that decision and remand the claim to the hearings officer for further consideration and development of evidence.

(g) The appeals panel shall issue its decision in writing not later than the 15th day after the date on which the appeal is heard by the panel and shall file a copy of the decision with the division director.

(h) The decision of the appeals panel is final in the absence of a timely appeal by a party for judicial review and is binding during the pendency of an appeal.

SECTION 6.05. JUDICIAL REVIEW. (a) A party who has exhausted all administrative remedies available under this article and who is aggrieved by a final decision of an agency appeals panel is entitled to seek judicial review under this section.

(b) Proceedings for judicial review are instituted by filing a petition not later than the 30th day after the date on which the final decision of the appeals panel is filed with the division director. The petition must be filed in district court in the county where the employee resides or where the injury occurred. A copy of the petition must be served on the board and on all parties of record in the proceedings before the appeals panel.

(c) Except as otherwise provided by this section, judicial

review shall be conducted in the manner provided for judicial review of a contested case under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) Judicial review conducted under this article is governed by the substantial evidence rule.

SECTION 6.06. CONTINUATION OF BOARD JURISDICTION. The board retains jurisdiction of a workers' compensation claim during an appeal of a ruling on any disputed issue relating to the claim.

SECTION 6.07. EXPEDITED PROCEDURES. The board by rule shall provide for expedited benefit review conferences, contested case hearings, or review by an agency appeals panel in cases in which compensability is in dispute.

ARTICLE 7. ISSUES RELATED TO
HEALTH CARE PROVIDERS; MEDICAL REVIEW

SECTION 7.01. GUIDELINES; MEDICAL REVIEW DIVISION. (a) The board shall adopt rules relating to the use of medical services by employees who suffer compensable injuries and the fees charged for those services.

(b) All fees for medical services provided under this Act must be fair and reasonable and may not exceed the fees charged for similar treatment of an injured individual of an equivalent standard of living when the fees for the treatment are paid by the injured individual or someone acting on the injured individual's behalf. To facilitate that fairness, the rules adopted by the board shall include:

(1) guidelines relating to reasonable fees or ranges

1 of reasonable fees for specific medical treatments or services;
2 (2) guidelines relating to necessary treatments or
3 ranges of treatments for specific injuries; and
4 (3) a program for systematic monitoring of fees
5 actually charged for medical treatments or services to ensure that
6 the guidelines are not exceeded.
7 (c) The board may contract with a health care provider
8 professional organization to develop, maintain, or review the
9 guidelines. The board may contract for that purpose only with an
10 organization that includes in the review process health care
11 practitioners who are licensed in the category under review.
12 (d) The medical review division of the board shall
13 administer the guidelines adopted by the board and perform other
14 duties as directed by the board.
15 (e) The division shall maintain a statewide data base of
16 medical charges and treatment protocols to be used by the board in
17 adopting the guidelines and by the division in administering the
18 guidelines.
19 (f) The division shall monitor health care providers and
20 workers' compensation claimants who receive medical services to
21 assure the compliance of those persons with the guidelines, as well
22 as with other rules adopted by the board relating to health care.
23 (g) The board by rule shall provide for the periodic review
24 of medical care provided in claims in which lost-time guidelines or
25 other appropriate guidelines are exceeded. The division shall
26 review the medical treatment provided in a claim that exceeds the
27 guidelines and may take appropriate action to assure that necessary

1 and reasonable care is provided.

2 (h) The division shall take appropriate action to be aware
3 of and maintain the most current information on developments in the
4 treatment and cure of injuries and diseases common in workers'
5 compensation cases.

6 (i) The board may contract with other public or private
7 entities to perform any of the duties or functions of the division.

8 (j) A fee that is within the range of fees for that specific
9 medical treatment or service is presumed to be reasonable. A
10 specific treatment or service that is included in a treatment
11 protocol is not presumed to be reasonable based only on its
12 inclusion in the protocol.

13 SECTION 7.02. SPECIAL ADVISORY COMMITTEES. (a) The
14 following special advisory committees are created to assist the
15 medical review division in administering the guidelines established
16 under Section 7.01 of this Act:

17 (1) the hospital care advisory committee;
18 (2) the medical care advisory committee;
19 (3) the osteopathic care advisory committee;
20 (4) the chiropractic care advisory committee;
21 (5) the podiatric care advisory committee;
22 (6) the physical therapy advisory committee; and
23 (7) the pharmaceutical advisory committee.

24 (b) Each committee is composed of nine members appointed by
25 the board as provided by this section. A member of a committee is
26 not entitled to remuneration but is entitled to reimbursement for
27 actual and necessary expenses incurred in performing functions as a

1 member of the committee, not to exceed any limit established in the
2 General Appropriations Act.
3 (c) The board shall appoint five health care practitioner
4 members to each advisory committee. Each health care practitioner
5 member of a committee must be a health care provider of that
6 particular provider group who is knowledgeable and qualified
7 regarding work related injuries and diseases. The board shall
8 consider the advice of the appropriate professional associations in
9 making the committee appointments.
10 (d) The board shall appoint four additional members to each
11 advisory committee, one to represent employers, one to represent
12 employees, and two to represent the general public.
13 (e) The health care advisory committee is created to assist
14 the division. The committee is composed of eight members appointed
15 by the board and one member elected from each of the committees
16 created under Subsection (a) of this section. The board shall
17 designate the chairman of the committee, which shall meet at the
18 call of its chairman. A member of this committee is not entitled
19 to remuneration but is entitled to reimbursement for actual and
20 necessary expenses incurred in performing functions as a member of
21 the committee, not to exceed any limit established in the General
22 Appropriations Act.
23 SECTION 7.03. COORDINATION WITH PROVIDERS. The medical
24 review division shall coordinate its activities with health care
25 providers as necessary to perform its duties under this article.
26 The coordination may include:
27 (1) conducting educational seminars on board rules and

1 procedures;

2 (2) providing information to and requesting assistance

3 from professional peer review organizations; or

4 (3) contracting with health care providers for

5 independent medical examinations, medical case reviews,

6 establishment of guidelines, or other medical consultant services.

7 SECTION 7.04. PROVIDERS' DISCLOSURE. A health care provider

8 that refers a workers' compensation claimant to another health care

9 provider in which the referring provider has a financial interest

10 shall file an annual disclosure statement with the Texas Workers'

11 Compensation Board as provided by rules adopted by the board and

12 shall disclose the interest to the insurance carrier at the time of

13 the referral. The referring provider shall specify the degree of

14 the financial interest and shall provide other information as

15 required by the rules of the Texas Workers' Compensation Board.

16 SECTION 7.05. PRIVATE CLAIMS. A health care provider may

17 not pursue a private claim against a workers' compensation claimant

18 for all or part of the costs of health care services provided to

19 the claimant by the provider unless the injury is finally

20 adjudicated not to be compensable under this Act.

21 ARTICLE 8. COMPLIANCE MONITORING

22 SECTION 8.01. COMPLIANCE AND PRACTICES DIVISION. (a) The

23 compliance and practices division shall monitor the conduct of all

24 persons subject to this Act other than persons monitored by the

25 medical review division. The monitoring shall include monitoring

26 the conduct of:

27 (1) injured employees;

(2) legal beneficiaries of those employees;

(3) employers;

(4) insurance carriers; and

(5) attorneys and other representatives of parties.

(b) The division shall monitor those persons for compliance with board rules, this Act, and other laws relating to workers' compensation.

SECTION 8.02. AUDIT OF INSURANCE CARRIERS. The division shall audit the records of insurance carriers on a regular basis. Each carrier shall cooperate with the division and shall make available to the division any records or other necessary information. The carrier shall allow the division access to the information at reasonable times at the offices of the carrier. On the request of the division, the carrier shall also make the information available to the division at the offices of the board in Austin.

SECTION 8.03. COMPILATION OF INFORMATION. The division shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this article that violate this Act or board rules, or that otherwise adversely affect the workers' compensation system of this state. The board shall use the information to assess appropriate penalties and other sanctions under Article 11 of this Act.

SECTION 8.04. INVESTIGATIONS. (a) The division shall conduct investigations relating to alleged violations of this Act or board rules.

(b) The division may refer the persons involved in a case subject to an investigation to the hearings division or to other appropriate authorities for further investigation and institution of appropriate proceedings.

ARTICLE 9. WORKERS' HEALTH AND SAFETY

SECTION 9.01. WORKERS' HEALTH AND SAFETY DIVISION. (a) The workers' health and safety division of the board shall coordinate and enforce the implementation of state laws and rules relating to workers' health and safety issues.

(b) The division shall collect and serve as a repository for statistical information on workers' health and safety. The division shall analyze and use the information to identify and assign priorities to safety needs and to better coordinate the safety services provided by public or private organizations, including insurance carriers. The division shall promote workers' health and safety through educational programs and other innovative programs developed by the division.

(c) The division shall coordinate or supervise the collection of information relating to job safety by state or federal entities, including information collected for the supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

(d) The division shall monitor loss control services provided by insurance carriers. The board by rule shall require that reasonable loss control services be provided by insurance carriers to employers classed as small and medium risks, as well as to employers classed as large risks. The board by rule may require

that services be directed to specific employers, industries, occupations, or geographic regions, or to the prevention of certain injuries or occupational diseases. The services may be provided through on-site inspections and consultations, training programs, or other means considered appropriate by the division.

(e) In accordance with Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 656), the division shall:

(1) consult with employers regarding compliance with federal occupational safety laws and rules; and

(2) collect information relating to occupational safety as required by federal laws, rules, or agreements.

(f) With the approval of the board, the division may enter contracts with the federal government to perform occupational safety projects and may apply for funds from the federal government through any federal program relating to occupational safety.

SECTION 9.02. JOB SAFETY INFORMATION SYSTEM. (a) The workers' health and safety division shall establish and maintain a job safety information system.

(b) The job safety information system shall include a comprehensive data base that incorporates all pertinent information relating to each workers' compensation claim, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee;

(2) the nature, source, and severity of the injury;

(3) a statement of whether the injury resulted from an unsafe practice or condition, as determined by the board;

(4) the part of the body affected;

(5) the compensation rate;

(6) the amount paid to the claimant as income benefits;

(7) the amount paid to the claimant as medical benefits;

(8) the industry code for the claimant's occupation;

(9) the premium amount paid by the employer;

(10) the number of prior workers' compensation claims by that employee; and

(11) the total claim costs of the employer.

(c) Based on the information compiled for the job safety information system, the division shall issue periodic reports relating to workers' health and safety and shall issue specialized reports and studies for public and private entities that are working to improve safety.

SECTION 9.03. CLAIM AND LOSS GUIDELINES. (a) The workers' health and safety division shall develop a program to identify an employer whose claim frequencies or loss levels exceed those that may be reasonably expected in that employer's business or industry. Based on the information developed by the division, the board shall adopt guidelines for the identification of such an employer. In adopting the guidelines, the board shall consider the hazards of the particular industry and the size of the affected business entities.

(b) If the division identifies an employer that exceeds the claim or loss guidelines for that employer's industry, the division

1 shall notify the employer in writing that the employer has exceeded
2 the claim and loss guidelines. The division shall reexamine that
3 employer for compliance with the claim and loss guidelines not
4 later than six months after the date on which the employer is
5 notified.
6 (c) An employer who continues to exceed the claim and loss
7 guidelines as determined by the division must obtain a safety
8 consultation from the board, the employer's insurance carrier, or
9 another professional source approved by the board for that purpose.
10 The safety consultant shall issue a written statement to the
11 employer to certify that the employer has participated in the
12 safety consultation. The employer shall submit a copy of the
13 statement to the board not later than the seventh day after the
14 date on which the consultation is completed and shall include a
15 statement of corrective actions contemplated by the employer.
16 (d) An employer who, six months after the initial safety
17 consultation under Subsection (c) of this section, is determined by
18 the board to continue to exceed the claim and loss guidelines shall
19 receive a follow-up safety consultation from the board. For each
20 additional workers' compensation claim filed by that employer's
21 employees, the employer shall file a special accident report in the
22 form prescribed by the board, specifying the nature and causes of
23 the injury and measures implemented to prevent similar injuries in
24 the future. If the board determines that the employer is still
25 exceeding the guidelines six months after the date of the follow-up
26 safety consultation, the employer shall file an adequate safety
27 plan with the board.

(e) The board may assess an administrative penalty as provided by Article 11 of this Act against an employer who fails to comply with this section.

(f) The board shall adopt rules and prescribe forms as necessary to implement this section.

SECTION 9.04. SAFETY EDUCATION. (a) The workers' health and safety division shall provide safety education services to the employers and employees of this state and to the general public.

(b) The division may:

(1) conduct seminars on occupational health and safety concerns;

(2) issue public service announcements on safety; and

(3) publish informational material on safety for general dissemination.

(c) The board may charge fees for division publications and for seminars and training programs offered by the division. If a fee is charged, the board shall set the fee in the amount reasonable and necessary to cover its administrative costs.

(d) The board may accept grants and gifts from any source for the benefit of the safety programs conducted by the division.

(e) The board may coordinate its safety programs with those of insurance carriers or those of other public or private entities.

SECTION 9.05. RISK MANAGEMENT FOR CERTAIN STATE AGENCIES. (a) In this section, "state agency" means a board, commission, department, officer, or other agency in the executive, judicial, or legislative branch of state government that was created by the constitution or a statute of this state and that has authority that

is not limited to a specific geographical portion of the state. The term includes an institution of higher education as defined by Section 61.003, Education Code. The term does not include an entity with fewer than five employees.

(b) The director of the workers' health and safety division shall serve as the state risk manager. In that capacity, the director shall supervise the development and administration of division systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses; and

(4) reduce the property and liability losses incurred by each state agency.

(c) Based on the recommendations of the director, the board shall report to each legislature relating to methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation losses, the operation and management of those risks, and the handling of claims brought against the state. The report must include:

(1) the number and amount of claims settled in the preceding biennium;

(2) the number and amount of final judgments paid in the preceding biennium; and

(3) recommendations for the coordination and

1 administration of a comprehensive risk management program to serve
2 all state agencies, including recommendations for any necessary
3 statutory changes.
4 (d) The workers' health and safety division shall administer
5 guidelines adopted by the board for a comprehensive risk management
6 program applicable to all state agencies to reduce property and
7 liability losses, including workers' compensation losses.
8 (e) A state agency that has its own risk management program
9 shall submit to the division any information or reports required by
10 the division relating to the agency's program. Based on the
11 material submitted, the division shall determine whether the agency
12 program is effective and shall notify the agency in writing of its
13 determination.
14 (f) The division shall assist a state agency that has not
15 implemented an effective risk management program in the
16 implementation of a comprehensive program that meets the division
17 guidelines.
18 (g) Each state agency shall reimburse the board for the
19 costs incurred by the board in administering this section as it
20 relates to that state agency through an interagency contract that
21 meets the requirements of The Interagency Cooperation Act (Article
22 4413(32), Vernon's Texas Civil Statutes). Reimbursable costs
23 include the cost of:
24 (1) services of board employees;
25 (2) materials; and
26 (3) equipment, including computer hardware and
27 software.

(h) The board may adopt rules to implement this section, including rules relating to reporting requirements for state agencies.

SECTION 9.06. REVIEW OF CERTAIN SAFETY COMMITTEES. The workers' health and safety division shall review and, on behalf of the board, approve or disapprove labor-management safety committees established to qualify for workers' compensation insurance premium discounts through promotion of occupational health and safety within an individual employer's work force, as provided by Article 5.55A, Insurance Code. To be eligible for approval, a committee must be composed of representatives of the employer and employees. A committee may make recommendations that can be implemented by the employer and employees to reduce job related accidents.

ARTICLE 10. SELF-INSURANCE

SECTION 10.01. DEFINITIONS. In this article:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) "Certified self-insurer" means a private employer who has been granted a certificate of authority to self-insure under this article.

(3) "Director" means the director of workers' compensation self-insurance.

(4) "Impaired employer" means a certified self-insurer:

(A) who has suspended payment of compensation as determined by the board;

(B) who has filed for relief under bankruptcy

laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

(5) "Incurred liabilities for compensation" means the sum of the estimate of liabilities for outstanding workers' compensation claims plus the estimated amount necessary to provide for the administration of those claims, including legal costs.

(6) "Qualified claims servicing contractor" means:

(A) an insurance company authorized by the State Board of Insurance to write workers' compensation insurance;

(B) a subsidiary of an insurance company that provides claim service under contract;

(C) an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code); or

(D) a third-party administrator that has on its staff an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(7) "Self-insured retention" means the total dollar amount of liability under this Act retained by a certified self-insurer.

SECTION 10.02. ADMINISTRATION. (a) The board shall appoint a director of workers' compensation self-insurance to administer the board's certification program for self-insurers as provided by

this article.

(b) The board may adopt rules as necessary to administer this article.

SECTION 10.03. APPLICATION FOR CERTIFICATION. (a) An employer who desires to self-insure under this article must submit an application to the board for a certificate of authority to self-insure. The application must be submitted on a form adopted by the board and be accompanied by a nonrefundable application fee of $1,000. The application fee shall be deposited in the workers' compensation self-insurance fund created under Section 10.10 of this Act.

(b) Not later than the 60th day after the day on which the form is received, the board shall issue a certificate of authority to self-insure to an applicant who meets the requirements for certification under this article. The certificate of authority is valid for one year after the date of issuance and may be renewed under procedures prescribed by the board. The director may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division. There is no renewal fee.

SECTION 10.04. REQUIREMENTS FOR CERTIFICATION TO SELF-INSURE; ISSUANCE OF CERTIFICATION. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the board of sufficient financial strength and liquidity under standards adopted by the board to assure that all workers' compensation obligations incurred by the applicant under this article are promptly met. In assessing financial strength and

1 liquidity, the board shall consider:

2 (1) the applicant's organizational structure and

3 management background;

4 (2) the applicant's profit and loss history;

5 (3) the applicant's compensation loss history;

6 (4) the source and reliability of the financial

7 information submitted by the applicant;

8 (5) the number of employees affected by

9 self-insurance;

10 (6) the applicant's access to excess insurance

11 markets;

12 (7) financial ratios, indexes, or other financial

13 measures that the board finds appropriate; and

14 (8) any other information considered appropriate by

15 the board.

16 (b) The applicant must present a plan for claims

17 administration that is acceptable to the board and designates a

18 qualified claims servicing contractor.

19 (c) The applicant must demonstrate the existence of an

20 effective safety program for each location in the state at which it

21 conducts business.

22 (d) If the provider of services is not an employee of the

23 applicant, the applicant must provide to the board a copy of each

24 contract entered into with a person that provides claims services,

25 underwriting services, or accident prevention services. If the

26 board has adopted a standard form for such a contract, the contract

27 must be submitted in that form. The board must approve the

contract before the applicant may self-insure.

(e) The board shall review a contract submitted under Subsection (d) of this section. A contract submitted to the board is considered approved by the board unless the board notifies the applicant in writing not later than the 30th day after the date on which the contract is submitted that the contract is not approved. If the board does not approve the contract, the notice must specify the reasons for the disapproval.

(f) The applicant must provide security for incurred liabilities for workers' compensation through a deposit with the director, in a combination and from institutions approved by the director, of the following security:

(1) cash or negotiable securities of the United States or this state;

(2) a surety bond that names the director as payee; or

(3) a letter of credit that:

(A) is irrevocable;

(B) names the director as payee; and

(C) requires at least 60 days' written notice of intention to cancel.

(g) The estimate of incurred liabilities must be signed and sworn to by a certified casualty actuary.

(h) The sum of the deposited securities must be at least equal to the greater of $300,000 or 125 percent of the applicant's incurred liabilities for workers' compensation.

(i) The applicant shall provide for excess insurance to cover liability that is not covered by the applicant's self-insured

retention in amounts considered necessary by the certified self-insurer, but not less than the amounts required by the director. The director shall require excess insurance in at least the amount of $1 million of specific coverage.

(j) If the applicant is a subsidiary, the parent organization must guarantee the obligations imposed by this article.

(k) The board shall issue a certificate of authority to self-insure to an applicant who meets the requirements of this article and pays the required fee.

SECTION 10.05. INITIAL PREMIUM REQUIREMENTS TO SELF-INSURE. (a) In addition to meeting the other eligibility requirements imposed under this article, an applicant for an initial certificate of authority to self-insure must present evidence satisfactory to the board of a total unmodified premium in this state for workers' compensation insurance coverage as follows:

(1) if the application is filed before September 1, 1990, $250,000;

(2) if the application is filed on or after September 1, 1990, but before September 1, 1991, $200,000;

(3) if the application is filed on or after September 1, 1991, but before September 1, 1992, $150,000;

(4) if the application is filed on or after September 1, 1992, but before September 1, 1993, $100,000; and

(5) if the application is filed on or after September 1, 1993, but before September 1, 1994, $50,000.

(b) In lieu of the state premiums required under Subsection

1 (a) of this section, the applicant may present evidence of a total
2 unmodified national workers' compensation insurance premium of at
3 least $1 million.
4 (c) If the application to self-insure is filed on or after
5 September 1, 1994, evidence of a workers' compensation insurance
6 premium is not required.
7 SECTION 10.06. SPECIFIC SECURITY REQUIREMENTS. (a) A
8 security deposit must include within its coverage all amounts
9 covered by terminated surety bonds or excess insurance policies.
10 (b) A surety bond, irrevocable letter of credit, or a
11 document indicating issuance of an irrevocable letter of credit
12 must be in a form approved by the director and must be issued by an
13 institution acceptable to the director. Such an instrument may be
14 released only according to its terms but may not be released by the
15 depositing of additional security.
16 (c) The certified self-insurer shall deposit the security
17 with the state treasurer on behalf of the director. The state
18 treasurer may accept securities for deposit or withdrawal only on
19 the written order of the director.
20 (d) On receipt by the director of a request to renew,
21 submit, or increase or decrease a security deposit, a perfected
22 security interest is created in the certified self-insurer's assets
23 in favor of the director to the extent of any then unsecured
24 portion of the self-insured's incurred liabilities for
25 compensation. That perfected security interest transfers to any
26 cash or securities deposited by the self-insured with the director
27 after the date of the request, and may be released only on:

(1) the acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the director.

(e) The certified self-insurer loses all right, title, interest in, and control of, the assets or obligations submitted or deposited as security. The director may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) The director, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, any liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) the issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) the issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.

(g) A decision of the director may be appealed to the board on filing with the board a written request for an appeal not later than the 30th day after the date on which the director's decision is final.

(h) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the board issues a determination staying the payment of claims.

(i) If the director determines that a security deposit has not been made immediately available for the payment of compensation, the director shall determine the appropriate method of payment and claims administration, which may include payment by a surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the director.

SECTION 10.07. PROCEDURES ON DENIAL OF APPLICATION. (a) If the board determines that an applicant for a certificate of authority to self-insure does not meet the requirements for eligibility to self-insure provided by this article, the board shall notify the applicant not later than the 60th day after the date on which the completed application is received, stating the specific reasons for the denial and the conditions to be met before approval can be granted.

(b) The applicant is entitled to a reasonable period of time, as determined by the board, to meet the conditions for approval before the application is considered rejected for purposes of appeal. An appeal is subject to the substantial evidence rule and must be filed in a district court of Travis County.

(c) During the pendency of approval or denial of the application for certification to self-insure, the applicant may not

1 operate as a self-insurer under this article.

2 SECTION 10.08. ANNUAL REPORT. (a) Each certified
3 self-insurer shall file an annual report with the board. The board
4 shall prescribe the form of the report and shall furnish blank
5 forms for preparation of the report to each certified self-insurer.
6 The report must include payroll data in the form prescribed by this
7 article and the board. The board may require that the report
8 include other financial and statistical data.

9 (b) The annual report must present evidence of sufficient
10 financial ability of the certified self-insurer to meet all
11 obligations under this article.

12 (c) The report must state the number of injuries sustained
13 in the three preceding calendar years and must report separately
14 the amount paid during each year for income benefits, medical
15 benefits, and other proper expenses related to worker injuries.
16 The report must include an estimate of future liability for
17 compensation. The estimate must be signed and sworn to by a
18 certified casualty actuary every third year, or more frequently if
19 required by the board.

20 (d) If the board considers it necessary, it may order a
21 certified self-insurer whose financial condition or claims record
22 warrants closer supervision to report as provided by this section
23 more often than annually.

24 SECTION 10.09. EXAMINATION OF RECORDS. (a) The certified
25 self-insurer shall maintain the books, records, and payroll data
26 necessary to compile the annual report and any other information
27 reasonably required by the board. The material shall be open to

1 inspection and examination by an authorized agent or representative
2 of the board at reasonable times for the purpose of ascertaining
3 the correctness of the information.
4 (b) The examination may be made at any location, including
5 the offices of the board in Austin, or, at the certified
6 self-insurer's option, in offices of the certified self-insurer.
7 The certified self-insurer must pay the reasonable expenses,
8 including travel expenses, of an inspector who makes an inspection
9 at its offices.
10 (c) The certified self-insurer may maintain the books,
11 records, and payroll data in locations outside this state.
12 (d) An unreasonable refusal on the part of a certified
13 self-insurer to make available for inspection books, records,
14 payroll data, and other required information is grounds for
15 revocation of the certificate of authority to self-insure.
16 SECTION 10.10. SELF-INSURANCE REGULATORY FEE. (a)
17 Certified self-insurers shall pay annual fees to cover the
18 administrative costs incurred by the board in implementing this
19 article. The fees shall be based on the total amount of income
20 benefit payments made in the preceding calendar year. The
21 insurance board shall assess each certified self-insurer a pro rata
22 share based on the ratio the total amount of income benefit
23 payments made by that self-insurer bears to the total amount of
24 income benefit payments made by all certified self-insurers.
25 (b) The fees shall be deposited in the state treasury to the
26 credit of a fund to be known as the workers' compensation
27 self-insurance fund and to be used only for the regulation of

1 certified self-insurers. Any amount not used in a budget year
2 shall be used to reduce the regulatory fees assessed in the
3 succeeding budget year.
4 SECTION 10.11. TAX ASSESSMENTS. (a) Each certified
5 self-insurer shall pay a tax equal to the premium tax paid by a
6 commercial insurance carrier under Section 5.68, Insurance Code,
7 and a maintenance tax under Section 12.04 of this Act for the
8 support of the Texas Workers' Compensation Board.
9 (b) To determine the tax liability of a certified
10 self-insurer for the maintenance tax assessed under Section 12.04
11 of this Act and the premium tax assessed under Subsection (a) of
12 this section, each certified self-insurer shall report its payroll
13 by individual workers' compensation risk code classifications in
14 its annual report to the board. The taxes assessed under this
15 section shall be collected and paid in the same manner and at the
16 same time that a commercial insurance carrier pays the maintenance
17 tax imposed under Article 5.68, Insurance Code.
18 (c) The estimated premium for a certified self-insurer shall
19 be determined by using the manual workers' compensation insurance
20 rates in effect at the time the annual report is due. The tax
21 shall be calculated by multiplying the manual premium by 75 percent
22 and multiplying the product by the same tax rate assessed against
23 other insurers under Article 5.68, Insurance Code.
24 (d) All amounts collected under this section shall be
25 deposited in the general revenue fund.
26 SECTION 10.12. WITHDRAWAL FROM SELF-INSURANCE. A certified
27 self-insurer may withdraw from self-insurance at any time with the

1 approval of the board. The board shall approve the withdrawal if
2 the certified self-insurer shows to the satisfaction of the board
3 that the certified self-insurer has established an adequate program
4 to pay all incurred losses, including unreported losses, that arise
5 out of accidents or occupational diseases first distinctly
6 manifested during the period of operation as a certified
7 self-insurer. A certified self-insurer who withdraws from
8 self-insurance shall surrender its certificate of authority to
9 self-insure to the board.
10 SECTION 10.13. CLAIMS. A claim or suit brought by a
11 workers' compensation claimant shall be brought against the
12 certified self-insurer.
13 SECTION 10.14. AGENT'S COMMISSION. This article does not
14 prohibit a certified self-insurer from paying a commission to an
15 insurance agent licensed in this state.
16 SECTION 10.15. REVOCATION OF CERTIFICATE OF AUTHORITY. (a)
17 The board may revoke the certificate of authority to self-insure of
18 a certified self-insurer who fails to comply with any of the
19 requirements or conditions provided by this article or the rules
20 adopted by the board under this article.
21 (b) If the board believes that grounds exist to revoke a
22 certificate of authority to self-insure, the board shall hold a
23 hearing to determine if the certificate should be revoked. The
24 board shall notify the certified self-insurer of the hearing and
25 the grounds not later than the 30th day before the scheduled
26 hearing date. At the hearing the certified self-insurer shall show
27 cause why its certificate should not be revoked. If the certified

1 self-insurer fails to show cause, the board shall immediately
2 revoke the certificate.
3 (c) A certified self-insurer whose certificate to
4 self-insure has been revoked is not relieved of its obligations to
5 its employees, and the required security shall be maintained with
6 the board or under the board's control until each claim for
7 workers' compensation benefits that arises out of an accident or
8 occupational disease first distinctly manifested during the period
9 of self-insurance has been paid, settled, or otherwise foreclosed
10 by law.
11 SECTION 10.16. TEXAS CERTIFIED SELF-INSURER GUARANTY
12 ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty
13 Association is established to provide for payment of workers'
14 compensation benefits for the injured employees of an impaired
15 employer. To be entitled to self-insure, each employer who desires
16 to become a certified self-insurer must be a member of the
17 association. The members shall provide by rule for the election of
18 a board of directors composed of not fewer than four members. The
19 board of directors shall also include, as voting members, the
20 executive director of the Texas Workers' Compensation Board and the
21 public counsel of the division of consumer protection of the State
22 Board of Insurance. The director of the division shall serve as a
23 nonvoting member. The board of directors may adopt rules for the
24 operation of the association. Rules adopted by the board of
25 directors are subject to the approval of the Texas Workers'
26 Compensation Board. Meetings of the association and its board of
27 directors are subject to the open meetings law, Chapter 271, Acts

of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and records of the association and its board of directors are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) Members of the association shall be assessed a fee, based on total paid indemnity losses in this state for the preceding reported calendar year, to create, over a period of five years, a trust fund of at least $1 million dollars for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed $2 million dollars. The board of directors of the association shall administer the trust fund in accordance with rules adopted by the Texas Workers' Compensation Board.

(c) If the director determines that the payment of benefits and claims administration shall be made through the association, the association shall assume the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director. The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association. On the assumption of obligations by the association under the director's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of any irrevocable letter of credit shall deliver the security to the association together with any interest that has accrued since the

1 date on which the certified self-insurer became impaired.

2 (d) On determination by the director that a certified
3 self-insurer has become an impaired employer, the director shall
4 secure release of the security deposit required by this article,
5 and shall promptly estimate the amount of any additional funds
6 needed to supplement the security deposit, the available assets of
7 the impaired employer for the purpose of making payment of all
8 incurred liabilities for compensation, and the funds maintained by
9 the association for the emergency payment of compensation
10 liabilities. The director shall advise the board of directors of
11 the association of the estimate of any necessary additional funds,
12 and the board of directors shall promptly assess each certified
13 self-insurer, except impaired employers, to collect the required
14 funds. The assessments shall be made against all certified
15 self-insurers in proportion to the ratio that the total paid
16 indemnity losses for the preceding reported calendar year bear to
17 the total paid indemnity losses by all certified self-insurers,
18 except impaired employers, in this state in that calendar year.

19 (e) A certified self-insurer designated as an impaired
20 employer is exempt from assessment beginning on the date of that
21 designation until the board determines that the employer is no
22 longer impaired.

23 (f) Each certified self-insurer shall pay the amount of its
24 assessment to the association not later than the 30th day after the
25 date on which the division notifies the self-insurer of the
26 assessment. A delinquent assessment may be collected on behalf of
27 the association through a suit brought for that purpose. Venue for

1 the suit is in Travis County.

2 (g) Funds advanced by the association under this article do
3 not become assets of the impaired employer but are considered a
4 special fund advanced to the director, trustee in bankruptcy,
5 receiver, or other lawful conservator only for the payment of
6 compensation liabilities, including the cost of claims
7 administration and legal costs.

8 (h) The association or the surety making compensation
9 payments under this article is entitled to the same preference over
10 the other debts of the impaired employer or the impaired employer's
11 estate as provided by law to the person directly entitled to the
12 compensation.

13 (i) The board, after notice and hearing, may suspend or
14 revoke the certificate of authority to self-insure of any certified
15 self-insurer that fails to pay an assessment. The association
16 promptly shall report such a failure to the director. A certified
17 self-insurer whose certificate of authority to self-insure is
18 revoked or surrendered remains liable for any unpaid assessments
19 made against an impaired employer who becomes an impaired employer
20 before the date of the revocation or surrender.

21 (j) Notwithstanding Subsection (c) of this section, the
22 association is not liable for the payment of any penalties assessed
23 for any act or omission on the part of any person other than the
24 association.

25 (k) The association is a party in interest in any proceeding
26 involving a workers' compensation claim against an impaired
27 employer whose compensation obligations have been paid or assumed

by the association. The association has the same rights and defenses as the impaired employer, including the right to:

(1) appear, defend, and appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, and pay a claim; and

(3) investigate, handle, and deny a claim.

ARTICLE 11. PROHIBITED ACTS; ENFORCEMENT

CHAPTER A. PROHIBITED ACTS

SECTION 11.01. DISCRIMINATION PROHIBITED. (a) An employer may not discharge or otherwise discriminate against an employee because the employee has, in good faith:

(1) filed a workers' compensation claim;

(2) hired an attorney to represent the employee regarding a claim;

(3) instituted a proceeding before the board; or

(4) testified at an administrative or judicial proceeding regarding a claim.

(b) An employer who violates this section is liable for reasonable damages incurred by the employee as a result of the violation. An employee who is discharged in violation of this section is entitled to reinstatement in the same or an equivalent position of employment. The burden of proof is on the employee.

SECTION 11.02. EMPLOYER CHARGEBACKS PROHIBITED. A covered employer may not collect from an employee, directly or indirectly, any premium or other fee paid by the employer to obtain workers' compensation insurance coverage.

SECTION 11.03. LOANS BY ATTORNEY PROHIBITED. (a) An

attorney who represents a claimant before the board may not lend money to the claimant during the pendency of the workers' compensation claim.

(b) The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable in any way for the credit extended to the claimant.

SECTION 11.04. CRIMINAL PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS. (a) A person commits an offense if the person, to obtain or deny payments of workers' compensation benefits or the provision of those benefits for himself or another, knowingly and intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a document; or

(4) conspires to commit an act listed in Subdivisions (1)-(3) of this subsection.

(b) An offense under this section is a felony of the third degree.

[Sections 11.05-11.10 reserved for expansion]

CHAPTER B. ADMINISTRATIVE SANCTIONS

SECTION 11.11. GENERAL SANCTIONS; ADMINISTRATIVE PENALTY. (a) After a hearing, the board may assess an administrative penalty or impose other sanctions as provided by Subsection (b) of this section against:

(1) a health care provider who violates the guidelines

adopted by the board under Section 7.01 of this Act, other applicable provisions of this Act or other laws relating to workers' compensation, or applicable board rules relating to health care providers;

(2) an insurance carrier who violates this Act, other laws relating to workers' compensation, or applicable board rules relating to carriers who write workers' compensation insurance;

(3) an attorney who violates this Act, other laws relating to workers' compensation, or applicable board rules relating to legal practice before the board; or

(4) any other person subject to the jurisdiction of the board, including a claimant, the legal beneficiary of a claimant, or an employer, who violates this Act, other laws relating to workers' compensation, or applicable board rules.

(b) If the board determines that a person subject to this section is in violation, the board may:

(1) issue a written reprimand to the person that specifies the violation;

(2) refer the person to the occupational regulatory agency that supervises the person's practice for appropriate action, including the probation, suspension, or revocation of the person's license, certificate, or permit;

(3) suspend the person from practice before the board;

(4) if the person is a health care provider, suspend the person's right to remuneration under this Act; or

(5) assess an administrative penalty.

(c) If a suspension is probated, the board may require the

person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the board; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis for the probation.

(d) If the board proposes to suspend a person's right to practice before the board, or assess an administrative penalty against the person, the person is entitled to a hearing before the hearings division of the board.

(e) The board by rule shall prescribe the procedures by which a decision to suspend the right to practice or to assess an administrative penalty are made by or are appealable to the board. Proceedings conducted under this section are subject to the requirements for a contested case hearing under Section 6.03 of this Act.

(f) In determining the amount of an administrative penalty assessed under this section, the board shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations; and

(4) any other appropriate matters.

(g) If the board determines that a violation has occurred and that the assessment of an administrative penalty is an

appropriate remedy, the board shall notify the person charged in writing of the violation, stating the amount proposed to be assessed. The notice must include a statement of the right of the person to a hearing. Not later than the 20th day after the date on which the notice is received, the person shall either remit the amount of the penalty to the board or submit to the board a written request for a hearing.

(h) If the person requests a hearing, the board shall call a hearing and give written notice of the hearing to the person not later than the 20th day after the date on which the person submits the request for a hearing. The hearing shall be conducted by the hearings division of the board. If it is determined by the hearing that a violation has occurred, the board shall enter a written order to that effect and shall notify the person in writing of the decision, the amount of the penalty assessed, and the person's right to judicial review of the board's order.

(i) Not later than the 30th day after the date on which the board's order is final, the person shall either remit the penalty to the board or, if the person files a petition for judicial review contesting the fact of the violation or the amount assessed, forward the amount assessed to the board for deposit in an escrow account. Failure to forward the amount assessed within the specified period constitutes a waiver of the right to judicial review.

(j) If, after judicial review, the penalty is reduced or is not assessed, the board shall remit to the person the appropriate amount, plus accrued interest at a rate equal to the rate charged

on loans to depository institutions by the New York Federal Reserve Bank. Interest under this section shall be paid for the period beginning on the date that the assessed penalty is paid to the board and ending on the date that the penalty is remitted.

(k) Amounts collected as penalties under this section shall be deposited in the state treasury.

SECTION 11.12. ENHANCEMENT OF AWARD FOR MALICE OR BAD FAITH. (a) In addition to the benefits granted under this Act, the board may order an insurance carrier to pay an employee an additional amount if the board determines that the failure of the insurance carrier to pay benefits determined to be owed to the employee, or the carrier's suspension or termination of payment of those benefits, was caused by malice or bad faith.

(b) For the purposes of this section, "malice" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

(c) An additional amount awarded under this section is the employee's exclusive remedy against the employer or carrier for the conduct described by Subsection (a) of this section.

(d) The board may award an amount not to exceed the lesser of twice the amount of benefits payable to the employee, or $15,000.

(e) The board shall adopt rules as necessary to implement this section, including rules to define specific actions that demonstrate malice or bad faith per se.

(f) Amounts paid by an insurance carrier under this section may not be used in the calculation of premium rates for workers'

compensation insurance.

ARTICLE 12. MISCELLANEOUS PROVISIONS

SECTION 12.01. ATTORNEY FEES. (a) An attorney who represents a workers' compensation claimant under this Act is entitled to a fee equal to 25 percent of the difference between the amount of income benefits attained or ordered and the amount of those benefits voluntarily paid or offered to be paid by the insurance carrier. The attorney is entitled to a minimum fee of $200.

(b) The board by rule may provide for the commutation of attorney's fees.

SECTION 12.02. CONFIDENTIALITY. (a) Information in a worker's claim file is confidential and may not be disclosed except as provided in this section.

(b) If a workers' compensation claim is open or pending before the board, on appeal to a court of competent jurisdiction from the board, or is the subject matter of a subsequent suit in which the insurance carrier is subrogated to the rights of the workers' compensation claimant at the time a record search or request for information is presented to the board, the board shall furnish the information as provided by this section.

(c) The board shall furnish the following information:

(1) the first, middle, and last name of the claimant;

(2) the claimant's age;

(3) the claimant's social security number; and

(4) the dates of injury and the names of the claimant's former employers, if possible.

(d) The board shall furnish the requested information or a record check only to the following:

(1) the claimant;

(2) the attorney for the claimant;

(3) the insurance carrier or the Texas Certified Self-Insurer Guaranty Association;

(4) the employer at the time of the current injury;

(5) third-party litigants;

(6) the State Board of Insurance;

(7) the Texas Department of Human Services; or

(8) the Texas Workers' Compensation Insurance Research Center.

(e) A third-party litigant in a suit arising out of an occurrence with respect to which a workers' compensation claim was filed is entitled to the information without regard to whether or not the compensation claim is still pending.

(f) Information held by the board concerning any person who has been finally adjudicated to be a fraudulent claimant is not confidential and shall be furnished to any person requesting the information, notwithstanding any other provision of this law.

(g) The board shall release to an employer with whom a person has applied for employment the date of injury and nature of injury to that person if that person has filed three or more claims in the preceding five years in which weekly compensation payments have been made and the employer requests the information not later than the 14th day after the date on which the person applied for employment. The request for information must provide the name,

address, and social security number of the person about whom information is sought. The board shall release the information only if the employer has written authorization from the person about whom information is sought, a copy of which must be filed with the board before the information is released. The board may release the information by telephone. If the employer requests information about three or more persons at the same time, the board may refuse to release the information except on written request from the employer and receipt of the written authorization from each person about whom the information is sought.

(h) This section does not authorize the board to withhold information from committees of the legislature to use for legislative purposes.

(i) Any information relating to a workers' compensation file that is confidential under this Act remains confidential on release to any investigative, legislative, or law enforcement agency, including the attorney general, district attorneys, grand juries, or legislative committees. An individual who publishes, discloses, or distributes that information to any person not entitled to the information under this Act commits an offense. A person who receives the confidential information with knowledge that the person is not entitled to have received the information from the board under this Act commits an offense. An offense under this subsection is a Class A misdemeanor.

(j) Each district court of Travis County has jurisdiction to enjoin the possession or the use by any person of any information made confidential by this section if that possession or use is not

1 authorized by this section. This subsection does not prohibit an
2 employer from releasing information about a former employee to
3 another employer with whom the employee has applied for employment
4 if the information was lawfully acquired by the employer releasing
5 the information.
6 (k) This section does not prohibit a person from receiving
7 from the board information contained in any record or file of the
8 board in statistical form and in a manner that does not disclose
9 the name or identity of any injured employee.
10 SECTION 12.03. LIABILITY OF GENERAL CONTRACTOR FOR CERTAIN
11 SUBCONTRACTORS. If a general contractor has workers' compensation
12 insurance to protect the general contractor's employees, and if, in
13 the execution of any work in the course and scope of the general
14 contractor's business, the general contractor enters a contract
15 with a subcontractor who is a sole proprietor, the general
16 contractor shall be treated as the employer of the subcontractor
17 for the purposes of this Act.
18 SECTION 12.04. MAINTENANCE TAX. (a) In addition to all
19 other tax imposed on those insurers, each stock company, mutual
20 company, reciprocal or interinsurance exchange, and Lloyd's
21 association that writes workers' compensation insurance in this
22 state shall pay an annual maintenance tax to support the Texas
23 Workers' Compensation Board at a rate not to exceed two percent of
24 the correctly reported gross workers' compensation insurance
25 premiums as reported to the State Board of Insurance under
26 Subchapter D, Chapter 5, Insurance Code. The tax shall be
27 collected and paid in the same manner and at the same time that the

compensable under this Act is void unless the contract also covers liability for payment of compensation under this Act.

(b) This section does not apply to an employer who has elected not to obtain workers' compensation insurance coverage.

SECTION 12.07. LEGALLY INCOMPETENT EMPLOYEES. If an injured employee is a minor or is otherwise legally incompetent, the employee's guardian may exercise on the employee's behalf the rights and privileges granted to the employee under this Act. The board by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees.

SECTION 12.08. ALIEN EMPLOYEES. (a) In this section, "alien" means an individual who is not a citizen of the United States.

(b) A resident or nonresident alien who sustains a compensable injury is entitled to compensation under this Act.

(c) A nonresident alien claimant may be officially represented by a consular officer of the country of which the alien is a citizen. That officer may receive benefit payments for distribution to the alien employee.

SECTION 12.09. MULTIPLE INSURANCE CARRIERS. If an injury sustained by an employee is determined to be compensable but there is a dispute as to which of two or more employers for whom the employee was providing services at the time of the injury, the insurance carriers of each of the affected employers shall pay a proportionate share of the benefits due to that employee. On final determination of the liability, any insurance carrier determined not to be liable for the payment of benefits is entitled to

insurers pay the maintenance tax imposed under Article 5.68, Insurance Code.

(b) The Texas Workers' Compensation Board shall set the rate of assessment each year to produce the amount of funds it estimates will be necessary to pay the expenses of the board in regulating workers' compensation insurance during the succeeding year. The Texas Workers' Compensation Board shall certify the rate of assessment to be used during the succeeding year not later than October 1 of each calendar year.

(c) Amounts received under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 12.05. INJURIES SUSTAINED OUTSIDE THIS STATE. (a) This section applies to an employee:

(1) hired in this state; or

(2) if a resident of this state, recruited in this state.

(b) An employee subject to this section who sustains a compensable injury outside this state is entitled to benefits under this Act.

(c) This section applies only to a compensable injury that occurs not later than one year after the date on which the employee leaves this state. An injured employee may not recover under this section if the employee elects to recover under the law of the jurisdiction in which the injury occurred.

SECTION 12.06. EFFECT OF OTHER INSURANCE COVERAGE. (a) A contract entered to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is

reimbursement for the share paid by that carrier from the carrier determined to be liable.

ARTICLE 13. AMENDMENTS

TEXAS WORKERS' COMPENSATION POOL

SECTION 13.01. Article 5.76, Insurance Code, is amended to read as follows:

Art. 5.76. PREVENTION OF INJURIES AND ASSIGNMENT OF CERTAIN [~~REJECTED~~] RISKS.

Sec. 1. [~~(a)~~] In this Article [~~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 4 [~~(e)~~] 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 4 [~~(e)~~] 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 that has an estimated annual premium of at least $10,000 and that is in good faith entitled to insurance but is unable to procure or retain insurance through ordinary methods in the voluntary [~~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. The term does not include an insurance risk that qualifies for assignment to an individual company under Section 6 of this Article.

(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.

Sec. 2. (a) [~~(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 nonprofit 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. An

[~~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.

(b) The pool shall be governed by a governing committee of twelve (12) members elected annually by the members of the pool. Seven of the elected members of the governing committee constitute a quorum. The [~~Their~~] qualifications, terms of office, duties, and responsibilities of the elected members 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 provided by Section 7 [~~(e)~~] of this Article.

(c) The Board also shall appoint three ex officio members of the governing committee, one of whom shall represent employers, one of whom shall represent labor, and one of whom shall represent the Board. An ex officio member may not vote and is not considered in determining a quorum.

(d) Not more than eight elected 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 Article [~~Act~~].

(e) The pool is a governmental body for purposes of the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 3. (a) If an insurer rejects an insurance risk, the insurer shall notify the Board in writing of the specific reasons for rejecting the risk. The insurer must include a statement in the notice as to whether the loss experience of the risk was a factor in the decision to reject the risk.

(b) The Board shall select the servicing companies it determines necessary to serve the residual market. The selection shall be made on the basis of competitive bids according to bid specifications and procedures established by the rules of the Board, including rules relating to standards and requirements for the qualification, performance, and operation of a servicing company that are adequate to assure employers assigned to the pool prompt and efficient service.

(c) A company may not be a servicing company unless the group of which the company is a member writes at least one-half percent of the total voluntary

market for workers' compensation insurance in this state.

Sec. 4. (a) The [~~(e)--It-shall-be-the--duty--of the~~] pool shall [~~to~~] provide insurance, in the manner herein provided, for any risk under the Texas Workers' Compensation Act [~~Law-of-Texas~~], the Longshoremen's and Harbor Workers' Compensation Act, [~~and/~~]or the Federal Coal Mine Health and Safety Act of 1969, as amended, 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.

(b) From and after the date the rules made and adopted under Section 7 [~~(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.

Sec. 5. (a) [~~(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 9 [~~(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.

(b) 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.

Sec. 6. (a) The Board shall develop a fair and nondiscriminatory plan for the assignment to individual companies of insurance risks with estimated annual premiums of less than $10,000 that are not classified by the Board as extra-hazardous businesses or activities.

(b) Except as provided by Subsection (c) of this section, each insurance company in this state writing insurance as defined in this Article shall participate in the assignment plan developed by the Board.

(c) The Board by rule may exempt from participation in the assignment plan a company or a group of companies whose total premium written for insurance as defined in this Article is less than 0.05 percent of the total voluntary market as of the most recent premium information reporting year.

Sec. 7. (a) [~~(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.

(b) The pool shall pay all costs and expenses of operating and maintaining the pool, including any fees or allowances paid [~~to members~~] for servicing rejected

risks or making up deficits incurred by the pool. 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 or for making up deficits incurred by the pool.

(c) 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.

Sec. 8. [~~(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.

Sec. 9. (a) [~~(g)~~] The Board, in addition to the provisions prescribed by Subchapter D 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.

(b) 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, and allowance for profit and contingencies, and any other relevant factors in connection with insuring and servicing such risk or risks.

(c) 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.

(d) The Board shall create a division to monitor the operation of the pool with the object of reducing the number of risks insured by the pool. The division shall review each rejected risk before its assignment to the pool and shall review the assignment of each risk made under Section 6 of this Article. The division shall attempt to find an insurer to voluntarily insure the risk before its initial assignment to the pool, assignment to a specific company under Section 6 of this Article, or renewal of the risk's assignment to the pool. The Board shall adopt rules as necessary to implement this subsection.

Sec. 10. [~~(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.

Sec. 11. [~~(i)~~] No rejected risk or applicant as a rejected risk shall be considered in good faith entitled to the remedies and benefits of this Article [~~Act~~] if such risk is in violation of rules or regulations of the Texas Workers' Compensation [~~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.

Sec. 12. [~~(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.

Sec. 13. [~~(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.

Sec. 14. [~~(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 Article [~~Act~~].

RESEARCH CENTER

SECTION 13.02. Chapter 88, Education Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TEXAS WORKERS' COMPENSATION INSURANCE RESEARCH CENTER

Sec. 88.501. DEFINITIONS. In this subchapter:

(1) "Center" means the Texas Workers' Compensation Insurance Research Center.

(2) "Committee" means the Workers' Compensation Insurance Research Advisory Committee.

(3) "Executive director" means the executive director of the center.

Sec. 88.502. RESEARCH CENTER. (a) The Texas Workers' Compensation Insurance Research Center is established. The center is operated jointly by the Texas Engineering Experiment Station, a part of The Texas A&M University System, and The University of Texas School of Public Health at Houston, a part of The University of Texas Health Science Center at Houston.

(b) The center shall:

(1) gather, maintain, and publish statistical information relating to workers' compensation programs operated by this state or other states in order to obtain data for an ongoing comparative evaluation of the effectiveness of the workers' compensation program operated in this state;

(2) design and conduct research studies on workers' compensation insurance cost containment and the prevention of workplace injury, occupational disease, and business interruption and publish and

disseminate the findings and result of the studies; and

(3) develop programs for use by employers, employees, insurance companies, and other interested parties specifically designed to reduce job-related injury, occupational disease, and business interruption.

(c) The director of the Texas Engineering Experiment Station and the dean of The University of Texas School of Public Health at Houston jointly shall designate the executive director of the center.

Sec. 88.503. ADVISORY COMMITTEE. (a) The Workers' Compensation Insurance Research Advisory Committee is composed of nine members. One member must be a representative of the lieutenant governor designated by that officer. One member must be a representative of the speaker of the house of representatives designated by that officer. The members appointed by the lieutenant governor and the speaker of the house of representatives serve at the pleasure of the appointing officer. Seven members must be members of the general public, who are appointed by the governor as follows:

(1) one member must have demonstrated expertise in injury and health statistics;

(2) one member must have demonstrated expertise in data base management and design;

(3) one member must have demonstrated

expertise in the study of occupational injury and disease epidemiology;

(4) one member must have demonstrated expertise in the area of industrial systems engineering;

(5) one member must have demonstrated expertise in the area of injury and health economics; and

(6) two members must be representatives of the general public.

(b) The public members of the committee serve for staggered terms of six years, with either two or three members' terms expiring February 1 of each odd-numbered year. A public member may not serve more than two terms. In the event of a vacancy in a public member's position during a term, the governor shall appoint a replacement who meets the qualifications of the vacated position to fill the unexpired portion of the term.

(c) A public member of the committee may not receive compensation for serving on the committee. A public member is entitled to actual and necessary expenses incurred in performing functions as a member of the committee, not to exceed the limit established for state officers in the General Appropriations Act.

(d) The director of the Texas Engineering Experiment Station and the dean of The University of

Texas School of Public Health at Houston shall serve as nonvoting, ex officio members of the committee. The board of regents of The University of Texas System and the board of regents of The Texas A&M University System may each appoint a nonvoting, ex officio member to the committee to serve as a liaison between the committee and the respective board.

(e) The committee annually shall elect a chairman from its appointed members. The committee shall meet at least annually and may meet at other times at the call of the chairman or on the petition of not fewer than eight of its members.

(f) The committee shall review:

(1) proposals for research to be conducted at the center;

(2) staffing at the center; and

(3) general center policies, including:

(A) criteria for the selection of research studies;

(B) statistical data base development; and

(C) other matters considered appropriate by the committee.

(g) The executive director shall submit an annual proposed budget for the center, which shall include staffing costs, to the director of the Texas Engineering Experiment Station and the dean of The

University of Texas School of Public Health at Houston for review and approval. After review and approval of the proposed budget, those officers shall forward it for approval by a joint committee composed of the chancellor and two members of the board of regents of The University of Texas System, named by the chairman of that board, and the chancellor and two members of the board of regents of The Texas A&M University System, named by the chairman of that board. The approved budget is subject to final ratification by the board of regents of each of the university systems and is a part of the annual budget of each system.

Sec. 88.504. RESEARCH AGENDA; OTHER POWERS AND DUTIES. (a) The executive director shall prepare an annual research agenda for the center in consultation with the director of the Texas Engineering Experiment Station and the dean of The University of Texas School of Public Health at Houston. Following review and approval by the director and dean, the executive director of the center shall submit the proposed research agenda to the committee for its review and approval at the beginning of each calendar year. The executive director shall regularly inform the committee of changes in the agenda.

(b) On or before January 10 of each year, the center shall file with the governor and the presiding officer of each house of the legislature a complete and

detailed report relating to the activities of the center and accounting for all funds received and disbursed by the center during the preceding year.

(c) The center shall cooperate with the Texas Workers' Compensation Board and the Labor-Business Advisory Council on Workers' Compensation and shall conduct research for the board and council as feasible under the center's budget and responsibility to perform other duties.

(d) The center may charge for its publications and may accept gifts and grants from foundations, individuals, research sponsors, and other sources for the benefit of the programs of the center.

(e) The center shall publish an annual report of the activities and accomplishments of the center.

Sec. 88.505. FUNDING; MAINTENANCE TAX. (a) The center shall be funded through the assessment of an annual maintenance tax collected from each stock company, mutual company, reciprocal or interinsurance exchange, and Lloyd's association that writes workers' compensation insurance in this state. The State Board of Insurance shall set the rate of the maintenance tax, in an amount not to exceed one-tenth percent of the correctly reported gross workers' compensation insurance premiums of those insurers as reported to the board under Subchapter D, Chapter 5, Insurance Code. The State Board of Insurance shall set the rate of

assessment each year to produce the amount of funds that it estimates will be necessary to pay the expenses of the center. The tax assessed under this section is in addition to all other taxes imposed on those insurers for workers' compensation purposes, and shall be paid to the State Board of Insurance at the time that the insurers pay the maintenance tax imposed under Article 5.68, Insurance Code.

(b) The State Board of Insurance may adopt rules as necessary relating to the assessment and collection of the maintenance tax imposed under Subsection (a) of this section.

(c) The State Board of Insurance shall remit all funds received under this section to the comptroller of public accounts for deposit in the state treasury to the credit of the general revenue fund.

OTHER INSURANCE MATTERS

SECTION 13.03. Subchapter D, Chapter 5, Insurance Code, is amended by adding Articles 5.55B, 5.60A, and 5.65A to read as follows:

Art. 5.55B. DEDUCTIBLES; RULES. (a) The Board shall require each company or association that writes workers' compensation insurance in this state to offer policyholders an optional deductible plan or a range of deductibles.

(b) The Board shall adopt rules as necessary to

implement this section.

Art. 5.60A. TESTIMONY AT RATE HEARINGS BY CERTAIN WORKERS' COMPENSATION BOARD OFFICERS. (a) To obtain more immediate and accurate information on certain trends in workers' compensation insurance that may affect the costs of that insurance during a rating period, the executive director of the Texas Workers' Compensation Board shall testify at any rate hearing conducted by the Board on workers' compensation insurance relating to trends in:

(1) claims resolution of workers' compensation cases; and

(2) cost components in workers' compensation claims.

(b) The testimony of the executive director is subject to cross-examination by the Board.

Art. 5.65A. NOTIFICATION TO POLICYHOLDER. (a) A company or association that writes workers' compensation insurance in this state shall notify each policyholder of:

(1) any claim that is filed against the policy;

(2) a proposal to settle a claim; and

(3) an administrative or judicial proceeding relating to the resolution of a claim, including a benefit review conference or contested case hearing conducted by the Texas Workers' Compensation

Board.

(b) Not later than the 60th day before the date on which the term of a workers' compensation insurance policy expires, and at other times on the written request of the policyholder, each company or association that writes workers' compensation insurance in this state shall provide a policyholder with a list of claims charged against the policy, including payments made and reserves established on each claim.

COURT REVIEW; JURISDICTION OF STATUTORY COUNTY COURTS

SECTION 13.04. Section 23.101(a), Government Code, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with criminal actions against defendants who are detained in jail pending trial given preference over other criminal actions;

(3) election contests and suits under the Texas Election Code; and

(4) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board-and~~] claims under the Federal Employers' Liability Act and the

Jones Act.

SECTION 13.05. (a) Section 25.0032(a), Government Code, as amended by Section 8.04(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Anderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) probate matters and proceedings, including will contests;

(B) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(C) family law cases and proceedings; and

[~~(D)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,-and~~]

(3) concurrent jurisdiction with the

county and district courts over all suits arising under the Family Code.

(b) Section 2(b), Chapter 665, Acts of the 67th Legislature, Regular Session, 1981 (Article 1970-377, Vernon's Texas Civil Statutes), as amended by Chapter 913, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) The County Court at Law of Anderson County has jurisdiction concurrent with the district court in:

(1) all probate matters and proceedings; including will contests;

(2) eminent domain cases; <u>and</u>

(3) civil cases when the matter in controversy exceeds $500 and does not exceed $50,000, exclusive of interest[~~,--and~~

[~~(4)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.06. Section 25.0222(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,-and~~

[~~(3)~~] family law cases and proceedings.

SECTION 13.07. (a) Section 25.0312(a), Government Code, as amended by Section 8.07 of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Calhoun County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount

in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings; [~~and~~]

(C) [~~(D)~~] suits on behalf of the state to recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(D) [~~(E)~~] suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(E) [~~(F)~~] suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(F) [~~(G)~~] suits for the trial of right to property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(G) [~~(H)~~] contested elections; and

(3) concurrent jurisdiction with the justice courts in criminal matters prescribed by law for justice courts.

(b) Section 2(c), Chapter 1076, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-385, Vernon's

Texas Civil Statutes), as amended by Section 1, Chapter 938, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(c) The county court at law has concurrent civil jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy;

(3) [~~(4)~~] cases and proceedings involving adoptions, birth records, or removal of disability of reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support, custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses;

(4) [~~(5)~~] suits on behalf of the state to

recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(5) [~~(6)~~] suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(6) [~~(7)~~] suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(7) [~~(8)~~] suits for the trial of right to property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(8) [~~(9)~~] contested elections.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.08. Section 25.0592(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Dallas County has original and concurrent jurisdiction with the district court in[~~:~~

[~~(1)~~] civil cases in which the matter in controversy exceeds $500, excluding interest, but does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs[~~,-and~~

[~~(2)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

SECTION 13.09. Section 25.0702(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Ector County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.10. Section 25.0862(b), Government Code, is amended to read as follows:

(b) A statutory county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(2) family law cases and proceedings[~~;--and~~

[~~(3)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

SECTION 13.11. (a) Section 25.1032(b), Government Code, as amended by Section 8.10(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) In addition to other jurisdiction provided by law, a county civil court at law has[~~:~~

[~~(1)~~] concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500, excluding interest, and does not exceed $50,000, excluding interest, statutory or punitive damages and penalties, attorney's fees, and costs[~~;-and~~

[~~(2)--original-and-concurrent--jurisdiction with-the-district-court-in-appeals-of-final-rulings-and decisions--of-the-Industrial-Accident-Board,-regardless~~

~~of the amount in controversy~~].

(b) Section 25.0013(d), Government Code, is repealed.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.12. (a) Section 25.1072(a), Government Code, as amended by Section 8.12(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hays County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed

$50,000, excluding interest; and

(B) family law cases and proceedings[~~,-and~~

[~~(C)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2(f), Chapter 298, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1970-358, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 231, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(f) The county courts at law have concurrent jurisdiction with the district court in[~~:~~

[~~(1)--appeals---of---final---rulings----and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(2)~~] eminent domain cases and proceedings, regardless of the amount in controversy.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.13. Section 25.1092(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by

Section 25.0003 and other law, a county court at law in Henderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees in cases in which attorney's fees are taxed as costs of court; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.14. Section 25.1182(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hunt County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in[~~:~~

[~~(A)~~] civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest[~~,-and~~

[~~(B)--appeals-of--final--rulings--and decisions-of-the-Industrial-Accident-Board~~].

SECTION 13.15. Section 25.1482(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Liberty County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; <u>and</u>

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.16. (a) Section 25.1542(a), Government Code, as amended by Section 8.14(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and

conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Lubbock County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(B) family law cases and proceedings[~~;--and~~

[~~(C)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 2b, Chapter 16, Acts of the 51st Legislature, 1st Called Session, 1950 (Article 1970-340, Vernon's Texas Civil Statutes), as amended by Section 28, Chapter 709, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2b. In addition to the jurisdiction now conferred upon the County Court at Law No. 1 of Lubbock County by the Constitution and Laws of the State of Texas said court shall hereinafter have and exercise concurrent civil jurisdiction with the district courts

in Lubbock County in all civil cases and matters when the matter in controversy shall exceed Five Hundred Dollars ($500) and not exceed Fifty Thousand Dollars ($50,000), exclusive of interest. [~~The County Court at Law No. 1 of Lubbock County also has concurrent jurisdiction with the district court in appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy.~~]

(c) Section 2b, Chapter 109, Acts of the 55th Legislature, Regular Session, 1957 (Article 1970-340.1, Vernon's Texas Civil Statutes), as amended by Section 29, Chapter 709, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2b. In addition to the jurisdiction now conferred upon the County Court at Law No. 2 of Lubbock County by the Constitution and Laws of the State of Texas said court shall hereinafter have and exercise concurrent civil jurisdiction with the district courts in Lubbock County in all civil cases and matters when the matter in controversy shall exceed Five Hundred Dollars ($500) and not exceed Fifty Thousand Dollars ($50,000), exclusive of interest. [~~The County Court at Law No. 2 of Lubbock County also has concurrent jurisdiction with the district court in appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy.~~]

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in

enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.17. Section 25.1672(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Midland County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; <u>and</u>

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.18. Section 25.1732(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by

Section 25.0003 and other law, a county court at law in Moore County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.19. Section 25.1792(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Nolan County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.20. Section 25.1852(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Panola County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.21. Section 25.1862(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in

Parker County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(3)~~] family law cases and proceedings.

SECTION 13.22. Section 25.1892(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Polk County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) [~~appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,~~

[~~(C)~~] cases and proceedings involving the collection of delinquent taxes,

penalties, interest, and costs and the foreclosure of tax liens; and

(C) [~~(D)~~] family law cases and proceedings.

SECTION 13.23. (a) Section 25.1902(b), Government Code, as amended by Section 8.18(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County also has, concurrent with the county court, the probate jurisdiction provided by general law for county courts. A county court at law also has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(3)~~] family law cases and proceedings.

(b) Section 2a(a), Chapter 56, Acts of the 54th Legislature, Regular Session, 1955 (Article 1970-311a, Vernon's Texas Civil Statutes), as added by Section 2, Chapter 658, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law No. 1 of Potter County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals---of---final---rulings----and decisions--of--the-Industrial-Accident-Board-regardless of-the-amount-in-controversy;~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy; [~~and~~]

(3) [~~(4)~~] cases and proceedings involving family law matters, including adoptions, birth records, or removal of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, and custody and support of minor children involved therein, incident to divorce or annulment proceedings; independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; paternity; termination of parental rights; independent actions involving child support and custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

(c) Section 2(b), Chapter 645, Acts of the 64th Legislature,

Regular Session, 1975 (Article 1970-311b, Vernon's Texas Civil Statutes), as added by Section 6, Chapter 658, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy; and

(3) [~~(4)~~] cases and proceedings involving family law matters, including adoptions, birth records, or removal of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, and custody and support of minor children involved therein, incident to divorce or annulment proceedings; independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; paternity; termination of parental rights; independent actions involving child support and custody of minors, and wife or child desertion; and

independent actions involving controversies between parent and child, between parents, and between spouses.

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.24. (a) Section 25.1932(a-2), Government Code, as amended by Section 8.19(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a-2) The County Court at Law No. 2 of Randall County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest and attorney's fees; <u>and</u>

(2) [~~appeals---of---final---rulings----and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(3)~~] cases under the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et

seq., Family Code).

(b) Section 2(b), Chapter 1027, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-371a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The County Court at Law No. 2 of Randall County has concurrent civil jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest and attorney's fees; and

(2) [~~appeals---of---final---rulings----and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(3)~~] eminent domain cases and proceedings.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.25. Section 25.2142(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Smith County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs; and

(B) family law cases and proceedings[~~;-and~~

[~~(C)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

SECTION 13.26. Section 25.2162(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Starr County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.27. (a) Section 25.2222(b), Government Code, as amended by Section 8.20(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs; <u>and</u>

(2) nonjury family law cases and proceedings[~~,-and~~

[~~(3)--final-rulings-and--decisions--of--the Industrial-Accident-Board,-regardless-of-the-amounts-in controversy~~].

(b) Section 2(c), Chapter 592, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-62.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The County Court at Law No. 3 of Tarrant County has jurisdiction concurrent with the district

court in civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs. The County Court at Law No. 3 of Tarrant County also has jurisdiction concurrent with the district court [~~in appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~] in matters of eminent domain, regardless of the amount in controversy.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.28. (a) Section 25.2292(a), Government Code, as amended by Section 8.21(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in

Travis County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district courts in civil cases and proceedings in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest[~~,-and~~

[~~(3)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 6(b), Chapter 315, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-324a.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In addition to other jurisdiction provided by law, the courts created by this Act and the existing county courts at law have concurrent jurisdiction with the district court in[~~:~~

[~~(1)~~] civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest[~~,-and~~

[~~(2)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various

laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.29. (a) Section 25.2412(a), Government Code, as amended by Section 8.23(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Washington County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; <u>and</u>

(B) family law cases and proceedings[~~,--and~~

[~~(C)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless~~

~~of the amount in controversy~~].

(b) Section 2(d), Chapter 943, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-308a, Vernon's Texas Civil Statutes), is repealed.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.30. (a) Section 25.2422(a), Government Code, as amended by Section 8.11(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Webb County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) cases and proceedings involving justiciable controversies and differences between spouses, or between parents, or between parent and child, or between any of these and third persons[~~,-and~~

[~~(D)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 3(a), Chapter 65, Acts of the 64th Legislature, Regular Session, 1975 (Article 1970-360, Vernon's Texas Civil Statutes), as amended by Section 1, Chapter 528, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law of Webb County has jurisdiction concurrent with the district court in:

(1) eminent domain cases; and

(2) civil cases when the matter in controversy exceeds $500 and does not exceed $50,000, exclusive of interest[~~,-and~~

[~~(3)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in

enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.31. (a) Section 25.2452(d), Government Code, as amended by Section 8.24(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(d) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) family law cases and proceedings;

(3) suits brought under the authority of the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code) or the Uniform Interstate Compact on Juveniles (Section 25.01 et seq., Family Code); <u>and</u>

(4) other juvenile and child welfare cases in which the district and county courts have jurisdiction[~~; and~~

[~~(5)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 2(f), Chapter 195, Acts of the 66th Legislature, Regular Session, 1979 (Article 1970-166d, Vernon's Texas Civil Statutes), as added by Section 3, Chapter 1094, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

(c) Section 2(f), Chapter 671, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-166e, Vernon's Texas Civil Statutes), as added by Section 5, Chapter 1094, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.32. (a) Section 25.2482(a), Government Code, as amended by Section 8.25(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by

Section 25.0003 and other law, a county court at law in Williamson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(3) family law cases and proceedings[~~,-and~~

[~~(4)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 2(a), Chapter 452, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-380, Vernon's Texas Civil Statutes), as amended by Chapters 985, 986, and 1088, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law of Williamson County has concurrent jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(2) cases and proceedings involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of names of persons; child welfare, custody, support

and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support and custody of minors and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses[~~,-and~~

[~~(3)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

CONFORMING AMENDMENTS; NAME CHANGE

SECTION 13.33. Article 1.07, Insurance Code, is amended to read as follows:

Art. 1.07. <u>TEXAS WORKERS' COMPENSATION</u>

[~~INDUSTRIAL-ACCIDENT~~] BOARD. Nothing in this Code shall be construed to in any manner affect the duties [~~new~~] imposed by law on the Texas Workers' Compensation [~~Industrial-Accident~~] Board or to take from said board the performance of the duties [~~new~~] imposed on said board by law.

SECTION 13.34. Article 5.55A, Insurance Code, is amended to read as follows:

Art. 5.55A. REDUCTION IN CERTAIN PREMIUMS[~~, LABOR-MANAGEMENT-SAFETY-COMMITTEES~~]. (a) In setting premium rates for workers' compensation insurance, the State Board of Insurance shall approve a premium discount plan that will entitle a policyholder to a premium reduction if the policyholder demonstrates that it has not experienced an employee accident during the past four years but excluding the most current policy year and that it complies with:

(1) an accident prevention program recommended by the policyholder's insurer under Article 5.76-1 of this code, or a similar program recommended by the workers' health and safety division [~~of occupational-safety~~] of the Texas Workers' Compensation Board [~~Department-of-Health~~];

(2) the employee notice requirements of the Hazard Communication Act (Article 5182b, Revised Statutes), if applicable;

(3) the recommendations of a

labor-management safety committee [~~created---and~~] approved by the Texas Workers' Compensation Board [~~in accordance-with-this-article~~]; and

(4) recommendations for completion of educational courses on accident prevention that are approved by the workers' health and safety division of the Texas Workers' Compensation Board [~~board~~] and are offered by an institution of higher education, a community college, an employer association, or other group.

(b) To be eligible for a premium reduction under Subsection (a) of this article, a policyholder must apply in the manner prescribed by the State Board of Insurance, [~~board-and~~] qualify under this article and rules of that [~~the~~] board, and have a labor-management safety committee approved by the workers' health and safety division of the Texas Workers' Compensation Board.

(c) [~~The-board-shall-create-a--plan--to--approve labor-management---safety---committees--established--to promote-occupational-or--industrial--safety--within--an individual--employer's-work-force.--A-committee-must-be composed--of--representatives--of--the---employer---and employees-and-shall-recommend-actions-that-can-be-taken by--the--employer--or--employees--to--reduce--workplace accidents.~~

[~~(d)~~] The State Board of Insurance [~~board~~] may

adopt rules as necessary to administer this article and to provide criteria for [~~approval of labor-management safety--committees--and~~] qualification for premium reductions under this article.

SECTION 13.35. Article 5.76-1, Insurance Code, is amended to read as follows:

Art. 5.76-1. ACCIDENT PREVENTION SERVICES. (a) Any insurer desiring to write workers' 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 workers' health and safety division of the Texas Workers' Compensation Board [~~State Board of Insurance~~].

(b) [~~(a-1)~~] The workers' health and safety division of the Texas Workers' Compensation Board [~~State---Board---of---Insurance~~] shall conduct [~~the~~] inspections to determine the adequacy of the accident prevention services required by Subsection (a) of this Article at least every two (2) years for each insurer writing workers' compensation insurance in Texas.

(c) [~~(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.~~] Notice that services are available to the policyholder from the insurer must appear in no less than 10-point bold type on the front of each workers' compensation insurance policy delivered or issued for delivery in the state. To provide such facilities, the insuror 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).

(d) [~~(c)~~] At least once each year each insurer writing workers' compensation insurance in Texas must submit to the Texas Workers' Compensation Board [~~State Board-of-Insurance~~] detailed information on the type

of accident prevention facilities offered to that insurer's policyholders. The information must include:

(1) the amount of money spent by the insurer on accident prevention services;

(2) the number of field safety representatives employed by the insurer;

(3) the number of site inspections performed;

(4) any accident prevention services for which the insurer contracts; and

(5) any additional information required by that board [~~the Board~~].

(e) [~~(d)~~] If the Commissioner of Insurance shall determine that reasonable accident prevention services are not being maintained or provided by the insuror or are not being used by the insuror in a reasonable manner to prevent injury to employees of its policyholders, the fact shall be reported to the Texas Workers' Compensation Board [~~State Board of Insurance~~], and that board [~~the Board~~] shall order a hearing to determine if the insuror is not in compliance with this Article. If it is determined that the insuror is not in compliance, the State Board of Insurance shall revoke its license to write workers' compensation insurance in Texas [~~shall be revoked~~].

(f) [~~(e)~~] The Texas Workers' Compensation Board [~~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.

(g) [~~(f)~~] The Texas Workers' Compensation Board shall employ the personnel necessary to enforce this Article and shall employ at least five (5) safety inspectors to perform inspections at the job site and at the insurance company to determine the adequacy of the accident prevention services provided by the insurer. The safety inspectors must have the qualifications required for field safety representatives required by Subsection (a) of this Article.

(h) [~~(g)~~] An Accident Prevention Advisory Committee is created to assist the Texas Workers' Compensation Board in developing rules to carry out this Article. The committee is composed of employer, employee, and insurance industry representatives and safety professionals appointed by that board [~~the Board~~] annually.

(i) [~~(h)~~] The administration of this Article is an expense of regulating workers' compensation insurance under Article 5.68, Insurance Code.

SECTION 13.36. Section 3A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION OF TEXAS WORKERS' COMPENSATION [~~INDUSTRIAL~~

~~ACCIDENT~~] BOARD. (a) The liquidator shall notify the Texas Workers' Compensation [~~Industrial-Accident~~] Board immediately upon a finding of insolvency or impairment upon any insurance company which has in force any workers' compensation coverage in Texas.

(b) The Texas Workers' Compensation [~~Industrial Accident~~] Board shall, upon said notice, submit to the liquidator a list of active cases pending before the Texas Workers' Compensation [~~Industrial-Accident~~] Board in which there has been an acceptance of liability by the carrier, where it appears that no bona fide dispute exists and where payments were commenced prior to the finding of insolvency or impairment and where future or past indemnity or medical payments are due.

(c) Notwithstanding the provisions of Section 3 of this Article, the liquidator is authorized to commence or continue the payment of claims based upon the list submitted in Subsection (b) above.

(d) In order to avoid undue delay in the payment of covered workers' compensation claims, the liquidator shall contract with the Texas Workers' Compensation [~~Assigned---Risk~~] Pool or any other qualified organization for claims adjusting. Files and information delivered by the Texas Workers' Compensation [~~Industrial--Accident~~] Board to the liquidator may be delivered to the Texas Workers' Compensation [~~Assigned-Risk~~] Pool or any organization

with which the liquidator has contracted for claims adjusting services.

(e) The Texas Workers' Compensation [~~Industrial Accident~~] Board shall report to the State Board of Insurance any occasion when a workers' compensation insurer has committed acts that may indicate insurer financial impairment, delinquency or insolvency.

SECTION 13.37. Section 2(5)(A), Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Department of Commerce;

(iii) a member of the Texas Aeronautics Commission;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Purchasing and General Services Commission;

(viii) a member of the Texas Board

of Corrections;

(ix) a member of the Board of Trustees of the Employees Retirement System of Texas;

(x) a member of the State Highway and Public Transportation Commission;

(xi) a member of the Texas Workers' Compensation [~~Industrial-Accident~~] Board;

(xii) a member of the State Board of Insurance;

(xiii) a member of the Board of Pardons and Paroles;

(xiv) a member of the Parks and Wildlife Commission;

(xv) a member of the Public Safety Commission;

(xvi) the Secretary of State;

(xvii) a member of the State Securities Board;

(xviii) a member of the Texas Amusement Machine Commission;

(xix) a member of the Texas Water Development Board;

(xx) a member of the Texas Water Commission;

(xxi) a member of the governing board of a state senior college or university as defined by Section 61.003, Education Code;

(xxii) a member of the Texas Higher Education Coordinating Board[~~,--Texas---College---and University-System~~];

(xxiii) a member of the Texas Employment Commission;

(xxiv) a member of the State Banking Board;

(xxv) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvi) a member of the Credit Union Commission; or

(xxvii) a member of the School Land Board.

SECTION 13.38. Section 3(1), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation [~~Industrial----Accident~~] Board, and institutions of higher education, that makes rules or determines contested cases.

SECTION 13.39. Section 2(1), Texas Administrative Code Act (Article 6252-13b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission,

department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation [~~Industrial----Accident~~] Board, and institutions of higher education, that makes rules or determines contested cases.

SECTION 13.40. Section 3A(h), Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Texas Workers' Compensation [~~Industrial--Accident~~] Board or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be clearly identified in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Any public official or person who is designated or authorized to post notices of meetings by a governmental body in accordance with Section 3A of this Act shall post the notice taking at face value the reason for the emergency as stated by the governmental

1 body. Cases of emergency and urgent public necessity
2 are limited to imminent threats to public health and
3 safety or reasonably unforeseeable situations requiring
4 immediate action by the governmental body. Provided
5 further, that where a meeting has been called with
6 notice thereof posted in accordance with this
7 subsection, additional subjects may be added to the
8 agenda for such meeting by posting a supplemental
9 notice, in which the emergency or urgent public
10 necessity requiring consideration of such additional
11 subjects is expressed. In the event of an emergency
12 meeting, or in the event any subject is added to the
13 agenda in a supplemental notice posted for a meeting
14 other than an emergency meeting, it shall be sufficient
15 if the notice or supplemental notice is posted two
16 hours before the meeting is convened, and the presiding
17 officer or the member calling such emergency meeting or
18 posting supplemental notice to the agenda for any other
19 meeting shall, if request therefor containing all
20 pertinent information has previously been filed at the
21 headquarters of the governmental body, give notice by
22 telephone or telegraph to any news media requesting
23 such notice and consenting to pay any and all expenses
24 incurred by the governmental body in providing such
25 special notice. The notice provisions for legislative
26 committee meetings shall be as provided by the rules of
27 the house and senate.

SECTION 13.41. Section 2, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Department" whenever used in this law shall be held to mean the State [~~Highway~~] Department of Highways and Public Transportation [~~Texas~~].

(2) [~~2.~~] "Employee" shall mean every person in the service of the [~~State-Highway~~] Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the [~~State-Highway~~] Department.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean----Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial--Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean--the--relatives--named--in Section--8a--of-Article-8306,-Revised-Civil-Statutes-of Texas-of-1925,-adopted-in-Section-7-of-this-law~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall--be--as--defined--in--Section--1,--Article-8309, Revised-Civil-Statutes-of-Texas-of-1925~~].

(b) [~~8.~~] Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

SECTION 13.42. Section 7, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~laws-as-amended-or as-they-may-hereafter-be-amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.08, 5.09, 5.21-5.24, 5.27, 5.41-5.46, 5.48-5.51, and 5.61-5.65;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08

[~~(1)--Article-8306,-except-Sections--5--and 28,--and--Articles-8307,-8307b,-and-8309,-Revised-Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter-248,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter---77,---Acts---of---the--65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter--208,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts---of---the---62nd Legislature,--Regular--Session,--1971--(Article--8307e, Vernon's-Texas-Civil-Statutes),~~

[~~(6)--Chapter--358,--Acts---of---the---64th Legislature,--1975-(Article-8307d,-Vernon's-Texas-Civil Statutes),-and~~

[~~(7)--Chapter-179,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber," or~~] "employer" appears [~~or-their--equivalents--appear~~], it [~~they~~] shall be construed to and shall mean "the department."

SECTION 13.43. Section 14, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. RULES AND REGULATIONS; EXAMINING PHYSICIANS; REPORTS AS EVIDENCE. The [~~State-Highway~~] Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the [~~State-Highway~~] Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the [~~State--Highway~~] Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the [~~State---Highway~~] Department to determine who may be physically fit to be classified as "employees" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the [~~State Highway~~] Department a complete transcript of said examination in writing upon a form to be furnished by the [~~State-Highway~~] Department. It shall be the duty of the [~~State-Highway~~] Department to preserve as a part of the permanent records of the [~~State--Highway~~]

Department all reports of such examinations so filed. Such reports shall be admissible in evidence before the Texas Workers' Compensation [~~Industrial--Accident~~] Board, and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Texas Workers' Compensation [~~Industrial Accident~~] Board in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such reports so admitted shall be prima facie evidence as to the facts set out therein.

SECTION 13.44. Sections 2, 7, 9, and 13, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the board of regents of The Texas A&M University System [~~Board-of-Directors-of-the-Agricultural-and--Mechanical College-of-Texas-including-the-following:~~

[~~Agricultural--and-Mechanical-College of-Texas~~

[~~Texas----Agricultural-----Experiment~~

~~Station~~

~~[Extension-Service,-A.-and-M.-College of-Texas~~

~~[Texas-Forest-Service~~

~~[Rodent-Control-Service~~

~~[Firemen's-Training-School~~

~~[John--Tarleton--Agricultural-College~~

~~[North-Texas-Agricultural-College~~

~~[Prairie--View---State---Normal---and Industrial-College~~

~~[Any--other-agencies-now-or-hereafter under-the--direction--and--control--of--said--Board--of Directors~~].

(2) [~~2.~~] "Workman" shall mean every person employed in the service of any institution as defined above, whose name appears on the payroll thereof.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean---Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial-Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall--mean--the-relatives-named-in Section-8a-of-Article-8306,-Revised-Civil--Statutes--of Texas-of-1925,-adopted-in-Section-7-of-this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925~~].

(b) [~~8.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. LAWS GOVERNING. (a) Unless otherwise provided in this Act, the following provisions of [~~herein,~~] the Texas Workers' Compensation Act [~~Sections 1, 6, 7, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and Article 8306a, Acts 1931, 42nd Legislature, as amended, and Sections 4a, 6a, 11, 12, 13, and 14 of Article 8307, of the Revised Civil Statutes of Texas, 1925, as amended, and Sections 4, and 5, of Article 8309, of the Revised Civil Statutes of Texas, 1925, as amended,~~] are hereby adopted and shall govern insofar as applicable under the provisions of this law:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.09, 5.21-5.24, 5.27, 5.41-5.46, 5.49-5.51, and 5.61-5.64;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08.

(b) Provided that whenever [~~in-the-above-adopted Sections--of--Articles--8306,--8307,--and--8309--of-the Revised-Civil-Statutes-of-Texas,-1925,-as--amended,--or herein--amended,~~] the word "employer" appears in this Act, it means [~~"association,"---"subscriber,"---or "employer,"---or---their--equivalents--appear--in--such Articles,-they-shall-be-construed-to--and--shall--mean~~] "the institution."

Sec. 9. PAYMENT OF COMPENSATION; EXHAUSTION OF EARNED ANNUAL AND SICK LEAVE. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~provided-in-Section-7,-Article-8306,-as-amended,~~] will remain available to the workman but no workmen's

compensation payment will accrue or become due and payable to the injured workman.

Sec. 13. RULES AND REGULATIONS; PHYSICIANS OR CHIROPRACTORS FOR EXAMINATIONS; REPORTS OF EXAMINATIONS. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection 2 of~~] Section 2(2) of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the

institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

SECTION 13.45. Sections 2, 7, 9, 13, and 18, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The University of Texas System [~~including the following:~~

[~~Main University, Austin~~

[~~Medical Branch, Galveston~~

[~~Dental Branch, Houston~~

[~~M. D. Anderson Hospital for Cancer Research, Houston~~

[~~Southwestern Medical School, Dallas~~

[~~Texas Western College, El Paso~~

[~~Postgraduate School of Medicine, Houston~~

[~~Any other agencies now or hereafter under the direction and control of said Board of Regents~~].

(2) [~~2.~~] "Workman" shall mean every person in the service of The University of Texas System under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of The University of Texas System.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean----Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial--Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean--the--relatives--named--in Section--8a--of-Article-8306,-Revised-Civil-Statutes-of Texas-of-1925,-adopted-in-Section-7-of-this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall--be--as--defined--in--Section--1,--Article-8309, Revised-Civil-Statutes-of-Texas-of-1925~~].

(b) [~~7.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be

included.

Sec. 7. APPLICABILITY OF EXISTING LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~sections~~] are adopted and shall govern as applicable under the provisions of this Act:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.09, 5.21-5.24, 5.41-5.46, 5.49-5.51, and 5.61-5.64;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08

[~~Sections-1,-6,-7,-7b,-7c,-7d,-7e,-8,-8a,--8b,--9,--10,-11,-11a,-12,-12a,-12b,-12c,-12d,-12e,-12f,-12i,-13,-15,-15a,--16,-17,-19,-20,-21,-22,-23,-24,-25,-26,-and-27-of-Article-8306,-Revised-Civil-Statutes-of-Texas,-1925,-as-amended,-and-as-may-be-hereafter--amended,--Section--1,-Chapter--248,--Acts--of--the--42nd-Legislature,-Regular-Session,-1931--(Article--8306a,--Vernon's--Texas--Civil-Statutes),--as--last--amended-by-Section-2,-Chapter-26,-Acts-of-the-54th-Legislature,--Regular--Session,--1955,-and--as--may-be-hereafter-amended,-Sections-4a,-6a,-10,-11,-12,-13,-and--14--of--Article--8307,--Revised--Civil-Statutes--of--Texas,--1925,--as--amended,-and-as-may-be-hereafter-amended,-Sections--4--and--5,--Article--8309,-Revised--Civil-Statutes-of-Texas,-1925,-as-amended,-and~~

~~as-may-be-hereafter-amended,-Section--1,--Chapter--179,~~
~~Acts--of--the--42nd--Legislature,-Regular-Session,-1931~~
~~(Article-8309a,--Vernon's--Texas--Civil--Statutes),--as~~
~~amended--by--Section--7,--Chapter-178,-Acts-of-the-53rd~~
~~Legislature,-Regular--Session,--1953,--and--as--may--be~~
~~hereafter-amended~~].

(b) Wherever the word "employer" appears in the Texas Workers' Compensation Act [~~words--"association,"~~ ~~"subscriber,"--or--"employer,"-or-the-equivalent-of-any~~ ~~of-these-words,-are-used--in--Article--8306,--8307,--or~~ ~~8309,--Revised--Civil-Statutes-of-Texas,-as-amended,-or~~ ~~as-may-be-hereafter-amended,-and-in-Section-1,--Chapter~~ ~~179,--Acts--of--the--42nd-Legislature,-Regular-Session,~~ ~~1931-(Article-8309a,-Vernon's-Texas-Civil-Statutes),-as~~ ~~amended-by-Section-7,-Chapter-178,--Acts--of--the--53rd~~ ~~Legislature,--Regular--Session,--1953,--and--as--may-be~~ ~~hereafter-amended~~], for the purpose of this Act it means [~~they-mean~~] "the institution."

Sec. 9. WEEKLY PAYMENTS; ANNUAL AND SICK LEAVE. It is the purpose of this Act that compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~in~~

~~Section--7,--Article--8306,--Revised--Civil-Statutes-of Texas,-1925,--as--amended,--and--as--may--be--hereafter amended,~~] will remain available to the workman, but no workmen's compensation payment will accrue or become due and payable to the injured employee.

Sec. 13. RULES AND REGULATIONS; DESIGNATION OF PHYSICIANS AND SURGEONS; REPORTS OF EXAMINATIONS. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection-2--of~~] Section 2(2) of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the

institution all reports of such examinations so filed with it.

Sec. 18. When an injured workman has sustained an injury in the course of employment and [~~filed claim for compensation and~~] given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

SECTION 13.46. Section 3(1), Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Board" means the Texas Workers' Compensation [~~Industrial Accident~~] Board.

SECTION 13.47. Subsection (b), Article 1269t, Revised Statutes, is amended to read as follows:

(b) An employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

(1) the disease is not an "ordinary disease of life" as that term is used in the context of

a workers' compensation claim [~~by--the--Industrial Accident-Board~~];

(2) the exposure to the disease occurs during the course of the employment; and

(3) the employee requires preventative medical treatment because of exposure to the disease.

SECTION 13.48. Section 1A, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 1A. In this article:

(1) "Association" means the Texas Employers' Insurance Association.

(2) "Board" means the Texas Workers' Compensation Board.

(3) "Chiropractic service" means [~~The-term "chiropractic-service"--shall--include,--but--shall--be limited-to,~~] chiropractic as defined by the laws [~~Laws~~] of this State.

(4) "Chiropractor" means a person [~~and-the term--"chiropractor"--shall--include,-but-be-limited-to chiropractors~~] licensed by the Texas Board of Chiropractic Examiners [~~whose--licenses--are-properly registered-and-in-good-standing-as-required-by-the-Laws of-this-State~~].

SECTION 13.49. Section 7, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 7. Any employer of labor in this State who may be subject to the terms of the Texas Workers'

Compensation Act [~~this-Law~~] or to the terms of the "Longshoremen's and Harbor Worker's Compensation Act" of the United States may become a subscriber to the Association.

SECTION 13.50. Section 20a(c), Article 8308, Revised Statutes, is amended to read as follows:

(c) Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Texas Workers' Compensation [~~Industrial-Accident~~] Board, or until a subsequent notice is filed under the provisions of Section 18a of this article, at which time the subsequent insurance company shall be deemed to be the only insurance company liable under the provisions of the Texas Workers' Compensation [~~this~~] Act from and after the effective date of such subsequent policy of insurance.

SECTION 13.51. Sections 1(3) and (4), Article 8309g, Revised Statutes, are amended to read as follows:

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meanings applied to those terms in the context of a workers' compensation claim brought under the Texas Workers' Compensation Act [~~meaning assigned-to-them-in-Section-1,--Article--8309,--Revised Civil-Statutes-of-Texas,-1925,-as-amended~~].

(4) "Board" means the Texas Workers'

Compensation [~~Industrial-Accident~~] Board.

SECTION 13.52. Sections 15(a) and (b), Article 8309g, Revised Statutes, are amended to read as follows:

(a) The following provisions of the Texas Workers' Compensation Act [~~following-laws-as-amended-or as-they-may-hereafter-be-amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.08, 5.09, 5.21-5.24, 5.27, 5.41-5.46, 5.48-5.51, and 5.61-5.65;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08

[~~(1)--Article-8306,-except-Sections--5--and 28,--and--Articles-8307,-8307b,-and-8309,-Revised-Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter-248,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter---77,---Acts---of---the--65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter--208,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts---of---the---62nd Legislature,--Regular--Session,--1971--(Article--8307e, Vernon's-Texas-Civil-Statutes),~~

[~~(6)--Chapter--358,--Acts---of---the---64th Legislature,--1975-(Article-8307d,-Vernon's-Texas-Civil Statutes),-and~~

[~~(7)--Chapter-179,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Wherever the words [~~"association,"~~] "insurer[~~,~~]" [~~"subscriber,"~~] or "employer" are used in the adopted law [~~laws~~], the word "state," "division" or "director," whichever is applicable, is substituted for the purposes of this article.

SECTION 13.53. Section 17, Article 8309g, Revised Statutes, is amended to read as follows:

Sec. 17. COVERAGE FOR OUT-OF-STATE EMPLOYEES. An [~~Notwithstanding--Section-19,-Article-8306,-Revised Civil-Statutes-of-Texas,-1925,-as-amended,-an~~] employee who performs services outside this state is entitled to benefits under this article even if the person is hired or not hired in this state, does not work in this state, works both in this state and out of state, is injured outside this state, or has been outside this state for more than one year. An employee who elects to pursue remedies provided by the state or the District of Columbia in which an injury occurs is not

entitled to benefits under this article.

SECTION 13.54. Section 1(3), Article 8309h, Revised Statutes, is amended to read as follows:

(3) "Board" means the Texas Workers' Compensation [~~Industrial-Accident~~] Board.

SECTION 13.55. Section 3, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 3. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~following-laws-as amended-or--as--they--may--hereafter--be--amended~~] are adopted except to the extent that they are inconsistent with this article:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.08, 5.09, 5.21-5.24, 5.27, 5.41-5.46, 5.48-5.51, and 5.61-5.65;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08

[~~(1)--Article--8306,--except-Sections-5-and 28,-and-Articles-8307,-8307b,-and-8309,--Revised--Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter--248,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter--77,---Acts---of---the---65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter-208,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter---115,---Acts---of--the--62nd Legislature,--Regular--Session,--1971--(Article--8307e, Vernon's-Texas-Civil-Statutes),-except-that-if-the-city provides-by-Charter-or-ordinance-for-ultimate-access-to the-district-court-for-wrongful-discharge,-Chapter-115, Acts--of--the--62nd--Legislature,-Regular-Session,-1971 (Article-8307e,-Vernon's-Texas-Civil-Statutes)--is--not applicable,~~

[~~(6)--Chapter---358,---Acts---of--the--64th Legislature,-1975-(Article-8307d,-Vernon's-Texas--Civil Statutes),-and~~

[~~(7)--Chapter--179,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber,"~~ ~~or~~] "employer[~~,~~]" appears [~~or--their--equivalents appear~~], it [~~they~~] shall be construed to and shall mean "a political subdivision."

(c) If a municipality provides by charter or ordinance for ultimate access to the district court in

the event of wrongful discharge, Section 11.05, Texas Workers' Compensation Act, does not apply.

ARTICLE 14. REPEALER

SECTION 14.01. The following laws are repealed:

(1) Section 2(e), Chapter 709, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-340.2, Vernon's Texas Civil Statutes);

(2) Article 4413a.2, Revised Statutes;

(3) Section 1, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145a, Vernon's Texas Civil Statutes);

(4) Section 2, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145b, Vernon's Texas Civil Statutes);

(5) Section 3, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145c, Vernon's Texas Civil Statutes);

(6) Section 11, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(7) Section 16, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(8) Article 8306, Revised Statutes;

(9) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes);

(10) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(11) Article 8307, Revised Statutes;

(12) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8307a, Vernon's Texas Civil Statutes);

(13) Article 8307b, Revised Statutes;

(14) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);

(15) Chapter 358, Acts of the 64th Legislature, Regular Session, 1975 (Article 8307d, Vernon's Texas Civil Statutes);

(16) Sections 18(a), 18a, 19, and 20, Article 8308, Revised Statutes;

(17) Article 8309, Revised Statutes;

(18) Section 11, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(19) Section 17, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(20) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes);

(21) Section 11, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas

1 Civil Statutes); and

2 (22) Section 25.0013(d), Government Code.

3 ARTICLE 15. TRANSITION;

4 EFFECTIVE DATE; EMERGENCY

5 SECTION 15.01. CREATION OF BOARD; INITIAL APPOINTMENTS OF
6 BOARD MEMBERS. (a) The Texas Workers' Compensation Board is
7 created on the effective date of this Act.

8 (b) Except as provided by Subsection (c) of this section, in
9 making the initial appointments to the Texas Workers' Compensation
10 Board, the governor shall designate three members for terms
11 expiring February 1, 1991, three members for terms expiring
12 February 1, 1993, and three members for terms expiring February 1,
13 1995.

14 (c) Unless the member is otherwise removed, each member of
15 the Industrial Accident Board who is serving on that board on
16 August 31, 1989, serves as a member of the Texas Workers'
17 Compensation Board until the expiration of the term to which that
18 member was originally appointed.

19 SECTION 15.02. CREATION OF ADVISORY COUNCIL; INITIAL
20 APPOINTMENTS OF ADVISORY COUNCIL MEMBERS. (a) The Labor-Business
21 Advisory Council on Workers' Compensation is created on the
22 effective date of this Act.

23 (b) In making the initial appointments to the advisory
24 council, the governing body of the Texas Workers' Compensation
25 Board shall designate two members for terms expiring February 1,
26 1991, two members for terms expiring February 1, 1993, and two
27 members for terms expiring February 1, 1995.

SECTION 15.03. CREATION OF ADVISORY COMMITTEE; INITIAL APPOINTMENTS OF ADVISORY COMMITTEE MEMBERS. (a) The Workers' Compensation Insurance Advisory Committee is created on the effective date of this Act.

(b) In making the initial appointments of the public members of the advisory committee, the governor shall designate two members for terms expiring February 1, 1991, two members for terms expiring February 1, 1993, and three members for terms expiring February 1, 1995.

SECTION 15.04. NAME CHANGE. The name of the Industrial Accident Board is changed to the Texas Workers' Compensation Board. Any reference in the law to the Industrial Accident Board means the Texas Workers' Compensation Board.

SECTION 15.05. TRANSFER OF CERTAIN PROGRAMS TO WORKERS' COMPENSATION BOARD. (a) The programs created under Articles 5.55A and 5.76-1, Insurance Code, and administered by the State Board of Insurance are transferred to the Texas Workers' Compensation Board on the effective date of this Act.

(b) The property and records in the custody of the State Board of Insurance that relate specifically to the implementation and enforcement of those programs shall be transferred to the Texas Workers' Compensation Board not later than September 1, 1990.

(c) The Texas Workers' Compensation Board shall adopt rules relating to the transfer of the programs assigned to that board not later than March 31, 1990. Notwithstanding amendments and repeals made by this Act, programs and rules in effect on the effective date of this Act remain in effect and shall be enforced by the

(a) This Act takes effect September 1, 1989.

(b) The change in law made by this Act applies only to a workers' compensation claim filed with the Texas Workers' Compensation Board on or after the effective date of this Act. The Texas Workers' Compensation Board shall process an outstanding workers' compensation claim received by the Industrial Accident Board before the effective date of this Act in accordance with the law in effect on the date that the claim was filed with the Industrial Accident Board, and the former law is continued in effect for this purpose.

SECTION 15.11. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

appropriate agency until provided otherwise by the rules of the board, and the laws providing authority for those rules and programs are continued in effect for that time and purpose. The board shall assume full control over those programs not later than September 1, 1990.

SECTION 15.06. INITIAL POLICY STATEMENT. The policy statement required under Section 2.09(e) of this Act must be filed not later than October 30, 1989.

SECTION 15.07. ADMINISTRATIVE PENALTIES. Section 11.11 of this Act, providing for the assessment of administrative penalties by the Texas Workers' Compensation Board, applies only to a violation that occurs on or after the effective date of this Act.

SECTION 15.08. SUBSEQUENT INJURY FUND. The subsequent injury fund is created on the effective date of this Act. All money in the second injury fund created under Article 8306, Revised Statutes, as of that date, is transferred to the subsequent injury fund.

SECTION 15.09. SELF-INSURANCE. (a) The initial board of directors of the Texas Certified Self-Insurer Guaranty Association created under Section 10.16, Texas Workers' Compensation Act, shall be appointed by the Texas Workers' Compensation Board.

(b) Notwithstanding the requirement imposed under Section 10.03(b), Texas Workers' Compensation Act, the Texas Workers' Compensation Board is not required to process an application for a certificate of authority to self-insure within 60 days of the receipt of the application by that board until September 1, 1990.

SECTION 15.10. EFFECTIVE DATE; EFFECT ON PENDING CLAIMS.

HOUSE COMMITTEE REPORT

89 MAR -3 PM 9:55
HOUSE OF REPRESENTATIVES

1st Printing

By Smith of Brazos, et al. H.B. No. 1

Substitute the following for H.B. No. 1:

By A. Hill of Dallas C.S.H.B. No. 1

A BILL TO BE ENTITLED

AN ACT

relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. Articles 1-12 of this Act may be cited as the Texas Workers' Compensation Act.

SECTION 1.02. DEFINITIONS. In this Act:

(1) "Adjuster" means a person licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(2) "Advisory council" means the Labor-Business Advisory Council on Workers' Compensation.

(3) "Agreement" means the resolution by the parties to a dispute based on a workers' compensation claim of one or more issues regarding the claim. The term does not include a settlement.

(4) "Benefit" means a benefit received by a claimant based on a compensable injury. The term includes a medical benefit, an income benefit, and a death or burial benefit.

(5) "Board" means the Texas Workers' Compensation Board.

(6) "Child" means a son, daughter, stepson, or

stepdaughter. The term includes an adopted child.

(7) "Commute" means to pay in a lump sum.

(8) "Compensable injury" means an injury that arises in the course and scope of employment for which compensation is payable under this Act.

(9) "Compensation" includes medical benefits, income benefits, death benefits, or burial benefits.

(10) "Course and scope of employment" means an activity of any kind or character that originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes activities conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of such transportation are under the control of the employer; or

(iii) the employee is directed in his employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of his employer if such travel is also in furtherance of personal or private affairs of the employee unless:

(i) the trip to the place of occurrence of the injury would have been made even had there been no personal or

private affairs of the employee to be furthered by the trip; and

(ii) the trip would not have been made had there been no affairs or business of the employer to be furthered by the trip.

(11) "Dependent" means an individual who is classified as a dependent for federal income tax purposes under 26 U.S.C. Sec. 152.

(12) "Designated health care practitioner" means a health care practitioner who is appointed by the parties or the board to resolve a dispute as to the disability or impairment of an injured employee.

(13) "Disability" means the inability to obtain and retain substantial gainful employment because of the physical incapacity to perform the functions required for employment, when a compensable injury was a producing cause of the incapacity.

(14) "Employee" means each person in the service of another under any contract of hire, whether express or implied, or oral or written. The term includes an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business. The term also includes a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer. The term does not include a master of, or a seaman on, a vessel engaged in interstate or foreign commerce, or a person whose employment is not in the usual course and scope

of the employer's business. A person who is an employee for purposes of this Act and is engaged in work that otherwise may be legally performed is an employee despite any license, permit, or certificate violation arising under state law or municipal ordinance or violation of a law regulating wages, hours, or work on Sunday.

(15) "Employer" means, unless otherwise specified, a person that makes a contract of hire, that employs one or more employees, and that has workers' compensation coverage, either through self-insurance obtained as provided by this Act or through private insurance obtained from a licensed insurance carrier. The term includes a governmental entity that self-insures, either individually or collectively.

(16) "Health care" includes all reasonable and necessary medical aid, examinations, treatments, diagnoses, and evaluations. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, nursing, physical therapy practices, and psychological services provided by a health care provider;

(B) the services of a hospital or other health care facility;

(C) prescription drugs, medicines, and other remedies; and

(D) medical and surgical supplies, appliances, artificial members, and prosthetics.

(17) "Health care facility" means a hospital,

emergency clinic, outpatient clinic, or other facility providing health care.

(18) "Health care practitioner" means a licensed individual who provides or renders health care or a nonlicensed individual who provides or renders health care under the supervision of a physician.

(19) "Health care provider" means a health care facility or health care practitioner.

(20) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from the compensable injury and is reasonably presumed to be permanent.

(21) "Income benefit" means a payment made to an employee for disability or impairment.

(22) "Injury" means damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm.

(23) "Insurance carrier" means:

(A) a person authorized and admitted by the State Board of Insurance to do insurance business in Texas pursuant to a certificate of authority that includes authorization to write workers' compensation insurance;

(B) a certified self-insurer under this Act; or

(C) a governmental entity that self-insures, either individually or collectively.

(24) "Intoxication" means physical or mental impairment resulting from the introduction into the body of:

(A) an alcoholic beverage, as that term is defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as those terms are defined by the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes);

(C) a dangerous drug, as defined by Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes);

(D) an abusable glue or aerosol paint, as defined by Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes); or

(E) any similar substance, the use of which is regulated under state law.

(25) "Legal beneficiary" means a spouse, child, grandchild, or other relative of a deceased employee who is eligible to receive benefits under this Act.

(26) "Maximum medical improvement" means the point after which further recovery from, or lasting improvement to, an injury can no longer reasonably be anticipated, based on the reasonable professional opinion of a health care practitioner.

(27) "Medical benefits" means the provision of health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure

and relieve the employee from the effects of occupational diseases before the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment, including any medical supplies or equipment necessary to the maintenance of the employee's ability to function, such as a prosthesis or a wheelchair.

(28) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. The term includes other diseases or infections that naturally result from the work related disease, and damage or harm to the physical structure of the body that occurs as the result of repetitious, physically traumatic activities that occur over time and arise in the course and scope of employment. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is a reasonable incident to a compensable injury or occupational disease.

(29) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(30) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be resolved under the terms of this Act.

(31) "Wages" includes every form of remuneration payable for a given period to an employee for personal services.

The term includes the market value of board, lodging, laundry, fuel, and other advantages that can be estimated in money, that the employee receives from the employer as part of his remuneration.

(32) "Workers' compensation insurance coverage" means an insurance policy to secure the payment of workers' compensation benefits as provided by this Act and includes coverage obtained through self-insurance as provided by this Act.

ARTICLE 2. TEXAS WORKERS' COMPENSATION BOARD

SECTION 2.01. BOARD. (a) The Texas Workers' Compensation Board is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(c) A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

SECTION 2.02. APPLICATION OF SUNSET ACT. The board is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the board is abolished and this Act expires September 1, 2001.

SECTION 2.03. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A person is not eligible for appointment as a member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care or insurance;

(2) is employed by or participates in the management of a business entity or other organization regulated by the board, other than as an employer who has obtained workers' compensation insurance coverage, or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board, other than as an employer who has obtained workers' compensation insurance coverage, or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than remuneration or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An officer, employee, or paid consultant of an employer oriented association, a labor oriented association, or a Texas trade association in the field of law, health care, or insurance may not be a member of the board or an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of an employer oriented association, a labor oriented association, or a Texas trade association in the field of law, health care, or insurance may not be a board member and may not be an employee of the board who is exempt from the state's position classification plan or is compensated at or above the

amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for remuneration on behalf of a profession related to the operation of the board.

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

SECTION 2.04. TERMS; VACANCY. (a) Members of the board hold office for staggered terms of six years. Three members' terms expire February 1 of each odd-numbered year.

(b) If a vacancy occurs during a term, the governor shall appoint a replacement to fill the unexpired part of the term.

SECTION 2.05. CHAIRMAN. The board shall elect one of its members to serve as chairman for a term of two years. The chairman may vote on all matters before the board.

SECTION 2.06. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by Section 2.03 of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or incapacity; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

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

(c) If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 2.07. REMUNERATION. A member of the board may not receive remuneration for serving on the board. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the board, not to exceed any limit established in the General Appropriations Act.

SECTION 2.08. MEETINGS. (a) The board shall meet at least once in each quarter of the calendar year.

(b) The board may meet at other times at the call of the chairman or as provided by the rules of the board.

SECTION 2.09. EXECUTIVE DIRECTOR; PERSONNEL. (a) The board

shall appoint an executive director to administer this Act in accordance with the policies set by the board. The board shall organize the board's personnel into the administrative divisions the board determines necessary, which must include the divisions established by this Act. The board shall appoint the directors of the various divisions of the board. Appointments for the positions of executive director of the board and director of the hearings division must be made from nominees of the advisory council as provided by Section 3.02 of this Act. The executive director or the executive director's designee shall hire the other employees of the board.

(b) The executive director shall hire persons to conduct benefit review conferences and contested case hearings under this Act. The executive director shall determine reasonable qualifications for benefit review officers, who are not required to be licensed to practice law, and for hearings officers who conduct contested case hearings, who must be licensed to practice law in this state. The executive director also shall hire qualified persons licensed to practice law in this state to serve on agency appeals panels under Section 6.01(b) of this Act.

(c) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting.

(d) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system

1 established under this subsection.

2 (e) The executive director or the executive director's
3 designee shall prepare and maintain a written policy statement to
4 assure implementation of a program of equal employment opportunity
5 under which all personnel transactions are made without regard to
6 race, color, handicap, sex, religion, age, or national origin. The
7 policy statement must include:

8 (1) personnel policies, including policies related to
9 recruitment, evaluation, selection, appointment, training, and
10 promotion of personnel;

11 (2) a comprehensive analysis of the board's work force
12 that meets federal and state guidelines;

13 (3) procedures by which a determination can be made of
14 significant underuse in the board's work force of all persons for
15 whom federal or state guidelines encourage a more equitable
16 balance; and

17 (4) reasonable methods to appropriately address those
18 areas of significant underuse.

19 (f) A policy statement prepared under Subsection (e) of this
20 section must cover an annual period, be updated at least annually,
21 and be filed with the governor's office.

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

26 SECTION 2.10. GENERAL POWERS AND DUTIES OF BOARD. (a) The
27 board may adopt rules as necessary for the implementation and

enforcement of this Act in accordance with Sections 1-12, except Section 4(a)(3) and 4(b), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The procedures set forth in Section 19A, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), apply to the enforcement of an order, decision, or rule of the board.

(c) The board may delegate all powers and duties, except rule-making and except as otherwise provided by this Act, to employees of the agency.

(d) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board. The agency is composed of the board, the executive director, and the professional, technical, and clerical personnel appointed by the board or employed by the executive director.

(f) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(g) The board may accept gifts, grants, or donations as provided by rules adopted by the board.

SECTION 2.11. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board shall keep an information file about each written complaint filed with the board that is unrelated to a specific workers' compensation claim. If such a complaint is filed with the board, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(c) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on issues under the general jurisdiction of the board.

(d) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental handicap may be provided reasonable access to workers' compensation benefits.

ARTICLE 3. ADVISORY COUNCIL

SECTION 3.01. COUNCIL. (a) The Labor-Business Advisory Council on Workers' Compensation is composed of six members appointed by the board. Three members must be representatives of

the business community and three members must be representatives of the labor community. The board shall select the members of the advisory council from names presented to the board from labor organizations and business organizations of this state.

(b) A member of the advisory council serves a term of six years. The term of one employer representative and one employee representative expires February 1 of each odd-numbered year. A member of the advisory council may not receive remuneration for serving on the council. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory council, not to exceed the limit established for state officers in the General Appropriations Act.

(c) The advisory council shall elect one of its members to serve as chairman for a term of one year. The chairman may vote on all matters before the council.

(d) The advisory council shall meet at the call of its chairman, at the request of any three of its members, at the request of the board, or at such times as may be prescribed by its rules, but no less than once in each quarter of the calendar year.

SECTION 3.02. COUNCIL POWERS AND DUTIES. (a) The advisory council shall:

(1) provide information to the labor and business communities relating to the operation of the workers' compensation system;

(2) monitor the performance of that system in the implementation of legislative directives and board policies; and

(3) advise the board of any necessary changes to that

system.

(b) The advisory council shall make recommendations and comments to the board relating to the adoption of board rules and policies and may draft proposed rules for the consideration of the board. The board shall cooperate with the advisory council and shall provide information and staff support as reasonably necessary and required by the advisory council.

(c) The advisory council shall develop a list of at least four nominees for the position of executive director of the board and for the position of the director of the hearings division of the board. To be included on the list, a nominee must receive the support of not less than a majority of the membership of the advisory council.

(d) The advisory council shall make recommendations to the Texas Workers' Compensation Insurance Research Center on a periodic basis relating to the research agenda of that center.

(e) The advisory council may adopt rules necessary to exercise the authority and perform the duties provided under this Act.

ARTICLE 4. WORKERS' COMPENSATION COVERAGE

SECTION 4.01. VOLUNTARY COVERAGE; EMPLOYER ELECTION. (a) For purposes of this section, "employer" means a person that employs one or more employees.

(b) Except as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage. Except for public employers covered under other law, an employer may obtain coverage through a licensed insurance carrier or through

self-insurance as provided by Article 10 of this Act. An employer who elects to obtain coverage is subject to the provisions of this Act.

(c) An employer who does not elect to obtain coverage must notify the board in writing, within a time period, and as prescribed by board rule, that the person does not elect to obtain coverage. The board shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the board about the nature of the employer's business. The board may contract with the Texas Employment Commission or the comptroller of public accounts for assistance in collecting the notification required under this section. These agencies shall cooperate with the board in enforcing this section.

(d) An employer shall notify each employee as to whether or not the employer has workers' compensation insurance coverage. The employer shall notify a new employee at the time the employee is hired. An employer who has workers' compensation insurance coverage shall notify all employees at least annually. A covered employer who elects to terminate employer's workers' compensation insurance coverage, or whose coverage is canceled, must notify each employee of the termination or cancellation of the coverage not later than the 10th day after the date on which the termination or cancellation is effective. An employer who does not have workers' compensation coverage shall notify each employee individually at least semiannually and shall include in the notice a statement prescribed by the board that explains to the employee the

action is subject to all defenses available under the common law and the statutes of this state.

(d) An agreement by an employee to waive the employee's right to compensation under this Act is void.

SECTION 4.03. COMMON LAW DEFENSES. (a) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) The employer may defend the action on the ground that the injury was caused by an intentional act of the employee to bring about the injury or while the employee was in a state of intoxication.

(c) In all such actions against an employer who does not have workers' compensation insurance coverage, it shall be necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of his employment.

SECTION 4.04. GENERAL APPLICATION; EXCEPTIONS. (a) This Act applies to actions to recover damages for personal injuries or death sustained by employees whose employers have workers'

consequences of the employer's lack of coverage. All employer notifications required under this subsection must be made in writing.

SECTION 4.02. EMPLOYEE ELECTION; WAIVER OF RIGHT TO COMPENSATION VOID. (a) Except as otherwise provided by this Act, unless the employee gives notice as provided by Subsection (b) of this section, an employee of an employer waives the employee's right of action at common law or under any statute of this state to recover damages for personal injuries or death sustained in the course of the employment.

(b) An employee who desires to retain the employee's right of action to recover those damages shall notify the employer in writing that the employee does not want to be covered under this Act and retains all rights of action. The employee shall notify the employer not later than the fifth day after the date the employee begins the employment. If the employer is not a covered employer at the time of the employment but later obtains workers' compensation insurance coverage, to retain the right of action the employee must notify the employer in writing not later than the fifth day after the date on which the employee receives notice in writing from the employer that the employer has obtained the coverage.

(c) An employee of an employer who elects to retain the right of action, and the legal beneficiaries of that employee, may bring a cause of action for damages for injuries sustained in the course of the employment under common law or under a statute of this state. Notwithstanding Section 4.03 of this Act, the cause of

compensation insurance coverage.

(b) An employee is not entitled to benefits under this Act based on an injury that was caused by an intentional act of the employee to bring about injury or that occurred while the employee was in a state of intoxication.

(c) The following employees are not covered by this Act:

(1) domestic servants;

(2) casual employees engaged in employment incidental to a personal residence;

(3) except as provided by Section 4.05 of this Act, farm or ranch employees; or

(4) an employee covered by a method of compensation established under federal law.

(d) An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees otherwise exempted from coverage under Subsection (c) of this section. Self-insurance or purchase by the employer of workers' compensation insurance applicable to that employee or classification of employees constitutes acceptance by the employer of the rights and responsibilities imposed under this Act as of the effective date of the certificate of authority to self-insure or the insurance policy and as long as the certificate or policy remains in effect. An employer who does not obtain coverage for exempt employees is not deprived of the common law defenses listed under Section 4.03 of this Act.

SECTION 4.05. APPLICATION TO FARM OR RANCH EMPLOYEES. (a) This Act applies to actions to recover damages for personal

injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker covered by Subsection (b) of this section; or

(3) employed by an employer with a gross annual payroll for the preceding year in the amount provided by Subsection (c) of this section.

(b) To be covered by this Act, a farm or ranch employee who is a seasonal worker must be employed on a truck farm, orchard, or vineyard or employed by an employer with a gross annual payroll for the preceding year in an amount provided by this subsection. The preceding year's gross annual payroll must be equal to or exceed the prior year's required payroll adjusted for inflation, but not less than $25,000. To adjust for inflation, the comptroller of public accounts shall develop a consumer price index for this state. The comptroller shall certify the applicable index factor to the board before October 1 of each year. The board shall adjust the gross annual payroll requirement accordingly. A seasonal worker is covered by this law as if the seasonal worker were a migrant worker if:

(1) the seasonal worker is working for a farmer, ranch operator, or labor agent who employs migrant workers; and

(2) the seasonal worker is doing the same work at the same time at the same location as migrant workers.

(c) To be covered by this law, a farm or ranch employee other than a migrant or seasonal worker must:

(1) for the years before 1991, be employed by an

1 employer with a gross annual payroll for the preceding year of at
2 least $50,000; and
3 (2) for 1991 and thereafter, be employed by an
4 employer:
5 (A) with a gross annual payroll in the amount
6 required for coverage of seasonal workers under Subsection (b) of
7 this section; or
8 (B) who employs three or more farm or ranch
9 employees other than migrant or seasonal workers.
10 (d) For purposes of Subsections (b) and (c) of this section,
11 the gross annual payroll of an employer includes any amount paid by
12 the employer to a labor agent for that agent's services and for the
13 services of migrant or seasonal workers, but does not include:
14 (1) wages paid to the employer or a member of the
15 employer's family, if the employer is a sole proprietor;
16 (2) wages paid to a partner or a member of a partner's
17 family, if the employer is a partnership; or
18 (3) wages paid to a shareholder or a member of a
19 shareholder's family, if the employer is a corporation in which all
20 shareholders are family members.
21 (e) If a labor agent furnishes migrant or seasonal workers,
22 the labor agent is liable under this law as if the labor agent were
23 the employer of the workers, without regard to the right of control
24 or other factors used to determine an employer-employee
25 relationship. However, if the labor agent is not an employer, the
26 person with whom the labor agent contracts for the services of the
27 migrant or seasonal workers is jointly and severally liable with

the labor agent in an action to recover damages for personal injuries or death suffered by any of the migrant or seasonal workers as provided by this Act. For that purpose, the migrant or seasonal workers are considered the employees of the person with whom the labor agent contracts, and that person may obtain workers' compensation insurance coverage for those workers as provided by this Act.

(f) A labor agent must notify each person with whom the agent contracts of whether or not the agent is an employer. If the agent is an employer, the agent must present evidence of the workers' compensation insurance coverage to each person with whom the agent contracts.

(g) If migrant or seasonal workers are covered by workers' compensation insurance, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this Act.

(h) A person who subscribes to a workers' compensation insurance policy covering farm or ranch employees may cover himself, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered, and the elected coverage continues while the policy is in effect and the named individual is endorsed on the policy. A member of an employer's family is exempt from coverage under the policy unless covered voluntarily as provided by this section.

(i) In this section:

(1) "Agricultural labor" means the planting, cultivating, or harvesting of an agricultural or horticultural

commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.A. Sec. 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who labor for the benefit of a third party.

(4) "Migrant worker" means an individual who is employed in agricultural labor of a seasonal or temporary nature and who is required to be absent overnight from the worker's permanent place of residence.

(5) "Person" means an individual, corporation, or association.

(6) "Seasonal worker" means an individual who is employed in agricultural or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from the worker's permanent place of residence.

(7) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

(j) This section does not affect the application or interpretation of this Act as it relates to persons engaged in

activities previously determined not to be farm or ranch labor.

(k) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this section is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of a person acting as an independent contractor. For the purposes of this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of that employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

SECTION 4.06. AGGRAVATION OF PREVIOUSLY EXISTING DISEASES. Where an occupational disease is aggravated by any other noncompensable disease or infirmity, or where incapacity or death from any other noncompensable cause is aggravated, prolonged, accelerated, or in anywise contributed to by an occupational disease, the number of weeks of compensation payable by the insurance carrier shall be reduced and limited to such proportion

only of the total number of weeks of compensation that would be payable if the occupational disease were the sole cause of the incapacity or death, as such occupational disease, as a causative factor, bears to all the causes of such incapacity or death, such reduction in compensation to be effected by reducing the number of weekly payments of compensation for which the insurance carrier is liable.

ARTICLE 5. BENEFITS

CHAPTER A. GENERAL PROVISIONS

SECTION 5.01. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b) of this section, a recovery of workers' compensation benefits under this Act is the exclusive remedy of an employee or legal beneficiary against the employer or an agent, servant, or employee of the employer for the death of or a work related injury sustained by a covered employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer, or by the employer's gross negligence. For the purposes of this section, "gross negligence" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

SECTION 5.02. EXEMPT FROM LEGAL PROCESS; ASSIGNABILITY. (a) Benefits received under this Act are exempt from garnishment, attachment, judgment, and other actions or claims.

(b) Except as provided by Subsection (c) of this section, benefits are not assignable.

(c) A legal beneficiary may, with board approval, assign the

right to death benefits if the assignment is executed not later than six months after the date on which the right to the death benefits is established.

SECTION 5.03. ALLOWABLE LIENS. (a) Except as provided by board rule, income or death benefits are not subject to any lien or other claim. The board may allow as a lien or claim against income or death benefits:

(1) an attorney's fee for representing an employee or legal beneficiary in any matter arising under this Act;

(2) court ordered child support; or

(3) a subrogation interest established under this Act.

(b) The board by rule shall establish the priority of liens and claims authorized under this section.

SECTION 5.04. NOTICE OF INJURY TO EMPLOYER. (a) An employee who sustains a work related injury other than an occupational disease shall notify the employer not later than the 30th day after the date on which the injury occurs. If the injury is an occupational disease, the employee shall notify the employer not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment.

(b) An employee's failure to notify the employer as required under Subsection (a) of this section relieves the employer and the employer's insurance carrier of liability under this Act unless:

(1) the employer or carrier has actual knowledge of the injury;

(2) the board determines that good cause exists for

failure to give notice in a timely manner; or

(3) the employer or carrier does not contest the claim.

(c) The notice required in this section may be given to the employer or any employee of the employer who holds a supervisory or management position.

(d) When the injury is an occupational disease, the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease.

SECTION 5.05. EMPLOYER RECORD. (a) Each employer shall maintain a record of all employee injuries reported by an employee or otherwise made known to the employer. Maintenance of a record as required by this section does not constitute an admission by the employer that the injury did occur or that any fact reported in the record is true.

(b) The employer shall allow the board reasonable access to the record.

(c) The board may adopt rules relating to the information that must be contained in an employer record.

SECTION 5.06. EMPLOYER RIGHT TO CONTEST COMPENSABILITY. (a) An employer may contest the compensability of an injury even if the insurance carrier has initiated payments to the claimant or has otherwise accepted liability for payment of the benefits as provided under Section 5.10(a) of this Act. An employer who desires to contest compensability must request a benefit review conference under Section 6.02 of this Act on the issue of the compensability of the injury not later than the 30th day after the

date on which the carrier accepts liability.

(b) The resolution of a dispute as to compensability is separate from the processing of the claim by the carrier, who may not suspend the payment of benefits based on the employer's action.

(c) If the board determines that the injury was not compensable, the insurance carrier shall expunge the claim from the employer's loss records and shall reimburse the employer for the costs incurred by the employer in disputing the claim. The carrier may not reflect the loss or the expense of the claim in any information compiled for ratemaking purposes, and the State Board of Insurance may not consider those losses or expenses in establishing rates.

SECTION 5.07. RIGHT TO NOTICE. An employer and employee are entitled to notification by the board of any benefit review conference, contested case hearing, or review by an agency appeals panel relating to a compensable injury incurred by an employee of an employer.

SECTION 5.08. EMPLOYER REPORT. (a) If an injury results in the absence of the employee from work for more than one day or if the employee notifies the employer of an occupational disease as provided by Section 5.04 of this Act, the employer shall file a written report with the board and the carrier. The employer shall file the report required by this subsection not later than the eighth day after:

(1) the employee's absence from work for one day due to an injury; or

(2) the employer receives notice that the employee has

contracted an occupational disease.

(b) The report must include:

(1) the name and business address of the employer;

(2) a description of the nature of the employer's business;

(3) the name, age, and sex of the injured employee;

(4) the social security number of the employee;

(5) the character of work in which the employee was engaged at the time of the injury;

(6) the occupation of the employee;

(7) the date and time of the injury or date of the first distinct manifestation of an occupational disease;

(8) the nature and cause of the injury or disease; and

(9) any other information required by board rule.

(c) A report filed under this section does not constitute an admission by the employer of any information contained in the report.

(d) On receipt of the employer report, the board shall provide the employee with a written statement that briefly describes the procedures relating to workers' compensation benefits. The statement must include:

(1) the name of the board;

(2) the address of the board's main administrative office;

(3) the telephone number of a board office to call for assistance;

(4) a description of the services provided by the

board; and

(5) a brief description of an employee's rights and responsibilities under this Act.

SECTION 5.09. VOCATIONAL REHABILITATION REFERRAL. (a) The board shall analyze each report of injury received under Section 5.07 of this Act to determine if the injured employee would be assisted by vocational rehabilitation. If the board determines that the injured employee would be assisted, the board shall notify the injured employee in writing of the services and facilities available through the Texas Rehabilitation Commission and private providers of vocational rehabilitation registered with the board. The board shall notify the Texas Rehabilitation Commission and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(b) The board shall cooperate with the Texas Rehabilitation Commission in the provision of services and facilities to employees by that commission.

(c) A private provider of vocational rehabilitation services may register with the board.

SECTION 5.10. INITIATION OF COMPENSATION; CARRIER'S REFUSAL. (a) An insurance carrier obligated to pay compensation under this Act shall pay promptly. If the carrier does not contest compensability of the injury on or before the 60th day after the date on which the carrier is notified of the injury, the carrier waives its right to contest the compensability. The initiation of payments by a carrier does not affect the right of the carrier to

1 continue to investigate or deny the compensability of the injury
2 during the 60-day period. If the carrier does not initiate payment
3 or file a notice of refusal in a timely manner as required by this
4 Act, the carrier waives the right to contest the compensability of
5 the injury under this Act. The carrier shall notify the board in
6 writing of the initiation of income or death benefit payments in
7 the manner prescribed by board rules. Notwithstanding the terms of
8 this section, the board may, on a showing of clear and convincing
9 evidence that a claim was fraudulent, allow a carrier to reopen the
10 issue of compensability.
11 (b) Not later than the 14th day after the date on which the
12 insurance carrier receives written notice of the injury, the
13 carrier either shall begin the payment of benefits as required
14 under this Act or shall notify the board, the employer, and the
15 employee in writing of its refusal to pay. A notice of refusal to
16 pay must include a request for a benefit review conference under
17 Section 6.02 of this Act.
18 (c) The carrier's notice must specify the grounds for the
19 refusal. The grounds specified in the notice constitute the only
20 basis for the carrier's defense on the issue of compensability in a
21 subsequent proceeding, unless the defense is based on newly
22 discovered evidence that could not reasonably have been discovered
23 at an earlier date. If the board determines that the carrier did
24 not have reasonable grounds for the refusal, the carrier is subject
25 to sanctions as provided by Section 11.11 of this Act and Article
26 1.10, Insurance Code.
27 SECTION 5.11. SUBROGATION. (a) If a third party is liable

to pay damages for an injury that is compensable under this Act, the employee or legal beneficiary may seek damages from the third party. An employee or legal beneficiary who seeks damages from a third party remains entitled to pursue a claim for workers' compensation benefits under this Act.

(b) If the employee or legal beneficiary elects to seek damages from a third party, notice of the election shall be given by certified mail to the insurance carrier and the board. If an action is filed by the employee or legal beneficiary, a copy of the original petition shall be sent to the insurance carrier and the board.

(c) An insurance carrier that is liable for the payment of benefits to that employee is subrogated to the rights of the employee or legal beneficiary against the third party.

(d) If under the provisions of this Act, a state special fund is liable for the payment of the benefits, the board is subrogated to the rights of the employee or legal beneficiary against the third party.

(e) Damages recovered from a third party under this section shall be distributed as follows:

(1) the costs and reasonable attorney's fees shall be paid proportionately by the employee, the carrier, and the board, as appropriate;

(2) the carrier and the subsequent injury fund, as appropriate, shall be reimbursed for any compensation paid; and

(3) any remaining balance shall be paid to the injured employee or the legal beneficiary.

(f) After the recovery has been distributed as provided, no payment of compensation shall be made to or on behalf of the employee or legal beneficiary until the amount of further compensation equals the remaining balance paid to the employee or beneficiary under Subsection (e)(3) of this section. Thereafter, compensation shall be resumed.

(g) Attorney's fees under this section shall be subject to the approval of the court and may not exceed 33 percent of the total amount recovered.

SECTION 5.12. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death.

[Sections 5.13-5.20 reserved for expansion]

CHAPTER B. MEDICAL BENEFITS

SECTION 5.21. ENTITLEMENT TO MEDICAL BENEFITS. (a) An injured employee is entitled to all health care reasonably required by the nature of the compensable injury as and when needed. The employee is specifically entitled to health care that:

(1) cures or relieves pain;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment, including medical supplies or equipment necessary to the maintenance of the employee's ability to function, such as a prosthesis or a wheelchair.

(b) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

SECTION 5.22. CHOICE OF HEALTH CARE PROVIDER; EFFECT OF

1 EMPLOYEE NONCOMPLIANCE. (a) The employee is entitled to the
2 employee's initial choice of health care provider. An initial
3 choice of a health care provider made by the employer or the
4 insurance carrier, or medical treatment provided to an injured
5 employee in an emergency situation, does not constitute the
6 employee's choice for purposes of this section.
7 (b) A subsequent choice of health care provider by the
8 employee is subject to the approval of the insurance carrier. The
9 denial of approval by the insurance carrier of the employee's
10 subsequent choice of health care provider is subject to review by
11 the board.
12 (c) A referral made by the employee's initial choice of
13 health care provider that is medically reasonable or necessary does
14 not constitute a change in the employee's initial choice for the
15 purposes of this section and is not subject to the approval of the
16 insurance carrier.
17 (d) Except as otherwise provided by this Act, the board,
18 after notice and hearing, may relieve an insurance carrier of
19 liability for medical benefits furnished by a health care provider
20 or other person that is selected by an employee in a manner
21 inconsistent with the requirements of this section.
22 (e) The limitations imposed by this section do not apply:
23 (1) if surgical or other procedures require ancillary
24 medical services; or
25 (2) when the employee desires a second opinion on the
26 appropriateness of the diagnosis or treatment.
27 SECTION 5.23. REPORTS BY HEALTH CARE PROVIDER. The board by

rule shall adopt reasonable requirements for reports required to be filed with the board by health care providers.

SECTION 5.24. BURDEN OF PROOF FOR CONTINUING MEDICAL BENEFITS. If, for two consecutive years, an employee does not receive health care for a compensable injury, whether or not paid for by the insurance carrier, the employee has the burden of proof to establish that any additional medical care is required and directly related to the compensable injury.

SECTION 5.25. REQUIRED MEDICAL PROCEDURES; AUTOPSY. (a) To resolve a medical dispute in a claim, a benefit review officer or hearings officer may order an employee to submit to a medical examination, including an examination by a designated health care practitioner, or to obtain health care considered reasonably necessary. Surgery may be ordered only if, based on reasonable medical evidence, the surgery will substantially improve the condition of the employee. An order for surgery may be entered only by the director of the hearings division.

(b) When, in a claim for benefits for death from an occupational disease, an autopsy is necessary to determine the cause of death, a hearings officer may, after notice and hearing, order the legal beneficiaries of a deceased employee to permit an autopsy. A legal beneficiary is entitled to have a representative present at an autopsy ordered under this section.

(c) The board shall require the insurance carrier to pay the costs of a procedure ordered under this section.

(d) If a person fails to comply with a procedure ordered under this section, the board, after notice and hearing and for as

long as the person remains out of compliance, may deny the person access to further proceedings before the board and may order the carrier to suspend or reduce income or death benefits. If a person refuses to comply with a procedure ordered under this section, the person is entitled to administrative hearings and judicial review in the manner provided for the resolution of other disputes under Article 6 of this Act.

SECTION 5.26. REQUIRED MEDICAL EXAMINATIONS. (a) The board may require the employee to submit to medical examinations if there is a dispute about the appropriateness of the health care received by the employee, the disability of the employee, the percentage of impairment caused by the compensable injury, or analogous issues.

(b) The insurance carrier may require the employee to submit to a medical examination conducted by a health care provider chosen by the carrier. A carrier may require an employee to submit to additional medical examinations only with the prior written approval of the board. A referral made by the carrier's choice of health care provider that is reasonable or necessary does not constitute a change in the carrier's choice for the purposes of this subsection and does not require the prior approval of the board.

(c) The board shall adopt rules regulating the actions of the carrier under this section and establishing reasonable compliance requirements for employees.

(d) The employee is entitled to have a health care provider of the employee's choice present at the carrier's expense at an examination required by the insurance carrier.

SECTION 5.27. COMPENSABILITY OF HEART ATTACKS. A heart attack is a compensable injury under this Act only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors.

SECTION 5.28. PAYMENT OF HEALTH CARE PROVIDER. (a) Unless the amount of the payment or the entitlement to payment is disputed by the carrier, an insurance carrier shall pay a fee charged by a health care provider not later than the 30th day after the date of receipt by the carrier of a charge for services rendered by the provider.

(b) To dispute the fee charged by the health care provider, the carrier must request a benefit review conference not later than the 10th day after the receipt of the provider's charge for the services in dispute.

[Sections 5.29-5.40 reserved for expansion]

CHAPTER C. INCOME BENEFITS

SECTION 5.41. INCOME BENEFITS; DETERMINATION BY BOARD. (a) An employee is entitled to income benefits to compensate the employee for impairment or disability caused by the compensable

injury.

(b) Except as otherwise provided by this Act, income benefits shall be paid on a weekly basis. Entitlement to income benefits under this chapter terminates on the death of the employee.

(c) The board shall adopt rules and guidelines for the determination of the existence and degree of an employee's impairment or disability. An employee's impairment rating is based on the percentage of physical impairment to the whole body caused by the injury, modified to reflect the effects that the employee's age, education, and work experience may have on the employee's ability to obtain or retain substantial gainful employment. Modifications must be based on objective criteria. The board by rule shall adopt formulas relating to modifications of impairment for the purposes of this Act. All determinations of impairment and disability must be made in accordance with the rules, guidelines, and formulas adopted by the board.

SECTION 5.42. TEMPORARY DISABILITY INCOME BENEFITS. (a) An employee who is totally or partially disabled by a compensable injury is entitled to temporary disability income benefits beginning on the eighth day of disability. On the initiation of compensation as provided under Section 5.09(b), the insurance carrier shall pay temporary disability income benefits as provided by this section.

(b) Temporary disability income benefits continue until the earlier of:

(1) the employee reaching maximum medical improvement;

or

(2) the expiration of 401 weeks.

(c) Except as provided by Subsection (e) of this section, temporary disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 5.48 of this Act.

(d) If the disability continues for at least 28 days, the employee is also entitled to temporary disability income benefits for the first seven days of disability.

(e) An employee who returns to work or is offered a position of employment by the employer, or any other employer, that the treating health care practitioner has certified the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, but who has not reached maximum medical improvement, is entitled to temporary disability income benefits at the rate of 66-2/3 percent of the difference between the employee's average weekly wage and the average weekly earnings in the position that the employee is performing or has been offered.

SECTION 5.43. IMPAIRMENT INCOME BENEFITS. (a) After the employee has been certified by a health care practitioner as having reached maximum medical improvement, the certifying practitioner shall evaluate the condition of the employee, using the guidelines adopted by the board, to determine the percentage of impairment caused to the employee by the injury. If the certification and evaluation are performed by a health care practioner other than the employee's treating practitioner, the certification and evaluation

shall be submitted to the treating practitioner and the treating practitioner shall indicate agreement or disagreement with the certification and evaluation. The certifying health care practitioner shall issue a written report to the board, the employee, and the insurance carrier certifying that maximum medical improvement has been reached and stating the percentage of impairment. The insurance carrier shall pay the employee impairment income benefits based on that percentage of impairment as modified under Section 5.41(c) or, if the carrier disputes the percentage of impairment, based on its assessment of the correct percentage.

(b) An employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement and continues until the earliest of:

(1) the death of the employee;

(2) the expiration of a period computed at the rate of four weeks for each percentage point of impairment as modified under Section 5.41 of this Act, but not to exceed 300 weeks; or

(3) the expiration of 401 weeks of receipt of all income benefits combined.

(c) The insurance carrier shall begin to pay the impairment income benefits not later than the fifth day after the date on which the carrier receives the health care practitioner's report.

(d) If the percentage of impairment is disputed, the board shall direct the employee to be examined by a designated health care practitioner selected by the mutual agreement of the parties. If the parties are unable to agree on a designated health care

practitioner, the board may direct the employee to be examined by a designated health care practitioner selected by the board. The designated health care practitioner shall report to the board in writing. The board shall base the award of impairment income benefits on the report of the designated health care practitioner.

(e) Impairment income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 5.48 of this Act.

SECTION 5.44. EXTENDED DISABILITY INCOME BENEFITS. (a) During the period that impairment income benefits are paid, the insurance carrier shall file written reports with the board that specify the employment status of the employee at six-month intervals and as of the 60th day before the date on which the impairment income benefits are scheduled to end. The board may order any evaluations of the employee considered necessary by the board to determine:

(1) the employee's ability to perform the functions reasonably required for employment; and

(2) the reasons for any extended unemployment.

(b) An employee is eligible for consideration for an extension of income benefits as provided by this section if the employee:

(1) as of the date of the payment of the final weekly impairment income benefit and because of continued disability has:

(A) not returned to employment; or

(B) returned to employment at not more than 30 percent of the employee's pre-injury wage; and

(2) has been eligible for and has received impairment income benefits for at least 104 weeks.

(c) The board may order the payment of extended disability income benefits to an employee determined by the board to meet the requirements imposed under Subsection (b) of this section. The board may order an initial payment of extended disability income benefits for a period not to exceed 52 weeks. At the expiration of each 52-week period thereafter, the board shall reevaluate the condition of the employee and may order the continued payment of extended disability income benefits for an additional 52-week period until the combined duration of the temporary disability income benefits, the impairment income benefits, and the extended disability income benefits received by that employee equals 600 weeks.

(d) Extended disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 5.48 of this Act.

SECTION 5.45. LIFETIME DISABILITY INCOME BENEFITS. (a) Income benefits for disability shall be paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss or total loss of use of both feet at or above the ankle;

(3) loss or total loss of use of both hands at or above the wrist;

(4) loss or total loss of use of one foot at or above

the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

(6) an injury to the skull resulting in incurable insanity or imbecility.

(b) Lifetime disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit provided by Section 5.48 of this Act.

SECTION 5.46. ADVANCE OF BENEFITS BASED ON HARDSHIP. (a) The board may grant an employee who is suffering financial hardship advances as provided by this Act against the amount of income benefits to which the employee may be entitled.

(b) An employee who desires an advance shall apply to the board on a form prescribed by the board describing the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the state average weekly wage as determined by the Texas Employment Commission. The board may not grant more than two advances to a particular employee based on the same injury.

SECTION 5.461. CONTINUATION OF WAGES. (a) After an injury and during the time that the insurance carrier is not paying benefits, the employer may continue to pay the employee's wages or may initiate weekly payments to the employee.

(b) If the injury is found compensable and the carrier initiates compensation, the insurance carrier shall reimburse the

1 employer for the amount of compensation to which the employee was
2 entitled under this Act during the period that the insurance
3 carrier was not making payments and the employer continued to pay
4 the employee's wages or made weekly payments to the employee.
5 (c) The employer shall notify the board and the insurance
6 carrier on forms prescribed by the board of the initiation of and
7 the amount of payments made under this section.
8 (d) Such employer payments shall not be construed as an
9 admission of compensability and shall not affect the payment of
10 benefits from any other source.
11 SECTION 5.47. AVERAGE WEEKLY WAGE. (a) Except as otherwise
12 provided by this section, the average weekly wage of an employee
13 shall be computed as of the date of the compensable injury and
14 equals the quotient of the amount of wages paid in the 13
15 consecutive weeks immediately preceding the injury divided by 13.
16 (b) If the employee has worked for the employer for fewer
17 than 13 weeks immediately preceding the injury, or if the wage at
18 the time of injury has not been fixed or cannot be determined, the
19 average weekly wage equals the usual wage that the employer pays a
20 similar employee for similar services or that are paid in that
21 vicinity for the same or similar services provided for remuneration
22 taking into account the number of hours normally worked per week.
23 (c) In this subsection, "part-time employee" means an
24 employee who, at the time of the compensable injury, was working
25 less than the full-time hours or full-time workweek of a similar
26 employee in the same employment, whether for the same or a
27 different employer. The average weekly wage of a part-time

employee who has voluntarily elected to limit the employee's work to part-time employment as a regular course of that employee's conduct shall be computed as provided by Subsections (a) and (b) of this section. For all other part-time employees, the average weekly wage shall be computed for the purpose of determining impairment income benefits, extended disability income benefits, lifetime income benefits, and death benefits as follows:

(1) if the employee has worked for the employer for at least 13 weeks immediately preceding the compensable injury, the average weekly wage equals the quotient of the amount of wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13 and adjusted to the weekly wage level the employee would have attained by working a 40-hour week at the same rate of pay; and

(2) if the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, the average weekly wage equals the weekly wage that the employer pays a similar employee for similar services in full-time employment or that are paid in that vicinity for the same or similar services provided for compensation in full-time employment.

(d) In this subsection, "seasonal employee" means an employee who, as a regular course of that employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year. The average weekly wage of a seasonal employee shall be computed for the purpose of determining temporary disability income benefits as provided by Subsections (a) and (b) of this section, adjusted as often as necessary to reflect the

1 wages the employee could reasonably have expected to earn during
2 the period of temporary disability. The average weekly wage of a
3 seasonal employee shall be computed for the purpose of determining
4 impairment income benefits, extended disability income benefits,
5 lifetime income benefits, or death benefits by dividing the amount
6 of total wages earned by the employee during the 12 months
7 immediately preceding the injury by 50.

8 (e) The average weekly wage for an employee who is a minor,
9 apprentice, trainee, or student at the time of the injury, whose
10 employment or earnings at the time of the injury are limited
11 primarily because of apprenticeship, continuing formal training, or
12 education intended to enhance the employee's future wages, and
13 whose wages would reasonably be expected to change, based on a
14 change of employment during the period in which impairment income
15 benefits, extended disability income benefits, lifetime income
16 benefits, or death benefits are payable, shall be adjusted to
17 reflect the level of expected wages during that period for the
18 purpose of computing those benefits. The adjustment shall not
19 consider expected wage levels for a period occurring more than
20 three years after the date of the injury.

21 (f) To expedite the payment of income benefits, the board
22 may adopt rules establishing a presumption that the employee's last
23 paycheck accurately reflects the employee's usual wage, or
24 establishing other reasonable presumptions relating to the wages
25 earned by an employee.

26 (g) If the methods adopted under Subsections (a) and (b) of
27 this section cannot be applied, the board may determine the

employee's average weekly wage by any method that it considers fair, reasonable, and consistent with the methods established under this section.

SECTION 5.48. MAXIMUM WEEKLY BENEFITS. (a) The maximum weekly benefit for temporary disability income benefits or lifetime disability income benefits is 100 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission. The maximum weekly benefit for extended disability income benefits is 66-2/3 percent of that average weekly wage.

(b) The maximum weekly benefit for impairment income benefits is 75 percent of the maximum weekly benefit for temporary disability income benefits.

(c) The board shall determine the maximum weekly income benefit for the succeeding fiscal year not later than September 1 of each year. The board shall round the maximum to the nearest whole dollar.

(d) The maximum weekly benefit in effect on the date of the injury is applicable for the entire period during which income benefits are payable.

SECTION 5.49. CONTRIBUTING INJURY. (a) On the written request of the insurance carrier, the board may order that income benefits for impairment be reduced to the extent of a documented impairment that results from an earlier compensable injury affecting the same body part.

(b) The board shall consider the cumulative impact of the two injuries on the employee's overall impairment in determining a

reduction under this section.

(c) If the combination of two injuries results in an injury compensable under Section 5.45 of this Act, the benefits for that injury shall be paid as provided by Section 5.65 of this Act.

SECTION 5.50. OFFSETS. (a) To ensure that the amount received by an employee in benefits under multiple employer sponsored disability benefit programs or public disability benefit programs does not exceed the employee's net average weekly wage before the injury, adjusted for inflation, the board may order, on a written request from the insurance carrier, that impairment income benefits or extended disability income benefits be reduced to the extent that the employee receives:

(1) board approved disability benefits for the injury from a source other than workers' compensation or social security; or

(2) social security retirement benefits.

(b) A reduction under this section is calculated on the after-tax value of the workers' compensation benefits and the offsetting benefits.

(c) An offset under this section does not reduce or eliminate a carrier's liability for continuing medical benefits.

(d) The board may not order a reduction under this section based on a disability program to which the employee has contributed.

SECTION 5.51. COMMUTING OF IMPAIRMENT INCOME BENEFITS. (a) Impairment income benefits may be commuted as provided by this section. Only impairment income benefits may be commuted. A

commutation of impairment income benefits must be approved by the board.

(b) The parties may agree to a commutation of impairment income benefits if the employee:

(1) has returned to substantial gainful employment and has worked for at least six months; and

(2) has not required or obtained medical treatment calculated and intended to promote final recovery from the injury for at least three months.

(c) The parties shall reduce the commutation agreement to writing and shall submit the agreement to the board for its approval. The board shall approve the agreement if the board determines that the agreement meets the requirements established under Subsection (b) of this section and is in the best interest of the employee.

(d) Impairment income benefits that are commuted under this section are subject to discounting for present payment at four percent, compounded annually.

[Sections 5.52-5.60 reserved for expansion]

CHAPTER D. DEATH AND BURIAL BENEFITS

SECTION 5.61. DEATH BENEFITS. (a) The insurance carrier shall pay death benefits to the legal beneficiary of the employee if the compensable injury results in death. Death benefits shall be calculated in the same manner as impairment income benefits.

(b) A person must file a claim for death benefits with the board not later than one year after the date on which the employee died. A failure to file a timely claim for death benefits bars the

claim unless:

(1) the claimant is a minor or legally incompetent; or

(2) the board determines that a good cause exists for the delay.

SECTION 5.62. DISTRIBUTION OF DEATH BENEFITS. (a) Death benefits shall be paid to the legal beneficiaries according to the priority established by this section.

(b) If there is no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is an eligible child or grandchild, half of the death benefits shall be paid to the eligible spouse, and half shall be paid in equal shares to the eligible children. If a child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(d) If the employee is not survived by an eligible spouse, child, or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, stepparent, sibling, or grandparent of the deceased. If more than one of those dependents survives the deceased, the death benefits shall be divided among them in equal shares.

(e) If the employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 5.65 of this article.

(f) For the purposes of this section:

(1) "Eligible spouse" means the surviving spouse of the deceased employee unless the spouse abandoned the employee for

more than one year immediately preceding the death without good cause, as determined by the board.

(2) "Eligible child" means a child of the deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age;

(C) because of a physical or mental handicap, a dependent of the deceased employee at the time of death; or

(D) a child who is otherwise a dependent of the deceased employee at the time of death.

(3) "Eligible grandchild" means a grandchild who is a dependent of the deceased employee if:

(A) the grandchild is a minor; and

(B) the grandchild's parent is not an eligible child.

SECTION 5.63. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by board rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive the benefits until the child attains the age of 18 years. If at age 18 the child is enrolled as a full-time student in an

accredited educational institution, the child is entitled to continue to receive the benefits until the earliest of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(d) A child who is eligible for death benefits because the child on the date of the employee's death is enrolled as a full-time student in an accredited educational institution is entitled to receive the benefits until the earlier of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(e) A child who is eligible for death benefits because the child on the date of the employee's death is a handicapped dependent is entitled to receive the benefits until the earlier of:

(1) the date on which the child is no longer handicapped; or

(2) the date on which the child dies.

(f) A child who is otherwise eligible for death benefits as a dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the death of the child; or

(2) the expiration of 360 weeks of death benefit

payments.

(g) An eligible grandchild is entitled to death benefits until the grandchild dies or ceases to be a minor.

(h) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

(1) the death of the beneficiary; or

(2) the expiration of 360 weeks of death benefit payments.

SECTION 5.64. BURIAL BENEFITS. (a) If death results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $2,500.

(b) The carrier shall also pay the reasonable cost of transporting the body if the employee died away from the usual place of employment, not to exceed the cost equivalent to transporting the body to the employee's usual place of employment.

SECTION 5.65. SUBSEQUENT INJURY FUND. (a) The subsequent injury fund is created as a special fund in the state treasury.

(b) If a covered employee dies without a legal beneficiary, or no claims for death benefits are made in a timely manner, the insurance carrier shall pay to the board for deposit in the subsequent injury fund an amount equal to 360 weeks of the death benefits otherwise payable.

(c) If a subsequent compensable injury, together with the effects of a previous injury, results in a condition for which the

injured employee is entitled to lifetime disability income benefits under Section 5.45 of this Act, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund shall compensate the employee for the remainder of the benefits to which the employee is entitled under Section 5.45 of this Act.

ARTICLE 6. ADJUDICATION OF DISPUTES

SECTION 6.01. HEARINGS DIVISION; APPEALS PANEL. (a) The hearings division of the board shall conduct benefit review conferences and contested case hearings related to workers' compensation claims. A decision made in a contested case hearing may be appealed by a party to the claim to an agency appeals panel as provided by Section 6.04 of this Act.

(b) An appeals panel is composed of three persons. Members of an appeals panel may not conduct benefit review conferences or contested case hearings. The board by rule shall provide for appeals hearings, which shall be conducted in Travis County.

SECTION 6.02. BENEFIT REVIEW CONFERENCES. (a) On receipt of a request from a party, or on its own motion, the board may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) The board by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may proceed directly to a contested case hearing. Except as otherwise

1 provided by law or board rule, unless a benefit review conference
2 is conducted as provided by this section the parties are not
3 entitled to a contested case hearing on the claim.
4 (c) A benefit review conference is a nonadversarial,
5 informal, dispute resolution proceeding designed to:
6 (1) explain, orally and in writing, the rights of the
7 respective parties to a workers' compensation claim and the
8 procedures necessary to protect those rights;
9 (2) discuss the facts of the claim, review available
10 information in order to evaluate the claim, and delineate the
11 disputed issues; and
12 (3) mediate and resolve the dispute by mutual
13 agreement of the parties in accordance with the purposes of this
14 Act and the policies of the board.
15 (d) A claimant may request a benefit review conference at
16 any time. An insurance carrier may request a benefit review
17 conference to attempt to resolve any disputed issue related to the
18 payment of benefits. A health care provider may request a benefit
19 review conference to resolve any disputed issue relating to the
20 payment of the health care provider for services provided by that
21 health care provider. An employer may request a benefit review
22 conference only to contest compensability. An employer who elects
23 to request a benefit review conference must request the conference
24 not later than the 30th day after the date on which the insurance
25 carrier accepts the compensability of the injury. A party may be
26 represented at a benefit review conference by an attorney or other
27 representative designated by the party.

(e) A party that desires a benefit review conference must file a written request for the conference with the board in the form prescribed by the board. Unless the benefit review officer determines that good cause exists for the selection of a different location, a benefit review conference may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(f) At least 10 days before a benefit review conference, the board shall send written notice of the benefit review conference to the parties to the claim and the employer. A party who fails to attend the conference without good cause as determined by the benefit review officer waives the right to a contested case hearing on the claim. If a party disputes the determination of the benefit review officer as to the existence of good cause, the party is entitled to administrative hearings and judicial review in the manner provided for the resolution of other disputes under this article.

(g) The benefit review officer shall assist in the adjustment of the claim. The officer may not take testimony or make a formal record. The officer shall assist in the resolution of disputed issues consistent with the purposes of this Act and the policies of the board.

(h) A benefit review conference is not subject to:

(1) common law or statutory rules of evidence or procedure; or

(2) the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement, or in a settlement, the benefit review officer shall reduce the agreed issues or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement. Except as otherwise provided by board rule, an agreement is binding as to the resolved issues and takes effect on the date signed. A settlement must be approved by the director of the hearings division and takes effect on the date it is approved by that director. If the director of hearings does not approve the settlement, he shall state his reasons and remand the settlement to the appropriate benefit review officer for further action in accordance with the statement of reasons given by the director of hearings. The director of hearings shall approve a settlement if he is satisfied that:

(1) the settlement accurately reflects the terms of the agreement between the parties;

(2) the settlement reflects adherence to all appropriate provisions of law; and

(3) under the law and facts, the settlement is in the best interests of the claimant if the claimant was not represented by counsel during the benefit review conference.

(j) If the dispute is not entirely resolved at the benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not settled at the conference. The report must also include:

(1) a statement of each resolved issue;

(2) the officer's recommendations regarding the payment or denial of benefits;

(3) the officer's basis for those recommendations; and

(4) a statement of the procedures required to request a contested case hearing.

(k) The benefit review officer shall file the signed agreement or the report with the director of the hearings division not later than the seventh day after the date on which the benefit review conference is concluded. The division director shall furnish a copy of the file stamped report to the claimant, the employer, and the insurance carrier not later than the seventh day after the receipt of the report by the director.

SECTION 6.03. CONTESTED CASE HEARING. (a) A party to a claim for which a benefit review conference is held or a party eligible to proceed directly to a contested case hearing as provided by Section 6.02(b) of this Act is entitled to a contested case hearing. If a benefit review conference is held, the hearing may not consider the issues resolved at the benefit review conference and may not consider issues not raised at the benefit review conference except by consent of the parties or unless the board determines that good cause existed for not considering an issue at the benefit review conference. Unless the board determines that good cause exists for a longer period, the party must request the hearing in writing not later than the 52nd day after the benefit review conference report is filed with the director of the hearings division and sent to the parties.

(b) A contested case hearing shall be conducted by a division hearings officer but may not be conducted by the same person who conducted a benefit review conference on the claim. Except as otherwise provided by this section, the hearing shall be conducted in accordance with Sections 13, 14, 15, and 17, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Unless the hearings officer determines that good cause exists for the selection of a different location, a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence.

(c) The hearings officer shall issue a written decision that includes findings of fact and conclusions of law and shall file the decision with the division not later than the 15th day after the date on which the hearing is concluded. The division shall notify each party in writing of the decision not later than the seventh day after the date on which the decision of the hearings officer is received by the division.

(d) The decision of the hearings officer is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal except as to nonessential medical services.

SECTION 6.04. REVIEW BY AGENCY APPEALS PANEL. (a) A party that desires to appeal the decision of the hearings officer shall file a written appeal request with the hearings division not later than the 37th day after the date on which the decision of the hearings officer is filed with the director of the hearings division, and shall on the same date serve a copy of the appeal request on the other party. The respondent party shall file a

1 written response with the division not later than the 30th day
2 after the date on which the appeal request is served, and shall on
3 the same date serve a copy of the response on the appellant party.
4 (b) An appeal request or response must clearly and concisely
5 rebut or support the decision of the hearings officer and must cite
6 statutes, case law, and evidence in support of the party's
7 position.
8 (c) The division director shall assign the appeal to an
9 appeals panel.
10 (d) The appeals panel shall consider:
11 (1) the record developed at the contested case
12 hearing; and
13 (2) the written appeal and response filed with the
14 division.
15 (e) The appeals panel may consider any new evidence
16 presented to the panel by a party and may allow oral argument.
17 (f) The appeals panel may:
18 (1) affirm the decision of the hearings officer;
19 (2) reverse that decision and render a new decision;
20 or
21 (3) reverse that decision and remand the claim to the
22 hearings officer for further consideration and development of
23 evidence.
24 (g) The appeals panel shall issue its decision in writing
25 not later than the 15th day after the date on which the appeal is
26 heard by the panel and shall file a copy of the decision with the
27 division director.

(h) The decision of the appeals panel is final in the absence of a timely appeal by a party for judicial review and is binding during the pendency of an appeal.

SECTION 6.05. JUDICIAL REVIEW. (a) A party who has exhausted all administrative remedies available under this article and who is aggrieved by a final decision of an agency appeals panel is entitled to seek judicial review under this section.

(b) Proceedings for judicial review are instituted by filing a petition not later than the 30th day after the date on which the final decision of the appeals panel is filed with the division director. The petition must be filed in district court in the county where the employee resides or where the injury occurred. A copy of the petition must be served on the board and on all parties of record in the proceedings before the appeals panel.

(c) Except as otherwise provided by this section, judicial review shall be conducted in the manner provided for judicial review of a contested case under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) Judicial review conducted under this article is governed by the substantial evidence rule.

SECTION 6.06. CONTINUATION OF BOARD JURISDICTION. The board retains jurisdiction of a workers' compensation claim during an appeal of a ruling on any disputed issue relating to the claim. The board may not modify, suspend, or revoke a final order of the board while such order is on appeal, except on a showing of a change of condition, mistake, or fraud and within 12 months of an

order denying compensation and within the compensation period for other orders of the board.

SECTION 6.07. EXPEDITED PROCEDURES. The board by rule shall provide for expedited benefit review conferences, contested case hearings, or review by an agency appeals panel in cases in which compensability is in dispute.

ARTICLE 7. ISSUES RELATED TO HEALTH CARE PROVIDERS; MEDICAL REVIEW

SECTION 7.01. GUIDELINES; MEDICAL REVIEW DIVISION. (a) The board shall adopt rules relating to the use of medical services by employees who suffer compensable injuries and the fees charged for those services.

(b) All fees for medical services provided under this Act must be fair and reasonable and may not exceed the fees charged for similar treatment of an injured individual of an equivalent standard of living when the fees for the treatment are paid by the injured individual or someone acting on the injured individual's behalf. To facilitate that fairness, the board shall consider the increased security of payment afforded by this Act. The rules adopted by the board shall include:

(1) guidelines relating to reasonable fees or ranges of reasonable fees for specific medical treatments or services;

(2) guidelines relating to necessary treatments or ranges of treatments for specific injuries;

(3) a program for systematic monitoring of the necessity of treatments administered and fees actually charged for medical treatments or services to ensure that the guidelines are

not exceeded;

(4) rules necessary to enable the board to compel the production of documents and to charge an insurance carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges pursuant to this Act; and

(5) rules necessary to enable the board to charge the health care provider who exceeds a fee or utilization guideline instituted under this Act a reasonable fee for evaluation of health care treatment, fees, or charges pursuant to this Act.

(c) The board may contract with a health care provider professional organization or other entity to develop, maintain, or review the guidelines or to review compliance with the guidelines. The board may contract for that purpose only with an organization or other entity that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review. The guidelines shall be reviewed and updated to reflect current "fair and reasonable" charges and amended to reflect current reasonable or necessary medical treatment or ranges of treatment. The appropriate special advisory committee established under Section 7.02 of this Act shall assist the board or professional organization in the review and update.

(d) The medical review division of the board shall administer the guidelines adopted by the board and perform other duties as directed by the board.

(e) The division shall maintain a statewide data base of medical charges and treatment protocols to be used by the board in

adopting the guidelines and by the division in administering the guidelines. The division shall ensure that the data base provided by this subsection contains the data necessary to allow the division to detect practices and patterns of charges and protocols and that the data base can be utilized in a meaningful way to allow the board to control medical costs as provided by this Act.

(f) The division shall monitor health care providers and workers' compensation claimants who receive medical services to assure the compliance of those persons with the guidelines, as well as with other rules adopted by the board relating to health care.

(g) The board by rule shall provide for the periodic review of medical care provided in claims in which lost-time guidelines or other appropriate guidelines are exceeded. The division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to assure that necessary and reasonable care is provided.

(h) The division shall take appropriate action to be aware of and maintain the most current information on developments in the treatment and cure of injuries and diseases common in workers' compensation cases.

(i) The board may contract with other public or private entities to perform any of the duties or functions of the division.

(j) A fee that is within the range of fees for that specific medical treatment or service is presumed to be reasonable. A specific treatment or service that is included in a treatment protocol is not presumed to be reasonable based only on its inclusion in the protocol.

(k) A fee or charge consistent with the guidelines for fees and charges earns interest at a rate computed by the Industrial Accident Board by taking the auction rate quoted on a discount basis for the 52-week treasury bills issued by the United States government, as published by the Federal Reserve Board on the most recent date preceding the date of computation, from 60 days after the date the health care provider submits the bill to an insurance carrier to the date the bill is paid. The rate shall be computed on December 15 and June 15 for the following six-month period beginning January 1 and July 1, respectively.

SECTION 7.02. SPECIAL ADVISORY COMMITTEES. (a) The following special advisory committees are created to assist the medical review division in administering the guidelines established under Section 7.01 of this Act:

(1) the hospital care advisory committee;

(2) the medical care advisory committee;

(3) the osteopathic care advisory committee;

(4) the chiropractic care advisory committee;

(5) the podiatric care advisory committee;

(6) the physical therapy advisory committee; and

(7) the pharmaceutical advisory committee.

(b) Each committee is composed of nine members appointed by the board as provided by this section. A member of a committee is not entitled to remuneration but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee, not to exceed any limit established in the General Appropriations Act.

(c) The board shall appoint five health care practitioner members to each advisory committee. Each health care practitioner member of a committee must be a health care provider of that particular provider group who is knowledgeable and qualified regarding work related injuries and diseases. The board shall consider the advice of the appropriate professional associations in making the committee appointments.

(d) The board shall appoint four additional members to each advisory committee, one to represent employers, one to represent employees, and two to represent the general public.

(e) The health care advisory committee is created to assist the division. The committee is composed of eight members appointed by the board and one member elected from each of the committees created under Subsection (a) of this section. The board shall designate the chairman of the committee, which shall meet at the call of its chairman. A member of this committee is not entitled to remuneration but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee, not to exceed any limit established in the General Appropriations Act.

SECTION 7.03. COORDINATION WITH PROVIDERS. The medical review division shall coordinate its activities with health care providers as necessary to perform its duties under this article. The coordination may include:

(1) conducting educational seminars on board rules and procedures;

(2) providing information to and requesting assistance

from professional peer review organizations; or

(3) contracting with health care providers for independent medical examinations, medical case reviews, establishment of guidelines, or other medical consultant services.

SECTION 7.04. PROVIDERS' DISCLOSURE. A health care provider that refers a workers' compensation claimant to another health care provider in which the referring provider has more than a five percent financial interest shall file an annual disclosure statement with the Texas Workers' Compensation Board as provided by rules adopted by the board and shall disclose the interest to the insurance carrier at the time of the referral. The referring provider shall specify the degree of the financial interest and shall provide other information as required by the rules of the Texas Workers' Compensation Board.

SECTION 7.05. PRIVATE CLAIMS. A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless the injury is finally adjudicated not to be compensable under this Act.

ARTICLE 8. COMPLIANCE MONITORING

SECTION 8.01. COMPLIANCE AND PRACTICES DIVISION. (a) The compliance and practices division shall monitor the conduct of all persons subject to this Act other than persons monitored by the medical review division. The monitoring shall include monitoring the conduct of:

(1) employees;

(2) persons claiming death benefits;

(3) employers;

(4) insurance carriers; and

(5) attorneys and other representatives of parties.

(b) The division shall monitor those persons for compliance with board rules, this Act, and other laws relating to workers' compensation.

SECTION 8.02. AUDIT OF INSURANCE CARRIERS. The division shall audit the workers' compensation records of insurance carriers on a regular basis. Each carrier shall cooperate with the division and shall make available to the division any records or other necessary information. The carrier shall allow the division access to the information at reasonable times at the offices of the carrier. On the request of the division, the carrier shall also make the information available to the division at the offices of the board in Austin.

SECTION 8.03. MONITORING OF TIMELY PAYMENTS. The division shall also monitor payments of health care providers and workers' compensation claimants who receive medical services to assure that the payments are made on a timely basis as established by rule of the board.

SECTION 8.04. COMPILATION OF INFORMATION. The division shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this article that violate this Act or board rules, or that otherwise adversely affect the workers' compensation system of this state. The board shall use the information to assess appropriate penalties and other sanctions

under Article 11 of this Act.

SECTION 8.05. INVESTIGATIONS. (a) The division shall conduct investigations relating to alleged violations of this Act or board rules.

(b) The division may refer the persons involved in a case subject to an investigation to the hearings division or to other appropriate authorities for further investigation and institution of appropriate proceedings.

ARTICLE 9. WORKERS' HEALTH AND SAFETY

SECTION 9.01. WORKERS' HEALTH AND SAFETY DIVISION. (a) The workers' health and safety division of the board shall coordinate and enforce the implementation of state laws and rules relating to workers' health and safety issues.

(b) The division shall collect and serve as a repository for statistical information on workers' health and safety. The division shall analyze and use the information to identify and assign priorities to safety needs and to better coordinate the safety services provided by public or private organizations, including insurance carriers. The division shall promote workers' health and safety through educational programs, certify employers who complete such programs for eligibility for rate reductions, as set out in Article 5.55A, Insurance Code, and other innovative programs developed by the division.

(c) The division shall coordinate or supervise the collection of information relating to job safety by state or federal entities, including information collected for the supplementary data system and the annual survey of the Bureau of

Labor Statistics of the United States Department of Labor.

(d) The division shall monitor loss control services provided by insurance carriers. The board by rule shall require that reasonable loss control services be provided by insurance carriers to employers classed as small, medium, or large risks. The board shall require that services be directed to specific employers, industries, occupations, or geographic regions, or to the prevention of certain injuries or occupational diseases. The services may be provided through on-site inspections and consultations, training programs, or other means considered appropriate by the division.

(e) In accordance with Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 656), the division shall:

(1) consult with employers regarding compliance with federal occupational safety laws and rules; and

(2) collect information relating to occupational safety as required by federal laws, rules, or agreements.

(f) With the approval of the board, the division may enter contracts with the federal government to perform occupational safety projects and may apply for funds from the federal government through any federal program relating to occupational safety.

SECTION 9.02. JOB SAFETY INFORMATION SYSTEM. (a) The workers' health and safety division shall establish and maintain a job safety information system.

(b) The job safety information system shall include a comprehensive data base that incorporates all pertinent information relating to each workers' compensation claim, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee;

(2) the nature, source, and severity of the injury;

(3) if the injury resulted from an accident, a description of the workplace site at which the accident occurred;

(4) a statement of whether the injury resulted from an unsafe practice or condition, as determined by the board;

(5) the part of the body affected;

(6) the compensation rate;

(7) the amount paid as income or death benefits;

(8) the amount paid on behalf of the claimant as medical benefits;

(9) the industry code for the claimant's occupation;

(10) the premium amount paid by the employer;

(11) the number of prior workers' compensation claims by that employee; and

(12) the total claim costs of the employer.

(c) Based on the information compiled for the job safety information system, the division shall issue periodic reports relating to workers' health and safety and shall issue specialized reports and studies for public and private entities that are working to improve safety.

SECTION 9.03. CLAIM AND LOSS GUIDELINES. (a) The workers' health and safety division shall develop a program to identify an employer whose claim frequencies or loss levels exceed those that may be reasonably expected in that employer's business or industry.

1 Based on the information developed by the division, the board shall
2 adopt guidelines for the identification of such an employer. In
3 adopting the guidelines, the board shall consider the hazards of
4 the particular industry and the size of the affected business
5 entities.
6 (b) If the division identifies an employer that exceeds the
7 claim or loss guidelines for that employer's industry, the division
8 shall notify the employer in writing that the employer has exceeded
9 the claim and loss guidelines. The division shall reexamine that
10 employer for compliance with the claim and loss guidelines not
11 later than six months after the date on which the employer is
12 notified.
13 (c) An employer who continues to exceed the claim and loss
14 guidelines as determined by the division must obtain a safety
15 consultation from the board, the employer's insurance carrier, or
16 another professional source approved by the board for that purpose.
17 The safety consultant shall issue a written statement to the
18 employer to certify that the employer has participated in the
19 safety consultation. The employer shall submit a copy of the
20 statement to the board not later than the seventh day after the
21 date on which the consultation is completed and shall include a
22 statement of corrective actions contemplated by the employer.
23 (d) An employer who, six months after the initial safety
24 consultation under Subsection (c) of this section, is determined by
25 the board to continue to exceed the claim and loss guidelines shall
26 receive a follow-up safety consultation from the board. For each
27 additional workers' compensation claim filed by that employer's

employees, the employer shall file a special accident report in the form prescribed by the board, specifying the nature and causes of the injury and measures implemented to prevent similar injuries in the future. If the board determines that the employer is still exceeding the guidelines six months after the date of the follow-up safety consultation, the employer shall file an adequate safety plan with the board.

(e) The board may assess an administrative penalty as provided by Article 11 of this Act against an employer who fails to comply with this section. This section does not create an independent cause of action at law or in equity. This section provides the sole remedy for violation of this section.

(f) The board shall adopt rules and prescribe forms as necessary to implement this section.

SECTION 9.04. SAFETY EDUCATION. (a) The workers' health and safety division shall provide safety education services to the employers and employees of this state and to the general public.

(b) The division may:

(1) conduct seminars on occupational health and safety concerns;

(2) issue public service announcements on safety; and

(3) publish informational material on safety for general dissemination.

(c) The board may charge fees for division publications and for seminars and training programs offered by the division. If a fee is charged, the board shall set the fee in the amount reasonable and necessary to cover its administrative costs.

(d) The board may accept grants and gifts from any source for the benefit of the safety programs conducted by the division.

(e) The board may coordinate its safety programs with those of insurance carriers or those of other public or private entities.

SECTION 9.05. RISK MANAGEMENT FOR CERTAIN STATE AGENCIES. (a) In this section, "state agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that was created by the constitution or a statute of this state and that has authority that is not limited to a specific geographical portion of the state. The term includes an institution of higher education as defined by Section 61.003, Education Code. The term does not include an entity with fewer than five employees.

(b) The director of the workers' health and safety division shall serve as the state risk manager. In that capacity, the director shall supervise the development and administration of division systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses; and

(4) reduce the property and liability losses incurred by each state agency.

(c) Based on the recommendations of the director, the board shall report to each legislature relating to methods to reduce the

exposure of state agencies to the risks of property and liability losses, including workers' compensation losses, the operation and management of those risks, and the handling of claims brought against the state. The report must include:

(1) the number and amount of claims settled in the preceding biennium;

(2) the number and amount of final judgments paid in the preceding biennium; and

(3) recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory changes.

(d) The workers' health and safety division shall administer guidelines adopted by the board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses.

(e) A state agency that has its own risk management program shall submit to the division any information or reports required by the division relating to the agency's program. Based on the material submitted, the division shall determine whether the agency program is effective and shall notify the agency in writing of its determination.

(f) The division shall assist a state agency that has not implemented an effective risk management program in the implementation of a comprehensive program that meets the division guidelines.

(g) Each state agency shall reimburse the board for the

costs incurred by the board in administering this section as it relates to that state agency through an interagency contract that meets the requirements of The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes). Reimbursable costs include the cost of:

(1) services of board employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(h) The board may adopt rules to implement this section, including rules relating to reporting requirements for state agencies.

SECTION 9.06. REVIEW OF CERTAIN SAFETY COMMITTEES. The workers' health and safety division shall review and, on behalf of the board, approve or disapprove labor-management safety committees established to qualify for workers' compensation insurance premium discounts through promotion of occupational health and safety within an individual employer's work force, as provided by Article 5.55A, Insurance Code. To be eligible for approval, a committee must be composed of representatives of the employer and employees. A committee may make recommendations that can be implemented by the employer and employees to reduce job related accidents.

ARTICLE 10. SELF-INSURANCE

SECTION 10.01. DEFINITIONS. In this article:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) "Certified self-insurer" means a private employer

1 who has been granted a certificate of authority to self-insure
2 under this article.
3 (3) "Director" means the director of workers'
4 compensation self-insurance.
5 (4) "Impaired employer" means a certified
6 self-insurer:
7 (A) who has suspended payment of compensation as
8 determined by the board;
9 (B) who has filed for relief under bankruptcy
10 laws;
11 (C) against whom bankruptcy proceedings have
12 been filed; or
13 (D) for whom a receiver has been appointed by a
14 court of this state.
15 (5) "Incurred liabilities for compensation" means the
16 sum of the estimate of liabilities for outstanding workers'
17 compensation claims plus the estimated amount necessary to provide
18 for the administration of those claims, including legal costs.
19 (6) "Qualified claims servicing contractor" means:
20 (A) an insurance company authorized by the State
21 Board of Insurance to write workers' compensation insurance;
22 (B) a subsidiary of an insurance company that
23 provides claim service under contract;
24 (C) an individual licensed under Chapter 407,
25 Acts of the 63rd Legislature, Regular Session, 1973 (Article
26 21.07-4, Vernon's Texas Insurance Code); or
27 (D) a third-party administrator that has on its

staff an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(7) "Self-insured retention" means the total dollar amount of liability under this Act retained by a certified self-insurer.

SECTION 10.02. ADMINISTRATION. (a) The board shall appoint a director of workers' compensation self-insurance to administer the board's certification program for self-insurers as provided by this article.

(b) The board may adopt rules as necessary to administer this article.

SECTION 10.03. APPLICATION FOR CERTIFICATION. (a) An employer who desires to self-insure under this article must submit an application to the board for a certificate of authority to self-insure. The application must be submitted on a form adopted by the board and be accompanied by a nonrefundable application fee of $1,000. The application fee shall be deposited in the workers' compensation self-insurance fund created under Section 10.10 of this Act.

(b) Not later than the 60th day after the day on which the form is received, the board shall issue a certificate of authority to self-insure to an applicant who meets the requirements for certification under this article. The certificate of authority is valid for one year after the date of issuance and may be renewed under procedures prescribed by the board. The director may stagger the renewal dates of certificates of authority to self-insure to

facilitate the work load of the division. There is no renewal fee.

SECTION 10.04. REQUIREMENTS FOR CERTIFICATION TO SELF-INSURE; ISSUANCE OF CERTIFICATION. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the board of sufficient financial strength and liquidity under standards adopted by the board to assure that all workers' compensation obligations incurred by the applicant under this article are promptly met. In assessing financial strength and liquidity, the board shall consider:

(1) the applicant's organizational structure and management background;

(2) the applicant's profit and loss history;

(3) the applicant's compensation loss history;

(4) the source and reliability of the financial information submitted by the applicant;

(5) the number of employees affected by self-insurance;

(6) the applicant's access to excess insurance markets;

(7) financial ratios, indexes, or other financial measures that the board finds appropriate; and

(8) any other information considered appropriate by the board.

(b) The applicant must present a plan for claims administration that is acceptable to the board and designates a qualified claims servicing contractor.

(c) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(d) If the provider of services is not an employee of the applicant, the applicant must provide to the board a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services. If the board has adopted a standard form for such a contract, the contract must be submitted in that form. The board must approve the contract before the applicant may self-insure.

(e) The board shall review a contract submitted under Subsection (d) of this section. A contract submitted to the board is considered approved by the board unless the board notifies the applicant in writing not later than the 30th day after the date on which the contract is submitted that the contract is not approved. If the board does not approve the contract, the notice must specify the reasons for the disapproval.

(f) The applicant must provide security for incurred liabilities for compensation through a deposit with the director, in a combination and from institutions approved by the director, of the following security:

(1) cash or negotiable securities of the United States or this state;

(2) a surety bond that names the director as payee; or

(3) a letter of credit that:

(A) is irrevocable; and

(B) names the director as payee.

(g) If an applicant who has provided a letter of credit as all or part of the security required under this section desires to cancel the existing letter of credit and substitute a different letter of credit, the applicant must notify the board in writing not later than the 60th day before the date on which the original letter of credit is to be canceled.

(h) The estimate of incurred liabilities must be signed and sworn to by a certified casualty actuary.

(i) The sum of the deposited securities must be at least equal to the greater of $300,000 or 125 percent of the applicant's incurred liabilities for compensation.

(j) The applicant shall provide for excess insurance to cover liability that is not covered by the applicant's self-insured retention in amounts considered necessary by the certified self-insurer, but not less than the amounts required by the director. The director shall require excess insurance in at least the amount of $1 million per occurrence, and may require excess insurance in a higher amount if the director determines that a higher amount is reasonable and necessary.

(k) If the applicant is a subsidiary, the parent organization must guarantee the obligations imposed by this article.

(l) The board shall issue a certificate of authority to self-insure to an applicant who meets the requirements of this article and pays the required fee.

SECTION 10.05. INITIAL PREMIUM REQUIREMENTS TO SELF-INSURE. (a) In addition to meeting the other eligibility requirements

imposed under this article, an applicant for an initial certificate of authority to self-insure must present evidence satisfactory to the board of a total unmodified premium in this state for workers' compensation insurance coverage as follows:

(1) if the application is filed before September 1, 1990, $250,000;

(2) if the application is filed on or after September 1, 1990, but before September 1, 1991, $200,000;

(3) if the application is filed on or after September 1, 1991, but before September 1, 1992, $150,000;

(4) if the application is filed on or after September 1, 1992, but before September 1, 1993, $100,000; and

(5) if the application is filed on or after September 1, 1993, but before September 1, 1994, $50,000.

(b) In lieu of the state premiums required under Subsection (a) of this section, the applicant may present evidence of a total unmodified national workers' compensation insurance premium of at least $1 million.

(c) If the application to self-insure is filed on or after September 1, 1994, evidence of a workers' compensation insurance premium is not required.

SECTION 10.06. SPECIFIC SECURITY REQUIREMENTS. (a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or a document indicating issuance of an irrevocable letter of credit must be in a form approved by the director and must be issued by an

1 institution acceptable to the director. Such an instrument may be
2 released only according to its terms but may not be released by the
3 depositing of additional security.
4 (c) The certified self-insurer shall deposit the security
5 with the state treasurer on behalf of the director. The state
6 treasurer may accept securities for deposit or withdrawal only on
7 the written order of the director.
8 (d) On receipt by the director of a request to renew,
9 submit, or increase or decrease a security deposit, a perfected
10 security interest is created in the certified self-insurer's assets
11 in favor of the director to the extent of any then unsecured
12 portion of the self-insured's incurred liabilities for
13 compensation. That perfected security interest transfers to any
14 cash or securities deposited by the self-insured with the director
15 after the date of the request, and may be released only on:
16 (1) the acceptance by the director of a surety bond or
17 irrevocable letter of credit for the full amount of the incurred
18 liabilities for compensation; or
19 (2) the return of cash or securities by the director.
20 (e) The certified self-insurer loses all right, title,
21 interest in, and control of, the assets or obligations submitted or
22 deposited as security. The director may liquidate the deposit and
23 apply it to the certified self-insurer's incurred liabilities for
24 compensation either directly or through the association.
25 (f) The director, after notice to the concerned parties and
26 an opportunity for a hearing, shall resolve a dispute concerning
27 the deposit, renewal, termination, release, or return of all or

1 part of the security, any liability arising out of the submission
2 or failure to submit security, or the adequacy of the security or
3 reasonableness of the administrative costs, including legal fees,
4 that arises among:
5 (1) a surety;
6 (2) the issuer of an agreement of assumption and
7 guarantee of workers' compensation liabilities;
8 (3) the issuer of a letter of credit;
9 (4) a custodian of the security deposit;
10 (5) a certified self-insurer; or
11 (6) the association.
12 (g) A decision of the director may be appealed to the board
13 on filing with the board a written request for an appeal not later
14 than the 30th day after the date on which the director's decision
15 is final.
16 (h) Payment of claims from the security deposit or by the
17 association may not be stayed pending the resolution of a dispute
18 under this section unless the board issues a determination staying
19 the payment of claims.
20 (i) If the director determines that a security deposit has
21 not been made immediately available for the payment of
22 compensation, the director shall determine the appropriate method
23 of payment and claims administration, which may include payment by
24 a surety that issued the bond or by the issuer of an irrevocable
25 letter of credit, and administration by a surety, an adjusting
26 agency, the association, or through any combination of those
27 entities approved by the director.

SECTION 10.07. PROCEDURES ON DENIAL OF APPLICATION. (a) If the board determines that an applicant for a certificate of authority to self-insure does not meet the requirements for eligibility to self-insure provided by this article, the board shall notify the applicant not later than the 60th day after the date on which the completed application is received, stating the specific reasons for the denial and the conditions to be met before approval can be granted.

(b) The applicant is entitled to a reasonable period of time, as determined by the board, to meet the conditions for approval before the application is considered rejected for purposes of appeal. An appeal is subject to the substantial evidence rule and must be filed in a district court of Travis County.

(c) During the pendency of approval or denial of the application for certification to self-insure, the applicant may not operate as a self-insurer under this article.

SECTION 10.08. ANNUAL REPORT. (a) Each certified self-insurer shall file an annual report with the board. The board shall prescribe the form of the report and shall furnish blank forms for preparation of the report to each certified self-insurer. The report must include payroll data in the form prescribed by this article and the board. The board may require that the report include other financial and statistical data.

(b) The annual report must present evidence of sufficient financial ability of the certified self-insurer to meet all obligations under this article.

(c) The report must state the number of injuries sustained

in the three preceding calendar years and must report separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries. The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the board.

(d) If the board considers it necessary, it may order a certified self-insurer whose financial condition or claims record warrants closer supervision to report as provided by this section more often than annually.

SECTION 10.09. EXAMINATION OF RECORDS. (a) The certified self-insurer shall maintain the books, records, and payroll data necessary to compile the annual report and any other information reasonably required by the board. The material shall be open to inspection and examination by an authorized agent or representative of the board at reasonable times for the purpose of ascertaining the correctness of the information.

(b) The examination may be made at any location, including the offices of the board in Austin, or, at the certified self-insurer's option, in offices of the certified self-insurer. The certified self-insurer must pay the reasonable expenses, including travel expenses, of an inspector who makes an inspection at its offices.

(c) The certified self-insurer may maintain the books, records, and payroll data in locations outside this state.

(d) An unreasonable refusal on the part of a certified

self-insurer to make available for inspection books, records, payroll data, and other required information is grounds for revocation of the certificate of authority to self-insure.

SECTION 10.10. SELF-INSURANCE REGULATORY FEE. (a) Certified self-insurers shall pay annual fees to cover the administrative costs incurred by the board in implementing this article. The fees shall be based on the total amount of income benefit payments made in the preceding calendar year. The board shall assess each certified self-insurer a pro rata share based on the ratio the total amount of income benefit payments made by that self-insurer bears to the total amount of income benefit payments made by all certified self-insurers.

(b) The fees shall be deposited in the state treasury to the credit of a fund to be known as the workers' compensation self-insurance fund and to be used only for the regulation of certified self-insurers. Any amount not used in a budget year shall be used to reduce the regulatory fees assessed in the succeeding budget year.

SECTION 10.11. TAX ASSESSMENTS. (a) Each certified self-insurer shall pay a tax equal to the premium tax paid by commercial insurance carriers under Article 4.10, Insurance Code, and a maintenance tax under Section 12.04 of this Act for the support of the Texas Workers' Compensation Board.

(b) To determine the tax liability of a certified self-insurer for the maintenance tax assessed under Section 12.04 of this Act and the premium tax assessed under Subsection (a) of this section, each certified self-insurer shall report its payroll

by individual workers' compensation risk code classifications in its annual report to the board. The taxes assessed under this section shall be collected and paid in the same manner and at the same time that a commercial insurance carrier pays the maintenance tax imposed under Article 5.68, Insurance Code.

(c) The estimated premium for a certified self-insurer shall be determined by using the manual workers' compensation insurance rates in effect at the time the annual report is due. The taxes shall be calculated by multiplying the manual premium by 75 percent and multiplying the product by the same tax rates assessed against other insurers under Article 5.68, Insurance Code.

(d) All amounts collected under this section shall be deposited in the general revenue fund.

SECTION 10.12. WITHDRAWAL FROM SELF-INSURANCE. A certified self-insurer may withdraw from self-insurance at any time with the approval of the board. The board shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the board that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer. A certified self-insurer who withdraws from self-insurance shall surrender its certificate of authority to self-insure to the board.

SECTION 10.13. CLAIMS. A claim or suit brought by a workers' compensation claimant shall be brought against the certified self-insurer.

SECTION 10.14. AGENT'S COMMISSION. This article does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

SECTION 10.15. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The board may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with any of the requirements or conditions provided by this article or the rules adopted by the board under this article.

(b) If the board believes that grounds exist to revoke a certificate of authority to self-insure, the board shall hold a hearing to determine if the certificate should be revoked. The board shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date. At the hearing the certified self-insurer shall show cause why its certificate should not be revoked. If the certified self-insurer fails to show cause, the board shall immediately revoke the certificate.

(c) A certified self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations to its employees, and the required security shall be maintained with the board or under the board's control until each claim for workers' compensation benefits that arises out of an accident or occupational disease first distinctly manifested during the period of self-insurance has been paid, settled, or otherwise foreclosed by law.

SECTION 10.16. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty

1 Association is established to provide for payment of workers'
2 compensation benefits for the injured employees of an impaired
3 employer. To be entitled to self-insure, each employer who desires
4 to become a certified self-insurer must be a member of the
5 association. The members shall provide by rule for the election of
6 a board of directors composed of not fewer than four members. The
7 board of directors shall also include, as voting members, the
8 executive director of the Texas Workers' Compensation Board and the
9 public counsel of the division of consumer protection of the State
10 Board of Insurance. The director of the division shall serve as a
11 nonvoting member. The board of directors may adopt rules for the
12 operation of the association. Rules adopted by the board of
13 directors are subject to the approval of the Texas Workers'
14 Compensation Board. Meetings of the association and its board of
15 directors are subject to the open meetings law, Chapter 271, Acts
16 of the 60th Legislature, Regular Session, 1967 (Article 6252-17,
17 Vernon's Texas Civil Statutes), and records of the association and
18 its board of directors are subject to the open records law, Chapter
19 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article
20 6252-17a, Vernon's Texas Civil Statutes).
21 (b) Members of the association shall be assessed a fee,
22 based on total paid indemnity losses in this state for the
23 preceding reported calendar year, to create, over a period of five
24 years, a trust fund of at least $1 million dollars for the
25 emergency payment of the compensation liabilities of an impaired
26 employer. The fund may not exceed $2 million dollars. The board
27 of directors of the association shall administer the trust fund in

accordance with rules adopted by the Texas Workers' Compensation Board.

(c) If the director determines that the payment of benefits and claims administration shall be made through the association, the association shall assume the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director. The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association. On the assumption of obligations by the association under the director's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of any irrevocable letter of credit shall deliver the security to the association together with any interest that has accrued since the date on which the certified self-insurer became impaired.

(d) On determination by the director that a certified self-insurer has become an impaired employer, the director shall secure release of the security deposit required by this article, and shall promptly estimate the amount of any additional funds needed to supplement the security deposit, the available assets of the impaired employer for the purpose of making payment of all incurred liabilities for compensation, and the funds maintained by the association for the emergency payment of compensation liabilities. The director shall advise the board of directors of the association of the estimate of any necessary additional funds, and the board of directors shall promptly assess each certified

self-insurer, except impaired employers, to collect the required funds. The assessments shall be made against all certified self-insurers in proportion to the ratio that the total paid indemnity losses for the preceding reported calendar year bear to the total paid indemnity losses by all certified self-insurers, except impaired employers, in this state in that calendar year.

(e) A certified self-insurer designated as an impaired employer is exempt from assessment beginning on the date of that designation until the board determines that the employer is no longer impaired.

(f) Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through a suit brought for that purpose. Venue for the suit is in Travis County.

(g) Funds advanced by the association under this article do not become assets of the impaired employer but are considered a special fund advanced to the director, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the cost of claims administration and legal costs.

(h) The association or the surety making compensation payments under this article is entitled to the same preference over the other debts of the impaired employer or the impaired employer's estate as provided by law to the person directly entitled to the compensation.

(i) The board, after notice and hearing, may suspend or revoke the certificate of authority to self-insure of any certified self-insurer that fails to pay an assessment. The association promptly shall report such a failure to the director. A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(j) Notwithstanding Subsection (c) of this section, the association is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the association.

(k) The association is a party in interest in any proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association. The association has the same rights and defenses as the impaired employer, including the right to:

(1) appear, defend, and appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, and pay a claim; and

(3) investigate, handle, and deny a claim.

ARTICLE 11. PROHIBITED ACTS; ENFORCEMENT

CHAPTER A. PROHIBITED ACTS

SECTION 11.01. DISCRIMINATION PROHIBITED. (a) No person may discharge or otherwise discriminate against an employee because the employee, in good faith:

(1) has initiated a workers' compensation claim;

(2) has hired an attorney to represent the employee regarding a claim;

(3) has instituted or caused to be instituted a proceeding before the board; or

(4) has testified or is about to testify at an administrative or judicial proceeding regarding a claim.

(b) A person who violates this section is liable for reasonable damages incurred by the employee as a result of the violation. An employee who is discharged in violation of this section is entitled to reinstatement in the same or an equivalent position of employment. The burden of proof is on the employee.

(c) The district courts of this state have jurisdiction, for cause shown, to restrain a violation of this section.

(d) Liability incurred by an employer because of a violation of this section is not a benefit payable under this Act.

SECTION 11.02. EMPLOYER CHARGEBACKS PROHIBITED. An employer may not collect from an employee, directly or indirectly, any premium or other fee paid by the employer to obtain workers' compensation insurance coverage.

SECTION 11.03. LOANS BY ATTORNEY PROHIBITED. (a) An attorney who represents a claimant before the board may not lend money to the claimant during the pendency of the workers' compensation claim.

(b) The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable in any way for the credit extended to the claimant.

SECTION 11.04. CRIMINAL PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS. (a) A person commits an offense if the person, to obtain or deny payments of workers' compensation benefits or the provision of those benefits for himself or another, knowingly and intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a document; or

(4) conspires to commit an act listed in Subdivisions (1)-(3) of this subsection.

(b) An offense under this section is a felony of the third degree.

[Sections 11.05-11.10 reserved for expansion]

CHAPTER B. ADMINISTRATIVE SANCTIONS

SECTION 11.11. GENERAL SANCTIONS; ADMINISTRATIVE PENALTY. (a) After a hearing, the board may assess an administrative penalty or impose other sanctions as provided by Subsection (b) of this section against:

(1) a health care provider who violates the guidelines adopted by the board under Section 7.01 of this Act, other applicable provisions of this Act or other laws relating to workers' compensation, or applicable board rules relating to health care providers;

(2) an insurance carrier who violates this Act, other laws relating to workers' compensation, or applicable board rules relating to carriers who write workers' compensation insurance;

(3) an attorney who violates this Act, other laws relating to workers' compensation, or applicable board rules relating to legal practice before the board; or

(4) any other person subject to the jurisdiction of the board, including a claimant, the legal beneficiary of a claimant, or an employer, who violates this Act, other laws relating to workers' compensation, or applicable board rules.

(b) If the board determines that a person subject to this section is in violation, the board may:

(1) issue a written reprimand to the person that specifies the violation;

(2) refer the person to the occupational regulatory agency that supervises the person's practice for appropriate action, including the probation, suspension, or revocation of the person's license, certificate, or permit;

(3) suspend the person from practice before the board;

(4) if the person is a health care provider, suspend the person's right to remuneration under this Act; or

(5) assess an administrative penalty.

(c) If a suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the board; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the board in those

areas that are the basis for the probation.

(d) If the board proposes to suspend a person's right to practice before the board, receive remuneration under this Act, or assess an administrative penalty against the person, the person is entitled to a hearing before the hearings division of the board.

(e) The board by rule shall prescribe the procedures by which a decision to suspend the right to practice or to assess an administrative penalty are made by or are appealable to the board. Proceedings conducted under this section are subject to the requirements for a contested case hearing under Section 6.03 of this Act.

(f) In determining the degree of sanction or amount of administrative penalty imposed or assessed under this section, the board shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the sanction or penalty necessary to deter future violations; and

(4) any other appropriate matters.

(g) If the board determines that a violation has occurred and that the assessment of an administrative penalty is an appropriate remedy, the board shall notify the person charged in writing of the violation, stating the amount proposed to be assessed. The notice must include a statement of the right of the person to a hearing. Not later than the 20th day after the date on which the notice is received, the person shall either remit the amount of the penalty to the board or submit to the board a written

request for a hearing.

(h) If the person requests a hearing, the board shall call and schedule a hearing, to be conducted not later than the 20th day after the date on which the person submits the request for a hearing. The board shall give written notice of the hearing to the person not later than the 10th day after the date on which the person submits the request for a hearing. The hearing shall be conducted by the hearings division of the board in the manner provided for a contested case hearing under Article 6 of this Act. The decision of the hearings officer may be appealed to an agency appeals panel as provided by Section 6.04 of this Act. If it is determined by the hearing, and after any review by an agency appeals panel, that a violation has occurred, the board shall enter a written order to that effect and shall notify the person in writing of the decision, the amount of the penalty assessed, and the person's right to judicial review of the board's order.

(i) Not later than the 30th day after the date on which the board's order is final, the person shall either remit the penalty to the board or, if the person files a petition for judicial review contesting the fact of the violation or the amount assessed, forward the amount assessed to the board for deposit in an escrow account. Failure to forward the amount assessed within the specified period constitutes a waiver of the right to judicial review.

(j) If, after judicial review, the penalty is reduced or is not assessed, the board shall remit to the person the appropriate amount, plus accrued interest at a rate equal to the rate charged

on loans to depository institutions by the New York Federal Reserve Bank. Interest under this section shall be paid for the period beginning on the date that the assessed penalty is paid to the board and ending on the date that the penalty is remitted.

(k) Amounts collected as penalties under this section shall be deposited in the state treasury.

SECTION 11.12. ENHANCEMENT OF AWARD FOR MALICE OR BAD FAITH. (a) In addition to the benefits granted under this Act, the board shall order an insurance carrier to pay an employee an additional amount if the board determines that the failure of the insurance carrier to pay benefits determined to be owed to the employee, or the carrier's suspension or termination of payment of those benefits, was caused by malice or the failure of an insurance carrier to deal fairly and act in good faith.

(b) For the purposes of this section, "malice" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

(c) An additional amount awarded under this section is the employee's exclusive remedy against the carrier for malice or the failure to deal fairly and act in good faith.

(d) The board may award an amount not to exceed the lesser of twice the amount of income benefits payable to the employee, or $15,000.

(e) The board shall adopt rules as necessary to implement this section, including rules to define specific actions that demonstrate malice or the failure to deal fairly and act in good faith.

(f) Amounts paid by an insurance carrier under this section may not be used in the calculation of premium rates for workers' compensation insurance.

ARTICLE 12. MISCELLANEOUS PROVISIONS

SECTION 12.01. ATTORNEY'S FEES. (a) An attorney who represents a workers' compensation claimant under this Act is entitled to a fee equal to 25 percent of the difference between the amount of income benefits attained or ordered and the amount of those benefits voluntarily paid or offered to be paid by the insurance carrier at the conclusion of the benefit review conference. The attorney is entitled to a minimum fee of $200.

(b) The board by rule may provide for the commutation of attorney's fees.

SECTION 12.02. CONFIDENTIALITY. (a) Information in a worker's claim file is confidential and may not be disclosed except as provided in this section.

(b) If a workers' compensation claim is open or pending before the board, on appeal to a court of competent jurisdiction from the board, or is the subject matter of a subsequent suit in which the insurance carrier is subrogated to the rights of the workers' compensation claimant at the time a record search or request for information is presented to the board, the board shall furnish the information as provided by this section.

(c) The person making a request for information under Subsection (b) of this section must furnish the following:

(1) the first, middle, and last name of the claimant;

(2) the claimant's age;

(3) the claimant's social security number; and

(4) the dates of injury and the names of the claimant's former employers, if possible.

(d) The board shall furnish the requested information or a record check only to the following:

(1) the claimant;

(2) the attorney for the claimant;

(3) the insurance carrier or the Texas Certified Self-Insurer Guaranty Association when the association has assumed the obligations of an impaired employer under Article 9 of this Act;

(4) the employer at the time of the current injury;

(5) third-party litigants;

(6) the State Board of Insurance;

(7) the Texas Department of Human Services; or

(8) the Texas Workers' Compensation Insurance Research Center.

(e) A third-party litigant in a suit arising out of an occurrence with respect to which a workers' compensation claim was filed is entitled to the information without regard to whether or not the compensation claim is still pending.

(f) Information held by the board concerning any person who has been finally adjudicated to be a fraudulent claimant is not confidential and shall be furnished to any person requesting the information, notwithstanding any other provision of this law.

(g) The board shall release to an employer with whom a person has applied for employment the date of injury and nature of

injury to that person if that person has filed three or more claims in the preceding five years in which weekly compensation payments have been made and the employer requests the information not later than the 14th day after the date on which the person applied for employment. The request for information must provide the name, address, and social security number of the person about whom information is sought. The board shall release the information only if the employer has written authorization from the person about whom information is sought, a copy of which must be filed with the board before the information is released. The board may release the information by telephone. If the employer requests information about three or more persons at the same time, the board may refuse to release the information except on written request from the employer and receipt of the written authorization from each person about whom the information is sought.

(h) This section does not authorize the board to withhold information from committees of the legislature to use for legislative purposes.

(i) Any information relating to a workers' compensation file that is confidential under this Act remains confidential on release to any investigative, legislative, or law enforcement agency, including the attorney general, district attorneys, grand juries, or legislative committees. An individual who publishes, discloses, or distributes that information to any person not entitled to the information under this Act commits an offense. A person who receives the confidential information with knowledge that the person is not entitled to have received the information from the

board under this Act commits an offense. An offense under this subsection is a Class A misdemeanor.

(j) Each district court of Travis County has jurisdiction to enjoin the possession or the use by any person of any information made confidential by this section if that possession or use is not authorized by this section. This subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment if the information was lawfully acquired by the employer releasing the information.

(k) This section does not prohibit a person from receiving from the board information contained in any record or file of the board in statistical form and in a manner that does not disclose the name or identity of any injured employee.

(l) The board may charge a fee to a person requesting information under this section. The board shall set the fee in an amount reasonable and necessary to cover the board's costs in furnishing the information.

SECTION 12.03. LIABILITY OF GENERAL CONTRACTOR FOR CERTAIN SUBCONTRACTORS. If a general contractor has workers' compensation insurance to protect the general contractor's employees, and if, in the execution of any work in the course and scope of the general contractor's business, the general contractor enters a contract with a subcontractor who is a sole proprietor with no employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this Act.

SECTION 12.04. MAINTENANCE TAX. (a) In addition to all

other tax imposed on those insurers, each stock company, mutual company, reciprocal or interinsurance exchange, and Lloyd's association that writes workers' compensation insurance in this state shall pay an annual maintenance tax to support the Texas Workers' Compensation Board at a rate not to exceed two percent of the correctly reported gross workers' compensation insurance premiums as reported to the State Board of Insurance under Subchapter D, Chapter 5, Insurance Code. The tax shall be collected and paid in the same manner and at the same time that the insurers pay the maintenance tax imposed under Article 5.68, Insurance Code.

(b) The Texas Workers' Compensation Board shall set the rate of assessment each year to produce the amount of funds it estimates will be necessary to pay the expenses of the board in regulating workers' compensation insurance during the succeeding year. The Texas Workers' Compensation Board shall certify the rate of assessment to be used during the succeeding year not later than October 1 of each calendar year.

(c) Amounts received under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 12.05. INJURIES SUSTAINED OUTSIDE THIS STATE. (a) This section applies to an employee:

(1) hired in this state; or

(2) if a resident of this state, recruited in this state.

(b) An employee subject to this section who sustains a compensable injury outside this state is entitled to benefits under

1 this Act.

2 (c) This section applies only to a compensable injury that
3 occurs not later than one year after the date on which the employee
4 leaves this state. An injured employee may not recover under this
5 section if the employee elects to recover under the law of the
6 jurisdiction in which the injury occurred.

7 SECTION 12.06. EFFECT OF OTHER INSURANCE COVERAGE. (a) A
8 contract entered to indemnify an employer from loss or damage
9 resulting from an injury sustained by an employee that is
10 compensable under this Act is void unless the contract also covers
11 liability for payment of compensation under this Act.

12 (b) This section does not prohibit an employer who has
13 elected not to obtain workers' compensation insurance coverage from
14 obtaining any insurance coverage for the employer's employees if
15 the insurance is not represented to any person as providing
16 workers' compensation coverage under this Act.

17 SECTION 12.07. LEGALLY INCOMPETENT EMPLOYEES. If an injured
18 employee is a minor or is otherwise legally incompetent, the
19 employee's guardian may exercise on the employee's behalf the
20 rights and privileges granted to the employee under this Act. The
21 board by rule shall adopt procedures relating to the method of
22 payment of benefits to legally incompetent employees.

23 SECTION 12.08. ALIEN EMPLOYEES; LEGAL BENEFICIARIES. (a)
24 In this section, "alien" means an individual who is not a citizen
25 of the United States.

26 (b) A resident or nonresident alien employee or legal
27 beneficiary is entitled to compensation under this Act.

(c) A nonresident alien claimant may be officially represented by a consular officer of the country of which the alien is a citizen. That officer may receive benefit payments for distribution to the alien employee.

SECTION 12.09. MULTIPLE INSURANCE CARRIERS. If an injury sustained by an employee is determined to be compensable but there is a dispute as to which of two or more employers for whom the employee was providing services at the time of the injury, the insurance carriers of each of the affected employers shall pay a proportionate share of the benefits due to that employee. On final determination of the liability, any insurance carrier determined not to be liable for the payment of benefits is entitled to reimbursement for the share paid by that carrier from the carrier determined to be liable.

SECTION 12.10. LIABILITY OF CARRIER FOR ACCIDENT PREVENTION. The insurance carrier, its agent, servant, or employee, shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance carrier for the prevention of accidents in connection with operations of the employer except as provided by this Act; provided, however, this immunity shall not affect the liability of the insurance carrier for compensation or as otherwise provided in this law.

ARTICLE 13. AMENDMENTS

TEXAS WORKERS' COMPENSATION POOL

SECTION 13.01. Article 5.76, Insurance Code, is amended to read as follows:

Art. 5.76. PREVENTION OF INJURIES AND ASSIGNMENT OF CERTAIN [~~REJECTED~~] RISKS

Sec. 1. [~~(a)~~] In this Article [~~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 4 [~~(e)~~] 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 4 [~~(e)~~] 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 that has an estimated annual premium of at least

$10,000 and that is in good faith entitled to insurance but is unable to procure or retain insurance through ordinary methods in the voluntary [~~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. The term does not include an insurance risk that qualifies for assignment to an individual company under Section 6 of this Article.

(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.

Sec. 2. (a) [~~(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 nonprofit 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. An [~~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.

(b) The pool shall be governed by a governing committee of twelve (12) members elected annually by the members of the pool. Seven of the elected members of the governing committee constitute a quorum. The [~~Their~~] qualifications, terms of office, duties, and responsibilities of the elected members 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 provided by Section 7 [~~(e)~~] of this Article.

(c) The Board also shall appoint three ex officio members of the governing committee, one of whom shall represent employers, one of whom shall represent labor, and one of whom shall represent the Board. An ex officio member may not vote and is not considered in determining a quorum.

(d) Not more than eight elected 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 Article [~~Act~~].

(e) The pool is a governmental body for purposes

of the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 3. (a) If an insurer rejects an insurance risk, the insurer shall notify the Board in writing of the specific reasons for rejecting the risk. The insurer must include a statement in the notice as to whether the loss experience of the risk was a factor in the decision to reject the risk.

(b) The Board shall select the servicing companies it determines necessary to serve the residual market. The selection shall be made on the basis of competitive bids according to bid specifications and procedures established by the rules of the Board, including rules relating to standards and requirements for the qualification, performance, and operation of a servicing company that are adequate to assure employers assigned to the pool prompt and efficient service.

(c) A company may not be a servicing company unless the group of which the company is a member writes at least one-half percent of the total voluntary market for workers' compensation insurance in this state.

Sec. 4. (a) The [~~(e)--It--shall--be-the-duty-of~~

~~the~~] pool shall [~~to~~] provide insurance, in the manner herein provided, for any risk under the Texas Workers' Compensation Act [~~Law of Texas~~], the Longshoremen's and Harbor Workers' Compensation Act, [~~and/~~]or the Federal Coal Mine Health and Safety Act of 1969, as amended, 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.

(b) From and after the date the rules made and adopted under Section 7 [~~(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.

Sec. 5. (a) [~~(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 9 [~~(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.

(b) 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.

Sec. 6. (a) The Board shall develop a fair and nondiscriminatory plan for the assignment to individual companies of insurance risks with estimated annual premiums of less than $10,000 that are not classified by the Board as extra-hazardous businesses or activities.

(b) Except as provided by Subsection (c) of this section, each insurance company in this state writing insurance as defined in this Article shall participate in the assignment plan developed by the Board.

(c) The Board by rule may exempt from participation in the assignment plan a company or a group of companies whose total premium written for

insurance as defined in this Article is less than 0.05 percent of the total voluntary market as of the most recent premium information reporting year.

Sec. 7. (a) [~~(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.

(b) The pool shall pay all costs and expenses of operating and maintaining the pool, including any fees or allowances paid [~~to members~~] for servicing rejected risks or making up deficits incurred by the pool. 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 or for making up deficits incurred by the pool.

(c) 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.

Sec. 8. [~~(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.

Sec. 9. (a) [~~(g)~~] The Board, in addition to the provisions prescribed by Subchapter D 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.

(b) 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, and allowance for profit and contingencies, and any other relevant factors in connection with insuring and servicing such risk or risks.

(c) 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.

(d) The Board shall create a division to monitor the operation of the pool with the object of reducing the number of risks insured by the pool. The division shall review each rejected risk before its assignment to the pool and shall review the assignment of each risk made under Section 6 of this Article. The division shall attempt to find an insurer to voluntarily insure the risk before its initial assignment to the pool, assignment to a specific company under Section 6 of this Article, or renewal of the risk's assignment to the pool. The Board shall adopt rules as necessary to implement this subsection.

Sec. 10. [~~(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.

Sec. 11. [~~(i)~~] No rejected risk or applicant as a rejected risk shall be considered in good faith entitled to the remedies and benefits of this Article [~~Act~~] if such risk is in violation of rules or regulations of the Texas Workers' Compensation [~~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.

Sec. 12. [~~(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.

Sec. 13. [~~(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.

Sec. 14. [~~(1)~~] 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 Article [~~Act~~].

RESEARCH CENTER

SECTION 13.02. Chapter 88, Education Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. TEXAS WORKERS' COMPENSATION INSURANCE RESEARCH CENTER

Sec. 88.501. DEFINITIONS. In this subchapter:

(1) "Center" means the Texas Workers' Compensation Insurance Research Center.

(2) "Committee" means the Workers' Compensation Insurance Research Advisory Committee.

(3) "Executive director" means the executive director of the center.

Sec. 88.502. RESEARCH CENTER. (a) The Texas Workers' Compensation Insurance Research Center is established. The center is operated jointly by the Texas Engineering Experiment Station, a part of The Texas A&M University System, and The University of Texas School of Public Health at Houston, a part of The University of Texas Health Science Center at Houston.

(b) The center shall:

(1) gather, maintain, and publish statistical information relating to workers' compensation programs operated by this state or other states in order to obtain data for an ongoing comparative evaluation of the effectiveness of the workers' compensation program operated in this state;

(2) design and conduct research studies on workers' compensation insurance cost containment and the prevention of workplace injury, occupational disease, and business interruption and publish and disseminate the findings and result of the studies; and

(3) develop programs for use by employers, employees, insurance companies, and other interested parties specifically designed to reduce job-related injury, occupational disease, and business

interruption.

(c) The director of the Texas Engineering Experiment Station and the dean of The University of Texas School of Public Health at Houston jointly shall designate the executive director of the center.

Sec. 88.503. ADVISORY COMMITTEE. (a) The Workers' Compensation Insurance Research Advisory Committee is composed of nine members. One member must be a representative of the lieutenant governor designated by that officer. One member must be a representative of the speaker of the house of representatives designated by that officer. The members appointed by the lieutenant governor and the speaker of the house of representatives serve at the pleasure of the appointing officer. Seven members must be members of the general public, who are appointed by the governor as follows:

(1) one member must have demonstrated expertise in injury and health statistics;

(2) one member must have demonstrated expertise in data base management and design;

(3) one member must have demonstrated expertise in the study of occupational injury and disease epidemiology;

(4) one member must have demonstrated expertise in the area of industrial systems engineering;

(5) one member must have demonstrated expertise in the area of injury and health economics; and

(6) two members must be representatives of the general public.

(b) The public members of the committee serve for staggered terms of six years, with either two or three members' terms expiring February 1 of each odd-numbered year. A public member may not serve more than two terms. In the event of a vacancy in a public member's position during a term, the governor shall appoint a replacement who meets the qualifications of the vacated position to fill the unexpired portion of the term.

(c) A public member of the committee may not receive compensation for serving on the committee. A public member is entitled to actual and necessary expenses incurred in performing functions as a member of the committee, not to exceed the limit established for state officers in the General Appropriations Act.

(d) The director of the Texas Engineering Experiment Station and the dean of The University of Texas School of Public Health at Houston shall serve as nonvoting, ex officio members of the committee. The board of regents of The University of Texas System and the board of regents of The Texas A&M University System may each appoint a nonvoting, ex officio member to the

committee to serve as a liaison between the committee and the respective board.

(e) The committee annually shall elect a chairman from its appointed members. The committee shall meet at least annually and may meet at other times at the call of the chairman or on the petition of not fewer than eight of its members.

(f) The committee shall review:

(1) proposals for research to be conducted at the center;

(2) staffing at the center; and

(3) general center policies, including:

(A) criteria for the selection of research studies;

(B) statistical data base development; and

(C) other matters considered appropriate by the committee.

(g) The executive director shall submit an annual proposed budget for the center, which shall include staffing costs, to the director of the Texas Engineering Experiment Station and the dean of The University of Texas School of Public Health at Houston for review and approval. After review and approval of the proposed budget, those officers shall forward it for approval by a joint committee composed of the chancellor and two members of the board of regents of

The University of Texas System, named by the chairman of that board, and the chancellor and two members of the board of regents of The Texas A&M University System, named by the chairman of that board. The approved budget is subject to final ratification by the board of regents of each of the university systems and is a part of the annual budget of each system.

Sec. 88.504. RESEARCH AGENDA; OTHER POWERS AND DUTIES. (a) The executive director shall prepare an annual research agenda for the center in consultation with the director of the Texas Engineering Experiment Station and the dean of The University of Texas School of Public Health at Houston. Following review and approval by the director and dean, the executive director of the center shall submit the proposed research agenda to the committee for its review and approval at the beginning of each calendar year. The executive director shall regularly inform the committee of changes in the agenda.

(b) On or before January 10 of each year, the center shall file with the governor and the presiding officer of each house of the legislature a complete and detailed report relating to the activities of the center and accounting for all funds received and disbursed by the center during the preceding year.

(c) The center shall cooperate with the Texas Workers' Compensation Board and the Labor-Business

Advisory Council on Workers' Compensation and shall conduct research for the board and council as feasible under the center's budget and responsibility to perform other duties.

(d) The center may charge for its publications and may accept gifts and grants from foundations, individuals, research sponsors, and other sources for the benefit of the programs of the center.

(e) The center shall publish an annual report of the activities and accomplishments of the center.

Sec. 88.505. FUNDING; MAINTENANCE TAX. (a) The center shall be funded through the assessment of an annual maintenance tax collected from each stock company, mutual company, reciprocal or interinsurance exchange, and Lloyd's association that writes workers' compensation insurance in this state. The State Board of Insurance shall set the rate of the maintenance tax, in an amount not to exceed one-tenth percent of the correctly reported gross workers' compensation insurance premiums of those insurers as reported to the board under Subchapter D, Chapter 5, Insurance Code. Certified self-insurers shall pay the annual maintenance tax established in this section at a rate not to exceed one-tenth percent of the estimated premium, as provided by Section 10.11 of the Texas Workers' Compensation Act. The State Board of Insurance shall set the rate of assessment each year to

produce the amount of funds that it estimates will be necessary to pay the expenses of the center. The tax assessed under this section is in addition to all other taxes imposed on those insurers for workers' compensation purposes, and shall be paid to the State Board of Insurance at the time that the insurers pay the maintenance tax imposed under Article 5.68, Insurance Code.

(b) The State Board of Insurance may adopt rules as necessary relating to the assessment and collection of the maintenance tax imposed under Subsection (a) of this section.

(c) The State Board of Insurance shall remit all funds received under this section to the comptroller of public accounts for deposit in the state treasury to the credit of the general revenue fund.

OTHER INSURANCE MATTERS

SECTION 13.03. Subchapter D, Chapter 5, Insurance Code, is amended by adding Articles 5.55B, 5.60A, and 5.65A to read as follows:

Art. 5.55B. (a) The Board shall require each company or association that writes workers' compensation insurance in this state to offer an optional deductible plan or a range of deductible plans for purposes of allowing policyholders to self-insure up to the deductible amount.

(b) Upon the effective date of this Act, the Board shall perform an actuarial analysis for purposes of determining the amount of rate reduction applicable to policies with the various ranges of deductibles as opposed to standard policies without a deductible. In subsequent years, the Board shall determine the amount of rate reduction according to rating procedures to be adopted by the Board.

(c) The Board shall adopt rules as necessary to insure the security of benefits to employees up to the deductible amount in the event of the insolvency or bankruptcy of the policyholder or other similar contingencies. In such instances, the Board shall require the company or association writing workers' compensation insurance for such policyholder to be responsible for all benefits that might accrue, with rights to indemnity from the policyholder or its estate up to the deductible limit.

(d) The Board shall adopt rules as necessary allocating responsibility between the policyholder and the company or association for servicing of claims up to the deductible amount. The rules shall provide that upon the written consent of the company or association for any separate claim until the deductible is exceeded, the policyholder may service any such claim if serviced by an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session,

1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(e) The Board shall adopt additional rules as necessary to implement this article to insure the availability of deductible workers' compensation policies as an option to policyholders.

Art. 5.60A. TESTIMONY AT RATE HEARINGS BY CERTAIN WORKERS' COMPENSATION BOARD OFFICERS. (a) To obtain more immediate and accurate information on certain trends in workers' compensation insurance that may affect the costs of that insurance during a rating period, the executive director of the Texas Workers' Compensation Board shall testify at any rate hearing conducted by the Board on workers' compensation insurance relating to trends in:

(1) claims resolution of workers' compensation cases; and

(2) cost components in workers' compensation cases.

(b) The testimony of the executive director is subject to cross-examination by the Board and any parties to the hearing.

Art. 5.65A. NOTIFICATION TO POLICYHOLDER. (a) A company or association that writes workers' compensation insurance in this state shall notify each policyholder of:

(1) any case that is initiated against the policy;

(2) a proposal to settle a case; and

(3) an administrative or judicial proceeding relating to the resolution of a case, including a benefit review conference or contested case hearing conducted by the Texas Workers' Compensation Board.

(b) Not later than the 60th day before the date on which the term of a workers' compensation insurance policy expires, and at other times on the written request of the policyholder, each company or association that writes workers' compensation insurance in this state shall provide a policyholder with a list of claims charged against the policy, including payments made and reserves established on each case.

COURT REVIEW; JURISDICTION OF STATUTORY COUNTY COURTS

SECTION 13.04. Section 23.101(a), Government Code, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with criminal actions against defendants who are detained in jail pending trial given preference over other criminal actions;

(3) election contests and suits under the Texas Election Code; and

(4) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board-and~~] claims under the Federal Employers' Liability Act and the Jones Act.

SECTION 13.05. (a) Section 25.0032(a), Government Code, as amended by Section 8.04(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Anderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) probate matters and proceedings, including will contests;

(B) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(C) family law cases and

proceedings; and

[~~(D)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,-and~~]

(3) concurrent jurisdiction with the county and district courts over all suits arising under the Family Code.

(b) Section 2(b), Chapter 665, Acts of the 67th Legislature, Regular Session, 1981 (Article 1970-377, Vernon's Texas Civil Statutes), as amended by Chapter 913, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) The County Court at Law of Anderson County has jurisdiction concurrent with the district court in:

(1) all probate matters and proceedings; including will contests;

(2) eminent domain cases; <u>and</u>

(3) civil cases when the matter in controversy exceeds $500 and does not exceed $50,000, exclusive of interest[~~,-and~~

[~~(4)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature,

is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.06. Section 25.0222(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,-and~~

[~~(3)~~] family law cases and proceedings.

SECTION 13.07. (a) Section 25.0312(a), Government Code, as amended by Section 8.07 of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Calhoun County has:

(1) concurrent with the county court, the

probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings; [~~and~~]

(C) [~~(D)~~] suits on behalf of the state to recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(D) [~~(E)~~] suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(E) [~~(F)~~] suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(F) [~~(G)~~] suits for the trial of right to property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(G) [~~(H)~~] contested elections; and

(3) concurrent jurisdiction with the justice courts in criminal matters prescribed by law for justice courts.

(b) Section 2(c), Chapter 1076, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-385, Vernon's Texas Civil Statutes), as amended by Section 1, Chapter 938, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(c) The county court at law has concurrent civil jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy;

(3) [~~(4)~~] cases and proceedings involving adoptions, birth records, or removal of disability of reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent

actions involving child support, custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses;

(4) [~~(5)~~] suits on behalf of the state to recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(5) [~~(6)~~] suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(6) [~~(7)~~] suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(7) [~~(8)~~] suits for the trial of right to property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(8) [~~(9)~~] contested elections.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.08. Section 25.0592(a), Government Code, is

amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Dallas County has original and concurrent jurisdiction with the district court in[~~:~~

[~~(1)~~] civil cases in which the matter in controversy exceeds $500, excluding interest, but does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs[~~;-and~~

[~~(2)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

SECTION 13.09. Section 25.0702(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Ector County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless~~

~~of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.10. Section 25.0862(b), Government Code, is amended to read as follows:

(b) A statutory county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(2) family law cases and proceedings[~~,-and~~

[~~(3)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

SECTION 13.11. (a) Section 25.1032(b), Government Code, as amended by Section 8.10(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) In addition to other jurisdiction provided by law, a county civil court at law has[~~:~~

[~~(1)~~] concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500, excluding interest, and does not exceed $50,000, excluding interest, statutory or

punitive damages and penalties, attorney's fees, and costs[~~,-and~~

[~~(2)--original-and-concurrent--jurisdiction with-the-district-court-in-appeals-of-final-rulings-and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 25.0013(d), Government Code, is repealed.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.12. (a) Section 25.1072(a), Government Code, as amended by Section 8.12(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hays County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county

courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(B) family law cases and proceedings[~~,-and~~

[~~(C)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2(f), Chapter 298, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1970-358, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 231, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(f) The county courts at law have concurrent jurisdiction with the district court in[~~:~~

[~~(1)--appeals---of---final---rulings----and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(2)~~] eminent domain cases and proceedings, regardless of the amount in controversy.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b)

of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.13. Section 25.1092(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Henderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees in cases in which attorney's fees are taxed as costs of court; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.14. Section 25.1182(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hunt County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in[~~:~~

[~~(A)~~] civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest[~~;--and~~

[~~(B)--appeals-of--final--rulings--and decisions-of-the-Industrial-Accident-Board~~].

SECTION 13.15. Section 25.1482(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Liberty County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; <u>and</u>

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board;-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.16. (a) Section 25.1542(a), Government Code, as amended by Section 8.14(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Lubbock County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(B) family law cases and proceedings[~~;--and~~

[~~(C)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 2b, Chapter 16, Acts of the 51st Legislature, 1st Called Session, 1950 (Article 1970-340, Vernon's Texas Civil Statutes), as amended by Section 28, Chapter 709, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2b. In addition to the jurisdiction now conferred upon the County Court at Law No. 1 of Lubbock County by the Constitution and Laws of the State of Texas said court shall hereinafter have and exercise concurrent civil jurisdiction with the district courts in Lubbock County in all civil cases and matters when the matter in controversy shall exceed Five Hundred Dollars ($500) and not exceed Fifty Thousand Dollars ($50,000), exclusive of interest. [~~The County Court at Law No. 1 of Lubbock County also has concurrent jurisdiction with the district court in appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy.~~]

(c) Section 2b, Chapter 109, Acts of the 55th Legislature, Regular Session, 1957 (Article 1970-340.1, Vernon's Texas Civil Statutes), as amended by Section 29, Chapter 709, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2b. In addition to the jurisdiction now conferred upon the County Court at Law No. 2 of Lubbock County by the Constitution and Laws of the State of Texas said court shall hereinafter have and exercise concurrent civil jurisdiction with the district courts in Lubbock County in all civil cases and matters when the matter in controversy shall exceed Five Hundred Dollars ($500) and not exceed Fifty Thousand Dollars ($50,000), exclusive of interest. [~~The County Court at Law No. 2 of Lubbock County also has concurrent~~

~~jurisdiction--with--the--district--court--in-appeals-of final-rulings-and-decisions-of-the-Industrial--Accident Board,-regardless-of-the-amount-in-controversy.~~]

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.17. Section 25.1672(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Midland County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; <u>and</u>

(B) [~~appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.18. Section 25.1732(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Moore County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.19. Section 25.1792(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Nolan County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.20. Section 25.1852(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Panola County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and

proceedings.

SECTION 13.21. Section 25.1862(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Parker County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(3)~~] family law cases and proceedings.

SECTION 13.22. Section 25.1892(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Polk County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy,~~

[~~(C)~~] cases and proceedings involving the collection of delinquent taxes, penalties, interest, and costs and the foreclosure of tax liens; and

(C) [~~(D)~~] family law cases and proceedings.

SECTION 13.23. (a) Section 25.1902(b), Government Code, as amended by Section 8.18(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County also has, concurrent with the county court, the probate jurisdiction provided by general law for county courts. A county court at law also has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(3)~~] family law cases and proceedings.

(b) Section 2a(a), Chapter 56, Acts of the 54th Legislature, Regular Session, 1955 (Article 1970-311a, Vernon's Texas Civil Statutes), as added by Section 2, Chapter 658, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law No. 1 of Potter County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals---of---final---rulings----and decisions--of--the-Industrial-Accident-Board-regardless of-the-amount-in-controversy;~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy; [~~and~~]

(3) [~~(4)~~] cases and proceedings involving family law matters, including adoptions, birth records, or removal of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, and custody and support of minor children involved therein, incident to divorce or annulment proceedings; independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; paternity; termination of parental

rights; independent actions involving child support and custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

(c) Section 2(b), Chapter 645, Acts of the 64th Legislature, Regular Session, 1975 (Article 1970-311b, Vernon's Texas Civil Statutes), as added by Section 6, Chapter 658, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy; and

(3) [~~(4)~~] cases and proceedings involving family law matters, including adoptions, birth records, or removal of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, and custody and support of minor children involved therein, incident to divorce or annulment proceedings;

independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; paternity; termination of parental rights; independent actions involving child support and custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.24. (a) Section 25.1932(a-2), Government Code, as amended by Section 8.19(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a-2) The County Court at Law No. 2 of Randall County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000,

excluding interest and attorney's fees; and

(2) [~~appeals---of---final---rulings----and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(3)~~] cases under the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code).

(b) Section 2(b), Chapter 1027, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-371a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The County Court at Law No. 2 of Randall County has concurrent civil jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest and attorney's fees; and

(2) [~~appeals---of---final---rulings----and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(3)~~] eminent domain cases and proceedings.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.25. Section 25.2142(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Smith County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs; and

(B) family law cases and proceedings[~~,-and~~

[~~(C)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

SECTION 13.26. Section 25.2162(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Starr County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 13.27. (a) Section 25.2222(b), Government Code, as amended by Section 8.20(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs; and

(2) nonjury family law cases and proceedings[~~,-and~~

[~~(3)--final-rulings-and--decisions--of--the Industrial-Accident-Board,-regardless-of-the-amounts-in controversy~~].

(b) Section 2(c), Chapter 592, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-62.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The County Court at Law No. 3 of Tarrant County has jurisdiction concurrent with the district court in civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs. The County Court at Law No. 3 of Tarrant County also has jurisdiction concurrent with the district court [~~in appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~] in matters of eminent domain, regardless of the amount in controversy.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.28. (a) Section 25.2292(a), Government Code, as amended by Section 8.21(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive

codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Travis County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district courts in civil cases and proceedings in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest[~~,-and~~

[~~(3)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 6(b), Chapter 315, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-324a.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In addition to other jurisdiction provided by law, the courts created by this Act and the existing county courts at law have concurrent jurisdiction with the district court in[~~:~~

[~~(1)~~] civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest[~~,-and~~

[~~(2)--appeals----of---final---rulings---and~~

~~decisions of the Industrial Accident Board, regardless of the amount in controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.29. (a) Section 25.2412(a), Government Code, as amended by Section 8.23(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Washington County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500, but does not exceed

$50,000, excluding interest; and

(B) family law cases and proceedings[~~,-and~~

[~~(C)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 2(d), Chapter 943, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-308a, Vernon's Texas Civil Statutes), is repealed.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.30. (a) Section 25.2422(a), Government Code, as amended by Section 8.11(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Webb County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; <u>and</u>

(C) cases and proceedings involving justiciable controversies and differences between spouses, or between parents, or between parent and child, or between any of these and third persons[~~;-and~~

[~~(D)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 3(a), Chapter 65, Acts of the 64th Legislature, Regular Session, 1975 (Article 1970-360, Vernon's Texas Civil Statutes), as amended by Section 1, Chapter 528, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law of Webb County has jurisdiction concurrent with the district court in:

(1) eminent domain cases; <u>and</u>

(2) civil cases when the matter in controversy exceeds $500 and does not exceed $50,000, exclusive of interest[~~;-and~~

[~~(3)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.31. (a) Section 25.2452(d), Government Code, as amended by Section 8.24(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(d) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) family law cases and proceedings;

(3) suits brought under the authority of the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code) or the Uniform

Interstate Compact on Juveniles (Section 25.01 et seq., Family Code); and

(4) other juvenile and child welfare cases in which the district and county courts have jurisdiction[~~; and~~

[~~(5) appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy~~].

(b) Section 2(f), Chapter 195, Acts of the 66th Legislature, Regular Session, 1979 (Article 1970-166d, Vernon's Texas Civil Statutes), as added by Section 3, Chapter 1094, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

(c) Section 2(f), Chapter 671, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-166e, Vernon's Texas Civil Statutes), as added by Section 5, Chapter 1094, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 13.32. (a) Section 25.2482(a), Government Code, as amended by Section 8.25(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and

corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Williamson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(3) family law cases and proceedings[~~,-and~~

[~~(4)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 2(a), Chapter 452, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-380, Vernon's Texas Civil Statutes), as amended by Chapters 985, 986, and 1088, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law of Williamson County has concurrent jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 and does not exceed $50,000,

excluding interest; and

(2) cases and proceedings involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support and custody of minors and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses[~~;-and~~

[~~(3)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

CONFORMING AMENDMENTS; NAME CHANGE

SECTION 13.33. Article 1.07, Insurance Code, is amended to read as follows:

Art. 1.07. TEXAS WORKERS' COMPENSATION [~~INDUSTRIAL-ACCIDENT~~] BOARD. Nothing in this Code shall be construed to in any manner affect the duties [~~new~~] imposed by law on the Texas Workers' Compensation [~~Industrial-Accident~~] Board or to take from said board the performance of the duties [~~new~~] imposed on said board by law.

SECTION 13.34. Article 5.55A, Insurance Code, is amended to read as follows:

Art. 5.55A. REDUCTION IN CERTAIN PREMIUMS[~~; LABOR-MANAGEMENT-SAFETY-COMMITTEES~~]. (a) In setting premium rates for workers' compensation insurance, the State Board of Insurance shall approve a premium discount plan that will entitle a policyholder to a premium reduction if the policyholder demonstrates that it has not experienced an employee accident during the past four years but excluding the most current policy year and that it complies with:

(1) an accident prevention program recommended by the policyholder's insurer under Article 5.76-1 of this code, or a similar program recommended by the workers' health and safety division [~~of occupational-safety~~] of the Texas Workers' Compensation

Board [~~Department of Health~~];

(2) the employee notice requirements of the Hazard Communication Act (Article 5182b, Revised Statutes), if applicable;

(3) the recommendations of a labor-management safety committee [~~created and~~] approved by the Texas Workers' Compensation Board [~~in accordance with this article~~]; and

(4) recommendations for completion of educational courses on accident prevention that are approved by the workers' health and safety division of the Texas Workers' Compensation Board [~~board~~] and are offered by an institution of higher education, a community college, an employer association, or other group.

(b) To be eligible for a premium reduction under Subsection (a) of this article, a policyholder must apply in the manner prescribed by the State Board of Insurance, [~~board and~~] qualify under this article and rules of that [~~the~~] board, and have a labor-management safety committee approved by the workers' health and safety division of the Texas Workers' Compensation Board.

(c) [~~The board shall create a plan to approve labor-management safety committees established to promote occupational or industrial safety within an individual employer's work force. A committee must be~~

~~composed--of--representatives--of--the---employer---and employees-and-shall-recommend-actions-that-can-be-taken by--the--employer--or--employees--to--reduce--workplace accidents.~~

[~~(d)~~] The State Board of Insurance [~~board~~] may adopt rules as necessary to administer this article and to provide criteria for [~~approval-of-labor-management safety--committees--and~~] qualification for premium reductions under this article.

SECTION 13.35. Article 5.76-1, Insurance Code, is amended to read as follows:

Art. 5.76-1. ACCIDENT PREVENTION SERVICES. (a) Any insurer desiring to write workers' 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 workers' health and safety division of the Texas Workers' Compensation Board [~~State Board of Insurance~~].

(b) [~~(a-1)~~] The workers' health and safety division of the Texas Workers' Compensation Board [~~State Board of Insurance~~] shall conduct [~~the~~] inspections to determine the adequacy of the accident prevention services required by Subsection (a) of this Article at least every two (2) years for each insurer writing workers' compensation insurance in Texas.

(c) [~~(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.~~] Notice that services are available to the policyholder from the insurer must appear in no less than 10-point bold type on the front of each workers' compensation insurance policy delivered or issued for delivery in the state. To provide such facilities, the insuror 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).

(d) [~~(e)~~] At least once each year each insurer writing workers' compensation insurance in Texas must submit to the Texas Workers' Compensation Board [~~State Board of Insurance~~] detailed information on the type of accident prevention facilities offered to that insurer's policyholders. The information must include:

(1) the amount of money spent by the insurer on accident prevention services;

(2) the number of field safety representatives employed by the insurer;

(3) the number of site inspections performed;

(4) any accident prevention services for which the insurer contracts; and

(5) any additional information required by that board [~~the Board~~].

(e) [~~(d)~~] If the Commissioner of Insurance shall determine that reasonable accident prevention services are not being maintained or provided by the insuror or are not being used by the insuror in a reasonable manner to prevent injury to employees of its policyholders, the fact shall be reported to the Texas Workers' Compensation Board [~~State Board of Insurance~~], and that board [~~the Board~~] shall order a hearing to determine if the insuror is not in compliance with this Article. If it is determined that the insuror is not

in compliance, the State Board of Insurance shall revoke its license to write workers' compensation insurance in Texas [~~shall be revoked~~].

(f) [~~(e)~~] The Texas Workers' Compensation Board [~~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.

(g) [~~(f)~~] The Texas Workers' Compensation Board shall employ the personnel necessary to enforce this Article and shall employ at least five (5) safety inspectors to perform inspections at the job site and at the insurance company to determine the adequacy of the accident prevention services provided by the insurer. The safety inspectors must have the qualifications required for field safety representatives required by Subsection (a) of this Article.

(h) [~~(g)~~] An Accident Prevention Advisory Committee is created to assist the Texas Workers' Compensation Board in developing rules to carry out this Article. The committee is composed of employer, employee, and insurance industry representatives and safety professionals appointed by that board [~~the Board~~] annually.

(i) [~~(h)~~] The administration of this Article is an expense of regulating workers' compensation

insurance under Article 5.68, Insurance Code.

SECTION 13.36. Section 3A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION OF TEXAS WORKERS' COMPENSATION [~~INDUSTRIAL ACCIDENT~~] BOARD. (a) The liquidator shall notify the Texas Workers' Compensation [~~Industrial-Accident~~] Board immediately upon a finding of insolvency or impairment upon any insurance company which has in force any workers' compensation coverage in Texas.

(b) The Texas Workers' Compensation [~~Industrial Accident~~] Board shall, upon said notice, submit to the liquidator a list of active cases pending before the Texas Workers' Compensation [~~Industrial-Accident~~] Board in which there has been an acceptance of liability by the carrier, where it appears that no bona fide dispute exists and where payments were commenced prior to the finding of insolvency or impairment and where future or past indemnity or medical payments are due.

(c) Notwithstanding the provisions of Section 3 of this Article, the liquidator is authorized to commence or continue the payment of claims based upon the list submitted in Subsection (b) above.

(d) In order to avoid undue delay in the payment of covered workers' compensation claims, the liquidator shall contract with the Texas Workers' Compensation [~~Assigned---Risk~~] Pool or any other qualified

organization for claims adjusting. Files and information delivered by the Texas Workers' Compensation [~~Industrial--Accident~~] Board to the liquidator may be delivered to the Texas Workers' Compensation [~~Assigned-Risk~~] Pool or any organization with which the liquidator has contracted for claims adjusting services.

(e) The Texas Workers' Compensation [~~Industrial Accident~~] Board shall report to the State Board of Insurance any occasion when a workers' compensation insurer has committed acts that may indicate insurer financial impairment, delinquency or insolvency.

SECTION 13.37. Section 2(5)(A), Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Department of Commerce;

(iii) a member of the Texas Aeronautics Commission;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Purchasing and General Services Commission;

(viii) a member of the Texas Board of Corrections;

(ix) a member of the Board of Trustees of the Employees Retirement System of Texas;

(x) a member of the State Highway and Public Transportation Commission;

(xi) a member of the Texas Workers' Compensation [~~Industrial-Accident~~] Board;

(xii) a member of the State Board of Insurance;

(xiii) a member of the Board of Pardons and Paroles;

(xiv) a member of the Parks and Wildlife Commission;

(xv) a member of the Public Safety Commission;

(xvi) the Secretary of State;

(xvii) a member of the State Securities Board;

(xviii) a member of the Texas Amusement Machine Commission;

(xix) a member of the Texas Water Development Board;

(xx) a member of the Texas Water Commission;

(xxi) a member of the governing board of a state senior college or university as defined by Section 61.003, Education Code;

(xxii) a member of the Texas Higher Education Coordinating Board[~~,--Texas---College---and University-System~~];

(xxiii) a member of the Texas Employment Commission;

(xxiv) a member of the State Banking Board;

(xxv) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvi) a member of the Credit Union Commission; or

(xxvii) a member of the School Land Board.

SECTION 13.38. Section 3(1), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation [~~Industrial----Accident~~] Board, and institutions of higher education, that makes rules or

determines contested cases.

SECTION 13.39. Section 2(1), Texas Administrative Code Act (Article 6252-13b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation [~~Industrial----Accident~~] Board, and institutions of higher education, that makes rules or determines contested cases.

SECTION 13.40. Section 3A(h), Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Texas Workers' Compensation [~~Industrial--Accident~~] Board or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be clearly identified in the notice, it shall be sufficient if the notice is posted two hours before the

meeting is convened. Any public official or person who is designated or authorized to post notices of meetings by a governmental body in accordance with Section 3A of this Act shall post the notice taking at face value the reason for the emergency as stated by the governmental body. Cases of emergency and urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the governmental body. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting

such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

SECTION 13.41. Section 2, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Department" whenever used in this law shall be held to mean the State [~~Highway~~] Department of Highways and Public Transportation [~~Texas~~].

(2) [~~2.~~] "Employee" shall mean every person in the service of the [~~State-Highway~~] Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the [~~State-Highway~~] Department.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean----Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial--Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean--the--relatives--named--in Section--8a--of-Article-8306,-Revised-Civil-Statutes-of Texas-of-1925,-adopted-in-Section-7-of-this-law~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall--be--as--defined--in--Section--1,--Article-8309, Revised-Civil-Statutes-of-Texas-of-1925~~].

(b) [~~8.~~] Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

SECTION 13.42. Section 7, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~laws-as-amended-or as-they-may-hereafter-be-amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.08, 5.09, 5.21-5.24, 5.27, 5.41-5.46, 5.48-5.51, and 5.61-5.65;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08

[~~(1)--Article-8306,-except-Sections--5--and 28,--and--Articles-8307,-8307b,-and-8309,-Revised-Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter-248,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter---77,---Acts---of---the--65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter--208,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts---of---the---62nd Legislature,--Regular--Session,--1971--(Article--8307c, Vernon's-Texas-Civil-Statutes),~~

[~~(6)--Chapter--358,--Acts---of---the---64th Legislature,--1975-(Article-8307d,-Vernon's-Texas-Civil Statutes),-and~~

[~~(7)--Chapter-179,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber,"~~ ~~or~~] "employer" appears [~~or-their--equivalents--appear~~], it [~~they~~] shall be construed to and shall mean "the department."

SECTION 13.43. Section 14, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. RULES AND REGULATIONS; EXAMINING PHYSICIANS; REPORTS AS EVIDENCE. The [~~State-Highway~~] Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the [~~State-Highway~~] Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the [~~State--Highway~~] Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the [~~State---Highway~~] Department to determine who may be physically fit to be classified as "employees" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the [~~State~~

~~Highway~~] Department a complete transcript of said examination in writing upon a form to be furnished by the [~~State-Highway~~] Department. It shall be the duty of the [~~State-Highway~~] Department to preserve as a part of the permanent records of the [~~State--Highway~~] Department all reports of such examinations so filed. Such reports shall be admissible in evidence before the Texas Workers' Compensation [~~Industrial--Accident~~] Board, and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Texas Workers' Compensation [~~Industrial Accident~~] Board in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such reports so admitted shall be prima facie evidence as to the facts set out therein.

SECTION 13.44. Sections 2, 7, 9, and 13, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the board of regents of The Texas A&M University System

[~~Board-of-Directors-of-the-Agricultural-and--Mechanical College-of-Texas-including-the-following:~~

[~~Agricultural--and-Mechanical-College of-Texas~~

[~~Texas----Agricultural-----Experiment Station~~

[~~Extension-Service,-A.-and-M.-College of-Texas~~

[~~Texas-Forest-Service~~

[~~Rodent-Control-Service~~

[~~Firemen's-Training-School~~

[~~John--Tarleton--Agricultural-College~~

[~~North-Texas-Agricultural-College~~

[~~Prairie--View---State---Normal---and Industrial-College~~

[~~Any--other-agencies-now-or-hereafter under-the--direction--and--control--of--said--Board--of Directors~~].

(2) [~~2.~~] "Workman" shall mean every person employed in the service of any institution as defined above, whose name appears on the payroll thereof.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean---Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial-Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall--mean--the-relatives-named-in Section-8a-of-Article-8306,-Revised-Civil--Statutes--of Texas-of-1925,-adopted-in-Section-7-of-this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall-be--as--defined--in--Section--1,--Article--8309, Revised-Civil-Statutes-of-Texas-of-1925~~].

(b) [~~8.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. LAWS GOVERNING. (a) Unless otherwise provided in this Act, the following provisions of the Texas Workers' Compensation Act [~~herein,-Sections-1,-6, 7,--7b,-7c,-7d,-7e,-8,-8a,-8b,-9,-10,-11,-11a,-12,-12a, 12b,-12c,-12d,-12e,-12f,-12i,-13,-15,-15a,-16,-17,--19, 20,--21,--22,--23,--24,-25,-26,-and-27-of-Article-8306, Revised-Civil-Statutes-of-Texas,-1925,-as-amended,--and Article-8306a,-Acts-1931,-42nd-Legislature,-as-amended, and--Sections--4a,--6a,--11,--12,-13,-and-14-of-Article 8307,-of-the-Revised-Civil-Statutes-of-Texas,-1925,--as~~

~~amended,-and-Sections-4,-and-5,-of-Article-8309,-of-the Revised-Civil-Statutes-of-Texas,-1925,-as-amended,~~] are hereby adopted and shall govern insofar as applicable under the provisions of this law:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.09, 5.21-5.24, 5.27, 5.41-5.46, 5.49-5.51, and 5.61-5.64;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08.

(b) Provided that whenever [~~in-the-above-adopted Sections--of--Articles--8306,--8307,--and--8309--of-the Revised-Civil-Statutes-of-Texas,-1925,-as--amended,--or herein--amended,~~] the word "employer" appears in this Act, it means [~~"association,"---"subscriber,"---or "employer,"---or---their--equivalents--appear--in--such Articles,-they-shall-be-construed-to--and--shall--mean~~] "the institution."

Sec. 9. PAYMENT OF COMPENSATION; EXHAUSTION OF EARNED ANNUAL AND SICK LEAVE. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may

provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~provided in Section 7, Article 8306, as amended,~~] will remain available to the workman but no workmen's compensation payment will accrue or become due and payable to the injured workman.

Sec. 13. RULES AND REGULATIONS; PHYSICIANS OR CHIROPRACTORS FOR EXAMINATIONS; REPORTS OF EXAMINATIONS. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection 2 of~~] Section 2(2) of this Act, and said physicians, surgeons and chiropractors so

designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

SECTION 13.45. Sections 2, 7, 9, 13, and 18, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The University of Texas System [~~including the following:~~

[~~Main University, Austin~~

[~~Medical Branch, Galveston~~

[~~Dental Branch, Houston~~

[~~M. D. Anderson Hospital for Cancer Research, Houston~~

[~~Southwestern Medical School, Dallas~~

[~~Texas Western College, El Paso~~

[~~Postgraduate---School--of--Medicine, Houston~~

[~~Any-other-agencies-now-or--hereafter under--the--direction--and--control--of--said--Board-of Regents~~].

(2) [~~2.~~] "Workman" shall mean every person in the service of The University of Texas System under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of The University of Texas System.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean----Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial--Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean--the--relatives--named--in Section--8a--of-Article-8306,-Revised-Civil-Statutes-of Texas-of-1925,-adopted-in-Section-7-of-this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall--be--as--defined--in--Section--1,--Article-8309, Revised-Civil-Statutes-of-Texas-of-1925~~].

(b) [~~7.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also

include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. APPLICABILITY OF EXISTING LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~sections~~] are adopted and shall govern as applicable under the provisions of this Act:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.09, 5.21-5.24, 5.41-5.46, 5.49-5.51, and 5.61-5.64;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08

[~~Sections-1,-6,-7,-7b,-7c,-7d,-7e,-8,-8a,--8b,--9,--10,-11,-11a,-12,-12a,-12b,-12c,-12d,-12e,-12f,-12i,-13,-15,-15a,--16,-17,-19,-20,-21,-22,-23,-24,-25,-26,-and-27-of-Article-8306,-Revised-Civil-Statutes-of-Texas,-1925,-as-amended,-and-as-may-be-hereafter--amended,--Section--1,-Chapter--248,--Acts--of--the--42nd-Legislature,-Regular-Session,-1931--(Article--8306a,--Vernon's--Texas--Civil-Statutes),--as--last--amended-by-Section-2,-Chapter-26,-Acts-of-the-54th-Legislature,--Regular--Session,--1955,~~

~~and--as--may-be-hereafter-amended,-Sections-4a,-6a,-10,-11,-12,-13,-and--14--of--Article--8307,--Revised--Civil-Statutes--of--Texas,--1925,--as--amended,-and-as-may-be-hereafter-amended,-Sections--4--and--5,--Article--8309,-Revised--Civil-Statutes-of-Texas,-1925,-as-amended,-and-as-may-be-hereafter-amended,-Section--1,--Chapter--179,-Acts--of--the--42nd--Legislature,-Regular-Session,-1931-(Article-8309a,--Vernon's--Texas--Civil--Statutes),--as-amended--by--Section--7,--Chapter-178,-Acts-of-the-53rd-Legislature,-Regular--Session,--1953,--and--as--may--be-hereafter-amended~~].

(b) Wherever the word "employer" appears in the Texas Workers' Compensation Act [~~words--"association,"-"subscriber,"--or--"employer,"-or-the-equivalent-of-any-of-these-words,-are-used--in--Article--8306,--8307,--or-8309,--Revised--Civil-Statutes-of-Texas,-as-amended,-or-as-may-be-hereafter-amended,-and-in-Section-1,--Chapter-179,--Acts--of--the--42nd-Legislature,-Regular-Session,-1931-(Article-8309a,-Vernon's-Texas-Civil-Statutes),-as-amended-by-Section-7,-Chapter-178,--Acts--of--the--53rd-Legislature,--Regular--Session,--1953,--and--as--may-be-hereafter-amended~~], for the purpose of this Act it means [~~they-mean~~] "the institution."

Sec. 9. WEEKLY PAYMENTS; ANNUAL AND SICK LEAVE. It is the purpose of this Act that compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto,

unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~in Section--7,--Article--8306,--Revised--Civil-Statutes-of Texas,-1925,--as--amended,--and--as--may--be--hereafter amended,~~] will remain available to the workman, but no workmen's compensation payment will accrue or become due and payable to the injured employee.

Sec. 13. RULES AND REGULATIONS; DESIGNATION OF PHYSICIANS AND SURGEONS; REPORTS OF EXAMINATIONS. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection-2--of~~] Section 2(2) of this Act, and said physicians and surgeons so designated and so conducting such

examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the institution all reports of such examinations so filed with it.

Sec. 18. When an injured workman has sustained an injury in the course of employment and [~~filed claim for compensation and~~] given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

SECTION 13.46. Section 3(1), Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Board" means the <u>Texas Workers' Compensation</u> [~~Industrial Accident~~] Board.

SECTION 13.47. Subsection (b), Article 1269t, Revised Statutes, is amended to read as follows:

(b) An employee who is exposed to a contagious disease is entitled to reimbursement from the employing

governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

(1) the disease is not an "ordinary disease of life" as that term is used in the context of a workers' compensation claim [~~by--the--Industrial Accident-Board~~];

(2) the exposure to the disease occurs during the course of the employment; and

(3) the employee requires preventative medical treatment because of exposure to the disease.

SECTION 13.48. Section 1A, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 1A. In this article:

(1) "Association" means the Texas Employers' Insurance Association.

(2) "Board" means the Texas Workers' Compensation Board.

(3) "Chiropractic service" means [~~The-term "chiropractic-service"--shall--include,--but--shall--be limited-to,~~] chiropractic as defined by the laws [~~Laws~~] of this State.

(4) "Chiropractor" means a person [~~and-the term--"chiropractor"--shall--include,-but-be-limited-to chiropractors~~] licensed by the Texas Board of Chiropractic Examiners [~~whose--licenses--are-properly registered-and-in-good-standing-as-required-by-the-Laws~~

~~of this State~~].

SECTION 13.49. Section 7, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 7. Any employer of labor in this State who may be subject to the terms of the Texas Workers' Compensation Act [~~this law~~] or to the terms of the "Longshoremen's and Harbor Worker's Compensation Act" of the United States may become a subscriber to the Association.

SECTION 13.50. Section 20a(c), Article 8308, Revised Statutes, is amended to read as follows:

(c) Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Texas Workers' Compensation [~~Industrial Accident~~] Board, or until a subsequent notice is filed under the provisions of Section 18a of this article, at which time the subsequent insurance company shall be deemed to be the only insurance company liable under the provisions of the Texas Workers' Compensation [~~this~~] Act from and after the effective date of such subsequent policy of insurance.

SECTION 13.51. Sections 1(3) and (4), Article 8309g, Revised Statutes, are amended to read as follows:

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meanings applied to those terms in

the context of a workers' compensation claim brought under the Texas Workers' Compensation Act [~~meaning assigned to them in Section 1, Article 8309, Revised Civil Statutes of Texas, 1925, as amended~~].

(4) "Board" means the Texas Workers' Compensation [~~Industrial Accident~~] Board.

SECTION 13.52. Sections 15(a) and (b), Article 8309g, Revised Statutes, are amended to read as follows:

(a) The following provisions of the Texas Workers' Compensation Act [~~following laws as amended or as they may hereafter be amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.08, 5.09, 5.21-5.24, 5.27, 5.41-5.46, 5.48-5.51, and 5.61-5.65;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08

[~~(1) Article 8306, except Sections 5 and 28, and Articles 8307, 8307b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;~~

[~~(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);~~

[~~(3) Chapter 77, Acts of the 65th~~

~~Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

~~[(4)--Chapter--208,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

~~[(5)--Chapter--115,--Acts---of---the---62nd Legislature,--Regular--Session,--1971--(Article--8307e, Vernon's-Texas-Civil-Statutes),~~

~~[(6)--Chapter--358,--Acts---of---the---64th Legislature,--1975-(Article-8307d,-Vernon's-Texas-Civil Statutes),-and~~

~~[(7)--Chapter-179,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Wherever the words [~~"association,"~~] "insurer[~~,~~]" [~~"subscriber,"~~] or "employer" are used in the adopted law [~~laws~~], the word "state," "division" or "director," whichever is applicable, is substituted for the purposes of this article.

SECTION 13.53. Section 17, Article 8309g, Revised Statutes, is amended to read as follows:

Sec. 17. COVERAGE FOR OUT-OF-STATE EMPLOYEES. An [~~Notwithstanding--Section-19,-Article-8306,-Revised Civil-Statutes-of-Texas,-1925,-as-amended,-an~~] employee who performs services outside this state is entitled to benefits under this article even if the person is hired or not hired in this state, does not work in this

state, works both in this state and out of state, is injured outside this state, or has been outside this state for more than one year. An employee who elects to pursue remedies provided by the state or the District of Columbia in which an injury occurs is not entitled to benefits under this article.

SECTION 13.54. Section 1(3), Article 8309h, Revised Statutes, is amended to read as follows:

(3) "Board" means the Texas Workers' Compensation [~~Industrial-Accident~~] Board.

SECTION 13.55. Section 3, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 3. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~following-laws-as amended-or--as--they--may--hereafter--be--amended~~] are adopted except to the extent that they are inconsistent with this article:

(1) Sections 1.02(9) and (23);

(2) Section 4.03;

(3) Sections 5.05, 5.07(c), 5.08, 5.09, 5.21-5.24, 5.27, 5.41-5.46, 5.48-5.51, and 5.61-5.65;

(4) Sections 6.01-6.05;

(5) Article 7;

(6) Sections 11.01 and 11.04; and

(7) Sections 12.05, 12.07, and 12.08

[~~(1)--Article--8306,--except-Sections-5-and~~

~~28,-and-Articles-8307,-8307b,-and-8309,--Revised--Civil Statutes-of-Texas,-1925,-as-amended,~~

~~[(2)--Chapter--248,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

~~[(3)--Chapter--77,---Acts---of---the---65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

~~[(4)--Chapter-208,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

~~[(5)--Chapter---115,---Acts---of--the--62nd Legislature,--Regular--Session,--1971--(Article--8307e, Vernon's-Texas-Civil-Statutes),-except-that-if-the-city provides-by-Charter-or-ordinance-for-ultimate-access-to the-district-court-for-wrongful-discharge,-Chapter-115, Acts--of--the--62nd--Legislature,-Regular-Session,-1971 (Article-8307e,-Vernon's-Texas-Civil-Statutes)--is--not applicable,~~

~~[(6)--Chapter---358,---Acts---of--the--64th Legislature,-1975-(Article-8307d,-Vernon's-Texas--Civil Statutes),-and~~

~~[(7)--Chapter--179,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)].~~

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber,"~~

~~or~~] "employer[~~,~~]" appears [~~or--their--equivalents appear~~], it [~~they~~] shall be construed to and shall mean "a political subdivision."

(c) If a municipality provides by charter or ordinance for ultimate access to the district court in the event of wrongful discharge, Section 11.01, Texas Workers' Compensation Act, does not apply.

ARTICLE 14. REPEALER

SECTION 14.01. The following laws are repealed:

(1) Section 2(e), Chapter 709, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-340.2, Vernon's Texas Civil Statutes);

(2) Article 4413a.2, Revised Statutes;

(3) Section 1, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145a, Vernon's Texas Civil Statutes);

(4) Section 2, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145b, Vernon's Texas Civil Statutes);

(5) Section 3, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145c, Vernon's Texas Civil Statutes);

(6) Section 11, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(7) Section 16, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas

Civil Statutes);

(8) Article 8306, Revised Statutes;

(9) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes);

(10) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(11) Article 8307, Revised Statutes;

(12) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8307a, Vernon's Texas Civil Statutes);

(13) Article 8307b, Revised Statutes;

(14) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);

(15) Chapter 358, Acts of the 64th Legislature, Regular Session, 1975 (Article 8307d, Vernon's Texas Civil Statutes);

(16) Sections 18, 19, and 20, Article 8308, Revised Statutes;

(17) Article 8309, Revised Statutes;

(18) Section 11, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(19) Section 17, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(20) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes);

(21) Section 11, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas Civil Statutes); and

(22) Section 25.0013(d), Government Code.

ARTICLE 15. TRANSITION;

EFFECTIVE DATE; EMERGENCY

SECTION 15.01. CREATION OF BOARD; INITIAL APPOINTMENTS OF BOARD MEMBERS. (a) The Texas Workers' Compensation Board is created on the effective date of this Act.

(b) Except as provided by Subsection (c) of this section, in making the initial appointments to the Texas Workers' Compensation Board, the governor shall designate three members for terms expiring February 1, 1991, three members for terms expiring February 1, 1993, and three members for terms expiring February 1, 1995.

(c) Unless the member is otherwise removed, each member of the Industrial Accident Board who is serving on that board on August 31, 1989, serves as a member of the Texas Workers' Compensation Board until the expiration of the term to which that member was originally appointed.

SECTION 15.02. CREATION OF ADVISORY COUNCIL; INITIAL APPOINTMENTS OF ADVISORY COUNCIL MEMBERS. (a) The Labor-Business Advisory Council on Workers' Compensation is created on the effective date of this Act.

(b) In making the initial appointments to the advisory council, the governing body of the Texas Workers' Compensation Board shall designate one employer representative and one employee representative for terms expiring February 1, 1991, one employer representative and one employee representative for terms expiring February 1, 1993, and one employer representative and one employee representative for terms expiring February 1, 1995.

SECTION 15.03. CREATION OF ADVISORY COMMITTEE; INITIAL APPOINTMENTS OF ADVISORY COMMITTEE MEMBERS. (a) The Workers' Compensation Insurance Research Advisory Committee is created on the effective date of this Act.

(b) In making the initial appointments of the public members of the advisory committee, the governor shall designate two members for terms expiring February 1, 1991, two members for terms expiring February 1, 1993, and three members for terms expiring February 1, 1995.

SECTION 15.04. NAME CHANGE. The name of the Industrial Accident Board is changed to the Texas Workers' Compensation Board. Any reference in the law to the Industrial Accident Board means the Texas Workers' Compensation Board.

SECTION 15.05. TRANSFER OF CERTAIN PROGRAMS TO WORKERS' COMPENSATION BOARD. (a) The programs created under Articles 5.55A and 5.76-1, Insurance Code, and administered by the State Board of Insurance are transferred to the Texas Workers' Compensation Board on the effective date of this Act.

(b) The property and records in the custody of the State Board of Insurance that relate specifically to the implementation

and enforcement of those programs shall be transferred to the Texas Workers' Compensation Board not later than September 1, 1990.

(c) The Texas Workers' Compensation Board shall adopt rules relating to the transfer of the programs assigned to that board not later than March 31, 1990. Notwithstanding amendments and repeals made by this Act, programs and rules in effect on the effective date of this Act remain in effect and shall be enforced by the appropriate agency until provided otherwise by the rules of the board, and the laws providing authority for those rules and programs are continued in effect for that time and purpose. The board shall assume full control over those programs not later than September 1, 1990.

SECTION 15.06. INITIAL POLICY STATEMENT. The policy statement required under Section 2.09(e) of this Act must be filed not later than October 30, 1989.

SECTION 15.07. ADMINISTRATIVE PENALTIES. Section 11.11 of this Act, providing for the assessment of administrative penalties by the Texas Workers' Compensation Board, applies only to a violation that occurs on or after the effective date of this Act.

SECTION 15.08. SUBSEQUENT INJURY FUND. The subsequent injury fund is created on the effective date of this Act. All money in, and all liabilities of, the second injury fund created under Article 8306, Revised Statutes, as of that date, are transferred to the subsequent injury fund.

SECTION 15.09. SELF-INSURANCE. (a) The initial board of directors of the Texas Certified Self-Insurer Guaranty Association created under Section 10.16, Texas Workers' Compensation Act, shall

be appointed by the Texas Workers' Compensation Board.

(b) Notwithstanding the requirement imposed under Section 10.03(b), Texas Workers' Compensation Act, the Texas Workers' Compensation Board is not required to process an application for a certificate of authority to self-insure within 60 days of the receipt of the application by that board until September 1, 1990.

SECTION 15.10. EFFECTIVE DATE; EFFECT ON PENDING CLAIMS. (a) This Act takes effect September 1, 1989.

(b) The change in law made by this Act applies only to an injury for which the date of injury is on or after the effective date of this Act. The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

(c) The Texas Workers' Compensation Board created under this Act shall process claims for injuries occurring before the effective date of this Act in accordance with the law in effect on the date that the injury occurred, and the former law is continued in effect for this purpose.

SECTION 15.11. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

3-1-89
(date)

The Honorable Gib Lewis
Speaker of the House of Representatives

Sir:

We, your COMMITTEE ON BUSINESS AND COMMERCE,

to whom was referred HB1 (measure) have had the same under consideration and beg to report back with the recommendation that it

( ) do pass, without amendment.
( ) do pass, with amendment(s).
(X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes ( ) no An actuarial analysis was requested. ( ) yes (X) no

An author's fiscal statement was requested. ( ) yes (X) no

A criminal justice policy impact statement was prepared. ( ) yes (X) no

A water development policy impact statement was requested. ( ) yes (X) no

( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars for placement on the ( ) Local, ( ) Consent, or ( ) Resolutions Calendar.

This measure (X) proposes new law. (X) amends existing law.

House Sponsor of Senate Measure _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wolens, Ch.			X	
Dutton, V.C.		X		
Connelly, C.B.O.	X			
Fraser	X			
Gavin	X			
Hill, A.	X			
Hilbert	X			
Horn	X			
Smithee	X			

Total
7 aye
1 nay
1 present, not voting
0 absent

CHAIRMAN

Deborah K. Wall
COMMITTEE COORDINATOR

COMMITTEE ON BUSINESS AND COMMERCE

BILL ANALYSIS

C.S.H.B. 1 by A. Hill of Dallas

Relating to the reform of the workers' compensation system in the state of Texas and to the creation, powers, and duties of the Texas Workers' Compensation Board; providing penalties.

BACKGROUND INFORMATION

The Joint Select Committee on Workers' Compensation Insurance was created by the 70th Legislature in July, 1987, because the Texas workers' compensation system seemed to be poorly understood and the perception was that it was out of control. Workers' compensation insurance rates promulgated by the State Board of Insurance had increased almost 100% since 1983, producing concern about this development on Texas' economy. Additionally, labor interests perceived Texas' benefits under this system to be among the lowest in the country. A lack of objective statistical information prevented any useful analysis on how the system did or did not work. Therefore, the Joint Select Committee on Workers' Compensation Insurance was charged to conduct studies and develop objective information, to define problems, and formulate solutions thereto.

The Committee staff and consultants, under the direction of the Committee, produced over 1500 pages of original research providing information and developing insight into such issues as benefits, costs, comparative litigation, medical care and costs, workplace safety, vocational rehabilitation, competitive insurance rating, self-insurance, state workers' compensation insurance funds, and the assigned risk pool. Additionally, the Committee called on a nationally recognized expert in this field to provide an extensive critique of the Texas workers' compensation system.

The Joint Select Committee on Workers' Compensation Insurance adopted its final report on December 8, 1988, and included in the report it's staff's and consultant's recommendations for a statutory change in the current system. H.B. 1 is based on this research and findings of the Committee and uses many of its recommendations.

PURPOSE

This Bill proposes new law and amends some existing law to reform the workers' compensation laws of Texas by restructuring the current agency in charge of workers' compensation in Texas, giving the new agency the ability to more adequately administer and enforce the workers' compensation laws of Texas, providing a more effective mechanism for adjudicating claims, providing more consistency to the decision-making process, and providing for ongoing data collection and monitoring of the workers' compensation system to ensure its continued effectiveness. This reform of the system is intended to provide a more understandable mechanism for compensating injured workers and is intended to bring Texas in line with many other states in terms of costs to employers and benefits to their employees.

RULEMAKING AUTHORITY

It is the opinion of the Committee that this Bill authorizes the Texas Workers' Compensation Board, (hereinafter the "Board"), the Labor-Business Advisory Council on Workers' Compensation, the Texas Certified Self-Insurer Guaranty Association, and the State Board of Insurance to adopt necessary rules and regulations to implement this Act. Specifically rulemaking authority is delegated in the Bill as follows:

(1) Section 2.10 gives the Board the power to issue rules necessary to enforce the Act.

(2) Section 2.11 gives the Board the power to establish policies that provide the public with a reasonable opportunity to appear before the Board.

(3) Section 3.02(e) gives the Advisory Council rulemaking authority necessary for it to exercise its authority and perform its duties.

(4) Section 5.03(b) allows the Board to set rules to establish the priority of liens and claims under Section 5.03 of the Act.

(5) Section 5.05(c) gives the Board power to establish rules concerning employer records of injuries.

(6) Section 5.07(b) gives the Board the power to establish rules concerning employer reports of injuries to the Board.

(7) Section 5.26(c) gives the Board the power to establish rules concerning required medical exams under the Act.

(8) Section 5.41 gives the Board the power to establish rules and regulations for the determination of the existence and degree of an employee's impairment under the Act.

(9) Section 5.47(f) gives the Board the power to establish rules concerning the determination of average weekly wages if not otherwise determinable under the Act.

(10) Section 6.01(b) gives the Board the power to establish rules for appeals hearings in Travis County.

(11) Section 6.02 allows the Board to establish guidelines for claims that do not require a benefit conference and can go directly to a contested case hearing.

(12) Section 6.07 allows the Board to set rules for expedited benefit review conferences, contested case hearings, and appeals in contested compensability cases.

(13) Section 7.01 allows the Board to establish rules for medical services and fees.

(14) Section 7.01(g) provides for the establishment of rules concerning the periodic review of medical costs in claims where guidelines are exceeded.

(15) Section 7.04 allows the Board to set rules for health care provider disclosures under the Act.

(16) Section 9.01 gives the Board the power to set rules for reasonable loss control services.

(17) Section 9.03(f) gives the Board the power to establish

rules to implement Section 9.03 concerning claims and loss guidelines.

(18) Section 9.05 gives the Board the power to establish rules to implement the risk management section of the Act.

(19) Section 10.02 gives the Board the power to implement rules concerning the self insurance article of the Act.

(20) Section 10.16 gives the Guaranty Association the power to establish rules concerning the guaranty fund with the approval of the Board.

(21) Section 11.11(e) allows the Board to set rules concerning the procedures by which a decision is made to suspend the right to practice before the Board or to receive remuneration under the Act, access to the Board, or to appeal an administrative penalty to the Board.

(22) Section 11.12(e) gives the Board the power to set rules concerning the enhancement of penalties for malice and the failure of an insurance carrier to deal fairly and act in good faith.

(23) Section 12.01(b) grants the Board the power to set rules for the commutation of attorney's fees.

(24) Section 13.01 amends Article 5.76, Section 6(c) of the Insurance Code to allow the State Board of Insurance to set rules exempting participants in assignment to the assigned risk pool.

(25) Section 13.01 amends Article 5.76, Section 9(d) of the Insurance Code to set rules concerning the operation of the assigned risk pool.

(26) Section 13.02 adds Section 88.505(b) to the Education Code to allow the Board to set rules to assess and collect the maintenance tax for the Workers' Compensation Research Center at Texas A&M University.

(27) Section 13.03 adds Article 5.55B to the Insurance Code allowing the State Board of Insurance to set rules for deductibles, to insure security of benefits in the event of the bankruptcy of policyholders, and to to assign responsibilities between employers and carriers for claims servicing up to the deductible limits.

(28) Section 15.05 allows the Board to set rules for the transfer of duties assigned to the Board under the Act.

SECTION BY SECTION ANALYSIS

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. Provides that the first 12 articles of this Act will be cited as the Texas Workers' Compensation Act.

SECTION 1.02. Provides definitions of certain terms under the Texas Workers' Compensation Act. The words defined are adjuster, advisory council, agreement, benefit, board, child, commute, compensable injury, compensation, course and scope of employment, covered employee, dependent, designated physician, disability, employee, employer, health care, health care facility, health care practitioner, health care provider, impairment, income benefit, injury, insurance carrier, intoxication, legal beneficiary, maximum medical improvement, medical benefits, occupational disease, person, settlement, wages, workers' compensation insurance coverage.

The words adjuster, advisory council, agreement, benefit, board, child, commute, compensable injury, covered employee, dependent, designated physician, health care, health care facility, health care practitioner, health care provider, impairment, income benefit, insurance carrier, intoxication, legal beneficiary, maximum medical improvement, medical benefits, person, settlement, and workers' compensation insurance coverage are not defined under current law.

The Act changes the definition of disability from inability to obtain and retain employment doing the usual tasks of a worker to inability to obtain and retain substantial, gainful employment because of physical incapacity to perform the functions required for employment, when that incapacity was caused by a compensable injury.

The Act adopts the current definition of course and scope of employment and of injury.

The definition of insurance carrier includes a person authorized and admitted by the State Board of Insurance to do insurance business in the State of Texas pursuant to a certificate of authority, a certified self-insurer under this Act or a governmental entity that self-insures.

A definition of intoxication is added that means physical or mental impairment resulting from the introduction into the body of alcoholic beverages, controlled substances, dangerous drugs, abusable glue or aerosol paint and any similar substance regulated by law.

The definition of wages under the Act is expanded to include the market value of board, lodging, laundry, fuel and other advantages estimated in money.

The Act defines workers' compensation insurance coverage to mean an insurance policy to secure the payment of workers' compensation benefits as provided by this Act and includes coverage by self-insurance.

ARTICLE 2. TEXAS WORKERS' COMPENSATION BOARD

SECTION 2.01. Provides that the Texas Workers' Compensation Board shall include nine appointed members, without regard to race, color, sex, religion, age, or national origin, and exempts Board members from liability in a civil action for the execution of their duties in good faith.

SECTION 2.02. Subjects the Board to the Texas Sunset Act, and makes the Board subject to review under that Act by September 1, 2001.

SECTION 2.03. Provides eligibility for appointment and restrictions on Board members and board staff. This section excludes people involved in health care, insurance, labor, business, lobbying and certain others from serving on the Board or being employed by the Board, although it does not exclude employers otherwise qualified who have only obtained workers' compensation insurance coverage for their businesses.

SECTION 2.04. Provides for staggered terms of six years for Board members with vacancies to be filled by the governor.

SECTION 2.05. Requires the Board to elect a chairman from its membership, such chairman to serve for two years.

SECTION 2.06. Provides for removal of Board members.

SECTION 2.07. Provides that Board members do not receive remuneration for serving on the Board but are reimbursed for actual and necessary expenses.

SECTION 2.08. Provides that the Board meet at least quarterly and at all other times as provided by rules set by the Board.

SECTION 2.09. Requires that the Board appoint an executive director and organize Board personnel into divisions. Requires the board to appoint the directors of the various divisions and that the Board select the executive director and the director of the hearings division from nominations made by the Advisory Council. Requires the executive director to hire benefit review officers who need not be attorneys and contested case hearing officers, the latter required to be attorneys. Prescribes personnel procedures, including performance evaluations, career ladders, and a program of equal employment opportunity.

SECTION 2.10. Authorizes the Board to delegate all powers and duties, except for rulemaking authority, and to adopt rules in accordance with Sections 1-12, except Sections 4(a)(3) and 4(b) of the Administrative Procedures and Texas Register Act (APTRA), and makes all orders, decisions and rules subject to APTRA; prescribes the responsibilities of the Board in informing employees of required qualifications and responsibilities in defining the responsibilities of the Board and staff, and requires the filing of an annual report with the governor, lieutenant governor and the speaker of the house. Authorizes the Board to accept gifts, grants, or donations.

SECTION 2.11. Requires the Board to provide public information regarding the functions of the Board and to implement policies to provide a mechanism by which the public may appear before the Board for any issue under the jurisdiction of the Board. Article 2 of the Bill is a change from current law. This Article removes the hearings functions as well as many of the administrative functions of the current Industrial Accident Board and increases its size. The employer/labor/public representation on the Board is removed and a prohibition against such labor and business relationships are placed against Board members.

ARTICLE 3. ADVISORY COUNCIL

SECTION 3.01. (a) Creates the Labor-Business Advisory Council on Workers' Compensation to be composed of six members, three from business and three from labor, appointed by the Board from persons recommended to the Board by labor and business organizations.

(b) Provides for staggered six-year terms, and provides that Advisory Council members do not receive remuneration but do receive reimbursement for actual and necessary expenses when the Council meets.

(c) Provides for election of a chairman and sets meets of the Council on at least a quarterly basis.

SECTION 3.02. (a) Requires the Advisory Council to provide information to labor and business regarding workers' compensation, to monitor the performance of the workers' compensation system, and to advise the Board of any necessary changes in the workers' compensation system.

(b) Requires the Advisory Council to comment on and draft proposed rules for adoption by the Board, and requires the Board to provide staff support and information to the Advisory Council.

(c) Requires the Advisory Council to provide four nominees each for the positions of executive director and director of the hearings division of the Board.

(d) Requires the Advisory Council to make recommendations to the Texas Workers' Compensation Insurance Research Center regarding the research agenda of the Center.

(e) Gives the Council rulemaking authority to carry out its functions and duties.

Article 3 creates a new entity in the workers' compensation system. The direct representation of labor or employers is transferred from the Board to the Advisory Council and the Board is called upon to use this expertise of the advisory council in monitoring the workers' compensation system.

ARTICLE 4. WORKERS' COMPENSATION COVERAGE

SECTION 4.01. (a) Defines employer for purposes of Section 4 as a person with one or more employees.

(b) Provides that workers' compensation insurance is elective and authorizes employers, except for public employers, who elect to be a covered employer to secure compensation by purchasing private insurance or by self-insuring under the provisions of this Act. An employer who elects to obtain coverage is subject to the provisions of this Act.

(c) Requires employers who do not elect to be a covered employer to provide written notice to the Board within a time determined by the Board. The Board may also use this requirement to discover information about the nature of the business of employers who choose not to be covered by workers' compensation insurance. Allows the Board to contract with the Texas Employment Commission or the comptroller of public accounts for assistance in collecting notifications.

(d) Requires employers to provide each employee with written notice of the employer's election to have or not to have workers' compensation coverage, such notice to be given to new employees at the time of hiring. Employers who elect to be covered must notify all employees annually, and employers not electing coverage must notify each employee individually semiannually and provide the employee with information regarding the effect of the employer's election not to be covered. Employers terminating coverage must give employees notice no later than 10 days after termination is effective of such termination.

SECTION 4.02. Provides that an employee may elect to retain the right to a cause of action in court against the employer to recover damages for a work related injury or death as provided in current law; provides that such a cause of action is subject to all defenses; and prohibits any other waiver of rights under this Act as provided in current law including the waiver of the employee's right to compensation under the Act.

SECTION 4.03. Provides that an employer who elects not to be covered looses the common law defenses of contributory negligence, assumption of the risk, and fellow employee negligence as provided in current law, but allows an employer who elects not to be covered the defenses that the injury was caused by an intentional act of

the employee or while the employee was in a state of intoxication, and requires the employee suing under this provision to prove negligence by the employer and his agent within the general scope of employment.

SECTION 4.04. (a) Provides that this Act applies to actions to recover damages for injuries or death sustained by employees whose employers have workers' compensation coverage as in current law.

(b) Provides that an employee may not receive benefits for any injury caused by an intentional act of the employee to bring about the injury or while the employee was intoxicated.

(c) Exempts from the Act domestic servants, casual employees engaged in employment incidental to a personal residence, certain farm and ranch employees, and employees covered by federal compensation laws.

(d) Authorizes an employer to cover an exempt employee but provides that if an employer does not elect to cover an exempt employee the employer retains the common law defenses under the Act.

SECTION 4.05. Provides for coverage of farm or ranch employees as provided in current law, with nonsubstantive changes to reflect date changes, including migrant workers, seasonal workers, and employees of farms and ranches over a certain size. This section also allows certain employers in the farm and ranch business to be covered themselves by workers' compensation insurance.

SECTION 4.06. Reduces the liability of an insurance carrier for the aggravation of previously existing occupational diseases, resulting in disability or death, to the total number of weeks of compensation payable if the occupational disease were the sole cause of the disability or death.

ARTICLE 5. BENEFITS

CHAPTER A. GENERAL PROVISIONS

SECTION 5.01. (a) Provides that recovery under this Act is the exclusive remedy of an injured employee or the employee's legal beneficiaries against an employer, his agent, servant, or employee, for recovery of damages for a work-related injury or death of an employee.

(b) Authorizes recovery of exemplary damages for an employer's gross negligence or intentional act or omission that results in the employee's death, and defines gross negligence as it is defined in the Texas Tort Reform Act of 1987 (Section 41.001, Civil Practice and Remedies Code). This section substitutes intentional for wilfull and adopts the definition of gross negligence under the Civil Practice and Remedies Code. "Gross Negligence" does not mean momentary thoughtfulness, inadvertance, or error of judgment. It means an entire want of care as to establish that the act or omission was the result of actual conscious indifference to the rights, safety, or welfare of the person affected.

SECTION 5.02. Exempts benefits received under this act from garnishment, attachment, judgment, and other actions or claims, and provides that such benefits are assignable only in cases of death benefits and if such assignment is executed within six months of the date on which the right to death benefits was established.

This provision reflects current law as to exemption from legal process. Current law does not speak to assignability of death benefits.

SECTION 5.03. Restricts claims and liens against benefits to attorney's fees for representing an employee, court ordered child support, a subrogation interest under this Act, or as otherwise provided by Board rule, and authorizes the Board by rule to establish the priority of such liens and claims.

SECTION 5.04. Requires an employee to notify his employer in writing within 30 days after the injury or after he knew or should have known that the occupational disease was work related, and provides that such failure relieves the employer and his insurance carrier of liability unless the Board finds that the employer or carrier had actual knowledge, that there was good cause for the failure to notify, or that the carrier or employer did not contest the claim. Allows notice to be given to an employer or an employee of an employer who holds a supervisory or management position.

SECTION 5.05. Requires an employer to maintain records of all reported injuries and allows access by the Board to such records and gives the Board rulemaking authority to adopt rules relating to the information to be contained in such reports.

SECTION 5.06. Authorizes an employer to contest compensability of an injury in proceedings in the agency separate from the processing of the claim by the carrier, and requires the carrier to expunge the claim from the employer's loss records and pay legal fees if the Board determines that the injury was not compensable.

SECTION 5.07. Provides that an employer and an employee are entitled to notification of conferences, hearings, or appeals on compensable injuries of that employer's employees. This section has no equivalent under current law. It gives employers standing in proceedings where he had no standing before.

SECTION 5.08. Requires an employer to report an injury to the Board and to the carrier within eight days after the employee's absence from work for one day due to an injury or after the employer receives notice that the employee has an occupational disease, and specifies the contents of the report; although such report is not an admission by the employer of the contents of the report. Requires the Board to give the employee a statement regarding the procedures for obtaining workers' compensation benefits, and specifies the contents of the statement.

SECTION 5.09. Requires the Board to determine if an injured employee would be helped by vocational rehabilitation and to notify the employee and the Texas Rehabilitation Commission of a determination that the employee would be helped by vocational rehabilitation through the Texas Rehabilitation Commission or private providers, and to cooperate with the Texas Rehabilitation Commission in the provision of services and facilities to employees. Allows a private provider to register with the Board.

SECTION 5.10. (a) Requires the carrier to pay promptly and provides that if the carrier does not contest the compensability of the injury within 60 days after the carrier is notified of the injury that the carrier waives its right to contest compensability. Provides that the carrier waives its right to contest the compensability of the claim if the carrier does not initiate payments or file a notice of refusal to pay as required under the Act. Allows the carrier to reopen issue of compensability on a showing of fraud.

(b) Requires the carrier to either begin payment or file a notice of refusal to pay within 14 days of the date on which the carrier received written notice of the injury.

(c) Provides that the grounds for refusal required in the notice of refusal to pay are the carrier's only defenses on the issue of compensability, unless the defense is based on newly discovered evidence. If a carrier did not have reasonable grounds for refusal, it is subject to sanctions under Section 11.11 of the Act and Article 1.10 of the Insurance Code. This section changes current law which now requires a carrier to initiate compensation or controvert a claim within 20 days after it receives notice of injury.

SECTION 5.11 (a) Allows an employee to seek damages from a third party for an injury compensable under the Act without loosing a right to his claim under the Act.

(b) Notice of an election to seek damages from a third party must be given by certified mail to the carrier and the Board. A copy of the subrogation lawsuit must be sent to carrier and the Board.

(c) Makes carriers liable for benefits subrogated to the rights of the employee against the third party.

(d) If a state special fund under this Act is involved, the Board is subrogated to the rights of the employee against the third party.

(e) Creates priorities for distributions under this section.

(f) Allows attorneys' fees of 33%.

SECTION 5.12. Provides that a cause of action survives where it is based on a compensable injury that results in the employee's death.

(Sections 5.13-5.20 reserved for expansion)

SECTION 5.21. Provides that an injured employee is entitled to all health care reasonably required by the nature of the injury, including health care that relieves pain, promotes recovery or enhances the ability of an employee to return to work or retain employment including medical supplies or equipment necessary to the maintenance of the employee's ability to function, such as a prosthesis or a wheelchair.

SECTION 5.22. (a) Provides for employee choice of the initial health care provider only and excludes a choice of a health care provider in an emergency from the limitations of this section. Current law allows numerous choices of such provider subject only to a challenge of a choice being unreasonable and unnecessary.

(b) Requires approval of the carrier for a subsequent choice of health care provider, subject to review by the Board if approval is denied by the carrier.

(c) Provides that reasonable and necessary referrals are not subsequent choices and are not subject to the approval of the carrier by the employee's initial choice.

(d) Authorizes the Board to relieve the carrier of liability for medical benefits furnished by a health care provider improperly chosen by the employee after notice and hearing.

(e) Provides that the limits in this section do not apply to

necessary ancillary services or second opinions.

SECTION 5.23. Requires the Board through rules to adopt requirements for health care providers' reports.

SECTION 5.24. Provides that an employee who does not receive health care for a compensable injury for 2 years has the burden of proof that any additional health care is required and that such care is directly related to the compensable injury. There is no provision under current law similar to this.

SECTION 5.25. Authorizes a benefit review officer or hearings officer in resolving a medical dispute to require that an employee submit to a medical examination or to get necessary health care and provides that surgery may be required only if based on reasonable medical evidence and where it will substantially improve the condition of the employee, and only when approved by the director of the hearings division.

(b) Authorizes a benefit review officer or a hearings officer to order an autopsy, after notice and hearing, and allows the legal beneficiary to have a representative at such hearing.

(c) Authorizes the Board to require the carrier to pay for procedures ordered under this section.

(d) Authorizes the Board to deny a noncompliant employee or legal beneficiary under this section access to further proceedings before the Board, after notice, hearing, and appeal, and authorizes the Board to order the carrier to suspend or reduce benefits for noncompliance.

SECTION 5.26. (a) Authorizes the Board to require a medical examination in cases where there is a dispute over issues other than compensability including the appropriateness of health care, disability, and percentage of impairment.

(b) Authorizes a carrier to require the employee to have a medical examination by a health care provider of the carrier's choice. Any additional exams must be with Board approval. A referral by the carrier's choice does not constitute a change for purposes of this section.

(c) Requires the Board to adopt rules to regulate the carrier's action under this section and to establish compliance requirements for employees.

(d) Entitles the employee to have the employee's health care provider present at examinations required by the carrier under this section.

SECTION 5.27. Limits the compensability of heart attacks under this Act to those where the attack occurred at a definite time and place, was caused by a specific event within the course and scope of employment, the employee's work and not the natural progression of a pre-existing condition or disease which substantially contributed to the attack, and the attack was not caused solely by mental or emotional stress. This section adds requirements to current law that the employees' work rather than a pre-existing condition or disease be a substantial contributing factor and that the heart attack not be triggered by emotional and mental stress factors.

SECTION 5.28 Unless disputed, a carrier must pay a fee charged by a health care provider not later than 30 days after receipt. To dispute such a fee, the carrier must request a benefit review conference within 10 days of receipt of the charge.

Sections 5.29-5.40 reserved for expansion

SECTION 5.41. Provides that income benefits shall be paid on a weekly basis to compensate an injured employee for impairment or disability under this Act, and requires the Board to adopt rules and guidelines for the determination of the existence and degree of the employee's impairment or disability. Provides that an employee's impairment rating is based on the percentage of physical impairment to the whole body modified by the employee's age, education, and work experience, and requires that the Board by rule must adopt formulas for modification of the physical impairment percentage. This section is a substantial change from current law. Under Article 8306, Sections 10, 11, and 12, an injured employee is entitled to benefits for incapacity on a weekly basis. This section pays benefits based on "disability" which is defined as the inability to obtain and retain substantial gainful employment because of the physical incapacity to perform the functions required for employment, where the incapacity was caused by a compensable injury; and on "impairment," which means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from the compensable injury and is reasonably presumed to be permanent.

SECTION 5.42. (a) Provides that temporary disability income benefits for partial or total disability begin on the eighth day after time lost from work and cease at the earlier of maximum medical improvement or 401 weeks, payable at two-thirds of the employee's average weekly wage. Provides that the employee may receive benefits for the first seven days of disability if the employee's disability lasts 28 days or more. Provides that temporary disability income benefits for an employee who returns to work or is offered work that the employee is able to do as certified by the treating health care practitioner, but who has not reached maximum medical improvement, will be two-thirds of the difference between the employee's pre-injury average weekly wage and the average weekly earnings of the current position. Current law contains no provision for maximum medical improvement.

SECTION 5.43. (a) Requires that the physician certifying that the employee has reached maximum medical improvement immediately evaluate the employee's condition and determine the percentage of impairment according to guidelines adopted by the Board, requires that if the certification and evaluation are done by a physician other than the treating physician, the treating physician must indicate agreement or disagreement, requires a written report of certification to be sent to the insurance carrier, and requires the carrier to begin paying impairment benefits based on that percentage of impairment, as modified under this Act, or whatever percentage the carrier believes to be the correct percentage.

(b) Provides for impairment benefits from the day after the employee reaches maximum medical improvement; such benefits cease at the earliest of the employee's death; period of time computed at four weeks per percentage point of impairment as modified under this Act, 300 weeks, or 401 weeks of all income benefits combined.

(c) Requires the carrier to start impairment income benefits by the fifth day after the carrier receives the physician's report.

(d) Requires the Board to order the employee to be examined by a physician agreed to by the parties or, if the parties cannot agree, by a physician designated by the Board to resolve disputes over the impairment rating, and requires the Board to award impairment income benefits based on the written report of such physician.

(e) Provides that impairment income benefits are two-thirds of the employee's average weekly wage not to exceed the maximum weekly benefit under Section 5.48 of the Act. Current law allows an employee to receive 66 2/3's of average weekly wage until he returns to work or is released from a doctor's care.

SECTION 5.44. (a) Requires the carrier to file written reports regarding the employee's employment status at six-month intervals while the employee is receiving impairment income benefits, and authorizes the Board to order evaluations to determine the employee's ability to perform the functions reasonably required for employment and the reasons for any extended unemployment.

(b) (c) (d) Provides that an employee may receive extended disability income benefits if the employee, due to the continuing disability, has not returned to employment, or has returned to work but is making no more than 30 percent of the employee's pre-injury wage, at the time of the final impairment income benefit and has been eligible for and receiving impairment income benefits for at least 104 weeks. Extended disability benefits under this section may be ordered at 52-week intervals and are two-thirds of the employee's average weekly wage, subject to the maximums under this Act.

There is no equivalent provision to Section 5.44 under current law.

SECTION 5.45. (a) Provides for lifetime disability income benefits for certain catastrophic injuries such as total and permanent loss of sight in both eyes, loss or total loss of use of both feet at or above the ankles; loss or total loss of use of both hands at or above the wrists, loss or total loss of use of one foot at or above the ankle, and the loss of one hand at or above the wrist, an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; and an injury to the skull resulting in insanity or imbecility as provided in current law.

(b) Provides for benefits under this section to be payable at 66 2/3% of the employee's average weekly wage not to exceed the maximum benefit under Section 5.48 of this Act.

SECTION 5.46. Authorizes the Board to order an advance as provided by this Act against which the employee is entitled if the employee is suffering financial hardship for an amount not to exceed four times the average weekly wage and not more than twice for the same injury.

SECTION 5.461 Provides that after an injury and during the time the carrier is not paying benefits, an employer may continue paying wages or initiate weekly payments to the employee. If the injury is found to be compensable, the carrier shall reimburse the employer for amounts paid by the employer up to the amount of benefits due. The employer must notify the Board and the carrier on prescribed forms of such payments. These payments do not admit compensability.

SECTION 5.47. Provides that generally the average weekly wage will be based on the actual wages of the employee for the 13 weeks immediately preceding the injury divided by 13, and provides for alternative calculations for certain types of employees who do not meet the requirements of 13 weeks employment. These employees are employees who have worked for the employer for fewer than 13 weeks prior to the injury, or whose wage at the time of injury has not been fixed. Part time employees, seasonal employees, and employees who are minors are also given a formula for figuring

their average weekly wage. This section also gives the Board rulemaking authority to establish a presumption that the employee's last paycheck accurately reflects the employees usual wage, and other presumptions concerning wages.

SECTION 5.48. Provides that the maximum weekly benefit for temporary disability will be based on a given percentage of the state average weekly wage calculated as provided in this Act: the maximum for disability income benefits and lifetime disability income benefits is 100% of that wage, the maximum for impairment income benefits is 75% of that wage, and the maximum for extended disability income benefits is two-thirds of that wage. This section allows the Board to determine the maximum weekly income benefit for the succeeding fiscal year not later than September 1 of each year. This section further provides that the maximum weekly benefit in effect on the date of the inquiry is applicable for the entire period during which income benefits are payable.

SECTION 5.49. Authorizes the Board to reduce impairment income benefits for an impairment resulting from an earlier compensable injury affecting the same body part and to consider the cumulative impact of the two injuries on the employee's overall impairment in determining such reduction.

SECTION 5.50. Authorizes the Board to order offsets against impairment income benefits or extended disability income benefits for social security retirement benefits and Board approved disability benefits to be calculated on the after-tax value of the worker's compensation benefits and the offsetting benefits. This section states that such offset does not reduce or eliminate a carrier's liability for continued medical benefits.

SECTION 5.51. Provides that only impairment income benefits may be commuted on Board approval and only if the employee has returned to substantial gainful employment for at least six months and has not required or obtained medical treatment calculated and intended to promote final recovery from the injury for three months. Any commutation agreement must be reduced to writing and the settlement approved by the Board. Impairment income benefits commuted under this section are subject to discounting for present payment at four percent compounded annually.

SECTION 5.61. Provides for death benefits to a legal beneficiary where the compensable injury results in death and requires that a claim for death benefits be filed within one year, unless claimant was a minor or legally incompetent or the board determines that good cause existed for the delay.

SECTION 5.62. Delineates the distribution of death benefits and defines eligible spouse, eligible child, and eligible grandchild. Such distributions is as follows: If no child or grandchild, all benefits are paid to the spouse. If spouse and children or grandchildren survive, employee benefits are payable 1/2 to spouse and 1/2 in equal shares to children or grandchildren. If a child predeceased the employee his portion shall be paid in equal shares to his children per stripes. Where no spouse, children or grandchildren survive, benefits are paid to surviving dependents.

SECTION 5.63. Delineates the duration of death benefits provided to different legal beneficiaries. This is the same as current law.

SECTION 5.64. Provides for burial benefits as the lesser of the actual costs of burial or $2,500 and requires the carrier to pay transportation costs if the employee died away from his usual place of business.

SECTION 5.65. Provides that, where the combination of two injuries results in a condition for which lifetime disability income benefits are due under Section 5.45, the subsequent injury fund in the state treasury will compensate an injured employee for the difference between the lifetime disability income benefits and the benefits to which the employee would have been entitled due only to the subsequent injury.

ARTICLE 6. ADJUDICATION OF DISPUTES

SECTION 6.01. Requires the hearings division of the Board to conduct benefit review conferences and contested case hearings, and provides for an appeal of a decision in a contested case hearing to an agency appeals panel composed of three persons to be held in Travis County.

SECTION 6.02. (a) Authorizes the Board to direct the parties to a disputed claim to have a benefit review conference on a party's request or on the Board's own motion to attempt to reach agreement on disputed issues.

(b) Requires the Board to adopt guidelines to expedite claims that do not need a benefit review conference before going to a contested case hearing.

(c) Delineates the purposes of the benefit review conference. It is a nonadverserial, informal dispute resolution proceeding designed to explain the rights of the respective parties to a worker's compensation claim and the procedures necessary to protect those rights, discuss the facts of the claim, evaluate the claim and delineate the disputed issues; and mediate and resolve the dispute by agreement of the parties.

(d) Provides that a claimant may request a benefit review conference at any time, that the carrier may request a benefit review conference to attempt to resolve disputed issues related to the payment of benefits, that a health care provider may request a benefit review conference relating to the payment of the health care provider; and that a employer may request one only to contest compensability and must do so within 30 days after the insurance carrier accepts compensability. Provides that a party may be represented by an attorney or other designated representative at such conferences.

(e) Requires a written request for a benefit review conference and that the conference must be within 75 miles of the claimant's residence at the time of the injury absent good cause for a different location.

(f) Requires the Board to send written notice to the parties and to the employer at least 10 days before the benefit review conference, and provides that a party who does not attend, without good cause as determined by the Board, waives the right to a contested case hearing. If a party disputes the determination as to good cause, the party is entitled to administrative hearing and judicial review of that issue.

(g) Requires the benefit review officer to assist in the adjustment of the claim and resolution of the disputed issues, and prohibits taking testimony or making a formal record. Authorizes the officer to recommend approval or disapproval of any agreement of the parties.

(h) Provides that a benefit review conference is not subject to common law or statutory rules of evidence or the Administrative Procedure and Texas Register Act (APTRA).

(i) Requires the benefit review officer to reduce any agreements or settlements to writing for signature of the parties, and provides that an agreement is binding as to the resolved issues and takes effect on the date signed, and that a settlement takes effect on approval by the division director. Provides for guidelines for approval by the division director.

(j) Provides that the benefit review officer must prepare a written report detailing unresolved issues and prescribes the contents of such report including a statement of resolved issues, the officers recommendations, the basis of such, and a statement of the procedures to request a contested hearing.

(k) Requires the benefit review officer to file any agreement or report with the division director within seven days after conclusion of the conference and requires the division director to provide the employee, employer, and the carrier with the file stamped report within seven days after receipt of such report.

SECTION 6.03. (a) Restricts contested case hearings, except on agreement of the parties or on good cause determined by the Board, to those issues not resolved at the benefit review conference or to cases eligible to proceed directly to a contested case hearing under this Act; to be held within 52 days after the file stamped report of the benefit review conference is sent to the parties, unless good cause is shown.

(b) Provides that a hearings officer shall conduct the contested case hearing, provided that such officer is not the same person who conducted the benefit review conference, and provides that the hearing is subject to Sections 13-15 and 17 of APTRA. Requires the hearing to be conducted within 75 miles of the claimant's residence at the time of the injury absent good cause for another location.

(c) Requires the hearings officer to file a written decision within 15 days, and requires the division to notify the parties of the decision within seven days after the decision is received by the Board.

(d) Provides that the hearings officer's decision is final absent timely appeal and is binding during the pendency of the appeal, except as to non-essential medical benefits.

SECTION 6.04. (a) Provides for appeal of a hearings officer to an agency appeals panel within 37 days of the filing of the notice of the hearings officer's decision, and prescribes the procedures for filing such an appeal. The respondent has 30 days after the appeal is served to respond and must serve a copy of the response on the appellant.

(b) Requires that an appeal request or response must rebut or support the hearings officer's decision and cite supporting evidence and law in support of the party's request or response.

(c) Requires the division director to assign the appeal to a panel.

(d) Requires the appeals panel to consider the record of the contested case hearing and the written appeal and response.

(e) Provides that the panel may consider newly discovered evidence and may allow oral argument.

(f) Authorizes the appeals panel to affirm the hearings officer's decision, reverse and render a new decision, or reverse

and remand for further consideration and development of evidence.

(g) Requires a written decision by the panel within 15 days after the appeal is heard.

(h) Provides that the panel's decision is final absent a timely appeal and that the decision is binding during the pendency of an appeal.

SECTION 6.05. Provides for judicial review of an agency appeals panel decision in a district court in the county of the employee's residence or where the injury occurred by filing a petition within 30 days after decision is filed with division director. Provides that such judicial review is subject to Section 19 of APTRA and is governed by the substantial evidence rule.

SECTION 6.06. Provides that the Board retains jurisdiction of the claim during the pendency of an appeal of disputed issues in the claim. The board can't modify a final order except on a showing of change of condition, mistake, or fraud within 12 months of a denial or within the compensation period.

SECTION 6.07. Requires the Board to promulgate rules for expedited procedures at all levels under Article 6 of this Act where the compensability of the injury is disputed.

ARTICLE 7. ISSUES RELATED TO HEALTH CARE PROVIDER: MEDICAL REVIEW

SECTION 7.01. Requires the Board to promulgate rules regarding utilization of and fees for medical services, and prescribes the contents of the rules. Establishes the medical review division for the Board and requires the medical review division to administer the guidelines established by the Board, to maintain a statewide data base to be used by the Board and the division in adopting and administering the guidelines, and to monitor health care providers and claimants to assure compliance with the guidelines and other Board rules. Requires the Board to promulgate rules for the periodic review of medical care in claims in which a certain threshold of time lost from work is exceeded and authorizes the Board to take action to ensure that necessary and reasonable care is provided. Allows the Board to contract with a health care provider professional organization to maintain and review these guidelines and compliance therewith. Creates a presumption that a fee within the guidelines is reasonable but does not create such a presumption in the case of specific treatments or services. Allows for periodic review of such guidelines. Allows interest to accrue on bills submitted to a carrier over 60 days old.

SECTION 7.02. Creates special advisory committees composed of 9 members each to assist the medical review division in administering the medical fee and utilization guidelines as provided in current law.

SECTION 7.03. Requires the medical review division to coordinate its activities with health care providers including conducting seminars, providing information to and requesting assistance from professional medical review organizations and contracting for services from independent health care providers.

SECTION 7.04. Requires a referring health care provider to disclose to the Board a financial interest over 5% in a health care provider that the claimant is referred to by the referring provider, on an annual basis.

SECTION 7.05. Prohibits a health care provider from pursuing

a claim against an injured employee for services rendered to the employee in connection with a work related injury, unless and until the injury is finally adjudicated under this Act to not be a compensable injury.

ARTICLE 8. COMPLIANCE MONITORING

SECTION 8.01. Establishes the compliance and practices monitoring division under the Board and requires that the compliance and practices monitoring division monitor compliance with this Act, Board rules, and other laws relating to workers' compensation by employees, persons claiming death benefits, employers, insurance carriers, and attorneys and other representatives of the parties.

SECTION 8.02. Provides for audit by the compliance and practices division of the workers' compensation records of insurance carriers and calls on insurance carriers to provide access for such information.

SECTION 8.03 Provides that this division monitor health care providers and claimants who receive medical services to insure timely payment.

SECTION 8.04. Requires the compliance and practices monitoring division to compile and maintain information to detect noncompliant practices and patterns of conduct by persons monitored under this act and to use such information to assess penalties under this Act.

SECTION 8.05. Requires the compliance and practices monitoring division to conduct investigations of alleged violations of this Act or Board rules and to refer persons subject to an investigation under this Act to other appropriate authorities, including the hearings division, for further investigation, or the institution of proceedings.

ARTICLE 9. WORKERS' HEALTH AND SAFETY

SECTION 9.01. (a) Creates the workers' health and safety division to coordinate and enforce the implementation of state laws and rules on workers' health and safety issues.

(b) Requires the division to collect information on workers' health and safety and use such information to identify and prioritize safety needs, and requires the division to promote workers' health and safety through educational and other programs, and to certify employers who complete such programs for eligibility for rate reductions.

(c) Requires the workers' health and safety division to coordinate the collection of job safety information by state or federal entities.

(d) Requires the workers' health and safety division to promulgate rules to require carriers to provide reasonable loss control services to all risks and to monitor the provision of such services.

(e) Requires the workers' health and safety division to collect job safety information required by federal law and to consult with employers regarding compliance with federal safety laws and rules.

(f) Authorizes the workers' health and safety division to

contract with the federal government to perform job safety projects and apply for federal funds relating to job safety.

SECTION 9.02. Requires the workers' health and safety division to maintain a job safety information system and prescribes what the data base should include. Requires the division to publish the information in various regular and special reports for public and private entities that are working to improve safety.

SECTION 9.03. (a) Requires the workers' health and safety division to establish thresholds and guidelines to identify such employers to develop a program to identify an employer whose claim frequencies and loss levels exceed industry standards and to establish thresholds and guidelines to identify such employers.

(b) Requires the division to notify an employer who exceeds the claim and loss guidelines and to reexamine such employer for compliance six months after notification.

(c) Requires employers that continue to exceed the guidelines to obtain a safety consultation from an approved professional source.

(d) Requires the Board to perform a follow-up safety consultation on an employer who continues to exceed the guidelines six months after the initial consultation under (c), and requires the employer to file a special accident report on each additional workers' compensation claim. Requires an employer who continues to exceed the guidelines six months after the follow-up consultation to file an adequate safety plan with the Board.

(e) Authorizes the Board to assess an administrative penalty under this act for an employer who does not comply with this section in accepting safety consultation and filing a safety plan with the Board and provides that violation of this section does not create an independent cause of action against an employer.

(f) Requires the Board to adopt rules to implement this section.

SECTION 9.04. Requires the Board to provide safety education services, and allows it to conduct seminars on health and safety, issue public service announcement on safety and publish information material on safety. This section allows the board to accept gifts and grants in a safety area from any source.

SECTION 9.05. Requires the director of the workers' safety and health division to act as the state risk manager to administer guidelines adopted by the Board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses, as provided in current law. As the risk manager, this division will identify property and liability losses of each state agency, identify the administrative costs of risk management incurred by each state agency, identify and evaluate the exposure of each state agency for property and liability losses and reduce such losses by each state agency. The cost of this services will be reimbursed by each state agency.

SECTION 9.06. Requires the workers' health and safety division to approve or disapprove labor-management safety committees established to qualify for workers' compensation insurance premium discounts under the insurance code.

ARTICLE 10. SELF-INSURANCE

SECTION 10.01. Contains definitions required for this Article for association, certified self-insurers, director, impaired employers, incurred liabilities for compensation, qualified claims serving contractor and self-insurer redemptions.

SECTION 10.02. Authorizes the Board to appoint a director of self-insurance and adopt rules as necessary to administer this article.

SECTION 10.03. Requires an applicant for a certificate to self-insure to submit an application with non-refundable fee of $1000; a certificate of authority must be issued within 60 days to applicants who meet requirements of this article.

SECTION 10.04. Establishes requirements for certification, including:

(a) Applicant must present evidence of sufficient financial strength and liquidity to insure that all obligations are promptly met and provides factors that the Board will consider in assessing financial strength and liquidity.

(b) Applicant must present a plan for claims administration acceptable to the Board and designate a qualified claims servicing contractor.

(c) Applicant must demonstrate the existence of an effective safety program at each business location.

(d) & (e) Applicant must submit contracts with any third-party providers of services; the Board is to approve or disapprove within 30 days. Board must specify reasons for dissapproval.

(f) Applicant must provide a security deposit for incurred liabilities in a combination of cash or negotiable securities of the United States or of this state, an irrevocable letter of credit, and/or a surety bond.

(g) Requires an applicant who posts a letter of credit and then wants to cancel such and substitute another one as security under this section to give the Board 60 days notice in writing before the date on which the original letter of credit is canceled.

(h) An estimate of incurred liabilities must be submitted and sworn to by a certified casualty actuary.

(i) The sum of the deposited securities must equal the greater of $300,000 or 125% of the applicant's incurred liabilities for workers' compensation.

(j) Applicant must provide excess insurance for liabilities above the self-insured retention in amounts required by the director, but at least $1 million of coverage per occurrence must be maintained and the director may require a higher amount if such is reasonable and necessary.

(k) If the applicant is a subsidiary, the parent must guarantee obligations imposed by this article.

(l) The Board shall issue a certificate of authority to applicants who meet requirements of this article and pay the application fee.

SECTION 10.05. A minimum unmodified premium of $250,000 in

this state or $1 million nationwide is required for certification to self-insure; the premium requirement is phased out at the rate of $50,000 per year.

SECTION 10.06. Provides for the deposit of securities with the state treasurer, the creation of a perfected security interest in favor of the director, the adjudication of disputes concerning the deposit, and the determination by the director of the appropriate method of payment of claims and claims administration.

SECTION 10.07. Provides that denial of a certificate must occur within 60 days; applicant is provided reasonable time to meet conditions for approval and may appeal the denial.

SECTION 10.08. Provides for a self-insurer's annual report and contents of the report, including payroll data, other financial and statistical data as required by the Board, evidence of sufficient financial ability, and the number of injuries and costs involved, as well as an estimate of future costs.

SECTION 10.09. Requires a self-insurer to maintain books and records as required by the Board and to make such available to the Board for inspection at its place of business or in Austin. Failure to allow inspection is a basis for revocation of a certificate of authority.

SECTION 10.10. Provides for a self-insurance regulatory fee to be deposited in the state treasury to pay the costs of administering this program.

SECTION 10.11. Requires each self-insurer to pay a tax equal to the premium tax paid by commercial insurance carriers under Article 4.10 of the Insurance Code and a maintenance tax under Article 12.04 of the Insurance Code for the support of the Board.

SECTION 10.12. Provides for a self-insurer to withdraw from self-insurance on approval of the Board if an adequate program to pay all incurred workers' compensation losses is established.

SECTION 10.13. A claim or suit brought by a workers' compensation claimant shall be brought against the certified self-insurer.

SECTION 10.14. A self-insurer is not prohibited from paying an insurance agent's commissions.

SECTION 10.15. Provides for revocation of a certificate for failure to comply with this article or rules of the Board; revocation does not relieve the obligation to the self-insurer's employees. Revocation must be on notice and hearing on a show cause basis.

SECTION 10.16. Establishes the Texas Certified Self-Insurer Guaranty Association; provides for a board of directors and for the Texas open meetings and open records acts to apply. The association is to create a trust fund of at least $1 million. Upon determination by the director of self-insurance that an employer has become impaired and that payment of benefits shall be through the guaranty association, the association shall begin the payment of obligations within 30 days; the association shall assess its members for the funds determined by the director to be required; the certificate of a member may be revoked for failure to pay the assessment.

ARTICLE 11. PROHIBITED ACTS; ENFORCEMENT

SECTION 11.01. Provides that no person may discriminate against an employee for filing a workers' compensation claim, hiring an attorney, instituting or causing the institution of a proceeding before the Board, or who is testifying, has testified, or is about to testify in a proceeding. An employer who violates this section is liable for reasonable damages and an employee is entitled to reinstatement to the same or equivalent position. Provides original jurisdiction in state district court to restrain violation of this section. Provides that liability of an employer under this section is not a benefit payable under this Act.

SECTION 11.02. A covered employer may not collect any premium or fee for workers' compensation insurance from an employee.

SECTION 11.03. An attorney may not lend money to a claimant represented by the attorney during the pendency of a claim, but he may assist the clamaint in obtaining a loan from another source. This prohibition does not exist under current law.

SECTION 11.04. A person commits a felony of the third degree if the person knowingly and intentionally (1) makes a false or misleading statement, (2) misrepresents or conceals a material fact, (3) fabricates, alters, conceals, or destroys a document, or (4) conspires to commit an act listed in (1) through (3), if such acts are committed to obtain or deny benefits.

SECTIONS 11.05-11.10 are reserved for expansion.

SECTION 11.11. Provides for administrative penalties and sanctions as follows:

(a) Provides that penalties or other sanctions may be imposed against health care providers, insurance carriers, attorneys, or any other person in the jurisdiction of the Board, including employees and employers.

(b) Sanctions may include a written reprimand, and referral to another regulatory agency for appropriate action, and suspension of: (1) practice before the Board; (2) a health care provider's right to remuneration under the Act; or (3) an administrative penalty.

(c) Provides for certain requirements for persons whose suspension is probated.

(d) Provides that in the case of suspensions of practice before the Board or receipt of remuneration and administrative penalties, a person is entitled to a hearing before the hearings division of the Board.

(e) Proceedings under this Article are subject to requirements for a contested case hearing; the Board is to prescribe rules under which certain penalties and sanctions are appealable to the Board.

(f) Sets out factors to be considered by the Board in determining the amount of an administrative penalty including the seriousness of the violation, previous history, the sanction or penalty necessary to deter future violations and any other appropriate matters.

(g)-(j) Provide for written notice of a violation for which an administrative penalty is to be assessed and procedures for hearing, appeal, and judicial review. Once the Board determines a

violation, the board shall notify the alleged violator of the violation and proposed penalties from which notice the alleged violator has 20 days to request a hearing or submit the amount of the penalty. If a hearing is requested, the Board must notify the person requesting it within 10 days in writing of the hearing which would be conducted by the hearings division within 20 days of the submission of the request. A hearing under this section is to be held under the provisions of Article 6 of the Act. After the hearing, if a violation is found to have occurred, the Board will enter a written order and notify the person in writing of the decision.

After such notice, the violator has 30 days to appeal and if he does, he must submit the amount assessed by the Board order to be held by the board in escrow until the judgment of the court. Failure to so submit shall waive the person's right to judicial review. If such amount is reduced or not assessed by the court, the Board shall return the amount due with interest.

(k) Amounts collected as penalties shall be deposited in the state treasury.

SECTION 11.12. Allows the Board to award a claimant additional monies if the carrier is found to have acted with malice or failed to deal fairly and act in good faith in the payment of benefits; the amount of such award may be the lessor of $15,000 or twice the benefits payable; an award under this section is the employee's exclusive remedy for malice or failure to deal fairly and act in good faith; awards paid under this section may not be used in the calculation of insurance premium rates. Current case law allows an injured party to sue an insurance carrier outside of the workers' compensation system for malice and bad faith with unlimited recovery.

ARTICLE 12. MISCELLANEOUS PROVISIONS

SECTION 12.01. Provides for claimant's attorney's fees of 25% of the difference between the amount of income benefits attained or ordered and those voluntarily paid or offered by the carrier at the conclusion of the benefit review conference, a minimum of $200 is provided and the Board is allowed to commute attorneys fees. This section is a departure from current law which allows an attorney to recover up to 25% of the total recovery, excluding medical costs and allows reimbursement of expenses at the Board level. If the matter goes to court, an attorney can recover up to 25% of the total recovery, excluding medical costs and reimbursement for expenses.

SECTION 12.02. Confidentiality is provided for workers' compensation claim files as in current law, except that the list of those entitled to information is expanded to include the Guaranty Association when it has assumed the role of an impaired employer under the Act, and the Texas Workers' Compensation Insurance Research Center. Allows the Board to set a fee to cover costs under this section.

SECTION 12.03. A general contractor who has workers' compensation insurance shall be treated as the employer of a subcontractor who is a sole proprieter, with no employees, for purposes of this Act.

SECTION 12.04. Provides for a maintenance tax to be assessed against workers' compensation insurance companies for the support of the Board; the tax shall not exceed two percent of gross premiums as reported to the State Board of Insurance and shall be collected and paid under the provisions of Article 5.68 of the Insurance Code.

SECTION 12.05. Provides that certain employees hired or residing and recruited in this state are entitled to benefits under the Act if injured in another state with one year after the employee leaves the state.

SECTION 12.06. Provides that an insurance contract to indemnify an employer against loss or damage from an injury to an employee which is compensable under this Act is void unless it covers liability for payment of compensation under this Act. This provision does not prohibit an employer who has elected not to obtain workers' compensation coverage from obtaining other insurance for the employer's employees if it is not represented as providing coverage under this Act.

SECTION 12.07. An employee's guardian may exercise the rights and privileges granted to employees under this Act if the employee is a minor or is otherwise legally incompetent.

SECTION 12.08. An employee or legal beneficiary who is not a citizen of the United States and who sustains a compensable injury is entitled to compensation under this Act and a consular officer of the county of which the alien is a citizen may represent such alien and receive payment for distribution.

SECTION 12.09. Provides for the proportionate payment of benefits by multiple carriers pending resolution of a dispute about which carrier is liable and provides for reimbursement for the share paid by a carrier determined not to be liable.

SECTION 12.10. Limits liability of a carrier with respect to any accident based on the allegation that it could have been prevented by action by the carrier for the prevention of accidents. This does not affect compensation otherwise due.

ARTICLE 13. AMENDMENTS

SECTION 13.01. Amends Article 5.76, Insurance Code, as follows:

(1) Changes the name of the "Texas Workers' Compensation Assigned Risk Pool" to the "Texas Workers' Compensation Pool", and redefines "rejected risk" as a risk with an estimated annual premium of $10,000 or more that cannot get insurance in the voluntary market and excludes risks qualifying for assignment under the new section 6 of this article;

(2) Requires the State Board of Insurance to appoint three ex officio, nonvoting members of the governing committee of the Texas Workers' Compensation Pool to represent employers, employees, and the State Board of Insurance; subjects the pool to the open meetings and open records laws;

(3) Provides for competitive bids for the selection of insurance carriers to service the pool; selection is by the State Board of Insurance based on rules and procedures established by the State Board of Insurance and limits serving companies to a company which writes at least 1/2% of the total voluntary market.

(4) Requires the State Board of Insurance to develop a plan to assign companies with estimated annual premiums of less than $10,000 and that are not classified as extra-hazardous to certain carriers rather than placing such risks in the pool; and

(5) Requires the State Board of Insurance to monitor the operation of the pool and to review each rejected risk to attempt

to find an insurer to voluntarily insure such risk, and to require the State Board of Insurance to adopt rules to implement this subsection.

SECTION 13.02. Adds Subchapter E to Chapter 88, Education Code, to create the Texas Workers' Compensation Insurance Research Center. (H.B. 2219--passed out of H. Bus. & Comm., 70th Leg.) to be operated by the Texas Engineering Experiment Station a part of Texas A&M, and The University of Texas School of Public Health at Houston to be funded by a maintenance tax assessed against carriers and certified self insurers.

SECTION 13.03. Adds the following articles to Subchapter D, Chapter 5, Insurance Code:

Article 5.55B. Requires the State Board of Insurance to adopt rules to require that insurance carriers offer employers an optional deductible plan or a range of deductibles for workers' compensation insurance. Requires the State Board of Insurance to perform an actuarial analysis for rate reductions, authorizes rulemaking by the State Board of Insurance to insure security of benefits and for servicing claims up to the deductible limit.

Article 5.60A. Requires the executive director of the Texas Workers' Compensation Board to testify at workers' compensation rate hearings conducted by the State Board of Insurance and allows close examination by the Board and any party to the hearing.

Article 5.65A. Requires insurance carriers to notify each policyholder of claims filed against the policy, proposals to settle a claim, and an administrative or judicial proceeding relating to the resolution of a claim, and to provide the policyholder with a list of claims against the policy at least 60 days before expiration of the policy or after written request by the policyholder.

SECTION 13.04. Amends Section 23.101(a), Government Code, to remove preferential settings in statutory county courts for appeals of final rulings and decisions of the Industrial Accident Board.

SECTIONS 13.05 to 13.32. Removes jurisdiction over appeals of final rulings and decisions of the Industrial Accident Board from county courts.

SECTIONS 13.33 to 13.55. Conforming amendments.

ARTICLE 14. REPEALER

This article lists statutes repealed under this Act.

ARTICLE 15. TRANSITION; EFFECTIVE DATE; EMERGENCY

SECTION 15.01. Provides for initial appointments of members of the Texas Workers' Compensation Board and provides that members of the Industrial Accident Board serving on that Board on August 31, 1989, may complete their terms.

SECTION 15.02. Creates the Labor-Business Advisory Council on Workers' Compensation and provides for the initial appointments to the advisory council and the expiration of terms on a staggered basis.

SECTION 15.03. Creates the Workers' Compensation Insurance Research Advisory Committee and provides for initial appointments.

SECTION 15.04. Changes the name of the Texas Industrial Accident Board to the Texas Workers' Compensation Board.

SECTION 15.05. Transfers the programs under Articles 5.55A and 5.76-1, Insurance Code, to the Texas Workers' Compensation Board, and requires the Board to promulgate rules relating to the transfer.

SECTION 15.06. Requires the equal opportunity policy statement required under this act to be filed by October 30, 1989.

SECTION 15.07. Provides that administrative penalties under this act are prospective only.

SECTION 15.08. Creates the subsequent injury fund and transfers all money and liabilities in the current second injury fund under Article 8306, Revised Statutes into this fund.

SECTION 15.09. Provides for the initial Board of Directors of the Texas Certified Self-Insurer Guaranty Association to be appointed by the Texas Workers' Compensation Board, and provides the Board does not have to process an application for self-insurance within 60 days of receipt until September 1, 1990.

SECTION 15.10. Makes the Bill effective September 1, 1989, and applies only to an injury for which the date thereof is on or after the effective date of the Act. The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may have been work related. Provides that the Board shall process claims for injuries prior to the effective date under the old law.

SECTION 15.11. Contains an emergency clause.

COMPARISON WITH ORIGINAL BILL

The amendments that the Business and Commerce Committee made to the original bill sponsored by R. Smith, are both stylistic and substantive and were made at the request of R. Smith, members of the committee, and representatives of various groups representing employers, employees, health care providers, insurance carriers, and others. Two hundred seventy-one (271) amendments were considered by the committee and one hundred forty-seven (147) were passed.

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. No change.

SECTION 1.02. Adds the definition of "course and scope of employment" to reflect current law. "Course and scope of employment" means an activity of any kind that originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in the affairs or business of the employer. The term "covered employer" was deleted from the Act in an attempt to have the term "employer" used more consistently throughout the Act. "Health care practitioner" was substituted for "physician" to reflect the expanded health care options under the Act and where "physician" is used in the Act in certain places, it is replaced by "health care practitioner." The definition of "employee" was replaced with one more close to the current law. The current definition of "injury" was placed into the Act. The definition of "health care" was amended to correct inconsistencies, including making it clear that health care provided by an unlicensed provider under the supervision of a physician is allowed. The definition of "insurance carrier" was changed to reflect the current definition of an insurance carrier under the Insurance Code. The definition of "maximum medical improvement" was changed to be based on the professional opinion of a health care practitioner instead of on reasonable medical probability. "Medical benefits" was redefined to include benefits which enhance the employee's ability to return to or retain employment, including any medical supplies such as a prosthesis or wheel chair. The definition of "settlement" was changed to prevent its confusion with "agreement" which has a different definition. "Wages" was changed to include the market value of board, lodging, laundry, fuel, and other advantages that can be estimated in money. The definition of "workers' compensation insurance" was clarified to make clear that the term includes the standard insurance coverage, as well as self insurance.

ARTICLE 2. TEXAS WORKERS' COMPENSATION BOARD

SECTION 2.01. No change.

SECTION 2.02. No change.

SECTION 2.03. The total restriction against a member of the Board being an employer or employed by a business regulated by the Board was changed to allow membership by a person who otherwise meets the requirements, but who may be involved in a business that has purchased workers' compensation insurance coverage.

SECTION 2.04. No change.

SECTION 2.05. No change.

SECTION 2.06. No change.

SECTION 2.07. No change.

SECTION 2.08. No change.

SECTION 2.09. No change.

SECTION 2.10. This section was amended to clarify the applicability of certain provisions of the Administrative Procedure and Texas Register Act (hereinafter APTRA) to the Act, as well as to make it clear that the Board can delegate its powers and duties, except for its rulemaking powers. This section was amended to add a new subsection (b) and subsequent subsections were redesignated.

SECTION 2.11. No change.

ARTICLE 3. ADVISORY COUNCIL

SECTION 3.01. This section was amended to make it clear that the Council would have six members, three each from business and labor organizations, and that the term of one labor and one business member expired each odd-numbered year.

SECTION 3.02. This section was changed to provide for the election of a chairman for the Council and to specify meetings of the Council on at least a quarterly basis and as further needed based on rules adopted by the Council.

ARTICLE 4. WORKERS' COMPENSATION COVERAGE

SECTION 4.01. (a) This was a new subsection added to provide a separate definition for "employer" for the purposes of employer election of coverage under this Article; the existing subsections were redesignated.

(b) This subsection was amended to reflect the fact that although workers' compensation insurance is voluntary, there are situations where it can be mandatory. This subsection was also changed to require written notification within a time period set by the Board of the election not to be covered.

(c) This subsection was changed to allow the Board to contract with the Texas Employment Commission or comptroller of public accounts for assistance in collecting notifications under Section 4.01(b).

(d) This subsection was added requiring notification by the employer to each employee of whether or not the employer has workers' compensation insurance. It requires a covered employer who elects to terminate without obtaining other coverage to notify each employee of such by 10 days after the termination. This subsection requires all notices under this Article to be in writing.

SECTION 4.02. (a), (b), and (c) No change.

(d) This subsection was changed to make an agreement by an employee to waive his right to the compensation void.

SECTION 4.03. (a) and (b) No change.

(c) This subsection was added to require a plaintiff in an action against an employer without workers' compensation insurance coverage to prove negligence of the employer or some employee, agent, or servant thereof for a work related injury.

SECTION 4.04. (a), (b), and (c) No change.

(d) The term "employee" was struck from line 14, page 18 of the original Bill. This amendment changed this subsection to allow the employer to reject coverage, which is the current law.

SECTION 4.05. No change.

SECTION 4.06. This section was added to reduce the liability of carriers for aggravation of previously existing occupational diseases; limiting liability to the total weeks of compensation payable as if the occupational disease were the sole cause of incapacity or death.

ARTICLE 5. BENEFITS

CHAPTER A. GENERAL PROVISIONS

SECTION 5.01. (a) This subsection was amended to adopt current law which makes workers' compensation insurance coverage available in the context of an injury caused by another employee. This subsection was also clarified to indicate that the exclusivity of workers' compensation also applies to the death of an employee. The amendment to the subsection also limited the availability of exemplary damages to a "surviving spouse or heirs of the body" which is current law.

(b) No change.

SECTION 5.02. (a) and (b) No change.

(c) This subsection was changed to add the requirement of Board approval to an assignment of death benefits.

SECTION 5.03. This section was renamed ALLOWABLE LIENS and language was added which clarifies how a lien can be perfected against benefits. Liens can only be perfected against income and death benefits. This amendment allows perfection of a lien for attorney's fees.

SECTION 5.04. (a) This subsection was changed to clarify what constitutes notice to the employer under the Act for an injury and an occupational disease.

(b) No change.

(c) This subsection was added to allow notice to be given not only to the employer but to an employee of an employer who holds a managerial or supervisory position.

(d) This subsection was added to make the employer who employed the person on the date of the last injurious exposures to the hazards of the disease, the employer for notice of the injury under this section.

SECTION 5.05. No change.

SECTION 5.06. This section was renamed EMPLOYER RIGHT TO CONTEST COMPENSATION and Subsection (d) was struck and renamed and numbered as Section 5.07. The following sections were renumbered.

SECTION 5.08. (a) Added the requirement that if the employee notifies the employer of an occupational disease under Section 5.04, the employer shall file a written report with the Board. This subsection was amended to make it clear that the employer's report to the Board of an injury is due on the eighth

day after the employee's absence from work for one day due to an injury or on the eighth day after the employer received notice of an occupational disease.

(b) This subsection was amended to add the employee's security number and the character of the employee's work to the list of information to be supplied in the employer's report.

SECTION 5.09. This section was amended to expand the Board's notice to an injured worker of the availability of vocational rehabilitation to include private providers registered with the Board.

SECTION 5.10. (a) This subsection was amended to allow the carrier not only to investigate, but to deny compensability with 60 days after notice of the injury even after payments have been made. The subsection was also changed to limit notification of initiation of payment to income and death benefits. This subsection was also changed to allow a carrier to reopen the compensability issue after 60 days on a showing by clear and convincing evidence that the claim was fraudulent.

(b) This subsection was changed to require written notice of the injury.

(c) This subsection was changed to subject the carrier to sanctions under Section 11.11 of this Act and Article 1.10 of the Insurance Code for refusing payment without reasonable grounds.

SECTION 5.11. This section was amended to add a notice requirement to the carrier and the Board when an employee or legal beneficiary elects to pursue a suit against a third party. This section was amended to allow for distribution of damages recovered and for attorney's fees for the employee's attorney if damages are recovered.

SECTION 5.12. No change.

CHAPTER B. MEDICAL BENEFITS

SECTION 5.21. (a) This subsection was amended to clarify that an injured employee is entitled to medical care, when needed, to cure or relieve pain, promote recovery, and enhance his ability to return to or retain employment, including the use of medical supplies or equipment necessary to the employee's ability to function, such as a prosthesis or a wheel chair.

(b) No change.

SECTION 5.22. No change.

SECTION 5.23. No change.

SECTION 5.24. No change.

SECTION 5.25. (a) The word "require" was changed to "order" with respect to the Board's actions regarding medical exams. A requirement that the director of the hearings division approve an order of surgery was added.

(b) This subsection was amended to limit an order for autopsy to a death claim involving an occupational disease and provides an order be made for such only after notice and hearing.

(c) This subsection was amended to require a carrier to pay costs for a procedure ordered under this section.

(d) This subsection was amended to provide for a hearing and appeal for a person who refuses to comply with an order under this section.

SECTION 5.26. (a) No change.

(b) This subsection was amended to limit required exams by a carrier to one. Any additional exams must be subject to Board approval.

(c) No change.

SECTION 5.27. This section was changed to make it clear that a heart attack must be triggered by an on-the-job, work related event.

SECTION 5.28. This was a new section added to the Act which requires a carrier to pay undisputed health care fees in 30 days and allows a benefit review conference for disputed charges.

CHAPTER C. INCOME BENEFITS

SECTION 5.41. (a) The word "compensable" was added to modify injury to make it clear that income benefits are only available for a compensable injury under this section.

(b) No change.

(c) This subsection was amended to make it clear that impairment rating is based on the percentage of the injury to the whole body, not just the injured part of the body.

SECTION 5.42. (a), (b), (c), and (d) No change.

(e) This subsection was amended to expand the "return to work" opportunities of an injured worker and requires certification by the treating health care practitioner of the injured employee's ability to return to some form of work.

SECTION 5.43. (a) This subsection was amended to provide that if impairment certification is made by anyone other than the treating physician, the certification must be submitted to the treating physician for his agreement or disagreement.

(b), (c), (d), and (c) No change.

SECTION 5.44. No change.

SECTION 5.45. Added subsections (a) and (b), which clarify that the loss for lifetime benefits includes total loss and provides that benefits are payable at the rate of 66 2/3 percent of employee's average weekly wage. The terms "mental illness and mental retardation" in Section (a)(6) were changed to "insanity" and "imbecility", which are terms used in current law.

SECTION 5.46. This section was changed to make it clear that advances of benefits by the Board based on hardship are against any income benefits not just impairment benefits.

SECTION 5.461. This was a new section added to the Act which provides that when a carrier hasn't initiated payment of benefits an employer can still pay wages or benefits to the injured employee and be reimbursed for such, equal to benefits due the employee once the carrier starts paying benefits under this Act.

SECTION 5.47. (a) No change.

(b) This subsection was changed to add a provision to take into account the number of hours normally worked per week in helping to determine the average weekly wage.

(c) No change.

(d) This subsection was amended to allow adjustment of the average weekly wage of a seasonal employee as often as necessary.

(e), (f), and (g) No change.

SECTION 5.48. No change.

SECTION 5.49. (a) and (b) No change.

(c) The second "the" in the first line of the subsection was removed to correct a syntatical error.

SECTION 5.50. No change.

SECTION 5.51. This section was amended to clarify that "medical treatment" not calculated or intended to bring about recovery does not bar the injured worker from the commutation of impairment income benefits. This section now makes it clear that an injured worker may commute his impairment income benefits although he is still receiving treatment, such as medication which is not intended to bring about a recovery.

CHAPTER D. DEATH BENEFITS

SECTION 5.61-5.65. No change.

ARTICLE 6. ADJUDICATION OF DISPUTES

SECTION 6.01. (a) The word "final" was deleted in this subsection to make it clear that any decision, not just a final one, in a contested case may be appealed.

(b) No change.

SECTION 6.02. (a) The subsection was changed to allow the Board on its own motion to order a benefit review conference.

(b) and (c) No change.

(d) This subsection was amended to include health care providers as a party that can request a benefit review conference.

(e) This subsection was changed to make venue for a benefit review conference at a place within 75 miles of the employee's residence at the time of the injury.

(f) This subsection was changed to add a requirement that the Board's notice of benefit review conference be mailed to the parties at least 10 days prior to the conference. It further added a provision to allow a party disputing a determination of whether good cause existed or not by a benefit review office be subject to hearing and judicial review.

(g) and (h) No change.

(i) This subsection was amended to provide the basis for the director of hearings to approve a settlement arising out of a benefit review conference. It also allows the director to disapprove settlements and provides the procedure to follow if that happens.

(j) No change.

(k) This subsection adds the requirement that the report filed by the benefit review officer be file-stamped for evidenciary purposes.

SECTION 6.03 (a) This subsection was changed to make it clear that unresolved issues from the benefit review conference and issues not reused there may be heard in a contested case hearing. This subsection was also changed to allow resolved issues to be considered on agreement of the parties or on a showing of good cause. This section was further changed to provide that a request for a contested case hearing must be filed within 52 days after the benefit review conference report is filed with the hearings director. The director is then required to mail the report within 7 days after it is filed to the parties.

(b) This subsection adds Section 17 of APTRA to the Act.

(c) and (d) No change.

SECTION 6.04(a) This subsection was amended to change the timetable for an appeal of a decision of a hearings officer in a contested case. Notice of appeal must be filed within 37 days after the decision is filed with the hearings director.

(b), (c), (d), (e), (f), (g), and (h) No change.

SECTION 6.05. No change.

SECTION 6.06. This section was amended to clarify the continuing jurisdiction of the Board and limits changing any order on appeal except as provided for in this Act.

SECTION 6.07. No change.

ARTICLE 7. ISSUES RELATED TO HEALTH CARE PROVIDERS; MEDICAL REVIEW

SECTION 7.01. (a) No change.

(b) This subsection was amended to restate current law concerning fee guidelines, allowing the Board to consider increased security of payments provided by current law. New Subsections (4) and (5) were added to help bring forward current laws as to medical cost containment. These provisions allow the Board to compel production of documents, charge a fee for access, evaluate health care treatment, fees, or charges and to charge a health care provider who exceeds the guidelines for fees.

(c) This subsection was changed to allow the review of guidelines under this section.

(d) No change.

(e) This subsection was amended to establish the data base provided to allow the Board to detect practices and patterns of charges and treatment protocols and to allow the Board to use the data to control medical costs.

(f), (g), (h), (i), and (j) No change.

(k) This was a new subsection added to the Act reflecting current law on interest in unpaid medical costs over 60 days due.

SECTION 7.02. No change.

SECTION 7.03. No change.

SECTION 7.04. This section was changed to require disclosure by a referring health care provider only if he owns more than 5% in another health care provider that he has referred an employee to.

ARTICLE 8. COMPLIANCE MONITORING

SECTION 8.01. (a) This subsection was changed to remove the word "injured" in 8.01(1) and changed (2) to persons claiming death benefits.

(b) No change.

SECTION 8.02. This section was changed to limit audits of insurance company records to be only of workers' compensation insurance records of the company.

SECTION 8.03. This was a new section added to the Act which allows the Board to monitor the carrier's payment to health care providers and claimants who receive medical services to insure timely payment. The following sections were renumbered by the addition of this section.

SECTION 8.04. No change.

SECTION 8.05. No change.

ARTICLE 9. WORKERS' HEALTH AND SAFETY

SECTION 9.01. (a) No change.

(b) This subsection was changed to require the certification of employers who complete safety programs under this section for rate reductions as set out in the Act.

(c) No change.

(d) This subsection was amended to insure that the Board does not have to go through the formal rulemaking process in order to insure that loss control services are provided to an employer.

(e) and (f) No change.

SECTION 9.02. (a) No change.

(b) This subsection was amended by adding new subsection (3) which added the description of the work site to the data base of information to be collected and renumbered the other subsections. Subsections (7) and (8) were changed to include death benefits.

(c) No change.

SECTION 9.03. (a) No change.

SECTION 9.03(b) No change.

SECTION 9.03(c) No change.

SECTION 9.03(d) No change.

(e) This subsection was amended to make it clear that an employer's failure to comply with the Act as it relates to safety does not create an independent cause of action against the employer. The remedy would be sanctions under the Act.

(f) No change.

SECTION 9.04. No change.

SECTION 9.05. No change.

SECTION 9.06. No change.

ARTICLE 10. SELF-INSURANCE

SECTION 10.01. No change.

SECTION 10.02. No change.

SECTION 10.03. No change.

SECTION 10.04. (a)-(f) No change.

(g) This was a new subsection added to the Act which requires 60 days' notice of cancellation of a letter of credit and redesignates the other subsections (h)-(l).

(h) and (i) No change.

(j) This subsection was amended to require $1,000,000 excess coverage per occurrence at a minimum and to allow the director to set a higher amount if necessary.

(k) and (l) No change.

SECTION 10.05. No change.

SECTION 10.06. No change.

SECTION 10.07. No change.

SECTION 10.08. This section was amended to add death and burial benefits to the required annual report.

SECTION 10.09. No change.

SECTION 10.10. This section deleted the word "insurance" since it's the Workers' Compensation Board rather than the State Board of Insurance that regulates self insurers.

SECTION 10.11. (a) This subsection was changed to reference Article 4.10 of the Insurance Code instead of Article 5.68.

(b) No change.

(c) This subsection was changed to reflect that a self insurer is liable for more than a single tax levied at more than a single rate.

(d) No change.

SECTION 10.12. No change.

SECTION 10.13. No change.

SECTION 10.14. No change.

SECTION 10.15. No change.

SECTION 10.16. No change.

ARTICLE 11. PROHIBITED ACTS: ENFORCEMENT
CHAPTER A. PROHIBITED ACTS

SECTION 11.01. This section was amended to broaden the antidiscrimination provisions to include any person rather than just the employer. This section was also changed to expand the trigger for antidiscrimination sanctions by including not only an employee who institutes a proceeding but who causes the institution of a proceeding. This section also invokes the jurisdiction of a district court to restrain a violation of this section. This was done by adding a new Subsection (c). This section also was changed to protect employees who not only testify in a workers' compensation proceeding but who has testified or is about to testify. New Subsection (d) was added to exempt liability under this section from benefits under the Act.

SECTION 11.02. No change.

SECTION 11.03. No change.

SECTION 11.04. No change.

SECTION 11.11. (a)-(c) No change.

(d) This subsection was changed to clarify that if the Board intends to suspend a person's right to receive remuneration under this Act there must be a hearing.

(e) No change.

(f) This subsection was amended to make the same criteria that are considered by the Board in assessing an administrative penalty applicable as well as to administrative sanctions.

(g) No change.

(h) This subsection was amended to require 10 days notice of a hearing under this section. The hearing must be held within 20 days after it is requested. A hearing under this section is to be conducted as a hearing is under Article 6 of the Act and can be appealed under the same provisions.

(i), (j), (h) No change.

SECTION 11.12. This section was changed to delete the phrase "bad faith" and replaced it with "failure to deal fairly and act in good faith". It requires a carrier to pay damages under this section. This section was also changed to clarify that the employee's cause of action is against the carrier, not the employer for actions that fall under this section.

ARTICLE 12. MISCELLANEOUS PROVISIONS

SECTION 12.01. This section was changed to provide a specific date for computing attorney's fees; which is at the conclusion of the benefit review conference.

SECTION 12.02. (a)-(b) No change.

(c) This subsection was changed to reflect that information under this section is supplied to the Board not released by it.

(d) This subsection was changed to limit information available to the self insurer guaranty association to files applicable to a self insurer which is impaired.

(e) and (j) No change.

(k) This subsection was amended by adding subsection (1) to allow the Board to charge a fee for its services under this section.

SECTION 12.03. This section was changed to further define a subcontractor to mean one with no employees. This makes such a person covered under the general contractor's workers' compensation insurance.

SECTION 12.04-12.05. No change.

SECTION 12.06. This section was changed to reflect current law allowing a non-subscribing employer to obtain insurance coverage if that coverage is not represented to be workers' compensation coverage.

SECTION 12.07. No change.

SECTION 12.08. This section was amended to make it clear that a legal beneficiary of a resident or non-resident alien is entitled to death benefits. This section was also renamed ALIEN EMPLOYEES; LEGAL BENEFICIARIES.

SECTION 12.09. No change.

SECTION 12.10. This was a new section added to the Act to limit a carrier's liability for accidents that might have been prevented by safety programs.

ARTICLE 13. AMENDMENTS

SECTION 13.01. No change.

SECTION 13.02. This section was changed to make it clear that a self insurer pays a tax equal to the maintenance tax paid by a carrier to support the research center created under the Act.

SECTION 13.03. This section was changed by adding three new subsections. This section requires the State Board of Insurance to perform an analysis for the purpose of determining the amount of rate reduction applicable to policies with various deductibles. This section gives the State Board of Insurance rulemaking authority to insure security for benefits to employees up to the deductible amounts; as well as rulemaking authority to allocate responsibility between carriers and policyholders for servicing claims up to the deductible amount. This section was also amended to make it clear that executive director of the Texas Workers' Compensation Board is subject to cross-examination by all parties at a rate hearing at the State Board of Insurance involving workers' compensation insurance rates.

SECTION 13.04-13.54. No change.

SECTION 13.55. This section was changed to reflect the correct citation in the Act from 11.05 to 11.01 of the Act.

ARTICLE 14. REPEALER

SECTION 14.01. Subsection 16 was changed to correct the citation.

ARTICLE 15. TRANSITION

EFFECTIVE DATE; EMERGENCY

SECTION 15.01. This section was changed to establish the initial terms of members of the Labor-Business Advisory Council.

SECTION 15.02. No change.

SECTION 15.03. This section was corrected to properly name the Workers' Compensation Insurance Research Committee.

SECTION 15.04-15.07. No change.

SECTION 15.08. This section was amended to include that liabilities of the second injury fund would be carried forward to the subsequent injury fund created by the Act.

SECTION 15.09. No change.

SECTION 15.10. This section was changed to make the Act applicable to an injury that occurs on or after the effective date of the Act and to an occupational disease that was known or should have been known to be related to employment.

SUMMARY OF COMMITTEE ACTION

Public notice was posted for public hearings on H.B. 1 on February 8, 1989 in accordance with Rule 4, Section 12 of the House Rules. The full committee met in public hearing on February 13, 1989 to take public testimony and recessed to a time certain. The full committee met in a public hearing on February 14, 1989 to take public testimony and recessed to a time certain. The full committee met in a public hearing on February 15, 1989 to take public testimony and recessed to a time certain. The full committee met in a public hearing on February 16, 1989 to take public testimony and recessed to a time certain. The full committee met in a public hearing February 20, 1989 to take public testimony and recessed to a time certain. The full committee met in a public hearing on February 22, 1989 to take public testimony and recessed to a time certain.

Pursuant to a recess, the full committee met in a public hearing on February 27, 1989 to consider amendments.

Pursuant to a recess, the full committee met in a public hearing on February 28, 1989 to consider amendments.

Pursuant to a recess on February 28, 1989, the full committee met in a public hearing on March 1, 1989. Representative Hill laid out the complete committee substitute. A motion was made to incorporate into the complete substitute amendments which had been adopted by the committee but inadvertently omitted, and technical and stylistic changes recommended by Legislative Council. There being no objection, the motion was adopted. Representative Hill moved that the substitute be adopted. There being no objection, the motion was adopted. Representative Hill moved that H.B. 1, as substituted, be reported favorably to the full House, with the recommendation that it do pass. The motion prevailed by the following vote: 7 Ayes, 1 Nay, 1 Present, Not Voting, and 0 Absent.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 3, 1989

TO: Honorable Steven D. Wolens, Chair
Committee on Business and Commerce
House of Representatives
Austin, Texas

In Re: Committee Substitute for House Bill No. 1

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 1 (relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to the reform of the Workers' Compensation System. The bill creates the Texas Workers' Compensation Board to replace the current Industrial Accident Board.

The bill changes the case adjudication process, by providing a multi-level administrative appeals process with substantial evidence standard of review at the judicial level. The bill eliminates trial de novo. The bill establishes the maximum weekly benefit to be the annual average weekly wage of manufacturing production workers in Texas as determined by the Texas Employment Commission (TEC). The new Texas Workers' Compensation Board would include divisions on compliance, medical review, safety, and hearings and appeals. The board would appoint members to a Labor-Business Advisory Council on Workers' Compensation and to special advisory committees.

The board would impose a rate not to exceed two percent of the gross workers' compensation insurance premiums to pay the expenses of the board in regulating the workers' compensation insurance program.

The bill would establish a worker's compensation self-insurance program. Certified self-insurers shall pay an annual fee to cover the administrative costs of the program.

The bill would establish a state risk manager and require all state agencies to develop risk management programs for the purpose of reducing property and liability losses.

I. State Workers' Compensation Payments.

The probable fiscal implications of implementing the provisions of the bill concerning payments made by the state to state employees and the administrative cost of programs during each of the first five years following passage is estimated as follows:

Fiscal Year	Current and Projected Cost of State Workers' Compensation Payments Program	Probable Program Cost After the Enactment of H.B. No. 1	Probable Savings to the State From the General Revenue Fund
1990	$44,490,240	$44,490,240	-0-
1991	53,388,288	53,388,288	-0-
1992	64,069,945	58,727,117	$ 5,338,828
1993	76,879,134	64,599,828	12,279,306
1994	92,254,961	64,599,828	27,655,133

Fiscal Year	Increase in Administrative Cost to the Office of the Attorney General Out of the General Revenue Fund	Increase in Administrative Cost to the State Department of Highways and Public Transportation Out of the State Highway Fund No. 6	Change in Number of State Employees from FY 1989
1990	$476,440	$182,850	+ 21
1991	545,710	182,850	+ 23
1992	614,980	182,850	+ 25
1993	614,980	182,850	+ 25
1994	614,980	182,850	+ 25

Probable savings in State workers' compensation payments to the State Highways and Public Transportation Department, Texas A&M University System and The University of Texas System cannot be determined.

II. The Texas Workers' Compensation Board.

The amount currently set forth for the administration of the Workers' Compensation Program in the Industrial Accident Board in the General Appropriations Bill, as introduced, is $16,327,583 for fiscal year 1990 and $15,569,437 for fiscal year 1991. This is an approximate 52 percent increase in this program over the 1989 budgeted level. The appropriation would be financed from the Workers' Compensation Tax, Federal Funds and Other Funds and would provide for approximately 494 employees.

The bill requires a substantial reorganization from the Industrial Accident Board to the Texas Workers' Compensation Board. In addition to the amounts appropriated in the General Appropriation Act, as introduced, for the 1990-91 biennium, the probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the General Revenue Fund*	Probable Cost Out of Federal Funds	Probable Cost Out of Fees
1990	$28,228,608	$1,026,967	$473,226
1991	38,354,976	1,026,967	643,761
1992	36,528,234	1,026,967	633,828
1993	35,400,874	1,026,967	633,828
1994	35,288,256	1,026,967	633,828

Fiscal Year	Probable Cost Out of Interagency Contracts	Probable Cost Out of Other Funds	Change in Number of State Employees from FY 1989
1990	$ 589,844	$1,020,000	+ 647
1991	1,129,204	1,125,000	+ 873
1992	1,084,744	1,050,000	+ 869
1993	1,084,744	1,050,000	+ 840
1994	1,084,744	1,050,000	+ 834

*Note: The General Revenue Fund under this section of the fiscal note is reimbursed by the maintenance tax on gross workers' compensation premiums up to the cap of 2%. The board would set a rate of 1.50% to fund $44.6 million in FY1990 and a rate of 1.94% to fund $53.9 million in FY1991 from the workers' compensation maintenance tax. The amount to be funded from the tax rate would not exceed the 2.0% rate for fiscal years 1992 through 1995 and thereafter.

The tax rate set by the board, federal monies, and other funds would allow for an estimated agency budget for the workers' compensation program of approximately $47.7 million in fiscal year 1990 and $57.9 million in fiscal year 1991, or over six times the amount of the 1989 budget. It might be reasonable to assume that the Legislature accomplish such significant budget expansion over a period of time rather than in one biennium. This would also allow a phase-in

of the increase in the tax rate.

Note: The Texas Workers' Compensation Board would also be responsible for the administration and payment of claims under the Crime Victims Compensation Act.

III. The Texas Worker's Compensation Insurance Research Center.

The bill, also, would establish the Texas Workers' Compensation Insurance Research Center operated jointly by the Texas Engineering Experiment Station and The University of Texas School of Public Health at Houston. The center would gather data, conduct research studies and develop programs relating to workers' compensation. The center would be funded by an amount not to exceed one-tenth percent of gross workers' compensation insurance premiums. The center would need approximately $1.2 million to operate each year. This amount would include estimated salaries for consulting services from faculty and graduate students conducting research, as well as for the executive director and a two-person professional staff and associated administrative costs. These costs would be funded by a tax rate of .41% in fiscal year 1990 and .43% in fiscal year 1991.

IV. State Board of Insurance.

The bill would create a new division to monitor the operation of the Workers' Compensation Assigned Risk Pool within the State Board of Insurance and would transfer to the Texas Workers' Compensation Board the Loss Control Section of the Casualty Division of the State Board of Insurance.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the Insurance Board Operating Fund No. 36	Probable Savings to the Insurance Board Operating Fund No. 36	Change in Number of State Employees from FY 1989
1990	$2,160,995	$330,079	+ 22
1991	1,422,919	289,547	+ 22
1992	1,422,919	289,547	+ 22
1993	1,422,919	289,547	+ 22
1994	1,422,919	289,547	+ 22

Similar annual fiscal implications for Parts I, II, III, and IV would continue as long as the provisions of the bill are in effect.

V. Courts.

The fiscal implications to units of local government cannot be determined, however, county court dockets would be reduced as a result of not having to set hearings and trials on appeals of final rulings and decisions of the Workers' Compensation Board.

State district courts would have appellate jurisdiction under the substantial evidence standard. The probable number of appeals cannot be determined.

Source: Department of Highways and Public Transportation;
Texas A&M University System; State Board of Insurance;
Texas Employment Commission; Attorney General's Office;
Texas Rehabilitation Commission; Department of Health;
Industrial Accident Board;
LBB Staff: JO, JWH, AL, MM, BL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

February 19, 1989

REVISED

TO: Honorable Steven D. Wolens, Chair
Committee on Business and Commerce
House of Representatives
Austin, Texas

In Re: House Bill No. 1
By: Richard Smith

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1 (relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to the reform of the Workers' Compensation System. The bill creates the Texas Workers' Compensation Board to replace the current Industrial Accident Board.

The bill changes the case adjudication process, by providing a multi-level administrative appeals process with substantial evidence standard of review at the judicial level. The bill eliminates trial de novo. The bill establishes the maximum weekly benefit to be the annual average weekly wage of manufacturing production workers in Texas as determined by the Texas Employment Commission (TEC). The new Texas Workers' Compensation Board would include divisions on compliance, medical review, safety, education and training, and hearings and appeals. The board would appoint members to a Labor-Business Advisory Council on Workers' Compensation and to special advisory committees.

The board would impose a rate not to exceed two percent of the gross workers' compensation insurance premiums to pay the expenses of the board in regulating the workers' compensation insurance program.

The bill would establish a worker's compensation self-insurance program. Certified self-insurers shall pay an annual fee to cover the administrative costs of the program.

The bill would establish a state risk manager and require all state agencies to develop risk management programs for the purpose of reducing property and liability losses.

I. State Workers' Compensation Payments.

The probable fiscal implications of implementing the provisions of the bill concerning payments made by the state to state employees and the administrative cost of programs during each of the first five years following passage is estimated as follows:

Fiscal Year	Current Cost of State Workers' Compensation Payments	Probable Payments After the Enactment of H.B. No. 1	Probable Savings to the State From the General Revenue Fund
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Probable savings in State workers' compensation payments to the State Highways and Public Transportation Department, Texas A&M University System and The University of Texas System cannot be determined.

II. The Texas Workers' Compensation Board.

The amount currently set forth for the administration of the Workers' Compensation Program in the Industrial Accident Board in the General Appropriations Bill, as introduced is $16,327,583 for fiscal year 1990 and $15,569,437 for fiscal year 1991. This is an approximate 52 percent increase in this program over the 1989 budgeted level. The appropriation would be financed from the Workers' Compensation Tax, Federal Funds and Other Funds and would provide for approximately 494 employees.

The bill requires a substantial reorganization from the Industrial Accident Board to the Texas Workers' Compensation Board. In addition to the amounts appropriated in the General Appropriation Act, as introduced, for the 1990-91 biennium, the probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the General Revenue Fund*	Probable Cost Out of Federal Funds	Probable Cost Out of Fees
1990	$25,021,765	$1,200,000	$400,000
1991	32,736,750	1,200,000	420,000
1992	35,333,982	1,200,000	440,000
1993	34,605,923	1,200,000	460,000
1994	34,467,245	1,200,000	480,000

Fiscal Year	Probable Cost Out of Interagency Contracts	Probable Cost Out of Other Funds	Change in Number of State Employees from FY 1989
1990	$ 514,684	$600,000	+ 630
1991	1,064,139	620,000	+ 859
1992	1,019,739	600,000	+ 855
1993	1,019,739	580,000	+ 828
1994	1,019,739	550,000	+ 824

*Note: The General Revenue Fund under this section of the fiscal note is reimbursed by the maintenance tax on gross workers' compensation premiums up to the cap of 2%. The board would set a rate of 1.65% to fund $40.6 million in FY1990 and a rate of 1.90% to fund $47.6 million in FY1991 from the workers' compensation maintenance tax. The tax rate would not exceed the 1.9% rate for fiscal years 1992 through 1995 and thereafter.

The tax rate set by the board, federal monies, and other funds would allow for an estimated agency budget for the workers' compensation program of approximately $44 million in fiscal year 1990 and $51 million in fiscal year 1991, or over five times the amount of the 1989 budget. It might be reasonable to assume that the Legislature accomplish such significant budget expansion over a period of time rather than in one biennium. This would also allow a phase-in

of the increase in the tax rate.

Note: The Texas Workers' Compensation Board would also be responsible for the administration and payment of claims under the Crime Victims Compensation Act.

III. The Texas Worker's Compensation Insurance Research Center.

The bill, also, would establish the Texas Workers' Compensation Insurance Research Center operated jointly by the Texas Engineering Experiment Station and The University of Texas School of Public Health at Houston. The center would gather data, conduct research studies and develop programs relating to workers' compensation. The center shall be funded by an amount not to exceed one-tenth percent of gross workers' compensation insurance premiums. The center would need approximately $1.2 million to operate each year. This amount would include estimated salaries for faculty and graduate students, as well as for the executive director and a two-person professional staff and associated administrative costs.

IV. State Board of Insurance.

The bill would create a new division to monitor the operation of the Workers' Compensation Assigned Risk Pool within the State Board of Insurance and would transfer to the Texas Workers' Compensation Board the Loss Control Section of the Casualty Division of the State Board of Insurance.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

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Similar annual fiscal implications for Parts I, II, III, and IV would continue as long as the provisions of the bill are in effect.

V. Courts.

The fiscal implications to units of local government cannot be determined, however, county court dockets would be reduced as a result of not having to set hearings and trials on appeals of final rulings and decisions of the Workers' Compensation Board.

State district courts would have appellate jurisdiction under the substantial evidence standard. The probable number of appeals cannot be determined.

Source: Department of Highways and Public Transportation;
Texas A&M University System; State Board of Insurance;
Texas Employment Commission; Attorney General's Office;
Texas Rehabilitation Commission; Department of Health;
Industrial Accident Board
LBB Staff: JO, JWH, AL, MM, BL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

February 13, 1989

TO: Honorable Steven D. Wolens, Chair
Committee on Business and Commerce
House of Representatives
Austin, Texas

In Re: House Bill No. 1
By: Richard Smith

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1 (relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to the reform of the Workers' Compensation System. The bill creates the Texas Workers' Compensation Board to replace the current Industrial Accident Board. Members of the board hold office for staggered terms of six years. A member of the board may not receive remuneration for serving on the board. However, the member would be entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the board, not to exceed any limit established in the General Appropriations Act.

The bill changes the case adjudication process, by providing a multi-level administrative appeals process with substantial evidence standard of review at the judicial level. The bill eliminates trial de novo. The bill establishes the maximum weekly benefit to be the annual average weekly wage of manufacturing production workers in Texas as determined by the Texas Employment Commission (TEC). The new Texas Workers' Compensation Board would include divisions on compliance, medical review, safety, education and training, and hearings and appeals.

The board would impose a rate not to exceed two percent of the gross workers' compensation insurance premiums to pay the expenses of the board in regulating the workers' compensation insurance program.

The bill would establish a worker's compensation self-insurance program. Certified self-insurers shall pay an annual fee to cover the administrative costs of the program.

The maximum tax rates, matching federal monies, and other funds would allow for an agency budget of approximately $60 million each year, or over six times the amount of the 1989 budget. It might be reasonable to assume that the Legislature accomplish such significant budget expansion over a period of time rather than in one biennium. This would also allow a phase-in of the increase in the tax rate.

The amount currently set forth for the administration and employee benefits of the Workers' Compensation Program in the Industrial Accident Board in the General Appropriations Bill, as introduced is $16,327,583 for fiscal year 1990 and $15,569,437 for fiscal year 1991. This is an approximate 52 percent increase in this program over the 1989 budgeted level. The appropriation would be financed from the Workers' Compensation Tax, Federal Funds and Other Funds and would provide for approximately 494 employees.

The bill, also, would establish the Texas Workers' Compensation Insurance Research Center operated jointly by the Texas Engineering Experiment Station and The University of Texas School of Public Health at Houston. The center would gather data, conduct research studies and develop programs relating to workers' compensation. The center shall be funded by an amount not to exceed one-tenth percent of gross workers' compensation insurance premiums. The center would need approximately $1.2 million to operate each year.

The bill would create a new division to monitor the operation of the

Workers' Compensation Assigned Risk Pool within the State Board of Insurance and would transfer to the Texas Workers' Compensation Board the Loss Control Section of the Casualty Division of the State Board of Insurance.

The fiscal implications to units of local government cannot be determined.

Source: Department of Highways and Public Transportation;
Texas A&M University System; State Board of Insurance;
Texas Employment Commission;
LBB Staff: JO, JWH, AL, MM, LV

HOUSE ENGROSSMENT

89 MAR 10 PM 5:04
HOUSE OF REPRESENTATIVES

By Smith of Brazos, et al. H.B. No. 1

A BILL TO BE ENTITLED

AN ACT

relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. Articles 1-11 of this Act may be cited as the Texas Workers' Compensation Act.

SECTION 1.02. DEFINITIONS. In this Act:

(1) "Adjuster" means a person licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(2) "Advisory council" means the Labor-Business Advisory Council on Workers' Compensation.

(3) "Agreement" means the resolution by the parties to a dispute based on a workers' compensation claim of one or more issues regarding the claim. The term does not include a settlement.

(4) "Benefit" means a benefit received by a claimant based on a compensable injury. The term includes a medical benefit, an income benefit, and a death or burial benefit.

(5) "Board" means the Texas Workers' Compensation Board.

(6) "Child" means a son, daughter, stepson, or

stepdaughter. The term includes an adopted child.

(7) "Commute" means to pay in a lump sum.

(8) "Compensable injury" means an injury that arises in the course and scope of employment for which compensation is payable under this Act.

(9) "Compensation" includes medical benefits, income benefits, death benefits, or burial benefits.

(10) "Course and scope of employment" means an activity of any kind or character that originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes activities conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of such transportation are under the control of the employer; or

(iii) the employee is directed in his employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of his employer if such travel is also in furtherance of personal or private affairs of the employee unless:

(i) the trip to the place of occurrence of the injury would have been made even had there been no personal or

private affairs of the employee to be furthered by the trip; and

(ii) the trip would not have been made had there been no affairs or business of the employer to be furthered by the trip.

(11) "Dependent" means an individual who is classified as a dependent for federal income tax purposes under 26 U.S.C. Sec. 152.

(12) "Designated health care practitioner" means a health care practitioner who is appointed by the parties or the board to resolve a dispute as to the disability or impairment of an injured employee.

(13) "Disability" means the inability to obtain and retain substantial gainful employment because of the physical incapacity to perform the functions required for employment, when a compensable injury was a producing cause of the incapacity.

(14) "Employee" means each person in the service of another under any contract of hire, whether express or implied, or oral or written. The term includes an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business. The term also includes a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer. The term does not include a master of, or a seaman on, a vessel engaged in interstate or foreign commerce, or a person whose employment is not in the usual course and scope

of the employer's business. A person who is an employee for purposes of this Act and is engaged in work that otherwise may be legally performed is an employee despite any license, permit, or certificate violation arising under state law or municipal ordinance or violation of a law regulating wages, hours, or work on Sunday.

(15) "Employer" means, unless otherwise specified, a person that makes a contract of hire, that employs one or more employees, and that has workers' compensation coverage, either through self-insurance obtained as provided by this Act or through private insurance obtained from a licensed insurance carrier. The term includes a governmental entity that self-insures, either individually or collectively.

(16) "Health care" includes all reasonable and necessary medical aid, examinations, treatments, diagnoses, and evaluations. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, nursing, physical therapy practices, and psychological services provided by a health care provider;

(B) the services of a hospital or other health care facility;

(C) prescription drugs, medicines, and other remedies; and

(D) medical and surgical supplies, appliances, artificial members, and prosthetics.

(17) "Health care facility" means a hospital,

emergency clinic, outpatient clinic, or other facility providing health care.

(18) "Health care practitioner" means a licensed individual who provides or renders health care or a nonlicensed individual who provides or renders health care under the supervision of a physician.

(19) "Health care provider" means a health care facility or health care practitioner.

(20) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from the compensable injury and is reasonably presumed to be permanent.

(21) "Income benefit" means a payment made to an employee for disability or impairment.

(22) "Injury" means damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm.

(23) "Insurance carrier" means:

(A) a person authorized and admitted by the State Board of Insurance to do insurance business in Texas pursuant to a certificate of authority that includes authorization to write workers' compensation insurance;

(B) a certified self-insurer under this Act; or

(C) a governmental entity that self-insures, either individually or collectively.

(24) "Intoxication" means physical or mental impairment resulting from the introduction into the body of:

(A) an alcoholic beverage, as that term is defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as those terms are defined by the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes);

(C) a dangerous drug, as defined by Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes);

(D) an abusable glue or aerosol paint, as defined by Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes); or

(E) any similar substance, the use of which is regulated under state law.

Intoxication does not include physical or mental impairment resulting from the introduction into the body of a substance taken pursuant to and in accordance with a prescription written for the employee by the employee's treating practitioner.

(25) "Legal beneficiary" means a spouse, child, grandchild, or other relative of a deceased employee who is eligible to receive benefits under this Act.

(26) "Maximum medical improvement" means the point after which further recovery from, or lasting improvement to, an injury can no longer reasonably be anticipated, based on the reasonable professional opinion of a health care practitioner.

(27) "Medical benefits" means the provision of health care reasonably required by the nature of a compensable injury and

intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational diseases before the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment, including any medical supplies or equipment necessary to the maintenance of the employee's ability to function, such as a prosthesis or a wheelchair.

(28) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. The term includes other diseases or infections that naturally result from the work related disease, and damage or harm to the physical structure of the body that occurs as the result of repetitious, physically traumatic activities that occur over time and arise in the course and scope of employment. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is a reasonable incident to a compensable injury or occupational disease.

(29) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(30) "Settlement" means a final resolution of all the

issues in a workers' compensation claim that are permitted to be resolved under the terms of this Act.

(31) "Wages" includes every form of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and other advantages that can be estimated in money, that the employee receives from the employer as part of his remuneration.

(32) "Workers' compensation insurance coverage" means an insurance policy to secure the payment of workers' compensation benefits as provided by this Act and includes coverage obtained through self-insurance as provided by this Act.

ARTICLE 2. TEXAS WORKERS' COMPENSATION BOARD

SECTION 2.01. BOARD. (a) The Texas Workers' Compensation Board is composed of six members appointed by the governor with the advice and consent of the senate.

(b) Three members must be employers of labor and three members must be wage earners. In making appointments to the board, the governor shall attempt to reflect the social, geographic, and economic diversity of the state. To ensure balanced representation, the governor may consider the geographic location of a prospective appointee's domicile, the prospective appointee's experience as an employer or wage earner, the number of employees employed by a prospective member who would represent employers, and the type of work performed by a prospective member who would represent wage earners, and shall consider those factors in appointing members to fill vacancies on the board. In making the appointments, the governor shall consider recommendations made in

groups that represent employers or wage earners.

(c) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(d) A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

SECTION 2.02. APPLICATION OF SUNSET ACT. The board is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the board is abolished and this Act expires September 1, 2001.

SECTION 2.03. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A person is not eligible for appointment as a member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care or insurance;

(2) is employed by or participates in the management of a business entity or other organization regulated by the board, other than as an employer who has obtained workers' compensation insurance coverage, or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board, other than as an employer who has obtained workers' compensation insurance coverage, or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible

goods, services, or funds from the board, other than remuneration or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of law, health care, or insurance may not be a member of the board or an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

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

(d) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for remuneration on behalf of a profession related to the operation of the board.

(e) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in

promoting their common interest.

SECTION 2.04. TERMS; VACANCY. (a) Members of the board hold office for staggered terms of six years. Three members' terms expire February 1 of each odd-numbered year.

(b) If a vacancy occurs during a term, the governor shall appoint a replacement to fill the unexpired part of the term.

SECTION 2.05. CHAIRMAN. The board shall elect one of its members to serve as chairman for a term of two years. The chairman may vote on all matters before the board.

SECTION 2.06. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by Section 2.03 of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or incapacity; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

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

(c) If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 2.07. REMUNERATION. A member of the board may not receive remuneration for serving on the board. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the board, not to exceed any limit established in the General Appropriations Act.

SECTION 2.08. MEETINGS. (a) The board shall meet at least once in each quarter of the calendar year.

(b) The board may meet at other times at the call of the chairman or as provided by the rules of the board.

SECTION 2.09. EXECUTIVE DIRECTOR; PERSONNEL. (a) The board shall appoint an executive director to administer this Act in accordance with the policies set by the board. The board shall organize the board's personnel into the administrative divisions the board determines necessary, which must include the divisions established by this Act. The board shall appoint the directors of the various divisions of the board. The executive director or the executive director's designee shall hire the other employees of the board.

(b) The executive director shall hire persons to conduct benefit review conferences and contested case hearings under this Act. The executive director shall determine reasonable qualifications for benefit review officers, who are not required to

be licensed to practice law, and for hearings officers who conduct contested case hearings, who must be licensed to practice law in this state. The executive director also shall hire qualified persons licensed to practice law in this state to serve on agency appeals panels under Section 5.01(b) of this Act.

(c) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting.

(d) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

(e) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the board's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board's work force of all persons for whom federal or state guidelines encourage a more equitable

balance; and

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

(f) A policy statement prepared under Subsection (e) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

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

SECTION 2.091. LIAISONS. (a) The board shall employ one person to act as a liaison for employers and one person to act as a liaison for employees.

(b) In addition to any other duties prescribed by the board, the employer liaison shall advise and assist employers in dealing with the board.

(c) In addition to any other duties prescribed by the board, the employee liaison shall advise and assist employees in dealing with the board and shall ensure that a claimant has all information necessary to initiate and pursue a claim for benefits as provided by this Act.

(d) The executive director shall supervise the activities of the employer and employee liaisons.

SECTION 2.10. GENERAL POWERS AND DUTIES OF BOARD. (a) The board may adopt rules as necessary for the implementation and enforcement of this Act in accordance with Sections 1-12, except Section 4(a)(3) and 4(b), Administrative Procedure and Texas

Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The procedures set forth in Section 19A, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), apply to the enforcement of an order, decision, or rule of the board.

(c) The board may delegate all powers and duties, except rule-making and except as otherwise provided by this Act, to employees of the agency.

(d) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board. The agency is composed of the board, the executive director, and the professional, technical, and clerical personnel appointed by the board or employed by the executive director.

(f) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(g) The board may accept gifts, grants, or donations as provided by rules adopted by the board.

SECTION 2.11. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board shall keep an information file about each written complaint filed with the board that is unrelated to a specific workers' compensation claim. If such a complaint is filed with the board, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(c) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on issues under the general jurisdiction of the board.

(d) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental handicap may be provided reasonable access to workers' compensation benefits.

ARTICLE 3. WORKERS' COMPENSATION COVERAGE

SECTION 3.01. VOLUNTARY COVERAGE; EMPLOYER ELECTION. (a) For purposes of this section, "employer" means a person that employs one or more employees.

(b) Except as otherwise provided by this subsection or other law, an employer may elect to obtain workers' compensation

insurance coverage. An employer shall obtain workers' compensation insurance to cover an employee who is employed on a construction project if the project is the result of a contract between the employer and the United States, a federal agency, this state, a state agency, a political subdivision of this state, or any other public entity. Except for public employers covered under other law, an employer may obtain coverage through a licensed insurance carrier or through self-insurance as provided by Article 9 of this Act. An employer who elects to obtain coverage is subject to the provisions of this Act.

(c) An employer who does not elect to obtain coverage must notify the board in writing, within a time period, and as prescribed by board rule, that the person does not elect to obtain coverage. The board shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the board about the nature of the employer's business. The board may contract with the Texas Employment Commission or the comptroller of public accounts for assistance in collecting the notification required under this section. These agencies shall cooperate with the board in enforcing this section.

(d) An employer shall notify each employee as to whether or not the employer has workers' compensation insurance coverage. The employer shall notify a new employee at the time the employee is hired. An employer who has workers' compensation insurance coverage shall notify all employees at least annually. A covered employer who elects to terminate employer's workers' compensation

insurance coverage, or whose coverage is canceled, must notify each employee of the termination or cancellation of the coverage not later than the 10th day after the date on which the termination or cancellation is effective. An employer who does not have workers' compensation coverage shall notify each employee individually at least semiannually and shall include in the notice a statement prescribed by the board that explains to the employee the consequences of the employer's lack of coverage. All employer notifications required under this subsection must be made in writing.

SECTION 3.02. EMPLOYEE ELECTION; WAIVER OF RIGHT TO COMPENSATION VOID. (a) Except as otherwise provided by this Act, unless the employee gives notice as provided by Subsection (b) of this section, an employee of an employer waives the employee's right of action at common law or under any statute of this state to recover damages for personal injuries or death sustained in the course of the employment.

(b) An employee who desires to retain the employee's right of action to recover those damages shall notify the employer in writing that the employee does not want to be covered under this Act and retains all rights of action. The employee shall notify the employer not later than the fifth day after the date the employee begins the employment. If the employer is not a covered employer at the time of the employment but later obtains workers' compensation insurance coverage, to retain the right of action the employee must notify the employer in writing not later than the fifth day after the date on which the employee receives notice in

writing from the employer that the employer has obtained the coverage.

(c) An employee of an employer who elects to retain the right of action, and the legal beneficiaries of that employee, may bring a cause of action for damages for injuries sustained in the course of the employment under common law or under a statute of this state. Notwithstanding Section 3.03 of this Act, the cause of action is subject to all defenses available under the common law and the statutes of this state.

(d) An agreement by an employee to waive the employee's right to compensation under this Act is void.

SECTION 3.03. COMMON LAW DEFENSES. (a) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) The employer may defend the action on the ground that the injury was caused by an intentional act of the employee to bring about the injury or while the employee was in a state of intoxication.

(c) In all such actions against an employer who does not

have workers' compensation insurance coverage, it shall be necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of his employment.

SECTION 3.04. GENERAL APPLICATION; EXCEPTIONS. (a) This Act applies to actions to recover damages for personal injuries or death sustained by employees whose employers have workers' compensation insurance coverage.

(b) An employee is not entitled to benefits under this Act based on an injury that was caused by an intentional act of the employee to bring about injury or that occurred while the employee was in a state of intoxication.

(c) The following employees are not covered by this Act:

(1) domestic servants;

(2) casual employees engaged in employment incidental to a personal residence;

(3) except as provided by Section 3.05 of this Act, farm or ranch employees; or

(4) an employee covered by a method of compensation established under federal law.

(d) An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees otherwise exempted from coverage under Subsection (c) of this section. Self-insurance or purchase by the employer of workers' compensation insurance applicable to that employee or classification of employees constitutes acceptance by the employer of the rights and responsibilities imposed under this Act as of the

effective date of the certificate of authority to self-insure or the insurance policy and as long as the certificate or policy remains in effect. An employer who does not obtain coverage for exempt employees is not deprived of the common law defenses listed under Section 3.03 of this Act.

SECTION 3.05. APPLICATION TO FARM OR RANCH EMPLOYEES. (a) This Act applies to actions to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker covered by Subsection (b) of this section; or

(3) employed by an employer with a gross annual payroll for the preceding year in the amount provided by Subsection (c) of this section.

(b) To be covered by this Act, a farm or ranch employee who is a seasonal worker must be employed on a truck farm, orchard, or vineyard or employed by an employer with a gross annual payroll for the preceding year in an amount provided by this subsection. The preceding year's gross annual payroll must be equal to or exceed the prior year's required payroll adjusted for inflation, but not less than $25,000. To adjust for inflation, the comptroller of public accounts shall develop a consumer price index for this state. The comptroller shall certify the applicable index factor to the board before October 1 of each year. The board shall adjust the gross annual payroll requirement accordingly. A seasonal worker is covered by this law as if the seasonal worker were a migrant worker if:

(1) the seasonal worker is working for a farmer, ranch operator, or labor agent who employs migrant workers; and

(2) the seasonal worker is doing the same work at the same time at the same location as migrant workers.

(c) To be covered by this law, a farm or ranch employee other than a migrant or seasonal worker must:

(1) for the years before 1991, be employed by an employer with a gross annual payroll for the preceding year of at least $50,000; and

(2) for 1991 and thereafter, be employed by an employer:

(A) with a gross annual payroll in the amount required for coverage of seasonal workers under Subsection (b) of this section; or

(B) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(d) For purposes of Subsections (b) and (c) of this section, the gross annual payroll of an employer includes any amount paid by the employer to a labor agent for that agent's services and for the services of migrant or seasonal workers, but does not include:

(1) wages paid to the employer or a member of the employer's family, if the employer is a sole proprietor;

(2) wages paid to a partner or a member of a partner's family, if the employer is a partnership; or

(3) wages paid to a shareholder or a member of a shareholder's family, if the employer is a corporation in which all shareholders are family members.

(e) If a labor agent furnishes migrant or seasonal workers, the labor agent is liable under this law as if the labor agent were the employer of the workers, without regard to the right of control or other factors used to determine an employer-employee relationship. However, if the labor agent is not an employer, the person with whom the labor agent contracts for the services of the migrant or seasonal workers is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by any of the migrant or seasonal workers as provided by this Act. For that purpose, the migrant or seasonal workers are considered the employees of the person with whom the labor agent contracts, and that person may obtain workers' compensation insurance coverage for those workers as provided by this Act.

(f) A labor agent must notify each person with whom the agent contracts of whether or not the agent is an employer. If the agent is an employer, the agent must present evidence of the workers' compensation insurance coverage to each person with whom the agent contracts.

(g) If migrant or seasonal workers are covered by workers' compensation insurance, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this Act.

(h) A person who subscribes to a workers' compensation insurance policy covering farm or ranch employees may cover himself, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual

to be covered, and the elected coverage continues while the policy is in effect and the named individual is endorsed on the policy. A member of an employer's family is exempt from coverage under the policy unless covered voluntarily as provided by this section.

(i) In this section:

(1) "Agricultural labor" means the planting, cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.A. Sec. 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who labor for the benefit of a third party.

(4) "Migrant worker" means an individual who is employed in agricultural labor of a seasonal or temporary nature and who is required to be absent overnight from the worker's permanent place of residence.

(5) "Person" means an individual, corporation, or association.

(6) "Seasonal worker" means an individual who is employed in agricultural or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from the worker's permanent place of residence.

(7) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

(j) This section does not affect the application or interpretation of this Act as it relates to persons engaged in activities previously determined not to be farm or ranch labor.

(k) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this section is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of a person acting as an independent contractor. For the purposes of this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of that employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

SECTION 3.06. AGGRAVATION OF PREVIOUSLY EXISTING DISEASES. Where an occupational disease is aggravated by any other noncompensable disease or infirmity, or where incapacity or death from any other noncompensable cause is aggravated, prolonged, accelerated, or in anywise contributed to by an occupational disease, the number of weeks of compensation payable by the insurance carrier shall be reduced and limited to such proportion only of the total number of weeks of compensation that would be payable if the occupational disease were the sole cause of the incapacity or death, as such occupational disease, as a causative factor, bears to all the causes of such incapacity or death, such reduction in compensation to be effected by reducing the number of weekly payments of compensation for which the insurance carrier is liable.

SECTION 3.07. APPLICATION TO INDEPENDENT CONTRACTORS. (a) In this section:

(1) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of, or method of payment to, any employee; and

(C) is required to furnish or have his

employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(2) "General contractor" means a person who has undertaken to procure the performance of work or services, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or an analogous term.

(3) "Subcontractor" means a person who has contracted with a general contractor to perform all or any part of the work or services that a general contractor has undertaken to perform.

(b) For the purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a general contractor who is an employer under this Act is an employee of that general contractor, unless the person is operating as an independent contractor or is hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(c) A subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this Act if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(d) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor. If a general contractor elects to provide that coverage, then, notwithstanding Section 10.02 of this Act, the actual premiums, based on payroll, that are paid or incurred by the general contractor for the coverage may be deducted from the contract price or any other amount owed to the subcontractor by the general contractor.

(e) If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the purpose and intent to avoid liability as an employer under this Act, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation, and shall also have a separate right of action against the subcontractor, which right of action does not affect the employee's right to compensation under this Act.

(f) This section does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to cease or change unsafe work practices.

SECTION 3.08. LIABILITY OF GENERAL CONTRACTOR FOR CERTAIN SUBCONTRACTORS. (a) If a general contractor has workers' compensation insurance to protect the general contractor's employees, and if, in the execution of any work in the course and scope of the general contractor's business, the general contractor

enters a contract with a subcontractor who is a sole proprietor with no employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this Act.

(b) The general contractor and subcontractor may enter into a written agreement regarding the payment of the premiums for coverage of the subcontractor as provided by Section 3.07(d) of this Act.

ARTICLE 4. BENEFITS

CHAPTER A. GENERAL PROVISIONS

SECTION 4.01. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b) of this section, a recovery of workers' compensation benefits under this Act is the exclusive remedy of an employee or legal beneficiary against the employer or an agent, servant, or employee of the employer for the death of or a work related injury sustained by a covered employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer, or by the employer's gross negligence. For the purposes of this section, "gross negligence" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

SECTION 4.02. EXEMPT FROM LEGAL PROCESS; ASSIGNABILITY. (a) Benefits received under this Act are exempt from garnishment, attachment, judgment, and other actions or claims.

(b) Except as provided by Subsection (c) of this section, benefits are not assignable.

(c) A legal beneficiary may, with board approval, assign the

right to death benefits if the assignment is executed not later than six months after the date on which the right to the death benefits is established.

SECTION 4.03. ALLOWABLE LIENS. (a) Except as provided by board rule, income or death benefits are not subject to any lien or other claim. The board may allow as a lien or claim against income or death benefits:

(1) an attorney's fee for representing an employee or legal beneficiary in any matter arising under this Act;

(2) court ordered child support; or

(3) a subrogation interest established under this Act.

(b) The board by rule shall establish the priority of liens and claims authorized under this section.

SECTION 4.04. NOTICE OF INJURY TO EMPLOYER. (a) An employee who sustains a work related injury other than an occupational disease shall notify the employer not later than the 30th day after the date on which the injury occurs. If the injury is an occupational disease, the employee shall notify the employer not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment.

(b) An employee's failure to notify the employer as required under Subsection (a) of this section relieves the employer and the employer's insurance carrier of liability under this Act unless:

(1) the employer or carrier has actual knowledge of the injury;

(2) the board determines that good cause exists for

failure to give notice in a timely manner; or

(3) the employer or carrier does not contest the claim.

(c) The notice required in this section may be given to the employer or any employee of the employer who holds a supervisory or management position.

(d) When the injury is an occupational disease, the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease.

(e) The Texas Workers' Compensation Board shall design and produce a sign giving notice to employees of the requirements of this section of this Act as pertaining to them. The employer must post these signs in a conspicuous place in the workplace for a period of five years from the effective date of this Act. The board shall adopt rules to implement this section.

SECTION 4.05. EMPLOYER RECORD. (a) Each employer shall maintain a record of all employee injuries reported by an employee or otherwise made known to the employer. Maintenance of a record as required by this section does not constitute an admission by the employer that the injury did occur or that any fact reported in the record is true.

(b) The employer shall allow the board reasonable access to the record.

(c) The board may adopt rules relating to the information that must be contained in an employer record.

SECTION 4.06. EMPLOYER RIGHT TO CONTEST COMPENSABILITY. (a) An employer may contest the compensability of an injury even if the

insurance carrier has initiated payments to the claimant or has otherwise accepted liability for payment of the benefits as provided under Section 4.10(a) of this Act. An employer who desires to contest compensability must request a benefit review conference under Section 5.02 of this Act on the issue of the compensability of the injury not later than the 30th day after the date on which the carrier accepts liability.

(b) The resolution of a dispute as to compensability is separate from the processing of the claim by the carrier, who may not suspend the payment of benefits based on the employer's action.

(c) If the board determines that the injury was not compensable, the insurance carrier shall expunge the claim from the employer's loss records and shall reimburse the employer for the costs incurred by the employer in disputing the claim. The carrier may not reflect the loss or the expense of the claim in any information compiled for ratemaking purposes, and the State Board of Insurance may not consider those losses or expenses in establishing rates.

SECTION 4.07. RIGHT TO NOTICE. An employer and employee are entitled to notification by the board of any benefit review conference, contested case hearing, or review by an agency appeals panel relating to a compensable injury incurred by an employee of an employer.

SECTION 4.08. EMPLOYER REPORT. (a) If an injury results in the absence of the employee from work for more than one day or if the employee notifies the employer of an occupational disease as provided by Section 4.04 of this Act, the employer shall file a

1 written report with the board and the carrier. The employer shall
2 file the report required by this subsection not later than the
3 eighth day after:
4 (1) the employee's absence from work for one day due
5 to an injury; or
6 (2) the employer receives notice that the employee has
7 contracted an occupational disease.
8 (b) The report must include:
9 (1) the name and business address of the employer;
10 (2) a description of the nature of the employer's
11 business;
12 (3) the name, age, and sex of the injured employee;
13 (4) the social security number of the employee;
14 (5) the character of work in which the employee was
15 engaged at the time of the injury;
16 (6) the occupation of the employee;
17 (7) the date and time of the injury or date of the
18 first distinct manifestation of an occupational disease;
19 (8) the nature and cause of the injury or disease; and
20 (9) any other information required by board rule.
21 (c) A report filed under this section does not constitute an
22 admission by the employer of any information contained in the
23 report.
24 (d) On receipt of the employer report, the board shall
25 provide the employee with a written statement that briefly
26 describes the procedures relating to workers' compensation
27 benefits. The statement must include:

(1) the name of the board;

(2) the address of the board's main administrative office;

(3) the telephone number of a board office to call for assistance;

(4) a description of the services provided by the board; and

(5) a brief description of an employee's rights and responsibilities under this Act.

SECTION 4.09. VOCATIONAL REHABILITATION REFERRAL. (a) The board shall analyze each report of injury received under Section 4.08 of this Act to determine if the injured employee would be assisted by vocational rehabilitation. If the board determines that the injured employee would be assisted, the board shall notify the injured employee in writing of the services and facilities available through the Texas Rehabilitation Commission and private providers of vocational rehabilitation registered with the board. The board shall notify the Texas Rehabilitation Commission and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(b) The board shall cooperate with the Texas Rehabilitation Commission in the provision of services and facilities to employees by that commission.

(c) A private provider of vocational rehabilitation services may register with the board.

SECTION 4.10. INITIATION OF COMPENSATION; CARRIER'S REFUSAL.

(a) An insurance carrier obligated to pay compensation under this Act shall pay promptly. If the carrier does not contest compensability of the injury on or before the 60th day after the date on which the carrier is notified of the injury, the carrier waives its right to contest the compensability. The initiation of payments by a carrier does not affect the right of the carrier to continue to investigate or deny the compensability of the injury during the 60-day period. If the carrier does not initiate payment or file a notice of refusal in a timely manner as required by this Act, the carrier waives the right to contest the compensability of the injury under this Act. The carrier shall notify the board in writing of the initiation of income or death benefit payments in the manner prescribed by board rules. Notwithstanding the terms of this section, the board may, on a showing of clear and convincing evidence that a claim was fraudulent, allow a carrier to reopen the issue of compensability.

(b) Not later than the 14th day after the date on which the insurance carrier receives written notice of the injury, the carrier either shall begin the payment of benefits as required under this Act or shall notify the board, the employer, and the employee in writing of its refusal to pay. A notice of refusal to pay must include a request for a benefit review conference under Section 5.02 of this Act.

(c) The carrier's notice must specify the grounds for the refusal. The grounds specified in the notice constitute the only basis for the carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly

discovered evidence that could not reasonably have been discovered at an earlier date. If the board determines that the carrier did not have reasonable grounds for the refusal, the carrier is subject to sanctions as provided by Section 10.11 of this Act and Article 1.10, Insurance Code.

SECTION 4.11. SUBROGATION. (a) If a third party is liable to pay damages for an injury that is compensable under this Act, the employee or legal beneficiary may seek damages from the third party. An employee or legal beneficiary who seeks damages from a third party remains entitled to pursue a claim for workers' compensation benefits under this Act.

(b) If the employee or legal beneficiary elects to seek damages from a third party, notice of the election shall be given by certified mail to the insurance carrier and the board. If an action is filed by the employee or legal beneficiary, a copy of the original petition shall be sent to the insurance carrier and the board.

(c) An insurance carrier that is liable for the payment of benefits to that employee is subrogated to the rights of the employee or legal beneficiary against the third party.

(d) If under the provisions of this Act, a state special fund is liable for the payment of the benefits, the board is subrogated to the rights of the employee or legal beneficiary against the third party.

(e) Damages recovered from a third party under this section shall be distributed as follows:

(1) the costs and reasonable attorney's fees shall be

paid proportionately by the employee, the carrier, and the board, as appropriate;

(2) the carrier and the subsequent injury fund, as appropriate, shall be reimbursed for any compensation paid; and

(3) any remaining balance shall be paid to the injured employee or the legal beneficiary.

(f) After the recovery has been distributed as provided, no payment of compensation shall be made to or on behalf of the employee or legal beneficiary until the amount of further compensation equals the remaining balance paid to the employee or beneficiary under Subsection (e)(3) of this section. Thereafter, compensation shall be resumed.

(g) Attorney's fees under this section shall be subject to the approval of the court and may not exceed 33 percent of the total amount recovered.

SECTION 4.12. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death.

SECTION 4.13. EMPLOYER LIABILITY TO THIRD PARTY. Except as provided by Section 7(b), Chapter 41, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1436c, Vernon's Texas Civil Statutes), if an action for damages is brought by an injured employee, the legal beneficiary of a deceased employee, or an insurance carrier, against a third party liable to pay damages for the injury as provided by Section 4.11 of this Act, and the action results in a judgment against the third party or a settlement by the third party, the employer is not liable to the third party for

1 any reimbursement or damages based on the judgment or settlement
2 unless the employer executed, before the injury occurred, a written
3 agreement with the third party to assume the liability.
4 [Sections 4.14-4.20 reserved for expansion]
5 CHAPTER B. MEDICAL BENEFITS
6 SECTION 4.21. ENTITLEMENT TO MEDICAL BENEFITS. (a) An
7 injured employee is entitled to all health care reasonably required
8 by the nature of the compensable injury as and when needed. The
9 employee is specifically entitled to health care that:
10 (1) cures or relieves pain;
11 (2) promotes recovery; or
12 (3) enhances the ability of the employee to return to
13 or retain employment, including medical supplies or equipment
14 necessary to the maintenance of the employee's ability to function,
15 such as a prosthesis or a wheelchair.
16 (b) An insurance carrier's liability for medical benefits
17 may not be limited or terminated by agreement or settlement.
18 SECTION 4.22. CHOICE OF HEALTH CARE PROVIDER; EFFECT OF
19 EMPLOYEE NONCOMPLIANCE. (a) The employee is entitled to the
20 employee's initial choice of health care provider. An initial
21 choice of a health care provider made by the employer or the
22 insurance carrier, or medical treatment provided to an injured
23 employee in an emergency situation, does not constitute the
24 employee's choice for purposes of this section.
25 (b) A subsequent choice of health care provider by the
26 employee is subject to the approval of the insurance carrier. The
27 denial of approval by the insurance carrier of the employee's

subsequent choice of health care provider is subject to review by the board.

(c) A referral made by the employee's initial choice of health care provider that is medically reasonable or necessary does not constitute a change in the employee's initial choice for the purposes of this section and is not subject to the approval of the insurance carrier.

(d) Except as otherwise provided by this Act, the board, after notice and hearing, may relieve an insurance carrier of liability for medical benefits furnished by a health care provider or other person that is selected by an employee in a manner inconsistent with the requirements of this section.

(e) The limitations imposed by this section do not apply:

(1) if surgical or other procedures require ancillary medical services; or

(2) when the employee desires a second opinion on the appropriateness of the diagnosis or treatment.

(f) The insurance carrier may not require the employee to use pharmaceutical services designated by the carrier. The carrier shall notify the injured employee, on a form prescribed by the board, that the employee is entitled to the employee's choice of provider of pharmaceutical services.

SECTION 4.23. REPORTS BY HEALTH CARE PROVIDER. The board by rule shall adopt reasonable requirements for reports required to be filed with the board by health care providers.

SECTION 4.24. BURDEN OF PROOF FOR CONTINUING MEDICAL BENEFITS. If, for two consecutive years, an employee does not

1 receive health care for a compensable injury, whether or not paid
2 for by the insurance carrier, the employee has the burden of proof
3 to establish that any additional medical care is required and
4 directly related to the compensable injury.

5 SECTION 4.25. REQUIRED MEDICAL PROCEDURES; AUTOPSY. (a) To
6 resolve a medical dispute in a claim, a benefit review officer or
7 hearings officer may order an employee to submit to a medical
8 examination, including an examination by a designated health care
9 practitioner, or to obtain health care considered reasonably
10 necessary. Surgery may be ordered only if, based on reasonable
11 medical evidence, the surgery will substantially improve the
12 condition of the employee. An order for surgery may be entered
13 only by the director of the hearings division.

14 (b) When, in a claim for benefits for death from an
15 occupational disease, an autopsy is necessary to determine the
16 cause of death, a hearings officer may, after notice and hearing,
17 order the legal beneficiaries of a deceased employee to permit an
18 autopsy. A legal beneficiary is entitled to have a representative
19 present at an autopsy ordered under this section.

20 (c) The board shall require the insurance carrier to pay the
21 costs of a procedure ordered under this section.

22 (d) If a person fails to comply with a procedure ordered
23 under this section, the board, after notice and hearing and for as
24 long as the person remains out of compliance, may deny the person
25 access to further proceedings before the board and may order the
26 carrier to suspend or reduce income or death benefits. If a person
27 refuses to comply with a procedure ordered under this section, the

1 person is entitled to administrative hearings and judicial review
2 in the manner provided for the resolution of other disputes under
3 Article 5 of this Act.

4 SECTION 4.26. REQUIRED MEDICAL EXAMINATIONS. (a) The board
5 may require the employee to submit to medical examinations if there
6 is a dispute about the appropriateness of the health care received
7 by the employee, the disability of the employee, the percentage of
8 impairment caused by the compensable injury, or analogous issues.

9 (b) The insurance carrier may require the employee to submit
10 to a medical examination conducted by a health care provider chosen
11 by the carrier. A carrier may require an employee to submit to
12 additional medical examinations only with the prior written
13 approval of the board. A referral made by the carrier's choice of
14 health care provider that is reasonable or necessary does not
15 constitute a change in the carrier's choice for the purposes of
16 this subsection and does not require the prior approval of the
17 board.

18 (c) The board shall adopt rules regulating the actions of
19 the carrier under this section and establishing reasonable
20 compliance requirements for employees.

21 (d) The employee is entitled to have a health care provider
22 of the employee's choice present at the carrier's expense at an
23 examination required by the insurance carrier.

24 SECTION 4.27. COMPENSABILITY OF HEART ATTACKS. A heart
25 attack is a compensable injury under this Act only if:

26 (1) the attack can be identified as:

27 (A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors.

SECTION 4.28. PAYMENT OF HEALTH CARE PROVIDER. (a) Unless the amount of the payment or the entitlement to payment is disputed by the carrier, an insurance carrier shall pay a fee charged by a health care provider not later than the 30th day after the date of receipt by the carrier of a charge for services rendered by the provider.

(b) To dispute the fee charged by the health care provider, the carrier must request a benefit review conference not later than the 10th day after the receipt of the provider's charge for the services in dispute.

[Sections 4.29-4.40 reserved for expansion]

CHAPTER C. INCOME BENEFITS

SECTION 4.41. INCOME BENEFITS; DETERMINATION BY BOARD. (a) An employee is entitled to income benefits to compensate the employee for impairment or disability caused by the compensable injury.

(b) Except as otherwise provided by this Act, income benefits shall be paid on a weekly basis. Entitlement to income benefits under this chapter terminates on the death of the

employee.

(c) The board shall adopt rules and guidelines for the determination of the existence and degree of an employee's impairment or disability. An employee's impairment rating is based on the percentage of physical impairment to the whole body caused by the injury, modified to reflect the effects that the employee's age, education, and work experience may have on the employee's ability to obtain or retain substantial gainful employment. Modifications must be based on objective criteria. The board by rule shall adopt formulas relating to modifications of impairment for the purposes of this Act. All determinations of impairment and disability must be made in accordance with the rules, guidelines, and formulas adopted by the board.

SECTION 4.42. TEMPORARY DISABILITY INCOME BENEFITS. (a) An employee who is totally or partially disabled by a compensable injury is entitled to temporary disability income benefits beginning on the eighth day of disability. On the initiation of compensation as provided under Section 4.10(b) of this Act, the insurance carrier shall pay temporary disability income benefits as provided by this section.

(b) Temporary disability income benefits continue until the earlier of:

(1) the employee reaching maximum medical improvement; or

(2) the expiration of 401 weeks.

(c) Except as provided by Subsection (e) of this section, temporary disability income benefits are payable at the rate of

66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.48 of this Act.

(d) If the disability continues for at least 28 days, the employee is also entitled to temporary disability income benefits for the first seven days of disability.

(e) An employee who returns to work or is offered a position of employment by the employer, or any other employer, that the treating health care practitioner has certified the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, but who has not reached maximum medical improvement, is entitled to temporary disability income benefits at the rate of 66-2/3 percent of the difference between the employee's average weekly wage and the average weekly earnings in the position that the employee is performing or has been offered.

SECTION 4.43. IMPAIRMENT INCOME BENEFITS. (a) After the employee has been certified by a health care practitioner as having reached maximum medical improvement, the certifying practitioner shall evaluate the condition of the employee, using the guidelines adopted by the board, to determine the percentage of impairment caused to the employee by the injury. If the certification and evaluation are performed by a health care practitioner other than the employee's treating practitioner, the certification and evaluation shall be submitted to the treating practitioner and the treating practitioner shall indicate agreement or disagreement with the certification and evaluation. The certifying health care practitioner shall issue a written report to the board, the

employee, and the insurance carrier certifying that maximum medical improvement has been reached and stating the percentage of impairment. The insurance carrier shall pay the employee impairment income benefits based on that percentage of impairment as modified under Section 4.41(c) of this Act or, if the carrier disputes the percentage of impairment, based on its assessment of the correct percentage.

(b) An employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement and continues until the earliest of:

(1) the death of the employee;

(2) the expiration of a period computed at the rate of three weeks for each percentage point of impairment as modified under Section 4.41 of this Act, but not to exceed 300 weeks; or

(3) the expiration of 401 weeks of receipt of all income benefits combined.

(c) The insurance carrier shall begin to pay the impairment income benefits not later than the fifth day after the date on which the carrier receives the health care practitioner's report.

(d) If the percentage of impairment is disputed, the board shall direct the employee to be examined by a designated health care practitioner selected by the mutual agreement of the parties. If the parties are unable to agree on a designated health care practitioner, the board may direct the employee to be examined by a designated health care practitioner selected by the board. The designated health care practitioner shall report to the board in writing. The board shall base the award of impairment income

benefits on the report of the designated health care practitioner.

(e) Impairment income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.48 of this Act.

SECTION 4.44. EXTENDED DISABILITY INCOME BENEFITS. (a) During the period that impairment income benefits are paid, the insurance carrier shall file written reports with the board that specify the employment status of the employee at six-month intervals and as of the 60th day before the date on which the impairment income benefits are scheduled to end. The board may order any evaluations of the employee considered necessary by the board to determine:

(1) the employee's ability to perform the functions reasonably required for employment; and

(2) the reasons for any extended unemployment.

(b) An employee is eligible for consideration for an extension of income benefits as provided by this section if the employee:

(1) as of the date of the payment of the final weekly impairment income benefit and because of continued disability has:

(A) not returned to employment; or

(B) returned to employment at not more than 30 percent of the employee's pre-injury wage; and

(2) has been eligible for and has received impairment income benefits for at least 104 weeks.

(c) The board may order the payment of extended disability income benefits to an employee determined by the board to meet the

requirements imposed under Subsection (b) of this section. The board may order an initial payment of extended disability income benefits for a period not to exceed 52 weeks. At the expiration of each 52-week period thereafter, the board shall reevaluate the condition of the employee and may order the continued payment of extended disability income benefits for an additional 52-week period until the combined duration of the temporary disability income benefits, the impairment income benefits, and the extended disability income benefits received by that employee equals 600 weeks.

(d) Extended disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.48 of this Act.

SECTION 4.45. LIFETIME DISABILITY INCOME BENEFITS. (a) Income benefits for disability shall be paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss or total loss of use of both feet at or above the ankle;

(3) loss or total loss of use of both hands at or above the wrist;

(4) loss or total loss of use of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

(6) an injury to the skull resulting in incurable insanity or imbecility.

(b) Lifetime disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit provided by Section 4.48 of this Act.

SECTION 4.46. ADVANCE OF BENEFITS BASED ON HARDSHIP. (a) The board may grant an employee who is suffering financial hardship advances as provided by this Act against the amount of income benefits to which the employee may be entitled.

(b) An employee who desires an advance shall apply to the board on a form prescribed by the board describing the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the state average weekly wage as determined by the Texas Employment Commission. The board may not grant more than two advances to a particular employee based on the same injury.

SECTION 4.461. CONTINUATION OF WAGES. (a) After an injury and during the time that the insurance carrier is not paying benefits, the employer may continue to pay the employee's wages or may initiate weekly payments to the employee.

(b) If the injury is found compensable and the carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of compensation to which the employee was entitled under this Act during the period that the insurance carrier was not making payments and the employer continued to pay the employee's wages or made weekly payments to the employee.

(c) The employer shall notify the board and the insurance carrier on forms prescribed by the board of the initiation of and the amount of payments made under this section.

(d) Such employer payments shall not be construed as an admission of compensability and shall not affect the payment of benefits from any other source.

SECTION 4.47. AVERAGE WEEKLY WAGE. (a) Except as otherwise provided by this section, the average weekly wage of an employee shall be computed as of the date of the compensable injury and equals the quotient of the amount of wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13.

(b) If the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, or if the wage at the time of injury has not been fixed or cannot be determined, the average weekly wage equals the usual wage that the employer pays a similar employee for similar services or that are paid in that vicinity for the same or similar services provided for remuneration taking into account the number of hours normally worked per week.

(c) In this subsection, "part-time employee" means an employee who, at the time of the compensable injury, was working less than the full-time hours or full-time workweek of a similar employee in the same employment, whether for the same or a different employer. The average weekly wage of a part-time employee who has voluntarily elected to limit the employee's work to part-time employment as a regular course of that employee's conduct shall be computed as provided by Subsections (a) and (b) of this section. For all other part-time employees, the average

weekly wage shall be computed for the purpose of determining impairment income benefits, extended disability income benefits, lifetime income benefits, and death benefits as follows:

(1) if the employee has worked for the employer for at least 13 weeks immediately preceding the compensable injury, the average weekly wage equals the quotient of the amount of wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13 and adjusted to the weekly wage level the employee would have attained by working a 40-hour week at the same rate of pay; and

(2) if the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, the average weekly wage equals the weekly wage that the employer pays a similar employee for similar services in full-time employment or that are paid in that vicinity for the same or similar services provided for compensation in full-time employment.

(d) In this subsection, "seasonal employee" means an employee who, as a regular course of that employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year. The average weekly wage of a seasonal employee shall be computed for the purpose of determining temporary disability income benefits as provided by Subsections (a) and (b) of this section, adjusted as often as necessary to reflect the wages the employee could reasonably have expected to earn during the period of temporary disability. The average weekly wage of a seasonal employee shall be computed for the purpose of determining impairment income benefits, extended disability income benefits,

1 lifetime income benefits, or death benefits by dividing the amount
2 of total wages earned by the employee during the 12 months
3 immediately preceding the injury by 50. If, for good and
4 sufficient reasons as determined by the board, it is impracticable
5 to compute the average weekly wage for a seasonal employee as
6 provided by this subsection, the board shall compute the average
7 weekly wage as of the time of the injury in a manner that is fair
8 and just to both parties.

9 (e) The average weekly wage for an employee who is a minor,
10 apprentice, trainee, or student at the time of the injury, whose
11 employment or earnings at the time of the injury are limited
12 primarily because of apprenticeship, continuing formal training, or
13 education intended to enhance the employee's future wages, and
14 whose wages would reasonably be expected to change, based on a
15 change of employment during the period in which impairment income
16 benefits, extended disability income benefits, lifetime income
17 benefits, or death benefits are payable, shall be adjusted to
18 reflect the level of expected wages during that period for the
19 purpose of computing those benefits. The adjustment shall not
20 consider expected wage levels for a period occurring more than
21 three years after the date of the injury.

22 (f) To expedite the payment of income benefits, the board
23 may adopt rules establishing a presumption that the employee's last
24 paycheck accurately reflects the employee's usual wage, or
25 establishing other reasonable presumptions relating to the wages
26 earned by an employee.

27 (g) If the methods adopted under Subsections (a) and (b) of

this section cannot be applied, the board may determine the employee's average weekly wage by any method that it considers fair, reasonable, and consistent with the methods established under this section.

SECTION 4.48. MAXIMUM WEEKLY BENEFITS. (a) The maximum weekly benefit for temporary disability income benefits or lifetime disability income benefits is 100 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission. The maximum weekly benefit for extended disability income benefits is 66-2/3 percent of that average weekly wage.

(b) The maximum weekly benefit for impairment income benefits is 75 percent of the maximum weekly benefit for temporary disability income benefits.

(c) The board shall determine the maximum weekly income benefit for the succeeding fiscal year not later than September 1 of each year. The board shall round the maximum to the nearest whole dollar.

(d) The maximum weekly benefit in effect on the date of the injury is applicable for the entire period during which income benefits are payable.

SECTION 4.49. CONTRIBUTING INJURY. (a) On the written request of the insurance carrier, the board may order that income benefits for impairment be reduced to the extent of a documented impairment that results from an earlier compensable injury affecting the same body part.

(b) The board shall consider the cumulative impact of the

two injuries on the employee's overall impairment in determining a reduction under this section.

(c) If the combination of two injuries results in an injury compensable under Section 4.45 of this Act, the benefits for that injury shall be paid as provided by Section 4.65 of this Act.

SECTION 4.50. OFFSETS. (a) To ensure that the amount received by an employee in benefits under multiple employer sponsored disability benefit programs or public disability benefit programs does not exceed the employee's net average weekly wage before the injury, adjusted for inflation, the board may order, on a written request from the insurance carrier, that impairment income benefits or extended disability income benefits be reduced to the extent that the employee receives:

(1) board approved disability benefits for the injury from a source other than workers' compensation or social security; or

(2) social security retirement benefits.

(b) A reduction under this section is calculated on the after-tax value of the workers' compensation benefits and the offsetting benefits.

(c) An offset under this section does not reduce or eliminate a carrier's liability for continuing medical benefits.

(d) The board may not order a reduction under this section based on a disability program to which the employee has contributed.

SECTION 4.51. COMMUTING OF IMPAIRMENT INCOME BENEFITS. (a) Impairment income benefits may be commuted as provided by this

section. Only impairment income benefits may be commuted. A commutation of impairment income benefits must be approved by the board.

(b) The parties may agree to a commutation of impairment income benefits if the employee:

(1) has returned to substantial gainful employment and has worked for at least six months; and

(2) has not required or obtained medical treatment calculated and intended to promote final recovery from the injury for at least three months.

(c) The parties shall reduce the commutation agreement to writing and shall submit the agreement to the board for its approval. The board shall approve the agreement if the board determines that the agreement meets the requirements established under Subsection (b) of this section and is in the best interest of the employee.

(d) Impairment income benefits that are commuted under this section are subject to discounting for present payment at four percent, compounded annually.

[Sections 4.52-4.60 reserved for expansion]

CHAPTER D. DEATH AND BURIAL BENEFITS

SECTION 4.61. DEATH BENEFITS. (a) The insurance carrier shall pay death benefits to the legal beneficiary of the employee if the compensable injury results in death. Death benefits shall be calculated in the same manner as impairment income benefits.

(b) A person must file a claim for death benefits with the board not later than one year after the date on which the employee

died. A failure to file a timely claim for death benefits bars the claim unless:

(1) the claimant is a minor or legally incompetent; or

(2) the board determines that a good cause exists for the delay.

SECTION 4.62. DISTRIBUTION OF DEATH BENEFITS. (a) Death benefits shall be paid to the legal beneficiaries according to the priority established by this section.

(b) If there is no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is an eligible child or grandchild, half of the death benefits shall be paid to the eligible spouse, and half shall be paid in equal shares to the eligible children. If a child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(d) If the employee is not survived by an eligible spouse, child, or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, stepparent, sibling, or grandparent of the deceased. If more than one of those dependents survives the deceased, the death benefits shall be divided among them in equal shares.

(e) If the employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 4.65 of this Act.

(f) For the purposes of this section:

(1) "Eligible spouse" means the surviving spouse of

the deceased employee unless the spouse abandoned the employee for more than one year immediately preceding the death without good cause, as determined by the board.

(2) "Eligible child" means a child of the deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age;

(C) because of a physical or mental handicap, a dependent of the deceased employee at the time of death; or

(D) a child who is otherwise a dependent of the deceased employee at the time of death.

(3) "Eligible grandchild" means a grandchild who is a dependent of the deceased employee if:

(A) the grandchild is a minor; and

(B) the grandchild's parent is not an eligible child.

SECTION 4.63. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by board rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive the benefits until the child attains the age of 18 years.

If at age 18 the child is enrolled as a full-time student in an accredited educational institution, the child is entitled to continue to receive the benefits until the earliest of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(d) A child who is eligible for death benefits because the child on the date of the employee's death is enrolled as a full-time student in an accredited educational institution is entitled to receive the benefits until the earlier of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(e) A child who is eligible for death benefits because the child on the date of the employee's death is a handicapped dependent is entitled to receive the benefits until the earlier of:

(1) the date on which the child is no longer handicapped; or

(2) the date on which the child dies.

(f) A child who is otherwise eligible for death benefits as a dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the death of the child; or

(2) the expiration of 360 weeks of death benefit payments.

(g) An eligible grandchild is entitled to death benefits until the grandchild dies or ceases to be a minor.

(h) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

(1) the death of the beneficiary; or

(2) the expiration of 360 weeks of death benefit payments.

SECTION 4.64. BURIAL BENEFITS. (a) If death results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $2,500.

(b) The carrier shall also pay the reasonable cost of transporting the body if the employee died away from the usual place of employment, not to exceed the cost equivalent to transporting the body to the employee's usual place of employment.

SECTION 4.65. SUBSEQUENT INJURY FUND. (a) The subsequent injury fund is created as a special fund in the state treasury.

(b) If a covered employee dies without a legal beneficiary, or no claims for death benefits are made in a timely manner, the insurance carrier shall pay to the board for deposit in the subsequent injury fund an amount equal to 360 weeks of the death benefits otherwise payable.

(c) If a subsequent compensable injury, together with the

effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime disability income benefits under Section 4.45 of this Act, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund shall compensate the employee for the remainder of the benefits to which the employee is entitled under Section 4.45 of this Act.

ARTICLE 5. ADJUDICATION OF DISPUTES

SECTION 5.01. HEARINGS DIVISION; APPEALS PANEL. (a) The hearings division of the board shall conduct benefit review conferences and contested case hearings related to workers' compensation claims. A decision made in a contested case hearing may be appealed by a party to the claim to an agency appeals panel as provided by Section 5.04 of this Act.

(b) An appeals panel is composed of three persons. Members of an appeals panel may not conduct benefit review conferences or contested case hearings. The board by rule shall provide for appeals hearings, which shall be conducted in Travis County.

SECTION 5.02. BENEFIT REVIEW CONFERENCES. (a) On receipt of a request from a party, or on its own motion, the board may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) The board by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may

1 proceed directly to a contested case hearing. Except as otherwise
2 provided by law or board rule, unless a benefit review conference
3 is conducted as provided by this section the parties are not
4 entitled to a contested case hearing on the claim.
5 (c) A benefit review conference is a nonadversarial,
6 informal, dispute resolution proceeding designed to:
7 (1) explain, orally and in writing, the rights of the
8 respective parties to a workers' compensation claim and the
9 procedures necessary to protect those rights;
10 (2) discuss the facts of the claim, review available
11 information in order to evaluate the claim, and delineate the
12 disputed issues; and
13 (3) mediate and resolve the dispute by mutual
14 agreement of the parties in accordance with the purposes of this
15 Act and the policies of the board.
16 (d) A claimant may request a benefit review conference at
17 any time. An insurance carrier may request a benefit review
18 conference to attempt to resolve any disputed issue related to the
19 payment of benefits. A health care provider may request a benefit
20 review conference to resolve any disputed issue relating to the
21 payment of the health care provider for services provided by that
22 health care provider. An employer may request a benefit review
23 conference only to contest compensability. An employer who elects
24 to request a benefit review conference must request the conference
25 not later than the 30th day after the date on which the insurance
26 carrier accepts the compensability of the injury. A party may be
27 represented at a benefit review conference by an attorney or other

representative designated by the party.

(e) A party that desires a benefit review conference must file a written request for the conference with the board in the form prescribed by the board. Unless the benefit review officer determines that good cause exists for the selection of a different location, a benefit review conference may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(f) At least 10 days before a benefit review conference, the board shall send written notice of the benefit review conference to the parties to the claim and the employer. A party who fails to attend the conference without good cause as determined by the benefit review officer waives the right to a contested case hearing on the claim. If a party disputes the determination of the benefit review officer as to the existence of good cause, the party is entitled to administrative hearings and judicial review in the manner provided for the resolution of other disputes under this article.

(g) The benefit review officer shall assist in the adjustment of the claim. The officer may not take testimony or make a formal record. The officer shall assist in the resolution of disputed issues consistent with the purposes of this Act and the policies of the board.

(h) A benefit review conference is not subject to:

(1) common law or statutory rules of evidence or procedure; or

(2) the Administrative Procedure and Texas Register

Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement, or in a settlement, the benefit review officer shall reduce the agreed issues or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement. Except as otherwise provided by board rule, an agreement is binding as to the resolved issues and takes effect on the date signed. A settlement must be approved by the director of the hearings division and takes effect on the date it is approved by that director. If the director of hearings does not approve the settlement, he shall state his reasons and remand the settlement to the appropriate benefit review officer for further action in accordance with the statement of reasons given by the director of hearings. The director of hearings shall approve a settlement if he is satisfied that:

(1) the settlement accurately reflects the terms of the agreement between the parties;

(2) the settlement reflects adherence to all appropriate provisions of law; and

(3) under the law and facts, the settlement is in the best interests of the claimant if the claimant was not represented by counsel during the benefit review conference.

(j) If the dispute is not entirely resolved at the benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not settled at the

conference. The report must also include:

(1) a statement of each resolved issue;

(2) the officer's recommendations regarding the payment or denial of benefits;

(3) the officer's basis for those recommendations; and

(4) a statement of the procedures required to request a contested case hearing.

(k) The benefit review officer shall file the signed agreement or the report with the director of the hearings division not later than the seventh day after the date on which the benefit review conference is concluded. The division director shall furnish a copy of the file stamped report to the claimant, the employer, and the insurance carrier not later than the seventh day after the receipt of the report by the director.

SECTION 5.03. CONTESTED CASE HEARING. (a) A party to a claim for which a benefit review conference is held or a party eligible to proceed directly to a contested case hearing as provided by Section 5.02(b) of this Act is entitled to a contested case hearing. If a benefit review conference is held, the hearing may not consider the issues resolved at the benefit review conference and may not consider issues not raised at the benefit review conference except by consent of the parties or unless the board determines that good cause existed for not considering an issue at the benefit review conference. Unless the board determines that good cause exists for a longer period, the party must request the hearing in writing not later than the 52nd day after the benefit review conference report is filed with the

director of the hearings division and sent to the parties.

(b) A contested case hearing shall be conducted by a division hearings officer but may not be conducted by the same person who conducted a benefit review conference on the claim. Except as otherwise provided by this section, the hearing shall be conducted in accordance with Sections 13, 14, 15, and 17, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Unless the hearings officer determines that good cause exists for the selection of a different location, a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence.

(c) The hearings officer shall issue a written decision that includes findings of fact and conclusions of law and shall file the decision with the division not later than the 15th day after the date on which the hearing is concluded. The division shall notify each party in writing of the decision not later than the seventh day after the date on which the decision of the hearings officer is received by the division.

(d) The decision of the hearings officer is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal except as to nonessential medical services.

SECTION 5.04. REVIEW BY AGENCY APPEALS PANEL. (a) A party that desires to appeal the decision of the hearings officer shall file a written appeal request with the hearings division not later than the 37th day after the date on which the decision of the hearings officer is filed with the director of the hearings division, and shall on the same date serve a copy of the appeal

request on the other party. The respondent party shall file a written response with the division not later than the 30th day after the date on which the appeal request is served, and shall on the same date serve a copy of the response on the appellant party.

(b) An appeal request or response must clearly and concisely rebut or support the decision of the hearings officer and must cite statutes, case law, and evidence in support of the party's position.

(c) The division director shall assign the appeal to an appeals panel.

(d) The appeals panel shall consider:

(1) the record developed at the contested case hearing; and

(2) the written appeal and response filed with the division.

(e) The appeals panel may consider any new evidence presented to the panel by a party and may allow oral argument.

(f) The appeals panel may:

(1) affirm the decision of the hearings officer;

(2) reverse that decision and render a new decision; or

(3) reverse that decision and remand the claim to the hearings officer for further consideration and development of evidence.

(g) The appeals panel shall issue its decision in writing not later than the 15th day after the date on which the appeal is heard by the panel and shall file a copy of the decision with the

division director.

(h) The decision of the appeals panel is final in the absence of a timely appeal by a party for judicial review and is binding during the pendency of an appeal.

SECTION 5.05. JUDICIAL REVIEW. (a) A party who has exhausted all administrative remedies available under this article and who is aggrieved by a final decision of an agency appeals panel is entitled to seek judicial review under this section.

(b) Proceedings for judicial review are instituted by filing a petition not later than the 30th day after the date on which the final decision of the appeals panel is filed with the division director. The petition must be filed in district court in the county where the employee resides or where the injury occurred. A copy of the petition must be served on the board and on all parties of record in the proceedings before the appeals panel.

(c) Except as otherwise provided by this section, judicial review shall be conducted in the manner provided for judicial review of a contested case under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) Judicial review conducted under this article is governed by the substantial evidence rule.

SECTION 5.06. CONTINUATION OF BOARD JURISDICTION. The board retains jurisdiction of a workers' compensation claim during an appeal of a ruling on any disputed issue relating to the claim. The board may not modify, suspend, or revoke a final order of the board while such order is on appeal, except on a showing of a

change of condition, mistake, or fraud and within 12 months of an order denying compensation and within the compensation period for other orders of the board.

SECTION 5.07. EXPEDITED PROCEDURES. The board by rule shall provide for expedited benefit review conferences, contested case hearings, or review by an agency appeals panel in cases in which compensability is in dispute.

ARTICLE 6. ISSUES RELATED TO
HEALTH CARE PROVIDERS; MEDICAL REVIEW

SECTION 6.01. GUIDELINES; MEDICAL REVIEW DIVISION. (a) The board shall adopt rules relating to the use of medical services by employees who suffer compensable injuries and the fees charged for those services.

(b) All fees for medical services provided under this Act must be fair and reasonable and may not exceed the fees charged for similar treatment of an injured individual of an equivalent standard of living when the fees for the treatment are paid by the injured individual or someone acting on the injured individual's behalf. To facilitate that fairness, the board shall consider the increased security of payment afforded by this Act. The rules adopted by the board shall include:

(1) guidelines relating to reasonable fees or ranges of reasonable fees for specific medical treatments or services;

(2) guidelines relating to necessary treatments or ranges of treatments for specific injuries;

(3) a program for systematic monitoring of the necessity of treatments administered and fees actually charged for

medical treatments or services to ensure that the guidelines are not exceeded;

(4) rules necessary to enable the board to compel the production of documents and to charge an insurance carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges pursuant to this Act; and

(5) rules necessary to enable the board to charge the health care provider who exceeds a fee or utilization guideline instituted under this Act a reasonable fee for evaluation of health care treatment, fees, or charges pursuant to this Act.

(c) The board may contract with a health care provider professional organization or other entity to develop, maintain, or review the guidelines or to review compliance with the guidelines. The board may contract for that purpose only with an organization or other entity that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review. The guidelines shall be reviewed and updated to reflect current "fair and reasonable" charges and amended to reflect current reasonable or necessary medical treatment or ranges of treatment. The appropriate special advisory committee established under Section 6.02 of this Act shall assist the board or professional organization in the review and update.

(d) The medical review division of the board shall administer the guidelines adopted by the board and perform other duties as directed by the board.

(e) The division shall maintain a statewide data base of

medical charges and treatment protocols to be used by the board in adopting the guidelines and by the division in administering the guidelines. The division shall ensure that the data base provided by this subsection contains the data necessary to allow the division to detect practices and patterns of charges and protocols and that the data base can be utilized in a meaningful way to allow the board to control medical costs as provided by this Act.

(f) The division shall monitor health care providers and workers' compensation claimants who receive medical services to assure the compliance of those persons with the guidelines, as well as with other rules adopted by the board relating to health care.

(g) The board by rule shall provide for the periodic review of medical care provided in claims in which lost-time guidelines or other appropriate guidelines are exceeded. The division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to assure that necessary and reasonable care is provided.

(h) The division shall take appropriate action to be aware of and maintain the most current information on developments in the treatment and cure of injuries and diseases common in workers' compensation cases.

(i) The board may contract with other public or private entities to perform any of the duties or functions of the division.

(j) A fee that is within the range of fees for that specific medical treatment or service is presumed to be reasonable. A specific treatment or service that is included in a treatment protocol is not presumed to be reasonable based only on its

1 inclusion in the protocol.

2 (k) A fee or charge consistent with the guidelines for fees
3 and charges earns interest at a rate computed by the Industrial
4 Accident Board by taking the auction rate quoted on a discount
5 basis for the 52-week treasury bills issued by the United States
6 government, as published by the Federal Reserve Board on the most
7 recent date preceding the date of computation, from 60 days after
8 the date the health care provider submits the bill to an insurance
9 carrier to the date the bill is paid. The rate shall be computed
10 on December 15 and June 15 for the following six-month period
11 beginning January 1 and July 1, respectively.

12 SECTION 6.02. SPECIAL ADVISORY COMMITTEES. (a) The
13 following special advisory committees are created to assist the
14 medical review division in administering the guidelines established
15 under Section 6.01 of this Act:

16 (1) the hospital care advisory committee;
17 (2) the medical care advisory committee;
18 (3) the osteopathic care advisory committee;
19 (4) the chiropractic care advisory committee;
20 (5) the podiatric care advisory committee;
21 (6) the physical therapy advisory committee; and
22 (7) the pharmaceutical advisory committee.

23 (b) Each committee is composed of nine members appointed by
24 the board as provided by this section. A member of a committee is
25 not entitled to remuneration but is entitled to reimbursement for
26 actual and necessary expenses incurred in performing functions as a
27 member of the committee, not to exceed any limit established in the

General Appropriations Act.

(c) The board shall appoint five health care practitioner members to each advisory committee. Each health care practitioner member of a committee must be a health care provider of that particular provider group who is knowledgeable and qualified regarding work related injuries and diseases. The board shall consider the advice of the appropriate professional associations in making the committee appointments.

(d) The board shall appoint four additional members to each advisory committee, one to represent employers, one to represent employees, and two to represent the general public.

(e) The health care advisory committee is created to assist the division. The committee is composed of eight members appointed by the board and one member elected from each of the committees created under Subsection (a) of this section. The board shall designate the chairman of the committee, which shall meet at the call of its chairman. A member of this committee is not entitled to remuneration but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee, not to exceed any limit established in the General Appropriations Act.

SECTION 6.03. COORDINATION WITH PROVIDERS. The medical review division shall coordinate its activities with health care providers as necessary to perform its duties under this article. The coordination may include:

(1) conducting educational seminars on board rules and procedures;

(2) providing information to and requesting assistance from professional peer review organizations; or

(3) contracting with health care providers for independent medical examinations, medical case reviews, establishment of guidelines, or other medical consultant services.

SECTION 6.04. PROVIDERS' DISCLOSURE. A health care provider that refers a workers' compensation claimant to another health care provider in which the referring provider has more than a five percent financial interest shall file an annual disclosure statement with the Texas Workers' Compensation Board as provided by rules adopted by the board and shall disclose the interest to the insurance carrier at the time of the referral. The referring provider shall specify the degree of the financial interest and shall provide other information as required by the rules of the Texas Workers' Compensation Board.

SECTION 6.05. PRIVATE CLAIMS. A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless the injury is finally adjudicated not to be compensable under this Act.

ARTICLE 7. COMPLIANCE MONITORING

SECTION 7.01. COMPLIANCE AND PRACTICES DIVISION. (a) The compliance and practices division shall monitor the conduct of all persons subject to this Act other than persons monitored by the medical review division. The monitoring shall include monitoring the conduct of:

(1) employees;

(2) persons claiming death benefits;

(3) employers;

(4) insurance carriers; and

(5) attorneys and other representatives of parties.

(b) The division shall monitor those persons for compliance with board rules, this Act, and other laws relating to workers' compensation.

SECTION 7.02. AUDIT OF INSURANCE CARRIERS. The division shall audit the workers' compensation records of insurance carriers on a regular basis. Each carrier shall cooperate with the division and shall make available to the division any records or other necessary information. The carrier shall allow the division access to the information at reasonable times at the offices of the carrier. On the request of the division, the carrier shall also make the information available to the division at the offices of the board in Austin.

SECTION 7.03. MONITORING OF TIMELY PAYMENTS. The division shall also monitor payments of health care providers and workers' compensation claimants who receive medical services to assure that the payments are made on a timely basis as established by rule of the board.

SECTION 7.04. COMPILATION OF INFORMATION. The division shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this article that violate this Act or board rules, or that otherwise adversely affect the workers' compensation system of this state. The board shall use the

information to assess appropriate penalties and other sanctions under Article 10 of this Act.

SECTION 7.05. INVESTIGATIONS. (a) The division shall conduct investigations relating to alleged violations of this Act or board rules.

(b) The division may refer the persons involved in a case subject to an investigation to the hearings division or to other appropriate authorities for further investigation and institution of appropriate proceedings.

ARTICLE 8. WORKERS' HEALTH AND SAFETY

SECTION 8.01. WORKERS' HEALTH AND SAFETY DIVISION. (a) The workers' health and safety division of the board shall coordinate and enforce the implementation of state laws and rules relating to workers' health and safety issues.

(b) The division shall collect and serve as a repository for statistical information on workers' health and safety. The division shall analyze and use the information to identify and assign priorities to safety needs and to better coordinate the safety services provided by public or private organizations, including insurance carriers. The division shall promote workers' health and safety through educational programs, certify employers who complete such programs for eligibility for rate reductions, as set out in Article 5.55A, Insurance Code, and other innovative programs developed by the division.

(c) The division shall coordinate or supervise the collection of information relating to job safety by state or federal entities, including information collected for the

supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

(d) The division shall monitor loss control services provided by insurance carriers. The board by rule shall require that reasonable loss control services be provided by insurance carriers to employers classed as small, medium, or large risks. The board shall require that services be directed to specific employers, industries, occupations, or geographic regions, or to the prevention of certain injuries or occupational diseases. The services may be provided through on-site inspections and consultations, training programs, or other means considered appropriate by the division.

(e) In accordance with Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 656), the division shall:

(1) consult with employers regarding compliance with federal occupational safety laws and rules; and

(2) collect information relating to occupational safety as required by federal laws, rules, or agreements.

(f) With the approval of the board, the division may enter contracts with the federal government to perform occupational safety projects and may apply for funds from the federal government through any federal program relating to occupational safety.

SECTION 8.02. JOB SAFETY INFORMATION SYSTEM. (a) The workers' health and safety division shall establish and maintain a job safety information system.

(b) The job safety information system shall include a comprehensive data base that incorporates all pertinent information

relating to each workers' compensation claim, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee;

(2) the nature, source, and severity of the injury;

(3) if the injury resulted from an accident, a description of the workplace site at which the accident occurred;

(4) a statement of whether the injury resulted from an unsafe practice or condition, as determined by the board;

(5) the part of the body affected;

(6) the compensation rate;

(7) the amount paid as income or death benefits;

(8) the amount paid on behalf of the claimant as medical benefits;

(9) the industry code for the claimant's occupation;

(10) the premium amount paid by the employer;

(11) the number of prior workers' compensation claims by that employee; and

(12) the total claim costs of the employer.

(c) Based on the information compiled for the job safety information system, the division shall issue periodic reports relating to workers' health and safety and shall issue specialized reports and studies for public and private entities that are working to improve safety.

SECTION 8.03. CLAIM AND LOSS GUIDELINES. (a) The workers' health and safety division shall develop a program to identify an employer whose claim frequencies or loss levels exceed those that

may be reasonably expected in that employer's business or industry. Based on the information developed by the division, the board shall adopt guidelines for the identification of such an employer. In adopting the guidelines, the board shall consider the hazards of the particular industry and the size of the affected business entities.

(b) If the division identifies an employer that exceeds the claim or loss guidelines for that employer's industry, the division shall notify the employer in writing that the employer has exceeded the claim and loss guidelines. The division shall reexamine that employer for compliance with the claim and loss guidelines not later than six months after the date on which the employer is notified.

(c) An employer who continues to exceed the claim and loss guidelines as determined by the division must obtain a safety consultation from the board, the employer's insurance carrier, or another professional source approved by the board for that purpose. The safety consultant shall issue a written statement to the employer to certify that the employer has participated in the safety consultation. The employer shall submit a copy of the statement to the board not later than the seventh day after the date on which the consultation is completed and shall include a statement of corrective actions contemplated by the employer.

(d) An employer who, six months after the initial safety consultation under Subsection (c) of this section, is determined by the board to continue to exceed the claim and loss guidelines shall receive a follow-up safety consultation from the board. For each

additional workers' compensation claim filed by that employer's employees, the employer shall file a special accident report in the form prescribed by the board, specifying the nature and causes of the injury and measures implemented to prevent similar injuries in the future. If the board determines that the employer is still exceeding the guidelines six months after the date of the follow-up safety consultation, the employer shall file an adequate safety plan with the board.

(e) The board may assess an administrative penalty as provided by Article 10 of this Act against an employer who fails to comply with this section. This section does not create an independent cause of action at law or in equity. This section provides the sole remedy for violation of this section.

(f) The board shall adopt rules and prescribe forms as necessary to implement this section.

SECTION 8.04. SAFETY EDUCATION. (a) The workers' health and safety division shall provide safety education services to the employers and employees of this state and to the general public.

(b) The division may:

(1) conduct seminars on occupational health and safety concerns;

(2) issue public service announcements on safety; and

(3) publish informational material on safety for general dissemination.

(c) The board may charge fees for division publications and for seminars and training programs offered by the division. If a fee is charged, the board shall set the fee in the amount

reasonable and necessary to cover its administrative costs.

(d) The board may accept grants and gifts from any source for the benefit of the safety programs conducted by the division.

(e) The board may coordinate its safety programs with those of insurance carriers or those of other public or private entities.

SECTION 8.05. PREMIUM INCENTIVES FOR CERTAIN EMPLOYERS. (a) In this section:

(1) "Covered employer" means an employer who is not experience-rated by the State Board of Insurance for workers' compensation insurance purposes and whose annual workers' compensation premium is less than $5,000.

(2) "Board" means the State Board of Insurance.

(b) The board shall promulgate a plan by which all insurance companies writing workers' compensation insurance in this state shall grant a premium discount to covered employers who qualify for the discount pursuant to the provisions of this Act, and by which surcharges are assessed against covered employers who experience two or more compensable lost-time injuries during a one-year period.

(c) A covered employer who has not experienced a compensable employee lost-time injury during the most recent one-year period for which statistics are available shall receive a discount of 10 percent on the amount of the employer's workers' compensation insurance premium.

(d) A covered employer who has experienced one compensable employee lost-time injury during the most recent one-year period for which statistics are available shall not be eligible for a

discount on the amount of the employer's workers' compensation insurance premium.

(e) A covered employer who has experienced two or more compensable employee lost-time injuries during the most recent one-year period for which statistics are available shall be assessed a surcharge of 10 percent on the amount of the employer's workers' compensation premium.

(f) The discounts and surcharges established under this Act shall not be cumulative. For any annual workers' compensation premium, no covered employer shall receive a discount of more than 10 percent, nor may any covered employer be required to pay a surcharge of more than 10 percent.

(g) Article 5.55A, Insurance Code, is repealed.

(h) This section takes effect on the effective date of this Act.

SECTION 8.06. RISK MANAGEMENT FOR CERTAIN STATE AGENCIES. (a) In this section, "state agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that was created by the constitution or a statute of this state and that has authority that is not limited to a specific geographical portion of the state. The term includes an institution of higher education as defined by Section 61.003, Education Code. The term does not include an entity with fewer than five employees.

(b) The director of the workers' health and safety division shall serve as the state risk manager. In that capacity, the director shall supervise the development and administration of

division systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses; and

(4) reduce the property and liability losses incurred by each state agency.

(c) Based on the recommendations of the director, the board shall report to each legislature relating to methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation losses, the operation and management of those risks, and the handling of claims brought against the state. The report must include:

(1) the number and amount of claims settled in the preceding biennium;

(2) the number and amount of final judgments paid in the preceding biennium; and

(3) recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory changes.

(d) The workers' health and safety division shall administer guidelines adopted by the board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses.

(e) A state agency that has its own risk management program shall submit to the division any information or reports required by the division relating to the agency's program. Based on the material submitted, the division shall determine whether the agency program is effective and shall notify the agency in writing of its determination.

(f) The division shall assist a state agency that has not implemented an effective risk management program in the implementation of a comprehensive program that meets the division guidelines.

(g) Each state agency shall reimburse the board for the costs incurred by the board in administering this section as it relates to that state agency through an interagency contract that meets the requirements of The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes). Reimbursable costs include the cost of:

(1) services of board employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(h) The board may adopt rules to implement this section, including rules relating to reporting requirements for state agencies.

SECTION 8.07. REVIEW OF CERTAIN SAFETY COMMITTEES. The workers' health and safety division shall review and, on behalf of the board, approve or disapprove labor-management safety committees established to qualify for workers' compensation insurance premium

discounts through promotion of occupational health and safety within an individual employer's work force, as provided by Article 5.55A, Insurance Code. To be eligible for approval, a committee must be composed of representatives of the employer and employees. A committee may make recommendations that can be implemented by the employer and employees to reduce job-related accidents.

ARTICLE 9. SELF-INSURANCE

SECTION 9.01. DEFINITIONS. In this article:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) "Certified self-insurer" means a private employer who has been granted a certificate of authority to self-insure under this article.

(3) "Director" means the director of workers' compensation self-insurance.

(4) "Impaired employer" means a certified self-insurer:

(A) who has suspended payment of compensation as determined by the board;

(B) who has filed for relief under bankruptcy laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

(5) "Incurred liabilities for compensation" means the sum of the estimate of liabilities for outstanding workers'

compensation claims plus the estimated amount necessary to provide for the administration of those claims, including legal costs.

(6) "Qualified claims servicing contractor" means:

(A) an insurance company authorized by the State Board of Insurance to write workers' compensation insurance;

(B) a subsidiary of an insurance company that provides claim service under contract;

(C) an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code); or

(D) a third-party administrator that has on its staff an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(7) "Self-insured retention" means the total dollar amount of liability under this Act retained by a certified self-insurer.

SECTION 9.02. ADMINISTRATION. (a) The board shall appoint a director of workers' compensation self-insurance to administer the board's certification program for self-insurers as provided by this article.

(b) The board may adopt rules as necessary to administer this article.

SECTION 9.03. APPLICATION FOR CERTIFICATION. (a) An employer who desires to self-insure under this article must submit an application to the board for a certificate of authority to self-insure. The application must be submitted on a form adopted

by the board and be accompanied by a nonrefundable application fee of $1,000. The application fee shall be deposited in the workers' compensation self-insurance fund created under Section 9.10 of this Act.

(b) Not later than the 60th day after the day on which the form is received, the board shall issue a certificate of authority to self-insure to an applicant who meets the requirements for certification under this article. The certificate of authority is valid for one year after the date of issuance and may be renewed under procedures prescribed by the board. The director may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division. There is no renewal fee.

SECTION 9.04. REQUIREMENTS FOR CERTIFICATION TO SELF-INSURE; ISSUANCE OF CERTIFICATION. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the board of sufficient financial strength and liquidity under standards adopted by the board to assure that all workers' compensation obligations incurred by the applicant under this article are promptly met. In assessing financial strength and liquidity, the board shall consider:

(1) the applicant's organizational structure and management background;

(2) the applicant's profit and loss history;

(3) the applicant's compensation loss history;

(4) the source and reliability of the financial information submitted by the applicant;

(5) the number of employees affected by self-insurance;

(6) the applicant's access to excess insurance markets;

(7) financial ratios, indexes, or other financial measures that the board finds appropriate; and

(8) any other information considered appropriate by the board.

(b) The applicant must present a plan for claims administration that is acceptable to the board and designates a qualified claims servicing contractor.

(c) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(d) If the provider of services is not an employee of the applicant, the applicant must provide to the board a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services. If the board has adopted a standard form for such a contract, the contract must be submitted in that form. The board must approve the contract before the applicant may self-insure.

(e) The board shall review a contract submitted under Subsection (d) of this section. A contract submitted to the board is considered approved by the board unless the board notifies the applicant in writing not later than the 30th day after the date on which the contract is submitted that the contract is not approved. If the board does not approve the contract, the notice must specify

the reasons for the disapproval.

(f) The applicant must provide security for incurred liabilities for compensation through a deposit with the director, in a combination and from institutions approved by the director, of the following security:

(1) cash or negotiable securities of the United States or this state;

(2) a surety bond that names the director as payee; or

(3) a letter of credit that:

(A) is irrevocable; and

(B) names the director as payee.

(g) If an applicant who has provided a letter of credit as all or part of the security required under this section desires to cancel the existing letter of credit and substitute a different letter of credit, the applicant must notify the board in writing not later than the 60th day before the date on which the original letter of credit is to be canceled.

(h) The estimate of incurred liabilities must be signed and sworn to by a certified casualty actuary.

(i) The sum of the deposited securities must be at least equal to the greater of $300,000 or 125 percent of the applicant's incurred liabilities for compensation.

(j) The applicant shall provide for excess insurance to cover liability that is not covered by the applicant's self-insured retention in amounts considered necessary by the certified self-insurer, but not less than the amounts required by the director. The director shall require excess insurance in at least

the amount of $1 million per occurrence, and may require excess insurance in a higher amount if the director determines that a higher amount is reasonable and necessary.

(k) If the applicant is a subsidiary, the parent organization must guarantee the obligations imposed by this article.

(l) The board shall issue a certificate of authority to self-insure to an applicant who meets the requirements of this article and pays the required fee.

(m) If an applicant is granted a certificate of authority to self-insure, any interest or other income that accrues from cash or negotiable securities deposited by the applicant as security under Subsection (f) of this section while the cash or securities are on deposit with the director shall be paid to the applicant on a quarterly basis.

SECTION 9.05. INITIAL PREMIUM REQUIREMENTS TO SELF-INSURE. (a) In addition to meeting the other eligibility requirements imposed under this article, an applicant for an initial certificate of authority to self-insure must present evidence satisfactory to the board of a total unmodified premium in this state for workers' compensation insurance coverage as follows:

(1) if the application is filed before September 1, 1990, $250,000;

(2) if the application is filed on or after September 1, 1990, but before September 1, 1991, $200,000;

(3) if the application is filed on or after September 1, 1991, but before September 1, 1992, $150,000;

(4) if the application is filed on or after September 1, 1992, but before September 1, 1993, $100,000; and

(5) if the application is filed on or after September 1, 1993, but before September 1, 1994, $50,000.

(b) In lieu of the state premiums required under Subsection (a) of this section, the applicant may present evidence of a total unmodified national workers' compensation insurance premium of at least $1 million.

(c) If the application to self-insure is filed on or after September 1, 1994, evidence of a workers' compensation insurance premium is not required.

SECTION 9.06. SPECIFIC SECURITY REQUIREMENTS. (a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or a document indicating issuance of an irrevocable letter of credit must be in a form approved by the director and must be issued by an institution acceptable to the director. Such an instrument may be released only according to its terms but may not be released by the depositing of additional security.

(c) The certified self-insurer shall deposit the security with the state treasurer on behalf of the director. The state treasurer may accept securities for deposit or withdrawal only on the written order of the director.

(d) On receipt by the director of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified self-insurer's assets

in favor of the director to the extent of any then unsecured portion of the self-insured's incurred liabilities for compensation. That perfected security interest transfers to any cash or securities deposited by the self-insured with the director after the date of the request, and may be released only on:

(1) the acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the director.

(e) The certified self-insurer loses all right, title, interest in, and control of, the assets or obligations submitted or deposited as security. The director may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) The director, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, any liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) the issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) the issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.

(g) A decision of the director may be appealed to the board on filing with the board a written request for an appeal not later than the 30th day after the date on which the director's decision is final.

(h) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the board issues a determination staying the payment of claims.

(i) If the director determines that a security deposit has not been made immediately available for the payment of compensation, the director shall determine the appropriate method of payment and claims administration, which may include payment by a surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the director.

SECTION 9.07. PROCEDURES ON DENIAL OF APPLICATION. (a) If the board determines that an applicant for a certificate of authority to self-insure does not meet the requirements for eligibility to self-insure provided by this article, the board shall notify the applicant not later than the 60th day after the date on which the completed application is received, stating the specific reasons for the denial and the conditions to be met before approval can be granted.

(b) The applicant is entitled to a reasonable period of time, as determined by the board, to meet the conditions for

approval before the application is considered rejected for purposes of appeal. An appeal is subject to the substantial evidence rule and must be filed in a district court of Travis County.

(c) During the pendency of approval or denial of the application for certification to self-insure, the applicant may not operate as a self-insurer under this article.

SECTION 9.08. ANNUAL REPORT. (a) Each certified self-insurer shall file an annual report with the board. The board shall prescribe the form of the report and shall furnish blank forms for preparation of the report to each certified self-insurer. The report must include payroll data in the form prescribed by this article and the board. The board may require that the report include other financial and statistical data.

(b) The annual report must present evidence of sufficient financial ability of the certified self-insurer to meet all obligations under this article.

(c) The report must state the number of injuries sustained in the three preceding calendar years and must report separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries. The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the board.

(d) If the board considers it necessary, it may order a certified self-insurer whose financial condition or claims record warrants closer supervision to report as provided by this section

more often than annually.

SECTION 9.09. EXAMINATION OF RECORDS. (a) The certified self-insurer shall maintain the books, records, and payroll data necessary to compile the annual report and any other information reasonably required by the board. The material shall be open to inspection and examination by an authorized agent or representative of the board at reasonable times for the purpose of ascertaining the correctness of the information.

(b) The examination may be made at any location, including the offices of the board in Austin, or, at the certified self-insurer's option, in offices of the certified self-insurer. The certified self-insurer must pay the reasonable expenses, including travel expenses, of an inspector who makes an inspection at its offices.

(c) The certified self-insurer may maintain the books, records, and payroll data in locations outside this state.

(d) An unreasonable refusal on the part of a certified self-insurer to make available for inspection books, records, payroll data, and other required information is grounds for revocation of the certificate of authority to self-insure.

SECTION 9.10. SELF-INSURANCE REGULATORY FEE. (a) Certified self-insurers shall pay annual fees to cover the administrative costs incurred by the board in implementing this article. The fees shall be based on the total amount of income benefit payments made in the preceding calendar year. The board shall assess each certified self-insurer a pro rata share based on the ratio the total amount of income benefit payments made by that self-insurer

bears to the total amount of income benefit payments made by all certified self-insurers.

(b) The fees shall be deposited in the state treasury to the credit of a fund to be known as the workers' compensation self-insurance fund and to be used only for the regulation of certified self-insurers. Any amount not used in a budget year shall be used to reduce the regulatory fees assessed in the succeeding budget year.

SECTION 9.11. TAX ASSESSMENTS. (a) Each certified self-insurer shall pay a tax equal to the premium tax paid by commercial insurance carriers under Article 4.10, Insurance Code, and a maintenance tax under Section 11.03 of this Act for the support of the Texas Workers' Compensation Board.

(b) To determine the tax liability of a certified self-insurer for the maintenance tax assessed under Section 11.03 of this Act and the premium tax assessed under Subsection (a) of this section, each certified self-insurer shall report its payroll by individual workers' compensation risk code classifications in its annual report to the board. The taxes assessed under this section shall be collected and paid in the same manner and at the same time that a commercial insurance carrier pays the maintenance tax imposed under Article 5.68, Insurance Code.

(c) The estimated premium for a certified self-insurer shall be determined by using the manual workers' compensation insurance rates in effect at the time the annual report is due. The taxes shall be calculated by multiplying the manual premium by 75 percent and multiplying the product by the same tax rates assessed against

other insurers under Article 5.68, Insurance Code.

(d) All amounts collected under this section shall be deposited in the general revenue fund.

SECTION 9.12. WITHDRAWAL FROM SELF-INSURANCE. A certified self-insurer may withdraw from self-insurance at any time with the approval of the board. The board shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the board that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer. A certified self-insurer who withdraws from self-insurance shall surrender its certificate of authority to self-insure to the board.

SECTION 9.13. CLAIMS. A claim or suit brought by a workers' compensation claimant shall be brought against the certified self-insurer.

SECTION 9.14. AGENT'S COMMISSION. This article does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

SECTION 9.15. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The board may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with any of the requirements or conditions provided by this article or the rules adopted by the board under this article.

(b) If the board believes that grounds exist to revoke a certificate of authority to self-insure, the board shall hold a

hearing to determine if the certificate should be revoked. The board shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date. At the hearing the certified self-insurer shall show cause why its certificate should not be revoked. If the certified self-insurer fails to show cause, the board shall immediately revoke the certificate.

(c) A certified self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations to its employees, and the required security shall be maintained with the board or under the board's control until each claim for workers' compensation benefits that arises out of an accident or occupational disease first distinctly manifested during the period of self-insurance has been paid, settled, or otherwise foreclosed by law.

SECTION 9.16. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty Association is established to provide for payment of workers' compensation benefits for the injured employees of an impaired employer. To be entitled to self-insure, each employer who desires to become a certified self-insurer must be a member of the association. The members shall provide by rule for the election of a board of directors composed of not fewer than four members. The board of directors shall also include, as voting members, the executive director of the Texas Workers' Compensation Board and the public counsel of the division of consumer protection of the State Board of Insurance. The director of the division shall serve as a

nonvoting member. The board of directors may adopt rules for the operation of the association. Rules adopted by the board of directors are subject to the approval of the Texas Workers' Compensation Board. Meetings of the association and its board of directors are subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and records of the association and its board of directors are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) Members of the association shall be assessed a fee, based on total paid indemnity losses in this state for the preceding reported calendar year, to create, over a period of five years, a trust fund of at least $1 million for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed $2 million. The board of directors of the association shall administer the trust fund in accordance with rules adopted by the Texas Workers' Compensation Board.

(c) If the director determines that the payment of benefits and claims administration shall be made through the association, the association shall assume the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director. The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association. On the assumption of

obligations by the association under the director's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of any irrevocable letter of credit shall deliver the security to the association together with any interest that has accrued since the date on which the certified self-insurer became impaired.

(d) On determination by the director that a certified self-insurer has become an impaired employer, the director shall secure release of the security deposit required by this article, and shall promptly estimate the amount of any additional funds needed to supplement the security deposit, the available assets of the impaired employer for the purpose of making payment of all incurred liabilities for compensation, and the funds maintained by the association for the emergency payment of compensation liabilities. The director shall advise the board of directors of the association of the estimate of any necessary additional funds, and the board of directors shall promptly assess each certified self-insurer, except impaired employers, to collect the required funds. The assessments shall be made against all certified self-insurers in proportion to the ratio that the total paid indemnity losses for the preceding reported calendar year bear to the total paid indemnity losses by all certified self-insurers, except impaired employers, in this state in that calendar year.

(e) A certified self-insurer designated as an impaired employer is exempt from assessment beginning on the date of that designation until the board determines that the employer is no longer impaired.

(f) Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through a suit brought for that purpose. Venue for the suit is in Travis County.

(g) Funds advanced by the association under this article do not become assets of the impaired employer but are considered a special fund advanced to the director, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the cost of claims administration and legal costs.

(h) The association or the surety making compensation payments under this article is entitled to the same preference over the other debts of the impaired employer or the impaired employer's estate as provided by law to the person directly entitled to the compensation.

(i) The board, after notice and hearing, may suspend or revoke the certificate of authority to self-insure of any certified self-insurer that fails to pay an assessment. The association promptly shall report such a failure to the director. A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(j) Notwithstanding Subsection (c) of this section, the association is not liable for the payment of any penalties assessed

for any act or omission on the part of any person other than the association.

(k) The association is a party in interest in any proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association. The association has the same rights and defenses as the impaired employer, including the right to:

(1) appear, defend, and appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, and pay a claim; and

(3) investigate, handle, and deny a claim.

ARTICLE 10. PROHIBITED ACTS; ENFORCEMENT

CHAPTER A. PROHIBITED ACTS

SECTION 10.01. DISCRIMINATION PROHIBITED. (a) No person may discharge or otherwise discriminate against an employee because the employee, in good faith:

(1) has initiated a workers' compensation claim;

(2) has hired an attorney to represent the employee regarding a claim;

(3) has instituted or caused to be instituted a proceeding before the board;

(4) has testified or is about to testify at an administrative or judicial proceeding regarding a claim; or

(5) has reported a hazardous working condition or a hazardous practice.

(b) A person who violates this section is liable for reasonable damages incurred by the employee as a result of the

violation. An employee who is discharged in violation of this section is entitled to reinstatement in the same or an equivalent position of employment. The burden of proof is on the employee.

(c) The district courts of this state have jurisdiction, for cause shown, to restrain a violation of this section.

(d) Liability incurred by an employer because of a violation of this section is not a benefit payable under this Act.

SECTION 10.02. EMPLOYER CHARGEBACKS PROHIBITED. An employer may not collect from an employee, directly or indirectly, any premium or other fee paid by the employer to obtain workers' compensation insurance coverage.

SECTION 10.03. LOANS BY ATTORNEY PROHIBITED. (a) An attorney who represents a claimant before the board may not lend money to the claimant during the pendency of the workers' compensation claim.

(b) The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable in any way for the credit extended to the claimant.

SECTION 10.04. CRIMINAL PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS. (a) A person commits an offense if the person, to obtain or deny payments of workers' compensation benefits or the provision of those benefits for himself or another, knowingly and intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a

document; or

(4) conspires to commit an act listed in Subdivisions (1)-(3) of this subsection.

(b) An offense under this section is a felony of the third degree.

[Sections 10.05-10.10 reserved for expansion]

CHAPTER B. ADMINISTRATIVE SANCTIONS

SECTION 10.11. GENERAL SANCTIONS; ADMINISTRATIVE PENALTY. (a) After a hearing, the board may assess an administrative penalty or impose other sanctions as provided by Subsection (b) of this section against:

(1) a health care provider who violates the guidelines adopted by the board under Section 6.01 of this Act, other applicable provisions of this Act or other laws relating to workers' compensation, or applicable board rules relating to health care providers;

(2) an insurance carrier who violates this Act, other laws relating to workers' compensation, or applicable board rules relating to carriers who write workers' compensation insurance;

(3) an attorney who violates this Act, other laws relating to workers' compensation, or applicable board rules relating to legal practice before the board; or

(4) any other person subject to the jurisdiction of the board, including a claimant, the legal beneficiary of a claimant, or an employer, who violates this Act, other laws relating to workers' compensation, or applicable board rules.

(b) If the board determines that a person subject to this

section is in violation, the board may:

(1) issue a written reprimand to the person that specifies the violation;

(2) refer the person to the occupational regulatory agency that supervises the person's practice for appropriate action, including the probation, suspension, or revocation of the person's license, certificate, or permit;

(3) suspend the person from practice before the board;

(4) if the person is a health care provider, suspend the person's right to remuneration under this Act; or

(5) assess an administrative penalty.

(c) If a suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the board; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis for the probation.

(d) If the board proposes to suspend a person's right to practice before the board, receive remuneration under this Act, or assess an administrative penalty against the person, the person is entitled to a hearing before the hearings division of the board.

(e) The board by rule shall prescribe the procedures by which a decision to suspend the right to practice or to assess an administrative penalty is made by or is appealable to the board.

Proceedings conducted under this section are subject to the requirements for a contested case hearing under Section 5.03 of this Act.

(f) In determining the degree of sanction or amount of administrative penalty imposed or assessed under this section, the board shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the sanction or penalty necessary to deter future violations; and

(4) any other appropriate matters.

(g) If the board determines that a violation has occurred and that the assessment of an administrative penalty is an appropriate remedy, the board shall notify the person charged in writing of the violation, stating the amount proposed to be assessed. The notice must include a statement of the right of the person to a hearing. Not later than the 20th day after the date on which the notice is received, the person shall either remit the amount of the penalty to the board or submit to the board a written request for a hearing.

(h) If the person requests a hearing, the board shall call and schedule a hearing, to be conducted not later than the 20th day after the date on which the person submits the request for a hearing. The board shall give written notice of the hearing to the person not later than the 10th day after the date on which the person submits the request for a hearing. The hearing shall be conducted by the hearings division of the board in the manner

provided for a contested case hearing under Article 5 of this Act. The decision of the hearings officer may be appealed to an agency appeals panel as provided by Section 5.04 of this Act. If it is determined by the hearing, and after any review by an agency appeals panel, that a violation has occurred, the board shall enter a written order to that effect and shall notify the person in writing of the decision, the amount of the penalty assessed, and the person's right to judicial review of the board's order.

(i) Not later than the 30th day after the date on which the board's order is final, the person shall either remit the penalty to the board or, if the person files a petition for judicial review contesting the fact of the violation or the amount assessed, forward the amount assessed to the board for deposit in an escrow account. Failure to forward the amount assessed within the specified period constitutes a waiver of the right to judicial review.

(j) If, after judicial review, the penalty is reduced or is not assessed, the board shall remit to the person the appropriate amount, plus accrued interest at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Interest under this section shall be paid for the period beginning on the date that the assessed penalty is paid to the board and ending on the date that the penalty is remitted.

(k) Amounts collected as penalties under this section shall be deposited in the state treasury.

SECTION 10.12. ENHANCEMENT OF AWARD FOR MALICE OR BAD FAITH. (a) In addition to the benefits granted under this Act, the board

shall order an insurance carrier to pay an employee an additional amount if the board determines that the failure of the insurance carrier to pay benefits determined to be owed to the employee, or the carrier's suspension or termination of payment of those benefits, was caused by malice or the failure of an insurance carrier to deal fairly and act in good faith.

(b) For the purposes of this section, "malice" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

(c) An additional amount awarded under this section is the employee's exclusive remedy against the carrier for malice or the failure to deal fairly and act in good faith.

(d) The board may award an amount not to exceed the lesser of twice the amount of income benefits payable to the employee, or $15,000.

(e) The board shall adopt rules as necessary to implement this section, including rules to define specific actions that demonstrate malice or the failure to deal fairly and act in good faith.

(f) Amounts paid by an insurance carrier under this section may not be used in the calculation of premium rates for workers' compensation insurance.

ARTICLE 11. MISCELLANEOUS PROVISIONS

SECTION 11.01. ATTORNEY'S FEES. (a) An attorney who represents a workers' compensation claimant under this Act is entitled to a fee equal to 25 percent of the difference between the amount of income benefits attained or ordered and the amount of

those benefits voluntarily paid or offered to be paid by the insurance carrier at the conclusion of the benefit review conference. The attorney is entitled to a minimum fee of $200.

(b) The board by rule may provide for the commutation of attorney's fees.

SECTION 11.02. CONFIDENTIALITY. (a) Information in a worker's claim file is confidential and may not be disclosed except as provided in this section.

(b) If a workers' compensation claim is open or pending before the board, on appeal to a court of competent jurisdiction from the board, or is the subject matter of a subsequent suit in which the insurance carrier is subrogated to the rights of the workers' compensation claimant at the time a record search or request for information is presented to the board, the board shall furnish the information as provided by this section.

(c) The person making a request for information under Subsection (b) of this section must furnish the following:

(1) the first, middle, and last name of the claimant;

(2) the claimant's age;

(3) the claimant's social security number; and

(4) the dates of injury and the names of the claimant's former employers, if possible.

(d) The board shall furnish the requested information or a record check only to the following:

(1) the claimant;

(2) the attorney for the claimant;

(3) the insurance carrier or the Texas Certified

Self-Insurer Guaranty Association when the association has assumed the obligations of an impaired employer under Article 9 of this Act;

(4) the employer at the time of the current injury;

(5) third-party litigants;

(6) the State Board of Insurance;

(7) the Texas Department of Human Services; or

(8) the Texas Workers' Compensation Insurance Research Center.

(e) A third-party litigant in a suit arising out of an occurrence with respect to which a workers' compensation claim was filed is entitled to the information without regard to whether or not the compensation claim is still pending.

(f) Information held by the board concerning any person who has been finally adjudicated to be a fraudulent claimant is not confidential and shall be furnished to any person requesting the information, notwithstanding any other provision of this law.

(g) The board shall release to an employer with whom a person has applied for employment the date of injury and nature of injury to that person if that person has filed three or more claims in the preceding five years in which weekly compensation payments have been made and the employer requests the information not later than the 14th day after the date on which the person applied for employment. The request for information must provide the name, address, and social security number of the person about whom information is sought. The board shall release the information only if the employer has written authorization from the person

about whom information is sought, a copy of which must be filed with the board before the information is released. The board may release the information by telephone. If the employer requests information about three or more persons at the same time, the board may refuse to release the information except on written request from the employer and receipt of the written authorization from each person about whom the information is sought.

(h) This section does not authorize the board to withhold information from committees of the legislature to use for legislative purposes.

(i) Any information relating to a workers' compensation file that is confidential under this Act remains confidential on release to any investigative, legislative, or law enforcement agency, including the attorney general, district attorneys, grand juries, or legislative committees. An individual who publishes, discloses, or distributes that information to any person not entitled to the information under this Act commits an offense. A person who receives the confidential information with knowledge that the person is not entitled to have received the information from the board under this Act commits an offense. An offense under this subsection is a Class A misdemeanor.

(j) Each district court of Travis County has jurisdiction to enjoin the possession or the use by any person of any information made confidential by this section if that possession or use is not authorized by this section. This subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment

if the information was lawfully acquired by the employer releasing the information.

(k) This section does not prohibit a person from receiving from the board information contained in any record or file of the board in statistical form and in a manner that does not disclose the name or identity of any injured employee.

(l) The board may charge a fee to a person requesting information under this section. The board shall set the fee in an amount reasonable and necessary to cover the board's costs in furnishing the information.

SECTION 11.03. MAINTENANCE TAX. (a) In addition to all other tax imposed on those insurers, each stock company, mutual company, reciprocal or interinsurance exchange, and Lloyd's association that writes workers' compensation insurance in this state shall pay an annual maintenance tax to support the Texas Workers' Compensation Board at a rate not to exceed two percent of the correctly reported gross workers' compensation insurance premiums as reported to the State Board of Insurance under Subchapter D, Chapter 5, Insurance Code. The tax shall be collected and paid in the same manner and at the same time that the insurers pay the maintenance tax imposed under Article 5.68, Insurance Code.

(b) The Texas Workers' Compensation Board shall set the rate of assessment each year to produce the amount of funds it estimates will be necessary to pay the expenses of the board in regulating workers' compensation insurance during the succeeding year. The Texas Workers' Compensation Board shall certify the rate of

assessment to be used during the succeeding year not later than October 1 of each calendar year.

(c) Amounts received under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 11.04. INJURIES SUSTAINED OUTSIDE THIS STATE. (a) This section applies to an employee:

(1) hired in this state; or

(2) if a resident of this state, recruited in this state.

(b) An employee subject to this section who sustains a compensable injury outside this state is entitled to benefits under this Act.

(c) This section applies only to a compensable injury that occurs not later than one year after the date on which the employee leaves this state. An injured employee may not recover under this section if the employee elects to recover under the law of the jurisdiction in which the injury occurred.

SECTION 11.05. EFFECT OF OTHER INSURANCE COVERAGE. (a) A contract entered to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this Act is void unless the contract also covers liability for payment of compensation under this Act.

(b) This section does not prohibit an employer who has elected not to obtain workers' compensation insurance coverage from obtaining any insurance coverage for the employer's employees if the insurance is not represented to any person as providing workers' compensation coverage under this Act.

SECTION 11.06. LEGALLY INCOMPETENT EMPLOYEES. If an injured employee is a minor or is otherwise legally incompetent, the employee's guardian may exercise on the employee's behalf the rights and privileges granted to the employee under this Act. The board by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees.

SECTION 11.07. ALIEN EMPLOYEES; LEGAL BENEFICIARIES. (a) In this section, "alien" means an individual who is not a citizen of the United States.

(b) A resident or nonresident alien employee or legal beneficiary is entitled to compensation under this Act.

(c) A nonresident alien claimant may be officially represented by a consular officer of the country of which the alien is a citizen. That officer may receive benefit payments for distribution to the alien employee.

SECTION 11.08. MULTIPLE INSURANCE CARRIERS. If an injury sustained by an employee is determined to be compensable but there is a dispute as to which of two or more employers for whom the employee was providing services at the time of the injury, the insurance carriers of each of the affected employers shall pay a proportionate share of the benefits due to that employee. On final determination of the liability, any insurance carrier determined not to be liable for the payment of benefits is entitled to reimbursement for the share paid by that carrier from the carrier determined to be liable.

SECTION 11.09. LIABILITY OF CARRIER FOR ACCIDENT PREVENTION. The insurance carrier, its agent, servant, or employee shall have

no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance carrier for the prevention of accidents in connection with operations of the employer except as provided by this Act; provided, however, this immunity shall not affect the liability of the insurance carrier for compensation or as otherwise provided in this law.

ARTICLE 12. AMENDMENTS

TEXAS WORKERS' COMPENSATION POOL

SECTION 12.01. Article 5.76, Insurance Code, is amended to read as follows:

Art. 5.76. PREVENTION OF INJURIES AND ASSIGNMENT OF CERTAIN [~~REJECTED~~] RISKS

Sec. 1. [~~(a)~~] In this Article [~~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 4 [~~(e)~~] 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 4 [~~(e)~~] 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 that has an estimated annual premium of at least $10,000 and that is in good faith entitled to insurance but is unable to procure or retain insurance through ordinary methods in the voluntary [~~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. The term does not include an insurance risk that qualifies for assignment to an individual company under Section 6 of this Article.

(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.

Sec. 2. (a) [~~(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 nonprofit 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. An [~~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.

(b) The pool shall be governed by a governing committee of twelve (12) members elected annually by the members of the pool. Seven of the elected members of the governing committee constitute a quorum. The [~~Their~~] qualifications, terms of office, duties, and responsibilities of the elected members 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 provided by Section 7 [~~(e)~~] of this Article.

(c) The Board also shall appoint three ex officio members of the governing committee, one of whom shall represent employers, one of whom shall represent labor, and one of whom shall represent the Board. An ex officio member may not vote and is not considered in

determining a quorum.

(d) Not more than eight elected 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 Article [~~Act~~].

(e) The pool is a governmental body for purposes of the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 3. (a) If an insurer rejects an insurance risk, the insurer shall notify the Board in writing of the specific reasons for rejecting the risk. The insurer must include a statement in the notice as to whether the loss experience of the risk was a factor in the decision to reject the risk.

(b) The Board shall select the servicing companies it determines necessary to serve the residual market. The selection shall be made on the basis of competitive bids according to bid specifications and procedures established by the rules of the Board, including rules relating to standards and requirements

for the qualification, performance, and operation of a servicing company that are adequate to assure employers assigned to the pool prompt and efficient service.

(c) A company may not be a servicing company unless the group of which the company is a member writes at least one-half percent of the total voluntary market for workers' compensation insurance in this state.

Sec. 4. (a) The [~~(e)--It-shall-be-the--duty--of the~~] pool shall [~~to~~] provide insurance, in the manner herein provided, for any risk under the Texas Workers' Compensation Act [~~Law-of-Texas~~], the Longshoremen's and Harbor Workers' Compensation Act, [~~and/~~]or the Federal Coal Mine Health and Safety Act of 1969, as amended, 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.

(b) From and after the date the rules made and adopted under Section 7 [~~(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.

Sec. 5. (a) [~~(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 9 [~~(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.

(b) 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.

Sec. 6. (a) The Board shall develop a fair and nondiscriminatory plan for the assignment to individual companies of insurance risks with estimated annual premiums of less than $10,000 that are not classified

by the Board as extra-hazardous businesses or activities.

(b) Except as provided by Subsection (c) of this section, each insurance company in this state writing insurance as defined in this Article shall participate in the assignment plan developed by the Board.

(c) The Board by rule may exempt from participation in the assignment plan a company or a group of companies whose total premium written for insurance as defined in this Article is less than 0.05 percent of the total voluntary market as of the most recent premium information reporting year.

Sec. 7. (a) [~~(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.

(b) The pool shall pay all costs and expenses of operating and maintaining the pool, including any fees or allowances paid [~~to members~~] for servicing rejected risks or making up deficits incurred by the pool. 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 or for making up deficits incurred by the pool.

(c) 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.

Sec. 8. [~~(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.

Sec. 9. (a) [~~(g)~~] The Board, in addition to the provisions prescribed by Subchapter D 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.

(b) 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, and allowance for profit and contingencies, and any other relevant factors in connection with insuring and servicing such risk or risks.

(c) 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.

(d) The Board shall create a division to monitor the operation of the pool with the object of reducing the number of risks insured by the pool. The division shall review each rejected risk before its assignment to the pool and shall review the assignment of each risk made under Section 6 of this Article. The

division shall attempt to find an insurer to voluntarily insure the risk before its initial assignment to the pool, assignment to a specific company under Section 6 of this Article, or renewal of the risk's assignment to the pool. The Board shall adopt rules as necessary to implement this subsection.

Sec. 10. [~~(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.

Sec. 11. [~~(i)~~] No rejected risk or applicant as a rejected risk shall be considered in good faith entitled to the remedies and benefits of this Article [~~Act~~] if such risk is in violation of rules or

regulations of the Texas Workers' Compensation [~~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.

Sec. 12. [~~(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.

Sec. 13. [~~(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.

Sec. 14. [~~(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 Article [~~Act~~].

OTHER INSURANCE MATTERS

SECTION 12.02. Subchapter D, Chapter 5, Insurance Code, is amended by adding Articles 5.55B, 5.60A, and 5.65A to read as follows:

Art. 5.55B. (a) The Board shall require each company or association that writes workers' compensation insurance in this state to offer an optional deductible plan or a range of deductible plans for purposes of allowing policyholders to self-insure up to the deductible amount.

(b) Upon the effective date of this Act, the Board shall perform an actuarial analysis for purposes of determining the amount of rate reduction applicable to policies with the various ranges of deductibles as opposed to standard policies without a deductible. In subsequent years, the Board shall determine the amount of rate reduction according to rating procedures to be adopted by the Board.

(c) The Board shall adopt rules as necessary to insure the security of benefits to employees up to the deductible amount in the event of the insolvency or bankruptcy of the policyholder or other similar contingencies. In such instances, the Board shall require the company or association writing workers' compensation insurance for such policyholder to be responsible for all benefits that might accrue, with

rights to indemnity from the policyholder or its estate up to the deductible limit.

(d) The Board shall adopt rules as necessary allocating responsibility between the policyholder and the company or association for servicing of claims up to the deductible amount. The rules shall provide that upon the written consent of the company or association for any separate claim until the deductible is exceeded, the policyholder may service any such claim if serviced by an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(e) The Board shall adopt additional rules as necessary to implement this article to insure the availability of deductible workers' compensation policies as an option to policyholders.

Art. 5.60A. TESTIMONY AT RATE HEARINGS BY CERTAIN WORKERS' COMPENSATION BOARD OFFICERS. (a) To obtain more immediate and accurate information on certain trends in workers' compensation insurance that may affect the costs of that insurance during a rating period, the executive director of the Texas Workers' Compensation Board shall testify at any rate hearing conducted by the Board on workers' compensation insurance relating to trends in:

(1) claims resolution of workers' compensation cases; and

(2) cost components in workers' compensation cases.

(b) The testimony of the executive director is subject to cross-examination by the Board and any parties to the hearing.

Art. 5.65A. NOTIFICATION TO POLICYHOLDER. (a) A company or association that writes workers' compensation insurance in this state shall notify each policyholder of:

(1) any case that is initiated against the policy;

(2) a proposal to settle a case; and

(3) an administrative or judicial proceeding relating to the resolution of a case, including a benefit review conference or contested case hearing conducted by the Texas Workers' Compensation Board.

(b) Not later than the 60th day before the date on which the term of a workers' compensation insurance policy expires, and at other times on the written request of the policyholder, each company or association that writes workers' compensation insurance in this state shall provide a policyholder with a list of claims charged against the policy, including payments made and reserves established on each case.

COURT REVIEW; JURISDICTION OF STATUTORY COUNTY COURTS

SECTION 12.03. Section 23.101(a), Government Code, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with criminal actions against defendants who are detained in jail pending trial given preference over other criminal actions;

(3) election contests and suits under the Texas Election Code; and

(4) [~~appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board-and~~] claims under the Federal Employers' Liability Act and the Jones Act.

SECTION 12.04. (a) Section 25.0032(a), Government Code, as amended by Section 8.04(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by

Section 25.0003 and other law, a county court at law in Anderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) probate matters and proceedings, including will contests;

(B) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(C) family law cases and proceedings; and

[~~(D)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~]

(3) concurrent jurisdiction with the county and district courts over all suits arising under the Family Code.

(b) Section 2(b), Chapter 665, Acts of the 67th Legislature, Regular Session, 1981 (Article 1970-377, Vernon's Texas Civil Statutes), as amended by Chapter 913, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) The County Court at Law of Anderson County has jurisdiction concurrent with the district court in:

(1) all probate matters and proceedings;

including will contests;

(2) eminent domain cases; and

(3) civil cases when the matter in controversy exceeds $500 and does not exceed $50,000, exclusive of interest[~~,-and~~

[~~(4)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.05. Section 25.0222(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless~~

~~of-the-amount-in-controversy,-and~~

[~~(3)~~] family law cases and proceedings.

SECTION 12.06. (a) Section 25.0312(a), Government Code, as amended by Section 8.07 of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Calhoun County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(B) [~~appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings; [~~and~~]

<u>(C)</u> [~~(D)~~] suits on behalf of the

state to recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(D) [~~(E)~~] suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(E) [~~(F)~~] suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(F) [~~(G)~~] suits for the trial of right to property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(G) [~~(H)~~] contested elections; and

(3) concurrent jurisdiction with the justice courts in criminal matters prescribed by law for justice courts.

(b) Section 2(c), Chapter 1076, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-385, Vernon's Texas Civil Statutes), as amended by Section 1, Chapter 938, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(c) The county court at law has concurrent civil jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(2) [~~appeals---of---final---rulings----and~~

~~decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy;~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy;

(3) [~~(4)~~] cases and proceedings involving adoptions, birth records, or removal of disability of reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support, custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses;

(4) [~~(5)~~] suits on behalf of the state to recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(5) [~~(6)~~] suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(6) [~~(7)~~] suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(7) [~~(8)~~] suits for the trial of right to

property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(8) [~~(9)~~] contested elections.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.07. Section 25.0592(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Dallas County has original and concurrent jurisdiction with the district court in[~~:~~

[~~(1)~~] civil cases in which the matter in controversy exceeds $500, excluding interest, but does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs[~~;--and~~

[~~(2)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

SECTION 12.08. Section 25.0702(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Ector County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.09. Section 25.0862(b), Government Code, is amended to read as follows:

(b) A statutory county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(2) family law cases and proceedings[~~, and~~

[~~(3) appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy~~].

SECTION 12.10. (a) Section 25.1032(b), Government Code, as amended by Section 8.10(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) In addition to other jurisdiction provided by law, a county civil court at law has[~~:~~

[~~(1)~~] concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500, excluding interest, and does not exceed $50,000, excluding interest, statutory or punitive damages and penalties, attorney's fees, and costs[~~;--and~~

[~~(2)--original--and-concurrent-jurisdiction with-the-district-court-in-appeals-of-final-rulings-and decisions-of-the-Industrial-Accident-Board;--regardless of-the-amount-in-controversy~~].

(b) Section 25.0013(d), Government Code, is repealed.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law,

Subsection (a) has no effect.

SECTION 12.11. (a) Section 25.1072(a), Government Code, as amended by Section 8.12(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hays County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(B) family law cases and proceedings[~~;--and~~

[~~(C)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board;--regardless of-the-amount-in-controversy~~].

(b) Section 2(f), Chapter 298, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1970-358, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 231, Acts of the 70th

Legislature, Regular Session, 1987, is amended to read as follows:

(f) The county courts at law have concurrent jurisdiction with the district court in[~~:~~

[~~(1) appeals of final rulings and decisions of the Industrial Accident Board; and~~

[~~(2)~~] eminent domain cases and proceedings, regardless of the amount in controversy.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.12. Section 25.1092(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Henderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed

$50,000, excluding interest, court costs, and attorney's fees in cases in which attorney's fees are taxed as costs of court; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.13. Section 25.1182(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hunt County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in[~~:~~

[~~(A)~~] civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest[~~, and~~

[~~(B) appeals of final rulings and decisions of the Industrial Accident Board~~].

SECTION 12.14. Section 25.1482(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in

Liberty County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board; and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.15. (a) Section 25.1542(a), Government Code, as amended by Section 8.14(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Lubbock County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the

district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(B) family law cases and proceedings[~~,-and~~

[~~(C)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2b, Chapter 16, Acts of the 51st Legislature, 1st Called Session, 1950 (Article 1970-340, Vernon's Texas Civil Statutes), as amended by Section 28, Chapter 709, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2b. In addition to the jurisdiction now conferred upon the County Court at Law No. 1 of Lubbock County by the Constitution and Laws of the State of Texas said court shall hereinafter have and exercise concurrent civil jurisdiction with the district courts in Lubbock County in all civil cases and matters when the matter in controversy shall exceed Five Hundred Dollars ($500) and not exceed Fifty Thousand Dollars ($50,000), exclusive of interest. [~~The-County-Court-at Law--No.--1--of--Lubbock--County--also--has--concurrent jurisdiction-with-the--district--court--in--appeals--of final--rulings-and-decisions-of-the-Industrial-Accident Board,-regardless-of-the-amount-in-controversy.~~]

(c) Section 2b, Chapter 109, Acts of the 55th Legislature,

Regular Session, 1957 (Article 1970-340.1, Vernon's Texas Civil Statutes), as amended by Section 29, Chapter 709, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2b. In addition to the jurisdiction now conferred upon the County Court at Law No. 2 of Lubbock County by the Constitution and Laws of the State of Texas said court shall hereinafter have and exercise concurrent civil jurisdiction with the district courts in Lubbock County in all civil cases and matters when the matter in controversy shall exceed Five Hundred Dollars ($500) and not exceed Fifty Thousand Dollars ($50,000), exclusive of interest. [~~The County Court at Law No. 2 of Lubbock County also has concurrent jurisdiction with the district court in appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy.~~]

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.16. Section 25.1672(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by

excluding interest and attorney's fees; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.18. Section 25.1792(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Nolan County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.19. Section 25.1852(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in

Section 25.0003 and other law, a county court at law in Midland County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.17. Section 25.1732(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Moore County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the matter in controversy exceeds $500 and does not exceed $50,000,

Panola County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.20. Section 25.1862(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Parker County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(2) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(3)~~] family law cases and proceedings.

SECTION 12.21. Section 25.1892(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Polk County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,~~

[~~(C)~~] cases and proceedings involving the collection of delinquent taxes, penalties, interest, and costs and the foreclosure of tax liens; and

(C) [~~(D)~~] family law cases and proceedings.

SECTION 12.22. (a) Section 25.1902(b), Government Code, as amended by Section 8.18(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and

conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County also has, concurrent with the county court, the probate jurisdiction provided by general law for county courts. A county court at law also has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,-and~~

[~~(3)~~] family law cases and proceedings.

(b) Section 2a(a), Chapter 56, Acts of the 54th Legislature, Regular Session, 1955 (Article 1970-311a, Vernon's Texas Civil Statutes), as added by Section 2, Chapter 658, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law No. 1 of Potter County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident--Board--regardless of-the-amount-in-controversy,~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy; [~~and~~]

(3) [~~(4)~~] cases and proceedings involving family law matters, including adoptions, birth records, or removal of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, and custody and support of minor children involved therein, incident to divorce or annulment proceedings; independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; paternity; termination of parental rights; independent actions involving child support and custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

(c) Section 2(b), Chapter 645, Acts of the 64th Legislature, Regular Session, 1975 (Article 1970-311b, Vernon's Texas Civil Statutes), as added by Section 6, Chapter 658, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) [~~appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy; and

(3) [~~(4)~~] cases and proceedings involving family law matters, including adoptions, birth records, or removal of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, and custody and support of minor children involved therein, incident to divorce or annulment proceedings; independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; paternity; termination of parental rights; independent actions involving child support and custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not

become law, Subsection (a) has no effect.

SECTION 12.23. (a) Section 25.1932(a-2), Government Code, as amended by Section 8.19(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a-2) The County Court at Law No. 2 of Randall County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest and attorney's fees; <u>and</u>

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board;-and~~

[~~(3)~~] cases under the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code).

(b) Section 2(b), Chapter 1027, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-371a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The County Court at Law No. 2 of Randall County has concurrent civil jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 but does not exceed $50,000,

excluding interest and attorney's fees; and

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(3)~~] eminent domain cases and proceedings.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.24. Section 25.2142(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Smith County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs; and

(B) family law cases and proceedings[~~,-and~~

[~~(C)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

SECTION 12.25. Section 25.2162(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Starr County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(B) [~~appeals-of--final--rulings--and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.26. (a) Section 25.2222(b), Government Code, as amended by Section 8.20(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and

conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs; and

(2) nonjury family law cases and proceedings[~~;-and~~

[~~(3)--final--rulings--and--decisions-of-the Industrial-Accident-Board,-regardless-of-the-amounts-in controversy~~].

(b) Section 2(c), Chapter 592, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-62.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The County Court at Law No. 3 of Tarrant County has jurisdiction concurrent with the district court in civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs. The County Court at Law No. 3 of Tarrant County also has jurisdiction concurrent with the district court [~~in--appeals-of-final-rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of--the--amount--in--controversy,--and~~] in matters of eminent domain, regardless of the amount in

controversy.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.27. (a) Section 25.2292(a), Government Code, as amended by Section 8.21(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Travis County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; <u>and</u>

(2) concurrent jurisdiction with the district courts in civil cases and proceedings in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest[~~;--and~~

[~~(3)--appeals----of---final---rulings---and~~

~~decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 6(b), Chapter 315, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-324a.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In addition to other jurisdiction provided by law, the courts created by this Act and the existing county courts at law have concurrent jurisdiction with the district court in[~~:~~

[~~(1)~~] civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest[~~,--and~~

[~~(2)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.28. (a) Section 25.2412(a), Government Code, as amended by Section 8.23(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive

codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Washington County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; <u>and</u>

(B) family law cases and proceedings[~~;--and~~

[~~(C)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2(d), Chapter 943, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-308a, Vernon's Texas Civil Statutes), is repealed.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature,

is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.29. (a) Section 25.2422(a), Government Code, as amended by Section 8.11(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Webb County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; <u>and</u>

(C) cases and proceedings involving justiciable controversies and differences between spouses, or between parents, or between parent and child, or between any of these and third persons[~~;--and~~

[~~(B)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 3(a), Chapter 65, Acts of the 64th Legislature, Regular Session, 1975 (Article 1970-360, Vernon's Texas Civil Statutes), as amended by Section 1, Chapter 528, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law of Webb County has jurisdiction concurrent with the district court in:

(1) eminent domain cases; <u>and</u>

(2) civil cases when the matter in controversy exceeds $500 and does not exceed $50,000, exclusive of interest[~~,-and~~

[~~(3)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.30. (a) Section 25.2452(d), Government Code, as amended by Section 8.24(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and

corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(d) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) family law cases and proceedings;

(3) suits brought under the authority of the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code) or the Uniform Interstate Compact on Juveniles (Section 25.01 et seq., Family Code); <u>and</u>

(4) other juvenile and child welfare cases in which the district and county courts have jurisdiction[~~;-and~~

[~~(5)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2(f), Chapter 195, Acts of the 66th Legislature, Regular Session, 1979 (Article 1970-166d, Vernon's Texas Civil Statutes), as added by Section 3, Chapter 1094, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

(c) Section 2(f), Chapter 671, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-166e, Vernon's Texas Civil

Statutes), as added by Section 5, Chapter 1094, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.31. (a) Section 25.2482(a), Government Code, as amended by Section 8.25(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Williamson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(3) family law cases and proceedings[~~,-and~~

[~~(4)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2(a), Chapter 452, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-380, Vernon's Texas Civil Statutes), as amended by Chapters 985, 986, and 1088, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law of Williamson County has concurrent jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(2) cases and proceedings involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support and custody of minors and wife or child desertion; and independent actions

involving controversies between parent and child, between parents, and between spouses[~~,-and~~

[~~(3)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

CONFORMING AMENDMENTS; NAME CHANGE

SECTION 12.32. Article 1.07, Insurance Code, is amended to read as follows:

Art. 1.07. TEXAS WORKERS' COMPENSATION [~~INDUSTRIAL--ACCIDENT~~] BOARD. Nothing in this Code shall be construed to in any manner affect the duties [~~new~~] imposed by law on the Texas Workers' Compensation [~~Industrial--Accident~~] Board or to take from said board the performance of the duties [~~new~~] imposed on said board by law.

SECTION 12.33. (a) For all workers' compensation insurance policies issued on or after September 1, 1989, and through August 31, 1990, the premium rates charged shall be adjusted to reflect at

1 least a four-percent reduction in the overall premium rate
2 effective on January 1, 1989, distributed among rate
3 classifications in accordance with sound actuarial principles.
4 (b) For all workers' compensation insurance policies issued
5 on or after September 1, 1990, through August 31, 1991, the premium
6 rates charged shall be adjusted to reflect at least a 10-percent
7 reduction in the overall premium rate effective January 1, 1989,
8 distributed among rate classifications in accordance with sound
9 actuarial principles.
10 (c) For all workers' compensation insurance policies issued
11 on or after September 1, 1991, through August 31, 1992, the premium
12 rates charged shall be adjusted to reflect at least a 15-percent
13 reduction in the overall premium rate effective January 1, 1989,
14 distributed among rate classifications in accordance with sound
15 actuarial principles.
16 (d) The reductions in rates required by this section take
17 effect only on a finding by the State Board of Insurance that the
18 reductions would be consistent with the following factors:
19 (1) encourage the prevention of accidents;
20 (2) take into account the peculiar hazard and
21 experience of individual risks, past and prospective, within and
22 outside the state, and all other relevant factors, within and
23 outside the state;
24 (3) that such reductions would be fair, reasonable,
25 and not confiscatory as to any class of insurer authorized by law
26 to write workers' compensation insurance in this state; and
27 (4) the statistical data or other information provided

to justify the reductions indicates that approval of the reductions are reasonable.

Any rates, rating plans, rate reductions or change therein, shall be published 15 days before they become effective.

SECTION 12.34. Article 5.76-1, Insurance Code, is amended to read as follows:

Art. 5.76-1. ACCIDENT PREVENTION SERVICES. (a) Any insurer desiring to write workers' 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 workers' health and safety division of the Texas Workers' Compensation Board [~~State Board of Insurance~~].

(b) [~~(a-1)~~] The workers' health and safety division of the Texas Workers' Compensation Board [~~State---Board---of---Insurance~~] shall conduct [~~the~~] inspections to determine the adequacy of the accident prevention services required by Subsection (a) of this Article at least every two (2) years for each insurer writing workers' compensation insurance in Texas.

(c) [~~(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.~~] Notice that services are available to the policyholder from the insurer must appear in no less than 10-point bold type on the front of each workers' compensation insurance policy delivered or issued for delivery in the state. To provide such facilities, the insuror 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).

(d) [~~(c)~~] At least once each year each insurer writing workers' compensation insurance in Texas must submit to the Texas Workers' Compensation Board [~~State Board-of-Insurance~~] detailed information on the type

of accident prevention facilities offered to that insurer's policyholders. The information must include:

(1) the amount of money spent by the insurer on accident prevention services;

(2) the number of field safety representatives employed by the insurer;

(3) the number of site inspections performed;

(4) any accident prevention services for which the insurer contracts; and

(5) any additional information required by that board [~~the Board~~].

(e) [~~(d)~~] If the Commissioner of Insurance shall determine that reasonable accident prevention services are not being maintained or provided by the insuror or are not being used by the insuror in a reasonable manner to prevent injury to employees of its policyholders, the fact shall be reported to the Texas Workers' Compensation Board [~~State Board of Insurance~~], and that board [~~the Board~~] shall order a hearing to determine if the insuror is not in compliance with this Article. If it is determined that the insuror is not in compliance, the State Board of Insurance shall revoke its license to write workers' compensation insurance in Texas [~~shall be revoked~~].

(f) [~~(e)~~] The Texas Workers' Compensation Board [~~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.

(g) [~~(f)~~] The Texas Workers' Compensation Board shall employ the personnel necessary to enforce this Article and shall employ at least five (5) safety inspectors to perform inspections at the job site and at the insurance company to determine the adequacy of the accident prevention services provided by the insurer. The safety inspectors must have the qualifications required for field safety representatives required by Subsection (a) of this Article.

(h) [~~(g)~~] An Accident Prevention Advisory Committee is created to assist the Texas Workers' Compensation Board in developing rules to carry out this Article. The committee is composed of employer, employee, and insurance industry representatives and safety professionals appointed by that board [~~the Board~~] annually.

(i) [~~(h)~~] The administration of this Article is an expense of regulating workers' compensation insurance under Article 5.68, Insurance Code.

SECTION 12.35. Section 3A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION OF TEXAS WORKERS' COMPENSATION [~~INDUSTRIAL~~

~~ACCIDENT~~] BOARD. (a) The liquidator shall notify the Texas Workers' Compensation [~~Industrial-Accident~~] Board immediately upon a finding of insolvency or impairment upon any insurance company which has in force any workers' compensation coverage in Texas.

(b) The Texas Workers' Compensation [~~Industrial Accident~~] Board shall, upon said notice, submit to the liquidator a list of active cases pending before the Texas Workers' Compensation [~~Industrial-Accident~~] Board in which there has been an acceptance of liability by the carrier, where it appears that no bona fide dispute exists and where payments were commenced prior to the finding of insolvency or impairment and where future or past indemnity or medical payments are due.

(c) Notwithstanding the provisions of Section 3 of this Article, the liquidator is authorized to commence or continue the payment of claims based upon the list submitted in Subsection (b) above.

(d) In order to avoid undue delay in the payment of covered workers' compensation claims, the liquidator shall contract with the Texas Workers' Compensation [~~Assigned---Risk~~] Pool or any other qualified organization for claims adjusting. Files and information delivered by the Texas Workers' Compensation [~~Industrial--Accident~~] Board to the liquidator may be delivered to the Texas Workers' Compensation [~~Assigned-Risk~~] Pool or any organization

with which the liquidator has contracted for claims adjusting services.

(e) The Texas Workers' Compensation [~~Industrial Accident~~] Board shall report to the State Board of Insurance any occasion when a workers' compensation insurer has committed acts that may indicate insurer financial impairment, delinquency or insolvency.

SECTION 12.36. Section 2(5)(A), Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Department of Commerce;

(iii) a member of the Texas Aeronautics Commission;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Purchasing and General Services Commission;

(viii) a member of the Texas Board

of Corrections;

(ix) a member of the Board of Trustees of the Employees Retirement System of Texas;

(x) a member of the State Highway and Public Transportation Commission;

(xi) a member of the Texas Workers' Compensation [~~Industrial-Accident~~] Board;

(xii) a member of the State Board of Insurance;

(xiii) a member of the Board of Pardons and Paroles;

(xiv) a member of the Parks and Wildlife Commission;

(xv) a member of the Public Safety Commission;

(xvi) the Secretary of State;

(xvii) a member of the State Securities Board;

(xviii) a member of the Texas Amusement Machine Commission;

(xix) a member of the Texas Water Development Board;

(xx) a member of the Texas Water Commission;

(xxi) a member of the governing board of a state senior college or university as defined by Section 61.003, Education Code;

(xxii) a member of the Texas Higher Education Coordinating Board[~~,--Texas---College---and University-System~~];

(xxiii) a member of the Texas Employment Commission;

(xxiv) a member of the State Banking Board;

(xxv) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvi) a member of the Credit Union Commission; or

(xxvii) a member of the School Land Board.

SECTION 12.37. Section 3(1), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation [~~Industrial----Accident~~] Board, and institutions of higher education, that makes rules or determines contested cases.

SECTION 12.38. Section 2(1), Texas Administrative Code Act (Article 6252-13b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission,

department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation [~~Industrial----Accident~~] Board, and institutions of higher education, that makes rules or determines contested cases.

SECTION 12.39. Section 3A(h), Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Texas Workers' Compensation [~~Industrial--Accident~~] Board or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be clearly identified in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Any public official or person who is designated or authorized to post notices of meetings by a governmental body in accordance with Section 3A of this Act shall post the notice taking at face value the reason for the emergency as stated by the governmental

body. Cases of emergency and urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the governmental body. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

SECTION 12.40. Section 2, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Department" whenever used in this law shall be held to mean the State [~~Highway~~] Department of Highways and Public Transportation [~~Texas~~].

(2) [~~2.~~] "Employee" shall mean every person in the service of the [~~State-Highway~~] Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the [~~State-Highway~~] Department.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean----Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial--Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean--the--relatives--named--in Section--8a--of-Article-8306,-Revised-Civil-Statutes-of Texas-of-1925,-adopted-in-Section-7-of-this-law~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall--be--as--defined--in--Section--1,--Article-8309, Revised-Civil-Statutes-of-Texas-of-1925~~].

(b) [~~8.~~] Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

SECTION 12.41. Section 7, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~laws-as-amended-or as-they-may-hereafter-be-amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.27, 4.41-4.46, 4.48-4.51, and 4.61-4.65;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07

[~~(1)--Article-8306,-except-Sections--5--and 28,--and--Articles-8307,-8307b,-and-8309,-Revised-Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter-248,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter---77,---Acts---of---the--65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter--208,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts---of---the---62nd Legislature,--Regular--Session,--1971--(Article--8307c, Vernon's-Texas-Civil-Statutes),~~

[~~(6)--Chapter--358,--Acts---of---the---64th Legislature,--1975-(Article-8307d,-Vernon's-Texas-Civil Statutes),-and~~

[~~(7)--Chapter-179,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber," or~~] "employer" appears [~~or-their--equivalents--appear~~], it [~~they~~] shall be construed to and shall mean "the department."

SECTION 12.42. Section 14, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. RULES AND REGULATIONS; EXAMINING PHYSICIANS; REPORTS AS EVIDENCE. The [~~State-Highway~~] Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the [~~State-Highway~~] Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the [~~State--Highway~~] Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the [~~State---Highway~~] Department to determine who may be physically fit to be classified as "employees" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the [~~State Highway~~] Department a complete transcript of said examination in writing upon a form to be furnished by the [~~State-Highway~~] Department. It shall be the duty of the [~~State-Highway~~] Department to preserve as a part of the permanent records of the [~~State--Highway~~]

Department all reports of such examinations so filed. Such reports shall be admissible in evidence before the Texas Workers' Compensation [~~Industrial--Accident~~] Board, and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Texas Workers' Compensation [~~Industrial Accident~~] Board in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such reports so admitted shall be prima facie evidence as to the facts set out therein.

SECTION 12.43. Sections 2, 7, 9, and 13, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the board of regents of The Texas A&M University System [~~Board-of-Directors-of-the-Agricultural-and--Mechanical College-of-Texas-including-the-following:~~

[~~Agricultural--and-Mechanical-College of-Texas~~

[~~Texas----Agricultural-----Experiment~~

~~Station~~

[~~Extension-Service,-A.-and-M.-College of-Texas~~

[~~Texas-Forest-Service~~

[~~Rodent-Control-Service~~

[~~Firemen's-Training-School~~

[~~John--Tarleton--Agricultural-College~~

[~~North-Texas-Agricultural-College~~

[~~Prairie--View---State---Normal---and Industrial-College~~

[~~Any--other-agencies-now-or-hereafter under-the--direction--and--control--of--said--Board--of Directors~~].

(2) [~~2.~~] "Workman" shall mean every person employed in the service of any institution as defined above, whose name appears on the payroll thereof.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean---Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial-Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall--mean--the-relatives-named-in Section-8a-of-Article-8306,-Revised-Civil--Statutes--of Texas-of-1925,-adopted-in-Section-7-of-this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925~~].

(b) [~~8.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. LAWS GOVERNING. (a) Unless otherwise provided in this Act, the following provisions of the Texas Workers' Compensation Act [~~herein, Sections 1, 6, 7, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and Article 8306a, Acts 1931, 42nd Legislature, as amended, and Sections 4a, 6a, 11, 12, 13, and 14 of Article 8307, of the Revised Civil Statutes of Texas, 1925, as amended, and Sections 4, and 5, of Article 8309, of the Revised Civil Statutes of Texas, 1925, as amended,~~] are hereby adopted and shall govern insofar as applicable under the provisions of this law:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.27, 4.41-4.46, 4.49-4.51, and 4.61-4.64;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07.

(b) Provided that whenever [~~in-the-above-adopted Sections-of--Articles--8306,--8307,--and--8309--of--the Revised--Civil--Statutes-of-Texas,-1925,-as-amended,-or herein-amended,~~] the word "employer" appears in this Act, it means [~~"association,"---"subscriber,"--or "employer,"--or--their--equivalents--appear---in---such Articles,--they--shall--be-construed-to-and-shall-mean~~] "the institution."

Sec. 9. PAYMENT OF COMPENSATION; EXHAUSTION OF EARNED ANNUAL AND SICK LEAVE. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~provided-in-Section-7,-Article-8306,-as-amended,~~] will remain available to the workman but no workmen's

compensation payment will accrue or become due and payable to the injured workman.

Sec. 13. RULES AND REGULATIONS; PHYSICIANS OR CHIROPRACTORS FOR EXAMINATIONS; REPORTS OF EXAMINATIONS. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection 2 of~~] Section 2(2) of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the

institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

SECTION 12.44. Sections 2, 7, 9, 13, and 18, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The University of Texas System [~~including the following:~~

[~~Main University, Austin~~

[~~Medical Branch, Galveston~~

[~~Dental Branch, Houston~~

[~~M. D. Anderson Hospital for Cancer Research, Houston~~

[~~Southwestern Medical School, Dallas~~

[~~Texas Western College, El Paso~~

[~~Postgraduate School of Medicine, Houston~~

[~~Any other agencies now or hereafter under the direction and control of said Board of Regents~~].

(2) [~~2.~~] "Workman" shall mean every person in the service of The University of Texas System under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of The University of Texas System.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean---Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial-Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall--mean--the-relatives-named-in Section-8a-of-Article-8306,-Revised-Civil--Statutes--of Texas-of-1925,-adopted-in-Section-7-of-this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall-be--as--defined--in--Section--1,--Article--8309, Revised-Civil-Statutes-of-Texas-of-1925~~].

(b) [~~7.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be

included.

Sec. 7. APPLICABILITY OF EXISTING LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~sections~~] are adopted and shall govern as applicable under the provisions of this Act:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.41-4.46, 4.49-4.51, and 4.61-4.64;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07

[~~Sections--1,--6,--7,-7b,-7c,-7d,-7e,-8,-8a,-8b,-9,-10,-11,-11a,-12,-12a,-12b,-12c,-12d,-12e,-12f,-12i,-13,-15,-15a,-16,-17,-19,-20,-21,-22,-23,-24,-25,-26,-and-27--of-Article-8306,-Revised-Civil-Statutes-of-Texas,-1925,-as-amended,--and--as--may-be-hereafter-amended,-Section-1,-Chapter-248,-Acts--of--the--42nd--Legislature,--Regular-Session,--1931--(Article--8306a,--Vernon's--Texas-Civil-Statutes),-as-last-amended-by-Section--2,--Chapter--26,-Acts--of--the--54th-Legislature,-Regular-Session,-1955,-and-as-may-be-hereafter-amended,-Sections-4a,--6a,--10,-11,--12,--13,--and--14--of--Article-8307,-Revised-Civil-Statutes-of-Texas,-1925,-as--amended,--and--as--may--be-hereafter--amended,--Sections--4--and--5,-Article-8309,-Revised-Civil-Statutes-of-Texas,-1925,-as-amended,--and~~

~~as--may--be--hereafter-amended,-Section-1,-Chapter-179,-Acts-of-the-42nd--Legislature,--Regular--Session,--1931-(Article--8309a,--Vernon's--Texas--Civil--Statutes),-as-amended-by-Section-7,-Chapter-178,--Acts--of--the--53rd-Legislature,--Regular--Session,--1953,--and--as--may-be-hereafter-amended~~].

(b) Wherever the word "employer" appears in the Texas Workers' Compensation Act [~~words-"association,"-"subscriber,"-or-"employer,"-or-the-equivalent--of--any-of--these--words,--are--used--in-Article-8306,-8307,-or-8309,-Revised-Civil-Statutes-of-Texas,-as--amended,--or-as--may-be-hereafter-amended,-and-in-Section-1,-Chapter-179,-Acts-of-the--42nd--Legislature,--Regular--Session,-1931-(Article-8309a,-Vernon's-Texas-Civil-Statutes),-as-amended--by--Section--7,--Chapter-178,-Acts-of-the-53rd-Legislature,-Regular--Session,--1953,--and--as--may--be-hereafter--amended~~], for the purpose of this Act it means [~~they-mean~~] "the institution."

Sec. 9. WEEKLY PAYMENTS; ANNUAL AND SICK LEAVE. It is the purpose of this Act that compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~in~~

~~Section-7,-Article--8306,--Revised--Civil--Statutes--of Texas,--1925,--as--amended,--and--as--may--be-hereafter amended,~~] will remain available to the workman, but no workmen's compensation payment will accrue or become due and payable to the injured employee.

Sec. 13. RULES AND REGULATIONS; DESIGNATION OF PHYSICIANS AND SURGEONS; REPORTS OF EXAMINATIONS. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection-2-of~~] Section 2(2) of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the

institution all reports of such examinations so filed with it.

Sec. 18. When an injured workman has sustained an injury in the course of employment and [~~filed--claim for--compensation-and~~] given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

SECTION 12.45. Section 3(1), Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Board" means the Texas Workers' Compensation [~~Industrial-Accident~~] Board.

SECTION 12.46. Subsection (b), Article 1269t, Revised Statutes, is amended to read as follows:

(b) An employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

(1) the disease is not an "ordinary disease of life" as that term is used in the context of

a workers' compensation claim [~~by--the---Industrial Accident-Board~~];

(2) the exposure to the disease occurs during the course of the employment; and

(3) the employee requires preventative medical treatment because of exposure to the disease.

SECTION 12.47. Section 1A, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 1A. In this article:

(1) "Association" means the Texas Employers' Insurance Association.

(2) "Board" means the Texas Workers' Compensation Board.

(3) "Chiropractic service" means [~~The-term "chiropractic--service"--shall--include,--but--shall-be limited-to,~~] chiropractic as defined by the laws [~~laws~~] of this State.

(4) "Chiropractor" means a person [~~and-the term-"chiropractor"-shall-include,-but--be--limited--to chiropractors~~] licensed by the Texas Board of Chiropractic Examiners [~~whose--licenses--are--properly registered-and-in-good-standing-as-required-by-the-laws of-this-State~~].

SECTION 12.48. Section 7, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 7. Any employer of labor in this State who may be subject to the terms of the Texas Workers'

Compensation Act [~~this--law~~] or to the terms of the "Longshoremen's and Harbor Worker's Compensation Act" of the United States may become a subscriber to the Association.

SECTION 12.49. Section 20a(c), Article 8308, Revised Statutes, is amended to read as follows:

(c) Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Texas Workers' Compensation [~~Industrial--Accident~~] Board, or until a subsequent notice is filed under the provisions of Section 18a of this article, at which time the subsequent insurance company shall be deemed to be the only insurance company liable under the provisions of the Texas Workers' Compensation [~~this~~] Act from and after the effective date of such subsequent policy of insurance.

SECTION 12.50. Sections 1(3) and (4), Article 8309g, Revised Statutes, are amended to read as follows:

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meanings applied to those terms in the context of a workers' compensation claim brought under the Texas Workers' Compensation Act [~~meaning assigned--to--them--in-Section-1,-Article-8309,-Revised Civil-Statutes-of-Texas,-1925,-as-amended~~].

(4) "Board" means the Texas Workers'

Compensation [~~Industrial-Accident~~] Board.

SECTION 12.51. Sections 15(a) and (b), Article 8309g, Revised Statutes, are amended to read as follows:

(a) The following provisions of the Texas Workers' Compensation Act [~~following-laws-as-amended-or as-they-may-hereafter-be-amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.27, 4.41-4.46, 4.48-4.51, and 4.61-4.65;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07

[~~(1)--Article--8306,--except-Sections-5-and 28,-and-Articles-8307,-8307b,-and-8309,--Revised--Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter--248,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter--77,---Acts---of---the---65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter-208,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter---115,---Acts---of--the--62nd Legislature,--Regular--Session,--1971--(Article--8307e, Vernon's-Texas-Civil-Statutes),~~

[~~(6)--Chapter---358,---Acts---of--the--64th Legislature,-1975-(Article-8307d,-Vernon's-Texas--Civil Statutes),-and~~

[~~(7)--Chapter--179,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Wherever the words [~~"association,"~~] "insurer[~~,~~]" [~~"subscriber,"~~] or "employer" are used in the adopted law [~~laws~~], the word "state," "division" or "director," whichever is applicable, is substituted for the purposes of this article.

SECTION 12.52. Section 17, Article 8309g, Revised Statutes, is amended to read as follows:

Sec. 17. COVERAGE FOR OUT-OF-STATE EMPLOYEES. An [~~Notwithstanding-Section-19,-Article--8306,--Revised Civil-Statutes-of-Texas,-1925,-as-amended,-an~~] employee who performs services outside this state is entitled to benefits under this article even if the person is hired or not hired in this state, does not work in this state, works both in this state and out of state, is injured outside this state, or has been outside this state for more than one year. An employee who elects to pursue remedies provided by the state or the District of Columbia in which an injury occurs is not

entitled to benefits under this article.

SECTION 12.53. Section 1(3), Article 8309h, Revised Statutes, is amended to read as follows:

(3) "Board" means the Texas Workers' Compensation [~~Industrial-Accident~~] Board.

SECTION 12.54. Section 3, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 3. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~following-laws--as amended--or--as--they--may--hereafter--be--amended~~] are adopted except to the extent that they are inconsistent with this article:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.27, 4.41-4.46, 4.48-4.51, and 4.61-4.65;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07

[~~(1)--Article-8306,-except-Sections--5--and 28,--and--Articles-8307,-8307b,-and-8309,-Revised-Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter-248,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter---77,---Acts---of---the--65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter--208,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts---of---the---62nd Legislature,--Regular--Session,--1971--(Article--8307e, Vernon's-Texas-Civil-Statutes),-except-that-if-the-city provides-by-Charter-or-ordinance-for-ultimate-access-to the-district-court-for-wrongful-discharge,-Chapter-115, Acts-of-the-62nd--Legislature,--Regular--Session,--1971 (Article--8307e,--Vernon's-Texas-Civil-Statutes)-is-not applicable,~~

[~~(6)--Chapter--358,--Acts---of---the---64th Legislature,--1975-(Article-8307d,-Vernon's-Texas-Civil Statutes),-and~~

[~~(7)--Chapter-179,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber,"~~ ~~or~~] "employer[~~,~~]" appears [~~or---their---equivalents appear~~], it [~~they~~] shall be construed to and shall mean "a political subdivision."

(c) If a municipality provides by charter or ordinance for ultimate access to the district court in

the event of wrongful discharge, Section 11.01, Texas Workers' Compensation Act, does not apply.

ARTICLE 13. REPEALER

SECTION 13.01. The following laws are repealed:

(1) Section 2(e), Chapter 709, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-340.2, Vernon's Texas Civil Statutes);

(2) Article 4413a.2, Revised Statutes;

(3) Section 1, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145a, Vernon's Texas Civil Statutes);

(4) Section 2, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145b, Vernon's Texas Civil Statutes);

(5) Section 3, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145c, Vernon's Texas Civil Statutes);

(6) Section 11, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(7) Section 16, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(8) Article 8306, Revised Statutes;

(9) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes);

(10) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(11) Article 8307, Revised Statutes;

(12) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8307a, Vernon's Texas Civil Statutes);

(13) Article 8307b, Revised Statutes;

(14) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);

(15) Chapter 358, Acts of the 64th Legislature, Regular Session, 1975 (Article 8307d, Vernon's Texas Civil Statutes);

(16) Sections 18, 19, and 20, Article 8308, Revised Statutes;

(17) Article 8309, Revised Statutes;

(18) Section 11, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(19) Section 17, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(20) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes);

(21) Section 11, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas

Civil Statutes); and

(22) Section 25.0013(d), Government Code.

ARTICLE 14. TRANSITION;

EFFECTIVE DATE; EMERGENCY

SECTION 14.01. CREATION OF BOARD; INITIAL APPOINTMENTS OF BOARD MEMBERS. (a) The Texas Workers' Compensation Board is created on the effective date of this Act.

(b) Except as provided by Subsection (c) of this section, in making the initial appointments to the Texas Workers' Compensation Board, the governor shall designate one employer representative and one wage earner representative for terms expiring February 1, 1991, one employer representative and one wage earner representative for terms expiring February 1, 1993, and one employer representative and one wage earner representative for terms expiring February 1, 1995.

(c) Unless the member is otherwise removed, each member of the Industrial Accident Board who is serving on that board on August 31, 1989, serves as a member of the Texas Workers' Compensation Board until the expiration of the term to which that member was originally appointed.

SECTION 14.02. JOINT TRANSITION OVERSIGHT COMMITTEE. (a) The Joint Transition Oversight Committee is created on the effective date of this Act. The committee is composed of six members as follows:

(1) two members must be representatives of the public, appointed by the governor;

(2) two members must be members of the senate,

appointed by the lieutenant governor; and

(3) two members must be members of the house of representatives, appointed by the speaker of the house of representatives.

(b) The committee may:

(1) meet with the Texas Workers' Compensation Board as considered necessary by the committee or the board;

(2) review rules adopted by the board or proposed for adoption by the board; and

(3) request reports and other information from the board relating to the operation of the board.

(c) The committee shall prepare a written report relating to the transition of the workers' compensation system from the Industrial Accident Board to the Texas Workers' Compensation Board that indicates the compliance of the transition process with this Act. The committee shall file the report with the governor, lieutenant governor, and speaker of the house of representatives not later than December 31, 1990.

(d) This section expires and the committee is abolished January 1, 1991.

SECTION 14.03. NAME CHANGE. The name of the Industrial Accident Board is changed to the Texas Workers' Compensation Board. Any reference in the law to the Industrial Accident Board means the Texas Workers' Compensation Board.

SECTION 14.04. TRANSFER OF CERTAIN PROGRAMS TO WORKERS' COMPENSATION BOARD. (a) The programs created under Articles 5.55A and 5.76-1, Insurance Code, and administered by the State Board of

Insurance are transferred to the Texas Workers' Compensation Board on the effective date of this Act.

(b) The property and records in the custody of the State Board of Insurance that relate specifically to the implementation and enforcement of those programs shall be transferred to the Texas Workers' Compensation Board not later than September 1, 1990.

(c) The Texas Workers' Compensation Board shall adopt rules relating to the transfer of the programs assigned to that board not later than March 31, 1990. Notwithstanding amendments and repeals made by this Act, programs and rules in effect on the effective date of this Act remain in effect and shall be enforced by the appropriate agency until provided otherwise by the rules of the board, and the laws providing authority for those rules and programs are continued in effect for that time and purpose. The board shall assume full control over those programs not later than September 1, 1990.

SECTION 14.05. INITIAL POLICY STATEMENT. The policy statement required under Section 2.09(e) of this Act must be filed not later than October 30, 1989.

SECTION 14.06. ADMINISTRATIVE PENALTIES. Section 10.11 of this Act, providing for the assessment of administrative penalties by the Texas Workers' Compensation Board, applies only to a violation that occurs on or after the effective date of this Act.

SECTION 14.07. SUBSEQUENT INJURY FUND. The subsequent injury fund is created on the effective date of this Act. All money in, and all liabilities of, the second injury fund created under Article 8306, Revised Statutes, as of that date, are

transferred to the subsequent injury fund.

SECTION 14.08. SELF-INSURANCE. (a) The initial board of directors of the Texas Certified Self-Insurer Guaranty Association created under Section 9.16, Texas Workers' Compensation Act, shall be appointed by the Texas Workers' Compensation Board.

(b) Notwithstanding the requirement imposed under Section 9.03(b), Texas Workers' Compensation Act, the Texas Workers' Compensation Board is not required to process an application for a certificate of authority to self-insure within 60 days of the receipt of the application by that board until September 1, 1990.

SECTION 14.09. EFFECTIVE DATE; EFFECT ON PENDING CLAIMS. (a) This Act takes effect September 1, 1989.

(b) The change in law made by this Act applies only to an injury for which the date of injury is on or after the effective date of this Act. The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

(c) The Texas Workers' Compensation Board created under this Act shall process claims for injuries occurring before the effective date of this Act in accordance with the law in effect on the date that the injury occurred, and the former law is continued in effect for this purpose.

SECTION 14.10. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 3, 1989

TO: Honorable Steven D. Wolens, Chair
Committee on Business and Commerce
House of Representatives
Austin, Texas

In Re: Committee Substitute for House Bill No. 1

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 1 (relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to the reform of the Workers' Compensation System. The bill creates the Texas Workers' Compensation Board to replace the current Industrial Accident Board.

The bill changes the case adjudication process, by providing a multi-level administrative appeals process with substantial evidence standard of review at the judicial level. The bill eliminates trial de novo. The bill establishes the maximum weekly benefit to be the annual average weekly wage of manufacturing production workers in Texas as determined by the Texas Employment Commission (TEC). The new Texas Workers' Compensation Board would include divisions on compliance, medical review, safety, and hearings and appeals. The board would appoint members to a Labor-Business Advisory Council on Workers' Compensation and to special advisory committees.

The board would impose a rate not to exceed two percent of the gross workers' compensation insurance premiums to pay the expenses of the board in regulating the workers' compensation insurance program.

The bill would establish a worker's compensation self-insurance program. Certified self-insurers shall pay an annual fee to cover the administrative costs of the program.

The bill would establish a state risk manager and require all state agencies to develop risk management programs for the purpose of reducing property and liability losses.

I. State Workers' Compensation Payments.

The probable fiscal implications of implementing the provisions of the bill concerning payments made by the state to state employees and the administrative cost of programs during each of the first five years following passage is estimated as follows:

Fiscal Year	Current and Projected Cost of State Workers' Compensation Payments Program	Probable Program Cost After the Enactment of H.B. No. 1	Probable Savings to the State From the General Revenue Fund
1990	$44,490,240	$44,490,240	-0-
1991	53,388,288	53,388,288	-0-
1992	64,069,945	58,727,117	$ 5,338,828
1993	76,879,134	64,599,828	12,279,306
1994	92,254,961	64,599,828	27,655,133

Fiscal Year	Increase in Administrative Cost to the Office of the Attorney General Out of the General Revenue Fund	Increase in Administrative Cost to the State Department of Highways and Public Transportation Out of the State Highway Fund No. 6	Change in Number of State Employees from FY 1989
1990	$476,440	$182,850	+ 21
1991	545,710	182,850	+ 23
1992	614,980	182,850	+ 25
1993	614,980	182,850	+ 25
1994	614,980	182,850	+ 25

Probable savings in State workers' compensation payments to the State Highways and Public Transportation Department, Texas A&M University System and The University of Texas System cannot be determined.

II. The Texas Workers' Compensation Board.

The amount currently set forth for the administration of the Workers' Compensation Program in the Industrial Accident Board in the General Appropriations Bill, as introduced, is $16,327,583 for fiscal year 1990 and $15,569,437 for fiscal year 1991. This is an approximate 52 percent increase in this program over the 1989 budgeted level. The appropriation would be financed from the Workers' Compensation Tax, Federal Funds and Other Funds and would provide for approximately 494 employees.

The bill requires a substantial reorganization from the Industrial Accident Board to the Texas Workers' Compensation Board. In addition to the amounts appropriated in the General Appropriation Act, as introduced, for the 1990-91 biennium, the probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the General Revenue Fund*	Probable Cost Out of Federal Funds	Probable Cost Out of Fees
1990	$28,228,608	$1,026,967	$473,226
1991	38,354,976	1,026,967	643,761
1992	36,528,234	1,026,967	633,828
1993	35,400,874	1,026,967	633,828
1994	35,288,256	1,026,967	633,828

Fiscal Year	Probable Cost Out of Interagency Contracts	Probable Cost Out of Other Funds	Change in Number of State Employees from FY 1989
1990	$ 589,844	$1,020,000	+ 647
1991	1,129,204	1,125,000	+ 873
1992	1,084,744	1,050,000	+ 869
1993	1,084,744	1,050,000	+ 840
1994	1,084,744	1,050,000	+ 834

*Note: The General Revenue Fund under this section of the fiscal note is reimbursed by the maintenance tax on gross workers' compensation premiums up to the cap of 2%. The board would set a rate of 1.50% to fund $44.6 million in FY1990 and a rate of 1.94% to fund $53.9 million in FY1991 from the workers' compensation maintenance tax. The amount to be funded from the tax rate would not exceed the 2.0% rate for fiscal years 1992 through 1995 and thereafter.

The tax rate set by the board, federal monies, and other funds would allow for an estimated agency budget for the workers' compensation program of approximately $47.7 million in fiscal year 1990 and $57.9 million in fiscal year 1991, or over six times the amount of the 1989 budget. It might be reasonable to assume that the Legislature accomplish such significant budget expansion over a period of time rather than in one biennium. This would also allow a phase-in

of the increase in the tax rate.

Note: The Texas Workers' Compensation Board would also be responsible for the administration and payment of claims under the Crime Victims Compensation Act.

III. The Texas Worker's Compensation Insurance Research Center.

The bill, also, would establish the Texas Workers' Compensation Insurance Research Center operated jointly by the Texas Engineering Experiment Station and The University of Texas School of Public Health at Houston. The center would gather data, conduct research studies and develop programs relating to workers' compensation. The center would be funded by an amount not to exceed one-tenth percent of gross workers' compensation insurance premiums. The center would need approximately $1.2 million to operate each year. This amount would include estimated salaries for consulting services from faculty and graduate students conducting research, as well as for the executive director and a two-person professional staff and associated administrative costs. These costs would be funded by a tax rate of .41% in fiscal year 1990 and .43% in fiscal year 1991.

IV. State Board of Insurance.

The bill would create a new division to monitor the operation of the Workers' Compensation Assigned Risk Pool within the State Board of Insurance and would transfer to the Texas Workers' Compensation Board the Loss Control Section of the Casualty Division of the State Board of Insurance.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the Insurance Board Operating Fund No. 36	Probable Savings to the Insurance Board Operating Fund No. 36	Change in Number of State Employees from FY 1989
1990	$2,160,995	$330,079	+ 22
1991	1,422,919	289,547	+ 22
1992	1,422,919	289,547	+ 22
1993	1,422,919	289,547	+ 22
1994	1,422,919	289,547	+ 22

Similar annual fiscal implications for Parts I, II, III, and IV would continue as long as the provisions of the bill are in effect.

V. Courts.

The fiscal implications to units of local government cannot be determined, however, county court dockets would be reduced as a result of not having to set hearings and trials on appeals of final rulings and decisions of the Workers' Compensation Board.

State district courts would have appellate jurisdiction under the substantial evidence standard. The probable number of appeals cannot be determined.

Source: Department of Highways and Public Transportation;
Texas A&M University System; State Board of Insurance;
Texas Employment Commission; Attorney General's Office;
Texas Rehabilitation Commission; Department of Health;
Industrial Accident Board;
LBB Staff: JO, JWH, AL, MM, BL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

February 19, 1989

REVISED

TO: Honorable Steven D. Wolens, Chair
Committee on Business and Commerce
House of Representatives
Austin, Texas

In Re: House Bill No. 1
By: Richard Smith

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1 (relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to the reform of the Workers' Compensation System. The bill creates the Texas Workers' Compensation Board to replace the current Industrial Accident Board.

The bill changes the case adjudication process, by providing a multi-level administrative appeals process with substantial evidence standard of review at the judicial level. The bill eliminates trial de novo. The bill establishes the maximum weekly benefit to be the annual average weekly wage of manufacturing production workers in Texas as determined by the Texas Employment Commission (TEC). The new Texas Workers' Compensation Board would include divisions on compliance, medical review, safety, education and training, and hearings and appeals. The board would appoint members to a Labor-Business Advisory Council on Workers' Compensation and to special advisory committees.

The board would impose a rate not to exceed two percent of the gross workers' compensation insurance premiums to pay the expenses of the board in regulating the workers' compensation insurance program.

The bill would establish a worker's compensation self-insurance program. Certified self-insurers shall pay an annual fee to cover the administrative costs of the program.

The bill would establish a state risk manager and require all state agencies to develop risk management programs for the purpose of reducing property and liability losses.

I. State Workers' Compensation Payments.

The probable fiscal implications of implementing the provisions of the bill concerning payments made by the state to state employees and the administrative cost of programs during each of the first five years following passage is estimated as follows:

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1994	614,980	182,850	+ 25

Probable savings in State workers' compensation payments to the State Highways and Public Transportation Department, Texas A&M University System and The University of Texas System cannot be determined.

II. The Texas Workers' Compensation Board.

The amount currently set forth for the administration of the Workers' Compensation Program in the Industrial Accident Board in the General Appropriations Bill, as introduced is $16,327,583 for fiscal year 1990 and $15,569,437 for fiscal year 1991. This is an approximate 52 percent increase in this program over the 1989 budgeted level. The appropriation would be financed from the Workers' Compensation Tax, Federal Funds and Other Funds and would provide for approximately 494 employees.

The bill requires a substantial reorganization from the Industrial Accident Board to the Texas Workers' Compensation Board. In addition to the amounts appropriated in the General Appropriation Act, as introduced, for the 1990-91 biennium, the probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the General Revenue Fund*	Probable Cost Out of Federal Funds	Probable Cost Out of Fees
1990	$25,021,765	$1,200,000	$400,000
1991	32,736,750	1,200,000	420,000
1992	35,333,982	1,200,000	440,000
1993	34,605,923	1,200,000	460,000
1994	34,467,245	1,200,000	480,000

Fiscal Year	Probable Cost Out of Interagency Contracts	Probable Cost Out of Other Funds	Change in Number of State Employees from FY 1989
1990	$ 514,684	$600,000	+ 630
1991	1,064,139	620,000	+ 859
1992	1,019,739	600,000	+ 855
1993	1,019,739	580,000	+ 828
1994	1,019,739	550,000	+ 824

*Note: The General Revenue Fund under this section of the fiscal note is reimbursed by the maintenance tax on gross workers' compensation premiums up to the cap of 2%. The board would set a rate of 1.65% to fund $40.6 million in FY1990 and a rate of 1.90% to fund $47.6 million in FY1991 from the workers' compensation maintenance tax. The tax rate would not exceed the 1.9% rate for fiscal years 1992 through 1995 and thereafter.

The tax rate set by the board, federal monies, and other funds would allow for an estimated agency budget for the workers' compensation program of approximately $44 million in fiscal year 1990 and $51 million in fiscal year 1991, or over five times the amount of the 1989 budget. It might be reasonable to assume that the Legislature accomplish such significant budget expansion over a period of time rather than in one biennium. This would also allow a phase-in

of the increase in the tax rate.

Note: The Texas Workers' Compensation Board would also be responsible for the administration and payment of claims under the Crime Victims Compensation Act.

III. The Texas Worker's Compensation Insurance Research Center.

The bill, also, would establish the Texas Workers' Compensation Insurance Research Center operated jointly by the Texas Engineering Experiment Station and The University of Texas School of Public Health at Houston. The center would gather data, conduct research studies and develop programs relating to workers' compensation. The center shall be funded by an amount not to exceed one-tenth percent of gross workers' compensation insurance premiums. The center would need approximately $1.2 million to operate each year. This amount would include estimated salaries for faculty and graduate students, as well as for the executive director and a two-person professional staff and associated administrative costs.

IV. State Board of Insurance.

The bill would create a new division to monitor the operation of the Workers' Compensation Assigned Risk Pool within the State Board of Insurance and would transfer to the Texas Workers' Compensation Board the Loss Control Section of the Casualty Division of the State Board of Insurance.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the Insurance Board Operating Fund No. 36	Probable Savings to the Insurance Board Operating Fund No. 36	Change in Number of State Employees from FY 1989
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Similar annual fiscal implications for Parts I, II, III, and IV would continue as long as the provisions of the bill are in effect.

V. Courts.

The fiscal implications to units of local government cannot be determined, however, county court dockets would be reduced as a result of not having to set hearings and trials on appeals of final rulings and decisions of the Workers' Compensation Board.

State district courts would have appellate jurisdiction under the substantial evidence standard. The probable number of appeals cannot be determined.

Source: Department of Highways and Public Transportation;
Texas A&M University System; State Board of Insurance;
Texas Employment Commission; Attorney General's Office;
Texas Rehabilitation Commission; Department of Health;
Industrial Accident Board
LBB Staff: JO, JWH, AL, MM, BL

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

February 13, 1989

TO: Honorable Steven D. Wolens, Chair
Committee on Business and Commerce
House of Representatives
Austin, Texas

In Re: House Bill No. 1
By: Richard Smith

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1 (relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to the reform of the Workers' Compensation System. The bill creates the Texas Workers' Compensation Board to replace the current Industrial Accident Board. Members of the board hold office for staggered terms of six years. A member of the board may not receive remuneration for serving on the board. However, the member would be entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the board, not to exceed any limit established in the General Appropriations Act.

The bill changes the case adjudication process, by providing a multi-level administrative appeals process with substantial evidence standard of review at the judicial level. The bill eliminates trial de novo. The bill establishes the maximum weekly benefit to be the annual average weekly wage of manufacturing production workers in Texas as determined by the Texas Employment Commission (TEC). The new Texas Workers' Compensation Board would include divisions on compliance, medical review, safety, education and training, and hearings and appeals.

The board would impose a rate not to exceed two percent of the gross workers' compensation insurance premiums to pay the expenses of the board in regulating the workers' compensation insurance program.

The bill would establish a worker's compensation self-insurance program. Certified self-insurers shall pay an annual fee to cover the administrative costs of the program.

The maximum tax rates, matching federal monies, and other funds would allow for an agency budget of approximately $60 million each year, or over six times the amount of the 1989 budget. It might be reasonable to assume that the Legislature accomplish such significant budget expansion over a period of time rather than in one biennium. This would also allow a phase-in of the increase in the tax rate.

The amount currently set forth for the administration and employee benefits of the Workers' Compensation Program in the Industrial Accident Board in the General Appropriations Bill, as introduced is $16,327,583 for fiscal year 1990 and $15,569,437 for fiscal year 1991. This is an approximate 52 percent increase in this program over the 1989 budgeted level. The appropriation would be financed from the Workers' Compensation Tax, Federal Funds and Other Funds and would provide for approximately 494 employees.

The bill, also, would establish the Texas Workers' Compensation Insurance Research Center operated jointly by the Texas Engineering Experiment Station and The University of Texas School of Public Health at Houston. The center would gather data, conduct research studies and develop programs relating to workers' compensation. The center shall be funded by an amount not to exceed one-tenth percent of gross workers' compensation insurance premiums. The center would need approximately $1.2 million to operate each year.

The bill would create a new division to monitor the operation of the

Workers' Compensation Assigned Risk Pool within the State Board of Insurance and would transfer to the Texas Workers' Compensation Board the Loss Control Section of the Casualty Division of the State Board of Insurance.

The fiscal implications to units of local government cannot be determined.

Source: Department of Highways and Public Transportation;
Texas A&M University System; State Board of Insurance;
Texas Employment Commission;
LBB Staff: JO, JWH, AL, MM, LV

SENATE FAVORABLY AS SUBSTITUTED COMMITTEE REPORT

Lt. Governor William P. Hobby
President of the Senate

5/19/89
(date)/(time)

Sir:

We, your Committee ~~on~~ of the Texas Senate to which was referred HB1 (measure) by Smith of Bragg (sponsor) have on May 19 (hearing date), 1989, had the same

under consideration and I am instructed to report it back with the recommendation (s) that it

( ) do pass as substituted, and be not printed
  ( ) the caption remained the same as original measure
  ( ) the caption changed with adoption of the substitute

( ) do pass as substituted, and be ordered not printed

( ) and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested.	( ) yes	( ) no
A revised fiscal note was requested.	( ) yes	( ) no
An actuarial analysis was requested.	( ) yes	( ) no
Considered by subcommittee.	(✓) yes	( ) no

Senate Sponsor of House Measure Lyon

The measure was reported from Committee by the following vote:

	YEA	NAY	PNV	ABSENT
TOTAL VOTES				

Betty King
COMMITTEE CLERK

Brooks
CHAIRMAN

Paper clip the original and one copy of this form along with TWO copies of the Committee Substitute to the original bill and retain one copy for Reporting Committee file.

ADOPTED

MAY 22 1989

Secretary of the Senate

By Smith of Brazos, et al. H.B. No. 1

Substitute the following for H.B. No. 1:

By C.S.H.B. No. 1

A BILL TO BE ENTITLED

AN ACT

relating to the reform of the workers' compensation system; to the creation, powers, and duties of the Texas Workers' Compensation Commission; to work safety; authorizing an appropriation; providing criminal and administrative penalties; and providing for taxes and fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

PREAMBLE; CONSTRUCTION; LEGISLATIVE INTENT

(a) As a matter of public policy, questions concerning reasonable doubt as to whether the injured employee is entitled to compensation will be liberally construed in favor of the employee's right to recover.

(b) It is the intent of the legislature to carry forward determinations made under prior law except to the extent of any conflict with this Act.

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. Articles 1 through 11 of this Act may be cited as the Texas Workers' Compensation Act.

SECTION 1.02. APPLICATION OF OTHER ACTS; SUNSET. (a) Except as otherwise provided by this Act:

(1) the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to all proceedings under this Act, except prehearing conferences, mediation conferences, and other

proceedings involving determinations on workers' compensation claims; and

(2) the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), applies to all records of the commission except as otherwise provided by this Act.

(b) Chapter 325, Government Code (Texas Sunset Act), applies to the Texas Workers' Compensation Commission. Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2001.

SECTION 1.03. DEFINITIONS. In this Act:

(1) "Adjuster" means a person licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(2) "Administrative violation" means a violation of this Act or a rule adopted under this Act that is subject to penalties and sanctions as provided in this Act.

(3) "Agreement" means the resolution by the parties to a dispute under this Act of one or more issues regarding an injury. The term does not include a settlement.

(4) "Alien" means a person who is not a citizen of the United States of America.

(5) "Benefit" means a benefit received based on a compensable injury. The term includes a medical benefit, an income benefit, and a death or burial benefit.

(6) "Certified self-insurer" means a business entity, or one of the consolidated subsidiaries of the entity, that is

required to register under the Securities Act of 1933 (15 U.S.C. Section 77 et seq.) and that has been granted a certificate of authority to self-insure under this Act.

(7) "Child" means a son or daughter. The term includes an adopted child, or a stepchild who is a dependent of the employee.

(8) "Claim" means the process through which benefits are sought under this Act.

(9) "Claimant" means a person who obtains or attempts to obtain benefits.

(10) "Commission" means the Texas Workers' Compensation Commission.

(11) "Commute" means to pay in a lump sum.

(12) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this Act.

(13) "Compensation" means medical benefits, income benefits, death benefits, or burial benefits.

(14) "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes activities conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of such transportation are under the control of the employer; or

(iii) the employee is directed in his employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of his employer if such travel is also in furtherance of personal or private affairs of the employee unless:

(i) the trip to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the trip; and

(ii) the trip would not have been made had there been no affairs or business of the employer to be furthered by the trip.

(15) "Death benefit" means a payment made to a legal beneficiary for the death of an employee under this Act.

(16) "Dependent" means an individual who is eligible to be classified as a dependent for federal income tax purposes under 26 U.S.C. Section 152, or who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood if the individual is a parent or other person related in the first degree of consanguinity or affinity.

(17) "Designated doctor" means a doctor who is appointed by the parties or the commission to resolve a dispute as to the disability or impairment of an injured employee.

(18) "Doctor" means a doctor of medicine, a doctor of

1 chiropractic, a doctor of osteopathic medicine, or a doctor of
2 podiatry.
3 (19) "Employee" means each individual in the service
4 of another under any contract of hire, whether express or implied,
5 or oral or written. The term includes an employee employed in the
6 usual course of the employer's business who is directed by the
7 employer temporarily to perform services outside the usual course
8 of the employer's business. The term also includes a person, other
9 than an independent contractor or the employee of an independent
10 contractor, who is engaged in construction, remodeling, or repair
11 work for the employer at the premises of the employer. The term
12 does not include a master of, or a seaman on, a vessel engaged in
13 foreign or interstate commerce, or a person whose employment is not
14 in the usual course and scope of the employer's business. A person
15 who is an employee for purposes of this Act and is engaged in work
16 that otherwise may be legally performed is an employee despite any
17 license, permit, or certificate violation arising under state law
18 or municipal ordinance or violation of a law regulating wages,
19 hours, or work on Sunday.
20 (20) "Employer" means, unless otherwise specified, a
21 person that makes a contract of hire or that employs one or more
22 employees, and that has workers' compensation coverage, either
23 through self-insurance obtained as provided by this Act, or through
24 private insurance obtained from a licensed insurance carrier. The
25 term includes a governmental entity that self-insures, either
26 individually or collectively.
27 (21) "Health care" includes all reasonable and

1 necessary medical aid, examinations, treatments, diagnoses,
2 evaluations, and services. The term does not include vocational
3 rehabilitation. The term includes:
4 (A) medical, surgical, chiropractic, podiatric,
5 nursing, physical therapy, and psychological services provided by
6 or at the direction of a health care provider;
7 (B) the services of a hospital or other health
8 care facility;
9 (C) prescription drugs, medicines, and other
10 remedies; and
11 (D) medical and surgical supplies, appliances,
12 braces, artificial members, and prostheses, including training in
13 the use of these devices.
14 (22) "Health care facility" means a hospital,
15 emergency clinic, outpatient clinic, or other facility providing
16 health care.
17 (23) "Health care practitioner" means a licensed
18 individual who provides or renders health care or a nonlicensed
19 individual who provides or renders health care under the direction
20 or supervision of a physician.
21 (24) "Health care provider" means a health care
22 facility or health care practitioner.
23 (25) "Impairment" means any anatomic or functional
24 abnormality or loss existing after maximum medical improvement that
25 results from the compensable injury and is reasonably presumed to
26 be permanent.
27 (26) "Income benefit" means a payment made to an

employee for disability or impairment.

(27) "Injury" means damage or harm to the physical or mental structure of the body and those diseases or infections naturally resulting from the damage or harm. The term includes accidental injuries and occupational diseases.

(28) "Insurance carrier" means:

(A) a person authorized and admitted by the State Board of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance;

(B) a certified self-insurer under this Act; or

(C) a governmental entity that self-insures, either individually or collectively.

(29) "Insurance company" means a person authorized and admitted by the State Board of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(30) "Intoxication" means:

(A) the state of having an alcohol concentration of 0.10 or more, where "alcohol concentration" has the meaning assigned to it under Article 67011-1, Revised Statutes, or the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(i) an alcoholic beverage, as that term is defined by Section 1.04, Alcoholic Beverage Code;

(ii) a controlled substance or controlled substance analogue, as those terms are defined by the Texas

Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes);

(iii) a dangerous drug, as defined by Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes);

(iv) an abusable glue or aerosol paint, as defined by Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes); or

(v) any similar substance, the use of which is regulated under state law.

(B) The term does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance taken under and in accordance with a prescription written for the employee by the employee's doctor, or physical or mental incapacity resulting from the introduction into the body of a substance listed under Paragraph (A) of this subdivision that is incidental to the employee's work.

(31) "Legal beneficiary" means a person who is entitled to receive death benefits under this Act.

(32) "Maximum medical improvement" means the point after which further recovery from, or lasting improvement to, an injury can no longer reasonably be anticipated, based on reasonable medical probability.

(33) "Medical benefits" means health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable

expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational diseases before and after the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment.

(34) "Medical emergency" means a medical condition that is manifested by acute symptoms, including severe pain, that are of sufficient severity that the absence of immediate medical attention would:

(A) place the patient's health in serious jeopardy;

(B) result in impairment to bodily functions; or

(C) result in serious dysfunction of any bodily organ or part.

(35) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. The term includes other diseases or infections that naturally result from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is a reasonable incident to a compensable injury or occupational disease. The term includes repetitive trauma injuries. The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

(36) "Objective" means independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests or signs confirmable by physical examination.

(37) "Objective clinical or laboratory finding" means a medical finding of injury or impairment based on competent objective medical evidence that is independently confirmable by an examining doctor without relying on the employee's subjective symptoms.

(38) "Partial incapacity" means any degree of incapacity less than total incapacity, because of which a person suffers a reduction in earning capacity. A person cannot suffer from both total and partial incapacity at the same time.

(39) "Penalty" means a fine established by this Act.

(40) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(41) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment.

(42) "Representative" means a person, including an attorney, authorized by the commission to assist or represent an employee, a person claiming death benefits, or an insurance carrier, in a matter arising under this Act that relates to the payment of compensation.

(43) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be

resolved under the terms of this Act.

(44) "Subclaimant" means a person who has:

(A) provided compensation payable under this Act, directly or indirectly, to or for an employee or legal beneficiary;

(B) sought and been refused reimbursement from the insurance carrier; and

(C) filed a written subclaim with the commission.

(45) "Subjective" means perceivable only by an employee who is examined by a doctor and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

(46) "Total incapacity" means that a person is disabled from performing the usual tasks of a worker, not merely the usual tasks of any particular trade or occupation, to such an extent that the person cannot get and retain employment doing the usual tasks of a worker. The term does not imply absolute inability to perform any kind of labor.

(47) "Treating doctor" means the doctor who is primarily responsible for the employee's health care for an injury.

(48) "Wages" includes every form of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and other advantage that can be estimated in money which the employee receives from the employer as part of the employee's remuneration.

(49) "Workers' compensation insurance coverage" means an approved insurance policy to secure the payment of compensation, coverage secured by self-insurance as provided by this Act, or coverage provided by a governmental entity.

SECTION 1.04. INTEREST OR DISCOUNT RATE. Any interest paid or discount provided for in this Act shall be at the rate of four percent a year.

SECTION 1.05. COMPUTATION OF TIME. (a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting months from a particular day, the period ends on the same numerical day of the month from which the computation is begun. If the concluding month does not contain that number of days, the period ends on the last day of that month.

ARTICLE 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER A. ORGANIZATION

SECTION 2.01. COMMISSION. (a) The Texas Workers' Compensation Commission is created on the effective date of this Act, and the terms of members of the Industrial Accident Board expire on that date.

(b) The Texas Workers' Compensation Commission is composed of six members appointed by the governor with the advice and consent of the senate.

(c) Three members must be employers of labor and three members must be wage earners with demonstrated experience in representing fellow wage earners regarding wages, hours, or conditions of employment. In making appointments to the commission, the governor shall attempt to reflect the social, geographic, and economic diversity of the state. To ensure balanced representation, the governor may consider the geographic location of a prospective appointee's domicile, the prospective appointee's experience as an employer or wage earner, the number of employees employed by a prospective member who would represent employers, and the type of work performed by a prospective member who would represent wage earners and shall consider those factors in appointing members to fill vacancies on the commission. In making the appointments, the governor shall consider recommendations made by groups that represent employers or wage earners.

(d) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(e) A member of the commission is not liable in a civil action for any act performed in good faith in the execution of duties as a commission member.

SECTION 2.02. TERMS; VACANCY. (a) Members of the commission hold office for staggered terms of six years. The terms of one member representing employers and one member representing wage earners expire February 1 of each odd-numbered year.

(b) The governor shall designate one member representing

employers and one member representing wage earners for terms expiring February 1, 1991, one member representing employers and one member representing wage earners for terms expiring February 1, 1993, and one member representing employers and one member representing wage earners for terms expiring February 1, 1995.

(c) If a vacancy occurs during a term, the governor shall appoint a replacement to fill the unexpired part of the term. The replacement must be from the group represented by the member being replaced.

SECTION 2.03. CHAIR. (a) The commission shall biennially elect one of its members to serve as chair for a two-year term expiring February 1 of even-numbered years. The term as chair of the first member elected to that position expires February 1, 1990.

(b) The chair may vote on all matters before the commission.

SECTION 2.04. VOTING REQUIREMENTS. The commission may take action by majority vote of its membership. Decisions regarding the hiring of an executive director require the votes of at least two commissioners representing employers and at least two commissioners representing wage earners.

SECTION 2.05. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the commission;

(2) does not maintain during service on the commission the qualifications required for appointment to the commission;

(3) cannot discharge the member's duties for a substantial part of the term for which the member is appointed

because of illness or incapacity; or

(4) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director of the commission has knowledge that a potential ground for removal exists, the executive director shall notify the chair of the commission of the ground. The chair shall then notify the governor that a potential ground for removal exists.

SECTION 2.06. REMUNERATION. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission, not to exceed any limit established in the General Appropriations Act. A member is entitled to reimbursement for actual lost wages, if any, due to performance of commission duties, not to exceed $100 per day.

SECTION 2.07. MEETINGS. (a) The commission shall meet at least once in each quarter of the calendar year.

(b) The commission may meet at other times at the call of the chair or as provided by the rules of the commission.

SECTION 2.08. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission shall adopt rules as necessary for the implementation and enforcement of this Act in accordance with Sections 1-12, Administrative Procedure and Texas Register Act

(Article 6252-13a, Vernon's Texas Civil Statutes), except Sections 4(a)(3) and 4(b) of that Act.

(b) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(d) The commission may accept gifts, grants, or donations as provided by rules adopted by the commission.

(e) The commission shall establish qualifications for representatives as defined in Section 1.03 of this Act and shall adopt rules establishing procedures for authorization of those representatives. If the representative is not an adjuster representing an insurance carrier or is not licensed to practice law, the representative may not receive a fee for providing representation under this Act.

(f) Any sanction that deprives a person of the right to practice before the commission or the right to receive remuneration under this Act for a period exceeding 30 days, or any other sanction suspending for a period exceeding 30 days or revoking a license, certification, or permit required for practice in the

field of workers' compensation may only be imposed by the commission.

(g) The commission shall appoint the executive director of the commission.

(h) Except for fees established by this Act, the commission shall establish fees for services provided to persons requesting services from the commission.

(i) The commission shall approve or deny any recommendation of the director of self-insurance concerning the issuance or revocation of a certificate to self-insure.

(j) The commission shall certify that a certified self-insurer has suspended payment of compensation or has otherwise become an impaired employer as that term is used in Section 3.51(3) of this Act.

(k) The commission shall consider and recommend to the legislature changes to this Act. Recommended changes shall be forwarded to the legislature on or before December 1 of each even-numbered year.

(l) The commission may appoint advisory committees as it deems necessary.

(m) The rights and duties imposed on the commission by this section may not be delegated.

SECTION 2.09. EXECUTIVE DIRECTOR. (a) The executive director is the executive officer and administrative head of the commission. The executive director exercises all rights, powers, and duties imposed or conferred by law on the commission, except for rule making and other rights, powers, and duties specifically

reserved by this Act to members of the commission.

(b) The executive director shall hire persons to conduct benefit review conferences, arbitration proceedings, and contested case hearings under this Act and other personnel as necessary.

(c) The executive director serves at the pleasure of the commission.

SECTION 2.10. POWERS AND DUTIES OF THE EXECUTIVE DIRECTOR. (a) The executive director may delegate all powers and duties as necessary.

(b) The executive director shall conduct the day-to-day operations of the commission in accordance with policies established by the commission and otherwise implement commission policy.

(c) The executive director may:

(1) investigate misconduct;

(2) hold hearings;

(3) issue subpoenas to compel the attendance of witnesses and the production of documents;

(4) administer oaths;

(5) take testimony either directly or by deposition or interrogatory;

(6) assess and enforce penalties established by this Act; and

(7) enter appropriate orders as authorized by this Act.

(d) The executive director may correct clerical errors in the entry of orders.

(e) The executive director may institute an action in the commission's name to enjoin the violation of this Act.

(f) The executive director is the custodian of the commission's records and shall perform those duties required by law, including provision of copies and certification of records. The executive director may destroy any records maintained by the commission relating to an injury 50 years after the date of injury to which the records refer. Records maintained by the commission may be preserved in any format permitted by Chapter 441, Government Code, and rules adopted by the Texas State Library under that chapter.

(g) The executive director is the agent for service of process on out-of-state employers.

(h) The executive director shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(i) The executive director shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(j) The executive director shall prepare and maintain a written policy statement approved by the commission to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to

recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission's work force that meets federal and state guidelines;

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

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

(k) A policy statement prepared under Subsection (j) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

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

SECTION 2.11. LIAISONS. (a) The commission shall employ one person selected by the commission members representing employers of labor to act as their liaison. The commission shall employ one person selected by the commission members representing wage earners to act as their liaison.

(b) The employer and employee liaisons shall coordinate their activities with the executive director, but shall be under the general direction of members of the commission.

(c) The employer and employee liaisons shall have full access to the books and records of the commission.

SECTION 2.12. DIVISIONS OF THE COMMISSION. (a) The executive director may establish divisions within the commission for effective administration and performance of commission functions. The executive director may allocate and reallocate functions among the divisions.

(b) In addition to the divisions established under Subsection (a) of this section, the following divisions are established:

(1) division of medical review;

(2) division of compliance and practices;

(3) division of hearings;

(4) division of self-insurance regulation; and

(5) division of risk management.

(c) The executive director shall appoint the directors of the divisions of the commission. The directors serve at the pleasure of the executive director.

SECTION 2.13. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The executive director shall prepare information of public interest describing the functions of the commission and the procedures by which complaints are filed with and resolved by the commission. The executive director shall make the information available to the public and appropriate state agencies.

(b) The executive director shall keep an information file about each written complaint filed with the commission that is unrelated to a specific workers' compensation claim. If such a complaint is filed with the commission, the commission, at least quarterly and until final disposition of the complaint, shall

notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on issues under the general jurisdiction of the commission.

(d) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental handicap may be provided reasonable access to workers' compensation proceedings.

SECTION 2.14. SUBSEQUENT INJURY FUND. (a) The subsequent injury fund is established as a special fund in the state treasury.

(b) The subsequent injury fund is liable for the payment of compensation as provided by Section 4.28 of this Act.

(c) The executive director shall appoint an administrator for the subsequent injury fund.

[Sections 2.15-2.20 reserved for expansion]

CHAPTER B. COMMISSION FINANCING

SECTION 2.21. COMMISSION FUNDING. Unless otherwise provided, all proceeds, including administrative penalties and advance deposits for purchase of services, collected under this Act shall be deposited in the general revenue fund of the state treasury to the credit of the commission. The funds may be spent as authorized by legislative appropriation on warrants issued by the comptroller of public accounts under requisitions made by the commission.

SECTION 2.22. MAINTENANCE TAXES AND FEES. (a) To pay the

costs of administering this Act, all insurance carriers, except governmental entities, annually shall pay a maintenance tax. The total taxes assessed for this purpose may not exceed two percent of the correctly reported gross workers' compensation insurance premiums plus two percent of the total tax base of all certified self-insurers, as computed under Section 3.61(b) of this Act.

(b) Workers' compensation insurance companies shall be taxed at the rate established under Section 2.23 of this Act. Those taxes shall be collected in the manner provided for collection of other taxes on gross premiums from workers' compensation companies as provided in Article 5.68, Insurance Code.

(c) Certified self-insurers shall pay a fee and maintenance taxes as provided in Sections 3.60 and 3.62 of this Act.

SECTION 2.23. RATE OF ASSESSMENT. (a) The commission shall set and certify to the State Board of Insurance the rate of assessment no later than October 31 of each year, taking into account the following factors:

(1) expenditures projected as necessary for the commission to administer this Act during the fiscal year for which the rate of assessment is set;

(2) projected employee benefits paid from general revenues;

(3) surpluses or deficits produced by this tax in the preceding year; and

(4) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under this Act.

(b) In setting the rate of assessment, the commission shall not consider revenue or expenditures related to:

(1) the crime victims compensation fund;

(2) the division of risk management;

(3) the division of self-insurance regulation; or

(4) the research center.

SECTION 2.24. WITHDRAWAL FROM BUSINESS. If an insurance carrier withdraws from business in this state or the certificate of a certified self-insurer is terminated, the insurance commissioner or the executive director of the commission shall proceed at once to collect taxes due under this Act using legal process as necessary.

SECTION 2.25. TAX RATE SURPLUS OR DEFICIT. (a) If the tax rate assessed by the commission for a given year fails to produce sufficient revenue to make all expenditures authorized by legislative appropriation, the deficit shall be paid from the general revenue fund and reflected in the rate of assessment for the next year.

(b) If the tax rate assessed by the commission for a given year exceeds the revenues required to make all expenditures authorized by the legislature, the excess shall be deposited in the general revenue fund to the credit of the commission and reflected in the rate of assessment for the next year.

SECTION 2.26. FUNDING OF SUBSEQUENT INJURY FUND. (a) If a compensable death occurs and there is no legal beneficiary, or if a claim for death benefits is not made in a timely manner, the insurance carrier shall pay to the commission for deposit in the

subsequent injury fund an amount equal to 360 weeks of the death benefits otherwise payable.

(b) The carrier may elect, or the commission may order, that death benefits payable to the fund be commuted on written approval of the executive director. The commutation may be discounted for present payment at the interest rate established in Section 1.04 of this Act, compounded annually.

(c) If a claim for death benefits is not filed with the commission by a beneficiary or beneficiaries on or before the first anniversary of the death of the employee, it shall be presumed, for the purposes of this section only, that no legal beneficiary survived the deceased employee. The presumption does not apply against a minor beneficiary or an incompetent beneficiary for whom no guardian has been appointed.

(d) If the carrier makes payment to the subsequent injury fund and the commission later determines that a legal beneficiary is entitled to the death benefits, the commission shall order the fund to reimburse the carrier for the amount overpaid to the fund.

SECTION 2.27. AUDITS. The state auditor shall audit the financial transactions of the commission at least once during each biennium.

[Sections 2.28-2.30 reserved for expansion]

CHAPTER C. RECORDS

SECTION 2.31. INJURY INFORMATION CONFIDENTIAL. (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this Act.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment pursuant to Section 10.04 or 10.05 of this Act is not confidential.

(c) The commission shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (d) of this section if:

(1) the claim is open or pending before the commission, on appeal to a court of competent jurisdiction, or the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form developed by the commission for this purpose and provides all required information.

(d) Information on a claim may be released as provided in Subsection (c) of this section to:

(1) the employee or the employee's legal beneficiary;

(2) the employee's or the legal beneficiary's representative;

(3) the employer at the time of injury;

(4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty Association, if that association has assumed the obligations of an impaired employer;

(6) the Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company; or

(7) a third party litigant in a lawsuit in which the cause of action arises from the incident which gave rise to the injury, provided that Subsection (c)(1) of this section shall not apply.

SECTION 2.32. EXCEPTIONS. (a) The commission may release information regarding a claim to a governmental agency, political subdivision, or regulatory body for the following purposes:

(1) investigating an allegation of criminal offense or licensing or regulatory violation;

(2) providing unemployment benefits, crime victims compensation benefits, vocational rehabilitation services, or health care benefits;

(3) investigating occupational safety or health violations; or

(4) verifying income on an application for benefits under an income-based state or federal assistance program.

(b) The commission shall release information on a claim to:

(1) the State Board of Insurance for any statutory or regulatory purpose;

(2) a legislative committee for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 2.31(d) of this Act, if the request is provided to the commission; and

(4) the research center for research purposes.

SECTION 2.33. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS. (a) When a person applies for employment, the

prospective employer who has workers' compensation coverage is entitled, on compliance with this chapter, to obtain information on the applicant's prior injuries.

(b) The employer must make the request by telephone or file the request in writing not more than 14 days after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) The employer must obtain written authorization from the applicant before making the request.

(e) If the request is made in writing, the authorization shall be filed simultaneously. If the request is made over the telephone, the employer shall file the authorization not later than the 10th day after the date on which the request is made.

SECTION 2.34. REPORT OF PRIOR INJURY. (a) The commission shall review its records upon receipt of a valid request from a prospective employer.

(b) If the commission finds that the applicant has made three or more general injury claims in the preceding five years, the commission shall release the date and description of each injury to the employer.

(c) The information may be released in writing or by telephone.

(d) The commission may refuse to release information except on receipt of written authorization from each applicant if the employer requests information on three or more applicants at the same time.

(e) For the purposes of this section, "general injury" means an injury other than an injury limited to one or more of the following:

(1) an injury to a digit, limb, or member;

(2) an inguinal hernia; or

(3) vision or hearing loss.

SECTION 2.35. FAILURE TO FILE AUTHORIZATIONS; OFFENSE; ADMINISTRATIVE VIOLATION. An employer who receives information by telephone and fails to file the necessary authorization in a timely manner commits a Class B administrative violation. Each failure to file is a separate violation.

SECTION 2.36. CONFIDENTIALITY TRANSFERS. Any information pertaining to a claim that is confidential under this Act remains confidential when released to any person, except when used in court for the purposes of an appeal.

SECTION 2.37. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE. (a) A person who knowingly, intentionally, or recklessly publishes, discloses, or distributes confidential information to a person not authorized to receive such information directly from the commission commits an offense.

(b) A person who knowingly, intentionally, or recklessly receives information that the person is not authorized to receive commits an offense.

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

(d) An offense under this section may be prosecuted in the district courts of Travis County or of the county in which the information was unlawfully received, published, disclosed, or

distributed.

(e) The district court of Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

SECTION 2.38. STATISTICAL INFORMATION. The commission, research center, or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed.

SECTION 2.39. FEES AUTHORIZED. Unless a fee is specifically established, the commission may establish reasonable fees for services provided under this chapter.

ARTICLE 3. COVERAGE

CHAPTER A. COVERAGE REQUIREMENTS

SECTION 3.01. LIABILITY FOR COMPENSATION. (a) An insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if:

(1) at the time of injury, the employee is subject to this Act; and

(2) the injury arises out of and in the course and scope of employment.

(b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this Act.

SECTION 3.02. EXCEPTIONS. An insurance carrier is not liable for compensation if:

(1) the employee's intoxication was a producing cause

of the injury;

(2) the injury was caused by the employee's wilful intention and attempt to injure himself or to unlawfully injure another person;

(3) the employee's horseplay was the producing cause of the injury;

(4) the injury arose out of an altercation in which the employee was the aggressor, unless the employee is performing service as a peace officer acting in the line of duty according to established policies;

(5) the injury arose out of an act of a third person intended to injure the employee because of personal reasons and not directed at the employee as an employee or because of the employment;

(6) the injury arose out of voluntary participation in an off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of or are expressly or impliedly required by the employment; or

(7) the injury arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public.

SECTION 3.03. COMMON-LAW DEFENSES. (a) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) This section does not reinstate or otherwise affect the availability of these or other defenses at common law.

(c) The employer may defend the action on the ground that the injury was caused by an intentional act of the employee to bring about the injury or while the employee was in a state of intoxication if the intoxication was a producing cause of the injury to or death of the employee.

SECTION 3.04. BURDEN OF PROOF. In all such actions against an employer who does not have workers' compensation insurance coverage, it is necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of employment.

SECTION 3.05. APPLICATION TO INDEPENDENT CONTRACTORS. (a) In this section:

(1) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;

(C) is required to furnish or have his employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(2) "General contractor" means a person who has undertaken to procure the performance of work or services, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or an analogous term. The term does not include motor carriers that make use of owner operators in providing transportation service.

(3) "Motor carrier" means a person operating a motor vehicle over any public highway in this state.

(4) "Owner operator" means a person who provides transportation service for a motor carrier under contract.

(5) "Subcontractor" means a person who has contracted with a general contractor to perform all or any part of the work or services that a general contractor has undertaken to perform.

(6) "Transportation service" means providing a motor vehicle with a driver under contract used in transporting passengers or property.

(b) For the purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a

general contractor or motor carrier who is an employer under this Act is an employee of that general contractor or motor carrier, unless the person is operating as an independent contractor or is hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(c) A subcontractor and the subcontractor's employees are not employees of the general contractor or motor carrier for purposes of this Act if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(d) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor. If a general contractor elects to provide that coverage, then, notwithstanding Section 10.03 of this Act, the actual premiums, based on payroll, that are paid or incurred by the general contractor for the coverage may be deducted from the contract price or any other amount owed to the subcontractor by the general contractor.

(e) A motor carrier and an owner operator may enter into a written agreement under which the motor carrier provides workers' compensation insurance coverage to the owner operator and the employees of the owner operator. If a motor carrier elects to provide that coverage, then, notwithstanding Section 10.03 of this

Act, the actual premiums, based on payroll, that are paid or incurred by the motor carrier for the coverage may be deducted from the contract price or any other amount owed to the owner operator by the motor carrier.

(f) If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the purpose and intent to avoid liability as an employer under this Act, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation and shall also have a separate right of action against the subcontractor, which right of action does not affect the employee's right to compensation under this Act.

(g) This section does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to cease or change unsafe work practices.

(h) This section does not apply to farm or ranch employees.

SECTION 3.06. LIABILITY OF GENERAL CONTRACTOR FOR CERTAIN SUBCONTRACTORS. If a general contractor has workers' compensation insurance to protect the general contractor's employees, and if, in the execution of any work in the course and scope of the general contractor's business, the general contractor enters into a contract with a subcontractor who is a sole proprietor with no employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this Act.

SECTION 3.07. APPLICATION TO FARM OR RANCH EMPLOYEES. (a)

This Act applies to actions to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker covered by Subsection (b) of this section; or

(3) employed by a person with a gross annual payroll for the preceding year in the amount provided by Subsection (c) of this section.

(b) To be covered by this Act, a farm or ranch employee who is a seasonal worker must be employed on a truck farm, orchard, or vineyard or employed by a person with a gross annual payroll for the preceding year in an amount provided by this subsection. The preceding year's gross annual payroll must be equal to or exceed the prior year's required payroll adjusted for inflation, but not less than $25,000. To adjust for inflation, the comptroller of public accounts shall develop a consumer price index for this state. The comptroller shall certify the applicable index factor to the commission before October 1 of each year. The commission shall adjust the gross annual payroll requirement accordingly. A seasonal worker is covered by this law as if the seasonal worker were a migrant worker if:

(1) the seasonal worker is working for a farmer, ranch operator, or labor agent who employs migrant workers; and

(2) the seasonal worker is doing the same work at the same time at the same location as migrant workers.

(c) To be covered by this law, a farm or ranch employee other than a migrant or seasonal worker must:

(1) for the years before 1991, be employed by a person with a gross annual payroll for the preceding year of at least $50,000; and

(2) for 1991 and thereafter, be employed by a person:

(A) with a gross annual payroll in the amount required for coverage of seasonal workers under Subsection (b) of this section; or

(B) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(d) For purposes of Subsections (b) and (c) of this section, the gross annual payroll of a person includes any amount paid by the person to a labor agent for that agent's services and for the services of migrant or seasonal workers, but does not include:

(1) wages paid to the person or a member of the person's family, if the person is a sole proprietor;

(2) wages paid to a partner or a member of a partner's family in a partnership; or

(3) wages paid to a shareholder or a member of a shareholder's family by a corporation in which all shareholders are family members.

(e) If a labor agent furnishes migrant or seasonal workers, the labor agent is liable under this Act as if the labor agent were the person employing the workers, without regard to the right of control or other factors used to determine an employer-employee relationship. However, if the labor agent does not have workers' compensation insurance coverage, the person with whom the labor agent contracts for the services of the migrant or seasonal workers

is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by any of the migrant or seasonal workers as provided by this Act. For that purpose, the migrant or seasonal workers are considered the employees of the person with whom the labor agent contracts, and that person may obtain workers' compensation insurance coverage for those workers as provided by this Act.

(f) A labor agent must notify each person with whom the agent contracts of whether or not the agent has workers' compensation insurance coverage. If the agent does have workers' compensation insurance coverage, the agent must present evidence of the workers' compensation insurance coverage to each person with whom the agent contracts.

(g) If migrant or seasonal workers are covered by workers' compensation insurance, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this Act.

(h) A person who purchases a workers' compensation insurance policy covering farm or ranch employees may cover himself, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered, and the elected coverage continues while the policy is in effect and the named individual is endorsed on the policy. A member of an employer's family is exempt from coverage under the policy unless covered voluntarily as provided by this section.

(i) In this section:

(1) "Agricultural labor" means the planting,

cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.A. Sec. 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who labor for the benefit of a third party.

(4) "Migrant worker" means an individual who is employed in agricultural labor of a seasonal or temporary nature and who is required to be absent overnight from the worker's permanent place of residence.

(5) "Person" means an individual, corporation, or association.

(6) "Seasonal worker" means an individual who is employed in agricultural or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from the worker's permanent place of residence.

(7) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

(j) This section does not affect the application or

interpretation of this Act as it relates to persons engaged in activities previously determined not to be farm or ranch labor.

(k) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this section is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of a person acting as an independent contractor. For the purposes of this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of that employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

SECTION 3.08. EMPLOYEE ELECTION; WAIVER OF RIGHT TO COMPENSATION VOID. (a) Except as otherwise provided by this Act, unless the employee gives notice as provided by Subsection (b) of this section, an employee of an employer waives the employee's right of action at common law or under any statute of this state to recover damages for personal injuries or death sustained in the

course of the employment.

(b) An employee who desires to retain the common-law right of action to recover damages for personal injuries or death shall notify the employer in writing that the employee does not want to be covered under this Act and retains all rights of action under common law. The employee shall notify the employer not later than the fifth day after the date the employee begins the employment. If the employer is not a covered employer at the time of the employment but later obtains workers' compensation insurance coverage, to retain the right of action the employee must notify the employer in writing not later than the fifth day after the date on which the employee receives notice in writing from the employer that the employer has obtained the coverage. An employer may not require an employee to retain common-law rights under this subsection as a condition of employment.

(c) An employee of an employer who elects to retain the right of action and the legal beneficiaries of that employee may bring a cause of action for damages for injuries sustained in the course of the employment under common law or under a statute of this state. Notwithstanding Section 3.03 of this Act, the cause of action is subject to all defenses available under the common law and the statutes of this state.

(d) Except as provided for in this section, an agreement by an employee to waive the employee's right to compensation under this Act is void.

SECTION 3.09. EMPLOYEES EXEMPTED FROM THIS ACT. The following employees are not subject to this Act:

(1) a person employed as a domestic worker or a casual worker engaged in employment incidental to a personal residence;

(2) a person covered by a method of compensation established under federal law; or

(3) a farm or ranch employee, except as provided by Section 3.07 of this Act.

SECTION 3.10. VOLUNTARY COVERAGE OF EXEMPT EMPLOYEES. An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees otherwise exempted from coverage under Section 3.09(1) or (3) of this Act. Self-insurance or purchase by the employer of workers' compensation insurance applicable to that employee or classification of employees constitutes acceptance by the employer of the rights and responsibilities imposed under this Act as of the effective date of the certificate of authority to self-insure or the insurance policy and as long as the certificate or policy remains in effect. An employer who does not obtain coverage for exempt employees is not deprived of the common-law defenses listed under Section 3.03 of this Act.

SECTION 3.11. ALIEN EMPLOYEES; LEGAL BENEFICIARIES. (a) A resident or nonresident alien employee or legal beneficiary is entitled to compensation under this Act.

(b) A nonresident alien claimant may be officially represented by a consular officer of the country of which the alien is a citizen. That officer may receive benefit payments for distribution to the alien employee. The receipt of such payments constitutes full discharge of the insurance carrier's liability for

1 such payments.

2 SECTION 3.12. LEGALLY INCOMPETENT EMPLOYEES. If an injured
3 employee is a minor or is otherwise legally incompetent, the
4 employee's guardian may exercise on the employee's behalf the
5 rights and privileges granted to the employees under this Act. The
6 commission by rule shall adopt procedures relating to the method of
7 payment of benefits to legally incompetent employees.

8 SECTION 3.13. EXTRATERRITORIAL COVERAGE. If an employee,
9 while working in a foreign jurisdiction, suffers an injury that
10 would be compensable had it occurred within this state, the
11 employee is entitled to all rights and remedies under this Act if:

12 (1) the employee has had significant contacts with
13 this state; or

14 (2) the employment was principally located in this
15 state.

16 SECTION 3.14. SIGNIFICANT CONTACTS. An employee has
17 significant contacts with this state if the employee:

18 (1) was hired or recruited in this state and the
19 employee:

20 (A) was injured not later than one year after
21 the date of hire; or

22 (B) has worked in this state for at least 10
23 working days during the 12-month period preceding the date of
24 injury; or

25 (2) was hired or recruited in this state to work
26 outside the United States.

27 SECTION 3.15. PRINCIPAL LOCATION. The principal location of

a person's employment is where:

(1) the employer has a place of business at or from which the employee regularly works; or

(2) the employee resides and spends a substantial part of the employee's working time.

SECTION 3.16. AGREEMENT ON PRINCIPAL LOCATION; ADMINISTRATIVE VIOLATION. (a) An employee whose work requires regular travel between this and one or more other jurisdictions may agree in writing with the employer on the principal location of the employment.

(b) The employer shall file the agreement with the executive director on request.

(c) A person who violates Subsection (b) commits a Class C administrative violation.

SECTION 3.17. INTERJURISDICTIONAL AGREEMENTS. (a) The executive director may enter into agreements with the appropriate agencies of other jurisdictions that administer the workers' compensation laws of those jurisdictions with respect to:

(1) conflicts of jurisdiction;

(2) the assumption of jurisdiction in cases in which the contract of employment arises in one state and the injury is incurred in another;

(3) procedures for proceeding against a foreign employer who fails to comply with this Act; and

(4) procedures for the appropriate agency in a foreign jurisdiction proceeding against a Texas employer that fails to comply with the workers' compensation laws of the foreign

jurisdiction.

(b) When the agreement has been executed and adopted by the commission as a rule, it binds all subject employers and employees.

SECTION 3.18. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTIONS. (a) An injured employee who elects to pursue the employee's remedy and recovers compensation under the workers' compensation laws of another jurisdiction is barred from recovering under this Act.

(b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited against the compensation that the employee would have received had the claim been made under this Act.

[Sections 3.19-3.20 reserved for expansion]

CHAPTER B. SECURITY PROCEDURES

SECTION 3.21. DEFINITION. For purposes of this chapter, "employer" means a person that employs one or more employees.

SECTION 3.22. OBTAINING COVERAGE. (a) Except for public employers and as otherwise provided by this section or other law, an employer may elect to obtain workers' compensation insurance coverage. An employer required to obtain coverage under this section may obtain the coverage through a licensed insurance company or through self-insurance as provided by Chapter D of this article. An employer who obtains coverage is subject to this Act.

(b) An employer in the building or construction industry, whether a general contractor or a subcontractor, shall obtain workers' compensation insurance coverage for all employees of that employer as provided by this section.

(c) A general contractor, by written contract, may assume responsibility for securing workers' compensation insurance coverage for a subcontractor or the employees of a subcontractor with whom the general contractor has a contract for the performance of any part of the building or construction work in question.

(d) In a building or construction contract entered into by this state or a political subdivision of this state, including a municipality, the governmental entity shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for all employees of the contractor employed on the public project. A subcontractor on the project must provide such a certificate to the general contractor relating to the coverage of the employees of the subcontractor. The general contractor shall provide the certificate of a subcontractor to the governmental entity. A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(e) A person who offers or attempts to procure for employers the services of common workers, whether or not for compensation, shall obtain workers' compensation insurance coverage for the person's employees and for each common worker whose services the person procures for an employer. This subsection does not apply to a person who operates a labor bureau or employment office in conjunction with the person's own business for the exclusive purpose of employing individuals in that business, and who:

(1) pays federal social security taxes, makes state

and federal unemployment compensation insurance contributions, carries workers' compensation insurance coverage and posts notice of that coverage in a conspicuous place on its premises indicating the coverage provided, the insurance carrier writing the coverage, and the expiration date of those insurance policies;

(2) provides workers with complete information and maintains a record of the information for at least two years, relating to work assignments, rates of pay, hours of work, and the nature and duration of the work;

(3) pays wages in a timely manner for all hours worked, less only deductions required or authorized by law, by negotiable check or cash, obtaining a receipt;

(4) provides, for each pay period, each worker with an itemized statement of gross earnings, any advances on earnings, required deductions, and net earnings, irrespective of the form of wage payment;

(5) provides for payment of wages to a worker by personal delivery, mail, or as otherwise requested by the worker, but not by delivery to or with the requirement that a worker's check be cashed by an entity owned or controlled by the person or in which the person has a significant financial interest, or by or at any other specific place designated by the person;

(6) pays workers reporting to assigned work a minimum of four hours' wages if the work is begun or two hours' wages if the work is not begun;

(7) pays workers for work performed whether or not the person is paid by the person's clients;

(8) provides that if transportation or other accommodations are provided to workers the workers are not obligated to use them, either by contract or as an express or implied condition of employment;

(9) provides overall supervision, direction, and control of the workers, including the right to hire, offer work assignments, administer discipline, and terminate employment;

(10) may provide direct on-the-job supervision of the workers to the extent of directing both what is to be done and the details of how it shall be done; and

(11) accepts full responsibility for the actions of workers while performing the work and carries general liability and property damage insurance to discharge that responsibility.

(f) In this section "building or construction industry" includes:

(1) erecting or preparing to erect structures, including buildings, bridges, roadways, public utility facilities, or related appurtenances;

(2) remodeling, extending, repairing, or demolishing a structure; or

(3) otherwise improving real property or appurtenances to real property through similar activities.

(g) For the purposes of this section:

(1) if the issue of which of two or more possible building or construction industry employers is the employer of a particular employee is in question, the employer is the person who carries the employee on the person's payroll, or who pays the

employee's wages, for the work being done at the time the injury occurs; and

(2) the employment of maintenance employees by an employer who is not engaging in building or construction as the employer's primary business purpose does not constitute engaging in the building or construction industry.

(h) An employer subject to this section commits an offense if the employer fails to obtain workers' compensation insurance coverage as required by this section. A first offense under this subsection is a Class A misdemeanor. A second or subsequent offense is a felony of the third degree.

SECTION 3.23. NOTICE TO EMPLOYEES. (a) An employer shall notify each employee annually as to whether or not the employer has workers' compensation insurance coverage.

(b) In addition to the notice required in Subsection (a) of this section, the employer shall notify a new employee of the existence or absence of coverage at the time the employee is hired.

(c) In the absence of workers' compensation insurance coverage, the notices required in this section shall specifically explain the consequence of the lack of coverage. The commission shall prescribe the contents of the notices.

(d) A covered employer who does not replace workers' compensation insurance coverage that has been terminated or canceled must notify in writing each employee of the termination or cancellation of the coverage within 10 days after the date on which the termination or cancellation is effective.

(e) An employer who secures workers' compensation coverage

shall keep posted in the employer's place of business a notice that the employer has secured compensation insurance coverage, and the notice shall be revised whenever the information it contains is revised.

(f) The notice required by Subsection (e) shall:

(1) be posted in a conspicuous place as necessary to provide reasonable notice to employees;

(2) contain the name, address, and telephone number of the insurance carrier's claims service; and

(3) identify whom an employee should contact about a possible safety hazard in or about the work place.

(g) A person who fails to comply with this section commits a Class B administrative violation.

SECTION 3.24. EMPLOYER FILING REQUIRED. (a) An employer who does not obtain coverage shall notify the commission in writing, in the time and as prescribed by commission rule, that the employer does not elect to obtain coverage. The commission shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the commission about the employer's business. The commission may contract with the Texas Employment Commission or the comptroller of public accounts for assistance in collecting the notification required under this section. These agencies shall cooperate with the commission in enforcing this section.

(b) An employer who fails to comply with this section commits a Class D administrative violation and each day of noncompliance is a separate violation.

SECTION 3.25. COMPANY NOTICE OF COVERAGE; ADMINISTRATIVE VIOLATION. (a) If an employer has secured compensation, the insurance company shall within 10 days file notice of coverage with the commission. Coverage shall be effective on the date a binder is issued or at a later date and time agreed to by the parties.

(b) An insurance company that fails to file notice with the commission in accordance with this section commits a Class B administrative violation and each day of noncompliance is a separate violation.

SECTION 3.26. EMPLOYER WITHDRAWAL OF COVERAGE; EXTENSION OF COVERAGE. (a) If an employer that has obtained coverage under this Act terminates coverage, the employer shall file written notice by certified mail with the commission. The notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Section 3.23(d) of this Act.

(b) The effective date of withdrawal from coverage shall be the later of:

(1) 30 days after the filing of notice with the commission required in Subsection (a) of this section; or

(2) the cancellation date of the policy.

(c) The insurance coverage shall be extended until the effective date of withdrawal as established in Subsection (b) of this section and the employer is obligated for premiums due for that period.

SECTION 3.27. COOPERATION BETWEEN STATE BOARD OF INSURANCE AND TEXAS WORKERS' COMPENSATION COMMISSION. (a) On and after

1 September 1, 1992, the State Board of Insurance shall collect and
2 maintain the information required to be provided under this chapter
3 and shall provide this information in the time and manner
4 prescribed by the commission. The State Board of Insurance shall
5 monitor compliance with the requirements and notify the commission
6 of possible violations in the time and manner prescribed by the
7 commission. The State Board of Insurance may adopt rules as
8 necessary to enforce this chapter.
9 (b) The commission shall enforce the administrative
10 penalties established in this chapter according to Article 10 of
11 this Act.
12 SECTION 3.28. INSURANCE COMPANY CANCELLATION OF COVERAGE;
13 EXTENSION OF COVERAGE. (a) If the insurance company cancels a
14 policy or does not renew it on its anniversary date, the insurance
15 company shall send notice of cancellation or nonrenewal by
16 certified mail or in person to the employer and the commission
17 prior to the effective date of cancellation or nonrenewal.
18 (b) The insurance company must send notice to the employer
19 and the commission not later than the 30th day before the date on
20 which the cancellation or nonrenewal becomes effective, except as
21 provided by Subsection (c) of this section.
22 (c) The insurance company may send notice to the employer
23 not later than the 10th day before the date on which the
24 cancellation or nonrenewal becomes effective if the insurance
25 company cancels or does not renew because of:
26 (1) fraud in obtaining coverage;
27 (2) misrepresentation of amount of payroll for

purposes of premium calculation; or

(3) failure to pay a premium when payment is due.

(d) Failure of the insurance company to give the notice as required by this section extends the policy until the required notice is given to the employer and to the commission.

SECTION 3.29. CLAIMS SERVICES; ADMINISTRATIVE VIOLATION. (a) The commission by rule may require an insurance carrier to provide claims services through its own offices located within the state or by other resident representatives with full power to act for the insurance carrier.

(b) A person who violates rules adopted under this section commits a Class B administrative violation. Each day of noncompliance is a separate violation.

SECTION 3.30. AUSTIN REPRESENTATIVE REQUIRED; ADMINISTRATIVE VIOLATION. (a) The commission by rule may require an insurance carrier to designate a person as an Austin representative to act as the carrier's agent before the commission in Austin. After designation, notice to an Austin representative is considered notice to the insurance carrier.

(b) A person who violates rules adopted under this section commits a Class B administrative violation. Each day of noncompliance is a separate violation.

[Sections 3.31-3.40 reserved for expansion]

CHAPTER C. COMMERCIAL INSURANCE

SECTION 3.41. SECURITY BY COMMERCIAL INSURANCE. (a) An insurance company may contract to secure an employer's liability and obligations and to pay compensation by issuing a workers'

compensation insurance policy under this chapter.

(b) The following obligations may not be transferred by the employer:

(1) the obligation to accept a report of an injury under Section 5.01 of this Act;

(2) the obligation to maintain records of injury under Section 5.03 of this Act;

(3) the obligation to report an injury to the commission under Section 5.04 of this Act;

(4) liability for violation of Section 10.01, 10.02, or 10.03 of this Act; or

(5) the obligation to comply with a commission order.

(c) The contract for coverage shall be written on a policy and endorsements approved by the State Board of Insurance.

SECTION 3.42. EFFECT OF OTHER INSURANCE COVERAGE. (a) A contract entered to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this Act is void unless the contract also covers liability for payment of compensation under this Act.

(b) This section does not prohibit an employer who has elected not to obtain workers' compensation insurance coverage from obtaining any insurance coverage for the employer's employees if the insurance is not represented to any person as providing workers' compensation coverage under this Act.

SECTION 3.43. ALL STATES COVERAGE. The State Board of Insurance shall coordinate with the applicable agencies of other states to:

(1) share information on an employer that obtains all states coverage; and

(2) ensure that the State Board of Insurance has knowledge of an employer that obtains all states coverage in another state but fails to file notice with the State Board of Insurance.

[Sections 3.44-3.50 reserved for expansion]

CHAPTER D. SELF-INSURANCE REGULATION

SECTION 3.51. DEFINITIONS. In this chapter:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) "Director" means the director of the division of self-insurance regulation.

(3) "Impaired employer" means a certified self-insurer:

(A) that has suspended payment of compensation as determined by the commission;

(B) that has filed for relief under bankruptcy laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

(4) "Incurred liabilities for compensation" means the sum of the estimate of liabilities for outstanding workers' compensation claims, including claims incurred but not yet reported, plus the estimated amount necessary to provide for the

administration of those claims, including legal costs.

(5) "Qualified claims servicing contractor" means:

(A) an insurance company authorized by the State Board of Insurance to write workers' compensation insurance;

(B) a subsidiary of an insurance company that provides claims service under contract;

(C) an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code); or

(D) a third-party administrator that has on its staff an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

SECTION 3.52. DIRECTOR. The director shall exercise all rights, powers, and duties imposed or conferred on the commission by this chapter, except as otherwise provided.

SECTION 3.53. APPLICATION FOR CERTIFICATION. (a) An employer that desires to self-insure under this article must submit an application to the commission for a certificate of authority to self-insure. The application must be submitted on a form adopted by the commission and be accompanied by a nonrefundable application fee of $1,000. The application fee shall be deposited in the workers' compensation self-insurance fund created under Section 3.60(b) of this Act.

(b) Not later than the 60th day after the day on which the form is received, the director shall recommend approval or denial to the commission. The commission, by majority vote, shall issue a

1 certificate of authority to self-insure to an applicant who meets
2 the requirements for certification under this article. The
3 certificate of authority is valid for one year after the date of
4 issuance and may be renewed under procedures prescribed by the
5 commission. The director may stagger the renewal dates of
6 certificates of authority to self-insure to facilitate the work
7 load of the division.

8 SECTION 3.54. REQUIREMENTS FOR CERTIFICATION TO SELF-INSURE;
9 ISSUANCE OF CERTIFICATION. (a) To be eligible for a certificate
10 of authority to self-insure, an applicant for an initial or renewal
11 certificate must present evidence satisfactory to the commission
12 and the guaranty association created under Section 3.69 of this Act
13 of sufficient financial strength and liquidity under standards
14 adopted by the commission to assure that all workers' compensation
15 obligations incurred by the applicant under this article are
16 promptly met. In assessing financial strength and liquidity, the
17 commission shall consider:

18 (1) the applicant's organizational structure and
19 management background;

20 (2) the applicant's profit and loss history;

21 (3) the applicant's compensation loss history;

22 (4) the source and reliability of the financial
23 information submitted by the applicant;

24 (5) the number of employees affected by
25 self-insurance;

26 (6) the applicant's access to excess insurance
27 markets;

(7) financial ratios, indexes, or other financial measures that the commission finds appropriate; and

(8) any other information considered appropriate by the commission.

(b) The applicant must present a plan for claims administration that is acceptable to the commission and designates a qualified claims servicing contractor.

(c) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(d) If the provider of services is not an employee of the applicant, the applicant must provide to the commission a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services. If the commission has adopted a standard form for such a contract, the contract must be submitted in that form. The contract must be acceptable to the commission.

(e) The applicant must provide security for incurred liabilities for compensation through a deposit with the director, in a combination and from institutions approved by the director, of the following security:

(1) cash or negotiable securities of the United States or of this state;

(2) a surety bond that names the director as payee; or

(3) a letter of credit that:

(A) is irrevocable; and

(B) names the director as payee.

(f) If an applicant who has provided a letter of credit as all or part of the security required under this subsection desires to cancel the existing letter of credit and substitute a different letter of credit or another form of security, the applicant must notify the commission in writing not later than the 60th day before the date on which the original letter of credit is to be canceled.

(g) The estimate of incurred liabilities must be signed and sworn to by an accredited casualty actuary.

(h) The sum of the deposited securities must be at least equal to the greater of $300,000 or 125 percent of the applicant's incurred liabilities for compensation.

(i) The applicant shall provide for excess insurance or reinsurance to cover any liability for losses not paid by the self-insurer in an amount not less than the amount required by the director. The director shall require excess insurance or reinsurance in at least the amount of $10 million per occurrence.

(j) If the applicant is a subsidiary, the parent organization must guarantee the obligations imposed by this article.

(k) If an applicant is granted a certificate of authority to self-insure, any interest or other income that accrues from cash or negotiable securities deposited by the applicant as security under Subsection (e) of this section while the case or securities are on deposit with the director shall be paid to the applicant on a quarterly basis.

(l) The commission, with approval of the guaranty association created under Section 3.69 of this Act, shall issue a

1 certificate of authority to self-insure to an applicant who meets
2 the requirements of this article and pays the required fee.
3 SECTION 3.55. PREMIUM REQUIREMENTS TO SELF-INSURE. (a) In
4 addition to meeting the other eligibility requirements imposed
5 under this article, an applicant for an initial certificate of
6 authority to self-insure must present evidence satisfactory to the
7 commission of a total unmodified premium in this state for workers'
8 compensation insurance coverage of $750,000. This amount shall be
9 adjusted annually to reflect increases in the Consumer Price Index.
10 (b) In lieu of the state premium required under Subsection
11 (a) of this section, the applicant may present evidence of a total
12 unmodified national workers' compensation insurance premium of at
13 least $10 million.
14 SECTION 3.56. SPECIFIC SECURITY REQUIREMENTS. (a) A
15 security deposit must include within its coverage all amounts
16 covered by terminated surety bonds or terminated excess insurance
17 policies.
18 (b) A surety bond, irrevocable letter of credit, or a
19 document indicating issuance of an irrevocable letter of credit
20 must be in a form approved by the director and must be issued by an
21 institution acceptable to the director. Such an instrument may be
22 released only according to its terms but may not be released by the
23 depositing of additional security.
24 (c) The certified self-insurer shall deposit the security
25 with the state treasurer on behalf of the director. The state
26 treasurer may accept securities for deposit or withdrawal only on
27 the written order of the director.

(d) On receipt by the director of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified self-insurer's assets in favor of the director to the extent of any then unsecured portion of the self-insured's incurred liabilities for compensation. That perfected security interest transfers to any cash or securities deposited by the self-insured with the director after the date of the request and may be released only on:

(1) the acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the director.

(e) The certified self-insurer loses all right, title, interest in, and control of the assets or obligations submitted or deposited as security. The director may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) The director, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, any liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) the issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) the issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.

(g) A decision of the director may be appealed to a district court as provided by Article 6 of this Act. Venue for an appeal is in Travis County.

(h) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the court issues a determination staying the payment of claims.

(i) If the director determines that a security deposit has not been made immediately available for the payment of compensation, the director shall determine the appropriate method of payment and claims administration, which may include payment by a surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the director.

SECTION 3.57. PROCEDURES ON DENIAL OF APPLICATION. (a) If the commission determines that an applicant for a certificate of authority to self-insure does not meet the requirements for eligibility to self-insure provided by this chapter, the commission shall notify the applicant in writing, stating the specific reasons for the denial and the conditions to be met before approval can be granted.

(b) The applicant is entitled to a reasonable period of

time, as determined by the commission, to meet the conditions for approval before the application is considered rejected for purposes of appeal. An appeal is subject to the substantial evidence rule and must be filed in a district court of Travis County.

(c) During the pendency of approval or denial of the application for certification to self-insure, the applicant may not operate as a self-insurer under this chapter.

SECTION 3.58. ANNUAL REPORT. (a) Each certified self-insurer shall file an annual report with the commission. The commission shall prescribe the form of the report and shall furnish blank forms for preparation of the report to each certified self-insurer. The report must include payroll data in the form prescribed by this article and the commission. The commission may require that the report include other financial and statistical data.

(b) The annual report must present evidence of sufficient financial ability of the certified self-insurer to meet all obligations under this article.

(c) The report must state the number of injuries sustained in the three preceding calendar years, and must report separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries. The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the commission.

(d) If the commission considers it necessary, it may order a

1 certified self-insurer whose financial condition or claims record
2 warrants closer supervision to report as provided by this section
3 more often than annually.
4 SECTION 3.59. EXAMINATION OF RECORDS. (a) The certified
5 self-insurer shall maintain the books, records, and payroll data
6 necessary to compile the annual report and any other information
7 reasonably required by the commission. The material shall be open
8 to inspection and examination by an authorized agent or
9 representative of the commission at reasonable times for the
10 purpose of ascertaining the correctness of the information.
11 (b) The examination may be made at any location, including
12 the offices of the commission in Austin, or, at the certified
13 self-insurer's option, in offices of the certified self-insurer.
14 The certified self-insurer must pay the reasonable expenses,
15 including travel expenses, of an inspector who makes an inspection
16 at its offices.
17 (c) The certified self-insurer may maintain the books,
18 records, and payroll data in locations outside this state.
19 (d) An unreasonable refusal on the part of a certified
20 self-insurer to make available for inspection books, records,
21 payroll data, and other required information is grounds for
22 revocation of the certificate of authority to self-insure or for
23 other penalties or sanctions the commission, after an opportunity
24 for hearing, may impose.
25 SECTION 3.60. SELF-INSURANCE REGULATORY FEE. (a) Certified
26 self-insurers shall pay annual fees to cover the administrative
27 costs incurred by the commission in implementing this chapter. The

fees shall be based on the total amount of income benefit payments made in the preceding calendar year. The commission shall assess each certified self-insurer a pro rata share based on the ratio the total amount of income benefit payments made by that self-insurer bears to the total amount of income benefit payments made by all certified self-insurers.

(b) The fees shall be deposited in the state treasury to the credit of a fund to be known as the workers' compensation self-insurance fund and to be used only for the regulation of certified self-insurers. Any amount not used in a budget year shall be used to reduce the regulatory fees assessed in the succeeding budget year.

SECTION 3.61. SELF-INSURER PREMIUM TAX. (a) Each certified self-insurer shall pay a self-insurer premium tax.

(b) To determine the tax base of a certified self-insurer for purposes of this chapter, each certified self-insurer shall report its payroll by individual workers' compensation risk code classifications in its application for certification and in its annual reports to the commission. The commission shall compute the estimated manual premium for the certified self-insurer using the workers' compensation insurance rates established by the State Board of Insurance. The estimated manual premium shall be multiplied by 0.75, and the product is the certified self-insurer's tax base.

(c) The tax liability of a certified self-insurer under this section shall be the tax base computed under Subsection (b) of this section multiplied by the aggregate average effective rate of gross

premium taxes paid by workers' compensation insurance companies under Article 4.10, Insurance Code, for the preceding fiscal year.

(d) For the period from January 1, 1990, through December 31, 1990, only, the aggregate average effective tax rate is 1.8 percent.

(e) The State Board of Insurance shall compute the aggregate effective gross premium tax rate for each fiscal year and certify that rate to the commission by October 31 of each year.

SECTION 3.62. SELF-INSURER MAINTENANCE TAX. (a) Each certified self-insurer shall pay a self-insurer maintenance tax for the administration of the commission equal to the tax paid by workers' compensation insurance companies under Section 2.23 of this Act.

(b) The tax liability of a certified self-insurer under this section shall be the tax base computed under Section 3.61(b) of this Act multiplied by the rate assessed workers' compensation insurance companies under Section 2.23 of this Act.

SECTION 3.63. COLLECTION OF SELF-INSURER TAXES AND FEES; PENALTIES. (a) The taxes imposed by Sections 3.61 and 3.62 of this Act and the fee imposed by Section 3.60 of this Act are due and payable on the 60th day after the issuance of a certificate to self-insure and on the 60th day after each annual renewal date. The commission shall compute the taxes and fee of the certified self-insurer and notify the certified self-insurer of the amounts due. The taxes and fee shall be remitted to the commission.

(b) The self-insurer premium tax shall be deposited in the state treasury and allocated in the same manner as the tax provided

under Article 4.10, Insurance Code.

(c) The self-insurer maintenance tax shall be deposited in the state treasury to the credit of the commission.

(d) Failure to timely pay the taxes and fee imposed by Sections 3.60 through 3.62 of this Act constitutes a Class B administrative violation. Each day of noncompliance constitutes a separate violation.

SECTION 3.64. WITHDRAWAL FROM SELF-INSURANCE. A certified self-insurer may withdraw from self-insurance at any time with the approval of the commission. The commission shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the commission that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer. A certified self-insurer who withdraws from self-insurance shall surrender its certificate of authority to self-insure to the commission.

SECTION 3.65. CLAIMS. A claim or suit brought by a claimant shall be brought against and in the name of the self-insurer's qualified servicing contractor. The director shall be the agent for service of process for a claim or suit brought by a workers' compensation claimant against the certified self-insurer's qualified servicing contractor.

SECTION 3.66. AGENT'S COMMISSION. This chapter does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

SECTION 3.67. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The commission, by majority vote, may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with any of the requirements or conditions provided by this article or the rules adopted by the commission under this article.

(b) If the commission believes that grounds exist to revoke a certificate of authority to self-insure, the commission shall hold a hearing to determine if the certificate should be revoked. The commission shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date. Hearings and appeals under this section shall be conducted under the procedures established under Article 6 of this Act. If the certified self-insurer fails to show cause, the commission shall immediately revoke the certificate.

(c) A certified self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations for compensation to its employees for accidental injuries or occupational diseases that occur during the period of self-insurance. The required security shall be maintained with the commission or under the commission's control until each claim for workers' compensation benefits has been paid, settled, or lapsed under Section 4.17 of this Act.

SECTION 3.68. TERMINATION OF EXCESS INSURANCE OR REINSURANCE COVERAGE; ADMINISTRATIVE VIOLATION. (a) A certified self-insurer shall notify the director not later than 10 days after the certified self-insurer has notice of the cancellation or termination of any excess insurance or reinsurance coverage

required under Section 3.54(i) of this Act.

(b) A violation of this section is a Class B administrative violation. Each day of noncompliance constitutes a separate violation.

SECTION 3.69. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty Association is established to provide for payment of workers' compensation benefits for the injured employees of an impaired employer. To be entitled to self-insure, each employer who desires to become a certified self-insurer must be a member of the association. The members shall provide by rule for the election of a board of directors including four certified self-insurer members. The board of directors shall also include, as voting members, the chair of the Texas Workers' Compensation Commission, the executive director of the Texas Workers' Compensation Commission, and the public counsel of the division of consumer protection of the State Board of Insurance. The director of the division of self-insurance regulation shall serve as a nonvoting member. The board of directors may adopt rules for the operation of the association. Rules adopted by the board of directors are subject to the approval of the Texas Workers' Compensation Commission. Meetings of the association and its board of directors are subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and records of the association and its board of directors are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil

Statutes).

(b) Members of the association shall be assessed a fee, based on total amount of income benefits payments made in this state for the preceding reported calendar year, to create, over a period of five years, a Texas certified self-insurer guaranty trust fund of at least $1 million for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed $2 million. The board of directors of the association shall administer the trust fund in accordance with rules adopted by the commission. The assessment for the first year after an employer is issued a certificate to self-insure shall be based on the indemnity losses paid by the employer's carrier in the year before the certificate was issued.

(c) If the commission determines that the payment of benefits and claims administration shall be made through the association, the association shall assume the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director. The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association. On the assumption of obligations by the association under the director's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of any irrevocable letter of credit shall deliver the security to the association together with any interest that has accrued.

(d) On determination by the commission that a certified

self-insurer has become an impaired employer, the director shall secure release of the security deposit required by this article and shall promptly estimate the amount of any additional funds needed to supplement the security deposit, the available assets of the impaired employer for the purpose of making payment of all incurred liabilities for compensation, and the funds maintained by the association for the emergency payment of compensation liabilities. The director shall advise the board of directors of the association of the estimate of any necessary additional funds, and the board of directors shall promptly assess each certified self-insurer, except impaired employers, to collect the required funds. The assessments shall be made against all certified self-insurers in proportion to the ratio that the total paid indemnity losses for the preceding reported calendar year bear to the total paid indemnity losses by all certified self-insurers, except impaired employers, in this state in that calendar year.

(e) A certified self-insurer designated as an impaired employer is exempt from assessment beginning on the date of that designation until the commission determines that the employer is no longer impaired.

(f) Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through a suit brought for that purpose. Venue for the suit is in Travis County.

(g) Funds advanced by the association under this article do

not become assets of the impaired employer but are considered a special fund advanced to the director, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the cost of claims administration and legal costs.

(h) The association or the surety making compensation payments under this chapter is entitled to the same preference over the other debts of the impaired employer or the impaired employer's estate as provided by law to the person directly entitled to the compensation.

(i) The commission, after notice and hearing and by majority vote, may suspend or revoke the certificate of authority to self-insure of any certified self-insurer that fails to pay an assessment. The association promptly shall report such a failure to the director. A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(j) Notwithstanding Subsection (c) of this section, the association is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the association.

(k) The association is a party in interest in any proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association. The association has the same rights and

defenses as the impaired employer, including the right to:

(1) appear, defend, and appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, and pay a claim; and

(3) investigate, handle, and deny a claim.

SECTION 3.70. TRANSITION. Approved applications for certification of authority to self-insure are activated when the director determines that the aggregate of approved self-insurers provides sufficient financial strength and liquidity to establish the Texas Certified Self-Insurer Guaranty Association.

ARTICLE 4. BENEFITS

CHAPTER A. GENERAL PROVISIONS

SECTION 4.01. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b) of this section, a recovery of workers' compensation benefits under this Act is the exclusive remedy of an employee or legal beneficiary against the employer or an agent, servant, or employee of the employer for the death of or a work-related injury sustained by a covered employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence. For the purposes of this section, "gross negligence" has the meaning assigned to it by Section 41.001, Civil Practice and Remedies Code.

SECTION 4.02. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death.

1 SECTION 4.03. EMPLOYER LIABILITY TO THIRD PARTY. If an
2 action for damages is brought by an injured employee, the legal
3 beneficiary of a deceased employee, or an insurance carrier,
4 against a third party liable to pay damages for the injury as
5 provided by Section 4.04 of this Act, and the action results in a
6 judgment against the third party or a settlement by the third
7 party, the employer is not liable to the third party for any
8 reimbursement or damages based on the judgment or settlement unless
9 the employer executed, before the injury occurred, a written
10 agreement with the third party to assume the liability.
11 SECTION 4.04. THIRD PARTY LIABILITY. (a) If the injury for
12 which compensation is payable under this Act was caused under
13 circumstances creating a legal liability in some person other than
14 the employer to pay damages, the employee may proceed either at law
15 against that person to recover damages or against the insurance
16 carrier for compensation under this Act, or both. If the employee
17 proceeds at law against the person other than the employer, the
18 employee may not be held to have waived the right to compensation
19 under this Act.
20 (b) If the claimant is a beneficiary under the death
21 benefits provisions of Chapter C of this article, a judgment does
22 not constitute an election, but the amount of the recovery shall
23 first pay costs and attorney's fees and then reimburse the
24 insurance carrier, and if there is any excess it shall be paid to
25 the beneficiaries in the same ratio as they receive death benefits.
26 The insurance carrier shall suspend further payments of benefits
27 until the suspended benefits equal the amount of the excess, at

which time benefit payments shall be resumed.

(c) If compensation is claimed under this Act by the injured employee or the employee's legal beneficiaries, the insurance carrier is subrogated to the rights of the injured employee, and may enforce in the name of the injured employee or the legal beneficiaries the liability of that other person. If the recovery is for a sum greater than that paid or assumed by the insurance carrier to the employee or the legal beneficiaries, then, out of the amount recovered, the insurance carrier shall reimburse itself and pay the costs, and the excess recovered shall be paid to the injured employee or the beneficiaries.

(d) If a claimant receives compensation from the subsequent injury fund, the commission is considered to be the insurance carrier under this section for purposes of those benefits, is subrogated to the rights of the injured employee, and is entitled to reimbursement in the same manner as the insurance carrier. The commission shall remit money recovered under this subsection to the state treasurer for deposit to the credit of the subsequent injury fund.

(e) If the claimant is represented by an attorney, the insurance carrier shall pay a fee to the claimant's attorney equal to one-third of the subrogation recovery and a proportionate share of expenses, payable out of the insurance carrier's part of the recovery. If the claimant's attorney is also representing the subrogated insurance carrier, a full written disclosure must be made by the attorney to the claimant before actual employment by the insurance carrier as an attorney. The disclosure must be

1 acknowledged by the claimant, and a signed copy of the disclosure
2 shall be furnished to all concerned parties and made a part of the
3 commission file. A copy of the disclosure with the authorization
4 and consent shall also be filed with the claimant's pleadings
5 before any judgment entered and approved by the court.
6 (f) If the insurance carrier obtains an attorney to actively
7 represent its interest and if the attorney actively participates in
8 obtaining a recovery, the court shall award and apportion an
9 attorney's fee allowable out of the insurance carrier's subrogation
10 recovery between those attorneys, considering the benefit accruing
11 to the insurance carrier as a result of each attorney's service.
12 The aggregate of those fees may not exceed 33-1/3 percent of the
13 subrogated interest.
14 (g) If at the conclusion of a third party action, a workers'
15 compensation claimant is entitled to compensation, the net amount
16 recovered by the claimant from the third party action shall be
17 applied to reimburse the insurance carrier for past benefits and
18 medical expenses paid. Any amount in excess of past benefits and
19 medical expenses shall be treated as an advance against future
20 benefit payments of compensation that the claimant is entitled to
21 receive under this Act. If the advance is adequate to cover all
22 future compensation and medical benefit payments as provided by
23 this Act, the insurance carrier is not required to make further
24 payments. If the advance is insufficient, the insurance carrier
25 shall resume the payments when the advance is exhausted. The
26 reasonable and necessary medical expenses incurred by the claimant
27 because of the injury shall be deducted from the advance in the

same manner as benefit payments.

(h) If the insurance carrier reasonably believes that third party liability exists with regard to a workers' compensation claim, it shall inform the claimant or the claimant's attorney promptly. If the claimant is unrepresented, the carrier shall advise the claimant to seek legal counsel, but may not recommend or otherwise suggest any particular attorney or group of attorneys.

(i) Unless liability for workers' compensation benefits is the subject of an active dispute between the claimant and the insurance carrier, the carrier shall immediately furnish to an attorney representing the claimant in a third party action copies of all investigation performed by the insurance carrier that relates to the third party action, and shall cooperate fully with the claimant's attorney in disclosing facts and information in the possession of the insurance carrier. Failure to comply with this subsection constitutes a waiver of the insurance carrier's right of subrogation.

SECTION 4.05. OFFSETS. (a) To ensure that the amount received by an employee in benefits under multiple employer-sponsored disability benefit programs or public disability benefit programs does not exceed the employee's net average weekly wage before the injury, adjusted for inflation, the commission may order, on a written request from the insurance carrier, that impairment income benefits or extended disability income benefits be reduced to the extent that the employee receives:

(1) commission-approved disability benefits for the injury from a source other than workers' compensation or social

1 security; or

2 (2) social security retirement benefits.

3 (b) A reduction under this section is calculated on the
4 after-tax value of the workers' compensation benefits and the
5 offsetting benefits.

6 (c) An offset under this section does not reduce or
7 eliminate an insurance carrier's liability for continuing medical
8 benefits.

9 (d) The commission may not order a reduction under this
10 section based on a disability program to which the employee has
11 contributed or on a disability program which is part of a
12 collectively bargained agreement.

13 SECTION 4.06. CONTINUATION OF WAGES. (a) After an injury
14 and during the time that the insurance carrier is not paying
15 benefits, the employer may continue to pay the employee's wages or
16 may initiate weekly payments to the employee.

17 (b) If the injury is found compensable and the insurance
18 carrier initiates compensation, the insurance carrier shall
19 reimburse the employer for the amount of compensation to which the
20 employee was entitled under this Act during the period that the
21 insurance carrier was not making payments and the employer
22 continued to pay the employee's wages or made weekly payments to
23 the employee.

24 (c) The employer shall notify the commission and the
25 insurance carrier of the initiation of and the amount of payments
26 made under this section. The notice must be given on forms
27 prescribed by the commission.

(d) Employer payments made under this section may not be construed as an admission of compensability and do not affect the payment of benefits from any other source.

SECTION 4.07. EXEMPT FROM LEGAL PROCESS; ASSIGNABILITY. (a) Benefits received under this Act are exempt from garnishment, attachment, judgment, and other actions or claims.

(b) Except as provided by Subsection (c) of this section, benefits are not assignable.

(c) A legal beneficiary may, with commission approval, assign the right to death benefits.

SECTION 4.08. ALLOWABLE LIENS. Income or death benefits are subject only to the following liens or claims in the following order of priority:

(1) an attorney's fee for representing an employee or legal beneficiary in any matter arising under this Act;

(2) court-ordered child support; or

(3) a subrogation interest established under this Act.

SECTION 4.09. ATTORNEY'S FEES REGULATED. (a) All fees of attorneys for representing claimants before the commission under this Act are subject to the approval of the commission.

(b) Attorney's fees for representing claimants before the commission may not be allowed or approved against any party or parties not represented by an attorney, nor may attorney's fees be allowed or approved exceeding an amount equal to 25 percent of the total recovery, in addition to the reasonable expenses that are incurred by the attorney in the preparation and presentation of the claim before the commission and that are allowed by the commission.

(c) If an attorney represents only part of those interested in the allowance of a claim before the commission and the attorney's services in prosecuting the claim and obtaining an award inures to the benefit of others jointly interested in the claim, the commission may take these facts into consideration and allow the attorney a reasonable charge to be assessed against the interest of those receiving benefits from the service of the attorney.

(d) The attorney's fees provided for by this section may be redeemed by the insurance carrier by the payment of a lump sum or may be commuted by the agreement of the parties, subject to the approval of the commission, but not until the claim represented by the attorney has been finally determined by the commission and recognized and accepted by the carrier. After the approval, if the carrier is notified in writing of the claim or agreement for legal services, the claim is a lien against any amount thereafter to be paid as compensation.

(e) If the employee's compensation is payable by the carrier in periodical installments, the commission shall fix at the time of approval the proportion of each installment to be paid on account of the legal services.

SECTION 4.10. AVERAGE WEEKLY WAGE. (a) The average weekly wage of the injured employee at the time of the injury is determined as provided by this section.

(b) If the injured employee worked in the employment in which the employee was working at the time of the injury, whether or not for the same employer, for at least 210 days of the year

1 immediately preceding the injury, the average weekly wage consists
2 of 300 times, if a six-day worker or 260 times, if a five-day
3 worker, the average daily wage or salary that the employee earned
4 during the days that the employee actually worked in that year,
5 divided by 52.

6 (c) If the injured employee did not work in the employment
7 in which the employee was working at the time of the injury, for at
8 least 210 days of the year immediately preceding the injury, the
9 average weekly wage consists of 300 times, if a six-day worker or
10 260 times, if a five-day worker, the average daily wage or salary
11 that an employee of the same class, with at least 210 days of the
12 immediately preceding year in the same or similar employment in the
13 same or a neighboring place, earned during the days that that
14 employee actually worked in that year, divided by 52.

15 (d) If the injured employee is a minor or an apprentice at
16 the time of injury, and, under normal conditions, the employee's
17 wages would be expected to increase during the period of
18 disability, the average weekly wage shall be adjusted accordingly.

19 (e) If, because of the shortness of the period of employment
20 of the employee, or of another employee engaged in the same class
21 of work in the manner and for the length of time specified in
22 Subsections (a)-(d) of this section, or if for other good and
23 sufficient reasons, it is impracticable to compute the average
24 weekly wage as provided by those subsections, it may be computed in
25 any manner, just and fair to both parties, as of the date of
26 injury.

27 (f) The wage shall include the market value of board,

lodging, laundry, fuel, and any other advantage or benefit that can be estimated in money that the employee receives from the employer as part of the remuneration, including fringe benefits.

(g) For the purposes of this section:

(1) "Five-day worker" means an individual who, at the time of injury, normally works a five-day work week.

(2) "Six-day worker" means an individual who, at the time of injury, normally works a six-day work week.

SECTION 4.11. MAXIMUM WEEKLY BENEFITS. (a) Effective September 1, 1989, the maximum weekly income benefit is:

(1) for the first 26 weeks following the beginning date of incapacity of all injuries, for injuries for which lifetime income benefits are payable, and for death cases, an amount equal to 100 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission, rounded to the nearest whole dollar amount divisible by seven; and

(2) for all other weeks of incapacity, an amount equal to 60 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission, rounded to the nearest whole dollar amount divisible by seven.

(b) In the manner prescribed by Subsection (a) and using the averages determined by the Texas Employment Commission, the commission shall establish the maximum weekly income benefit for each state fiscal year not later than September 1 of each year. The commission shall round the maximum to the nearest whole dollar

amount divisible by seven.

(c) The maximum weekly income benefit in effect on the date of the first payment of weekly income benefits is applicable for the entire period during which the income benefits are payable.

SECTION 4.12. MINIMUM WEEKLY BENEFITS. (a) Effective September 1, 1989, the minimum weekly income benefit is 10 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission, rounded to the nearest whole dollar amount divisible by seven.

(b) The commission shall establish the minimum weekly income benefit for each state fiscal year not later than September 1 of each year.

SECTION 4.13. INTEREST ON ACCRUED INCOME BENEFITS. (a) In any order to pay income or death benefits accrued but not paid, the order shall include interest on the amount of compensation due at the rate provided by Section 1.04 of this Act.

(b) Accrued compensation and interest shall be paid in a lump sum.

[Sections 4.14-4.20 reserved for expansion]

CHAPTER B. INCOME BENEFITS

SECTION 4.21. INCOME BENEFITS; DETERMINATION BY COMMISSION. (a) An employee is entitled to income benefits to compensate the employee for incapacity caused by the compensable injury.

(b) Except as otherwise provided by this Act, income benefits shall be paid without order from the commission on a weekly basis as and when they accrue. Entitlement to income

benefits under this chapter terminates on the death of the employee, and no interest in future income benefits survives after the employee's death, except benefits for specific injury cases under Section 4.25 of this Act.

SECTION 4.22. ACCRUAL OF RIGHT TO INCOME BENEFITS. (a) Weekly income benefits may not be paid under this Act for an injury that does not incapacitate the employee from earning full wages for a period of at least one week. If incapacity extends beyond one week, weekly income benefits begin to accrue on the eighth day after injury. This section does not preclude recovery of benefits under any other section of this Act.

(b) If incapacity does not follow at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits begin to accrue on the eighth day after the date the incapacity began.

(c) If the incapacity continues for four weeks or longer after the beginning date of the incapacity, the compensation shall be computed from the beginning date of the incapacity.

SECTION 4.23. TEMPORARY INCAPACITY INCOME BENEFITS. (a) An employee who has total or partial incapacity from a compensable injury is entitled to temporary incapacity income benefits. These benefits accrue beginning on the eighth day of incapacity and shall be paid weekly. On the initiation of compensation as provided under Section 5.21 of this Act, the insurance carrier shall pay temporary incapacity income benefits as provided by this section.

(b) Temporary incapacity income benefits continue until the earlier of:

(1) the employee reaching maximum medical improvement; or

(2) the expiration of 401 weeks.

(c) Except as provided by Subsection (d) of this section, temporary incapacity income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit.

(d) An employee who returns to work or is offered a bona fide position of employment by the employer, or any other employer, that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, but who has not reached maximum medical improvement, has partial incapacity and is entitled to temporary incapacity income benefits at the rate of 66-2/3 percent of the difference between the employee's average weekly wage and the average weekly earnings in the position that the employee is performing or has been offered.

(e) The commission may adopt rules establishing a presumption that maximum medical improvement has been reached based on a lack of medical improvement in the employee's condition.

SECTION 4.24. TOTAL INCAPACITY. While the incapacity for work resulting from the injury is total, the insurance carrier shall pay the injured employee a weekly income benefit equal to 66-2/3 percent of the employee's average weekly wage, but not more than the maximum weekly income benefit nor less than the minimum weekly income benefit.

SECTION 4.25. PARTIAL INCAPACITY. (a) After the employee

has attained maximum medical improvement and while the incapacity for work resulting from the injury is partial, the insurance carrier shall pay the injured employee a weekly income benefit equal to 66-2/3 percent of the difference between the employee's average weekly wages before the injury and the employee's average weekly wage-earning capacity during the existence of the partial incapacity, but not more than the maximum weekly benefit.

(b) The period covered by the compensation for partial incapacity may not exceed 300 weeks. In no case may the period of compensation for total and partial incapacity exceed 401 weeks from the date of injury.

(c) Compensation for all partial incapacity shall be computed in the manner provided by this section and may not be computed on a basis of a percentage of disability.

SECTION 4.26. SPECIFIC INJURIES. (a) For the injuries enumerated in the following schedule the employee shall receive, in lieu of all other compensation except medical benefits, a weekly compensation equal to 66-2/3 percent of the average weekly wages of the employee, but not less than the minimum weekly benefit nor more than the maximum weekly benefit for the respective periods:

For the loss of a thumb, 60 weeks.

For the loss of a first finger, commonly called the index finger, 45 weeks.

For the loss of a second finger, 30 weeks.

For the loss of a third finger, 21 weeks.

For the loss of a fourth finger, commonly known as the little finger, 15 weeks.

The loss of the second or distal phalange of the thumb is considered equal to the loss of one-half of the thumb. The loss of more than one-half of the thumb is considered equal to the loss of the whole thumb.

The loss of the third or distal phalange of any finger is considered equal to the loss of one-third of the finger.

The loss of more than the middle and distal phalange of any finger is considered equal to the loss of the whole finger, except that in no case may the amount received for the loss of a thumb and more than one finger on the same hand exceed the amount provided by this schedule for the loss of a hand.

For the loss of the metacarpal bone (bone or palm) for the corresponding thumb, finger, or fingers above, add 10 weeks to the number of weeks provided above, subject to the limitation that in no case may the amount received for the loss or injury to one hand be more than for the loss of the hand.

For ankylosis (total stiffness of) or contracture (due to scars or injuries) which make the fingers useless, the same number of weeks shall apply to the finger or fingers or parts of fingers (not thumb) as given above.

For the loss of a hand, 150 weeks.

For the loss of an arm at or above the elbow, 200 weeks.

For the loss of one of the toes other than the great toe, 10 weeks.

For the loss of the great toe, 30 weeks.

The loss of more than two-thirds of any toe is considered equal to the loss of the whole toe. The loss of less than two-thirds of any toe is considered equal to the loss of one-half of the toe.

For the loss of a foot, 125 weeks.

For the loss of a leg, at or above the knee, 200 weeks.

For the total and permanent loss of the sight of one eye, 100 weeks.

For the complete and permanent loss of the hearing in both ears, 150 weeks.

For the loss of an eye and leg above the knee, 350 weeks.

For the loss of an eye and an arm above the elbow, 350 weeks.

For the loss of an eye and a hand, 325 weeks.

For the loss of an eye and a foot, 300 weeks.

(b) If the employee sustains concurrent injuries resulting in concurrent incapacities, the employee shall receive compensation only for the injury which produces the longest period of incapacity. However, this subsection does not affect liability for the concurrent loss or the loss of the use of more than one member for which compensation is provided by this schedule, and compensation for specific injuries under this section is cumulative as to time and not concurrent.

(c) In all injuries described in this section, the permanent loss of the use of the member is considered equal to the loss of that member.

(d) In all other cases of partial incapacity, including any

disfigurement that will impair the future usefulness or occupational opportunities of the injured employee, compensation shall be determined according to the percentage of incapacity, taking into account among other things any previous incapacity, the nature of the physical injury or disfigurement, the occupation of the injured employee, and the age at the time of the injury. The benefits shall be calculated by first determining a basic figure equal to 66-2/3 percent of the average weekly wages of the employee, but not to exceed the maximum weekly benefit. The basic figure is then multiplied by the percentage of incapacity caused by the injury, and the result is the weekly income benefit for a period not exceeding 300 weeks, as the commisson may determine. If the weekly payments under this subsection would be less than $3 a week, the period may be shortened, and the payments correspondingly increased by the commission.

SECTION 4.27. ELIGIBILITY FOR RECOVERY AFTER MAXIMUM MEDICAL IMPROVEMENT. A claimant is not entitled to benefits for permanent incapacity for any period for which there is not evidence of permanent impairment supported by an "objective clinical or laboratory finding," as that term is defined by this Act.

SECTION 4.28. WAGE EARNING CAPACITY. (a) A determination of wage earning capacity under this chapter shall be made after the claimant has reached maximum medical improvement and shall be based on the following factors:

(1) age;

(2) education;

(3) training;

(4) previous work experience;

(5) previous earnings;

(6) present occupation and earnings;

(7) likelihood of future suitable occupational change;

(8) efforts to obtain and retain suitable employment; and

(9) success of and willingness to participate in reasonable physical and vocational rehabilitation programs.

(b) Actual post-injury earnings create a presumption of wage-earning capacity commensurate with the post-injury earnings. The presumption may be rebutted by a showing, on a preponderance of the evidence, of one of the following:

(1) permanent physical impairment;

(2) increased training and education;

(3) increased number of hours worked;

(4) employer sympathy;

(5) assistance from coworkers;

(6) economic necessity; or

(7) irregular earnings or earnings that are temporary.

SECTION 4.29. LIFETIME INCOME BENEFITS. (a) Income benefits for total incapacity shall be paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss of both feet at or above the ankle;

(3) loss of both hands at or above the wrist;

(4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

(6) an injury to the skull resulting in incurable insanity or imbecility.

(b) Total loss of use of a member under Subsection (a) is considered equal to the loss of the member.

(c) Lifetime income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage. Lifetime benefits may not exceed the maximum weekly benefit, except that benefits being paid shall be increased at least three percent a year notwithstanding the maximum weekly benefit.

SECTION 4.30. ADVANCE OF BENEFITS BASED ON HARDSHIP. (a) The commission may grant an employee who is suffering financial hardship advances as provided by this Act against the amount of income benefits to which the employee may be entitled, if there is a likelihood that income benefits will be paid in the future. Advances may be ordered before or after the claimant attains maximum medical improvement. An insurance carrier shall pay any advance ordered.

(b) An employee who desires an advance shall apply to the commission on a form prescribed by the commission describing the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the maximum weekly benefit. The commission may not grant more than three advances to a particular employee based on the same injury.

SECTION 4.31. SETTLEMENTS. (a) A settlement of income benefits may not be paid in a lump sum unless:

(1) the insurance carrier has denied liability; or

(2) the employee has reached maximum medical improvement and has either returned to work or demonstrated hardship to the satisfaction of the commission.

(b) A settlement takes effect on the date it is approved by the director of the division of hearings.

(c) The director of the division of hearings shall approve a settlement if the director is satisfied that:

(1) the settlement accurately reflects the terms of the agreement between the parties;

(2) the settlement reflects adherence to all appropriate provisions of law and the policies of the commission; and

(3) under the law and facts, the settlement is in the best interest of the claimant.

(d) A settlement must be signed by all parties to the dispute.

(e) A party to a settlement may withdraw acceptance of the settlement at any time before its effective date.

[Sections 4.32-4.40 reserved for expansion]

CHAPTER C. DEATH AND BURIAL BENEFITS

SECTION 4.41. DEATH BENEFITS. If the compensable injury results in death, the insurance carrier shall pay death benefits to the legal beneficiary of the employee equal to 66-2/3 percent of the deceased employee's average weekly wage.

SECTION 4.42. DISTRIBUTION OF DEATH BENEFITS. (a) Death benefits shall be paid to the legal beneficiaries according to the priority established by this section.

(b) If there is no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is no eligible spouse, the death benefits shall be paid to the eligible children or grandchildren.

(d) If there is an eligible child or grandchild and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. If a child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(e) If the employee is not survived by an eligible spouse, child, or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, stepparent, sibling, or grandparent of the deceased. If more than one of those dependents survives the deceased, the death benefits shall be divided among them in equal shares.

(f) If the employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 2.26 of this Act.

(g) For the purposes of this section:

(1) "Eligible spouse" means the surviving spouse of the deceased employee unless the spouse abandoned the employee for more than one year immediately preceding the death without good cause, as determined by the commission.

(2) "Eligible child" means a child of the deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age;

(C) because of a physical or mental handicap, a dependent of the deceased employee at the time of death; or

(D) a child who is otherwise a dependent of the deceased employee at the time of death.

(3) "Eligible grandchild" means a grandchild whose parent is not an eligible child and who is a dependent of the deceased employee.

SECTION 4.43. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commission rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive the benefits until the child attains the age of 18 years. If at age 18 the child is enrolled as a full-time student in an accredited educational institution, the child is entitled to continue to receive the benefits until the earliest of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(d) A child who is eligible for death benefits because the child on the date of the employee's death is enrolled as a full-time student in an accredited educational institution is entitled to receive the benefits until the earlier of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(e) A child who is eligible for death benefits because the child on the date of the employee's death is dependent because of a physical or mental handicap is entitled to receive the benefits until the earlier of:

(1) the date on which the child is no longer handicapped; or

(2) the date on which the child dies.

(f) A child who is otherwise eligible for death benefits as a dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the death of the child; or

(2) the expiration of 360 weeks of death benefit payments.

(g) An eligible grandchild who is a minor at the time of death is entitled to receive death benefits until the grandchild

dies or ceases to be a minor.

(h) An eligible grandchild who is not a minor at the time of death is entitled to receive death benefits until the earlier of:

(1) the death of the grandchild; or

(2) the expiration of 360 weeks of death benefit payments.

(i) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

(1) the death of the beneficiary; or

(2) the expiration of 360 weeks of death benefit payments.

SECTION 4.44. REDISTRIBUTION OF DEATH BENEFITS. (a) If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with Sections 4.42 and 4.43 of this Act.

(b) If a spouse ceases to be eligible because of remarriage, the benefits payable to the remaining legal beneficiaries shall be reduced by 104 weeks.

(c) If all legal beneficiaries, other than the subsequent injury fund, cease to be eligible and the insurance carrier has not made 360 weeks of full death benefit payments, including the remarriage payment, the insurance carrier shall pay the difference between the weeks paid and 360 weeks to the subsequent injury fund.

SECTION 4.45. BURIAL BENEFITS. (a) If death results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $2,500.

(b) The carrier shall also pay the reasonable cost of transporting the body if the employee died away from the usual place of employment, not to exceed the cost equivalent to transporting the body to the employee's usual place of employment.

SECTION 4.46. SUBSEQUENT INJURY FUND BENEFITS. If a subsequent compensable injury, together with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund shall compensate the employee for the remainder of the lifetime income benefits to which the employee is entitled.

SECTION 4.47. COMPENSABILITY OF HEART ATTACKS. A heart attack is a compensable injury under this Act only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a pre-existing heart condition or disease was a contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

[Sections 4.48-4.60 reserved for expansion]

CHAPTER D. MEDICAL BENEFITS

SECTION 4.61. ENTITLEMENT TO MEDICAL BENEFITS. (a) An injured employee is entitled to all health care reasonably required by the nature of the compensable injury as and when needed. Medical benefits are payable from the date of injury arising out of and in the course and scope of employment. The employee is specifically entitled to health care that:

(1) cures or relieves the effects naturally resulting from the compensable injury;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

(b) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

SECTION 4.62. RIGHT TO SELECT DOCTOR. (a) The employee is entitled to the employee's initial choice of a doctor. An initial choice of a doctor made by the employer or the insurance carrier, or medical treatment provided to an injured employee in an emergency situation, does not constitute the employee's choice for purposes of this section. The employee may select one alternate doctor.

(b) A third or subsequent doctor selected by the employee is subject to the approval of the insurance carrier or the commission.

SECTION 4.63. REFERRALS. A referral made by a doctor selected by the employee that is medically reasonable and necessary or that is made necessary by a change of residence does not constitute a change of doctors.

SECTION 4.64. EXCEPTIONS. The limitations imposed by this chapter do not apply:

(1) if surgical or other procedures require ancillary medical services; or

(2) when the employee desires a second opinion only on the appropriateness of the diagnosis or treatment, but not for the purpose of obtaining an impairment rating.

SECTION 4.65. EFFECT OF EMPLOYEE NONCOMPLIANCE. Except as otherwise provided by this chapter, and after notice and an opportunity for hearing, the commission may relieve the insurance carrier of liability for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this chapter.

SECTION 4.66. REPORTS BY HEALTH CARE PROVIDER. The commission by rule shall adopt requirements for reports required to be filed with the commission by health care providers.

SECTION 4.67. CONTINUING MEDICAL BENEFITS. After two years without health care for a compensable injury, whether paid by the insurance carrier or not, the employee has the burden of proof to establish that the care is necessary and related to the compensable injury.

SECTION 4.68. DEMAND FOR SURGERY. (a) If liability for compensation exists for an injury sustained by an employee in the

1 course of employment, and a surgical operation for the injury will
2 either effect a cure or will materially and beneficially improve
3 the employee's condition, the employee or the insurance carrier may
4 demand that a surgical operation be provided to the injured
5 employee. The demand must be in writing and must be filed with the
6 commission.

7 (b) If the insurance carrier makes a written demand for a
8 surgical operation, the carrier shall file with the commission at
9 the same time an affidavit, sworn to by an authorized officer of
10 the carrier, stating that the carrier:

11 (1) fully and unconditionally accepts liability for
12 the provision of benefits under this Act for the injury;

13 (2) has provided all reasonable and necessary medical
14 care required by the injured employee to date and has paid all
15 weekly compensation benefits due; and

16 (3) will provide and pay for all necessary surgical
17 treatment, medicines, and hospital services incident to the
18 performance of the surgery.

19 (c) If either party files with the commission a demand for
20 surgery, the commission immediately shall order a medical
21 examination of the employee to determine the advisability and
22 beneficial effects of the proposed surgery. The examination shall
23 be performed by a doctor of the commission's choice. The employee
24 or the carrier are each entitled to have a doctor of choice present
25 at the examination at the expense of the carrier.

26 (d) On recommendation of the executive director and the
27 concurrence of one wage-earner commission member and one employer

commission member, an employee may be ordered to undergo a surgical operation if, based on a reasonable medical probability:

(1) the surgery is advisable and will relieve or materially benefit the condition of the injured employee;

(2) the employee does not have a chronic disease or other condition that would render the operation more than ordinarily unsafe; and

(3) the carrier has complied with the requirements of Subsection (b) of this section.

(e) If the commission finds that surgery is not advisable, the employee shall continue to receive compensation for incapacity under this Act.

(f) If the employee refuses to submit to surgery ordered under this section, the commission may order or direct the insurance carrier to suspend the compensation in whole or in part during the period of the refusal. If the refusal continues, the commission may elect to limit the injured employee to 52 weeks of compensation.

(g) The beneficial effects of surgery may not be considered in determining the amount of compensation due to an employee in any proceeding under this Act unless the employee has refused surgery ordered by the commission under this section.

SECTION 4.681. AUTOPSY. If in a claim for death benefits based on an occupational disease an autopsy is necessary to determine the cause of death, the commission may, after opportunity for hearing, order the legal beneficiaries of a deceased employee to permit an autopsy. A legal beneficiary is entitled to have a

representative present at an autopsy ordered under this section. The commission shall require the insurance carrier to pay the costs of a procedure ordered under this section.

SECTION 4.69. REQUIRED MEDICAL EXAMINATIONS. (a) The commission may require the employee to submit to medical examinations to resolve any question about the appropriateness of the health care received by the employee, the disability of the employee, the incapacity caused by the compensable injury, or analogous issues.

(b) The insurance carrier may require the employee to submit to a medical examination conducted by a doctor chosen by the insurance carrier. An insurance carrier may require an employee to submit to additional medical examinations only with the prior written approval of the commission. A referral for diagnostic purposes only made by the insurance carrier's choice of doctor that is reasonable or necessary does not constitute a change in the insurance carrier's choice for the purposes of this subsection and does not require the prior approval of the commission.

(c) The commission shall adopt rules regulating the actions of the insurance carrier under this section and establishing reasonable compliance requirements for employees.

(d) The employee is entitled to have a doctor of the employee's choice present at the insurance carrier's expense at an examination required by the insurance carrier.

SECTION 4.70. SURGERY TO CORRECT A BACK INJURY: SUBSEQUENT MEDICAL OPINIONS. (a) A treating physician shall notify the appropriate insurance carrier and the executive director if the

1 treating physician recommends surgery to correct or cure an injury
2 to a claimant's back. The notice must be in writing and must be
3 mailed not later than the fifth day after the day of the
4 physician's recommendation.
5 (b) On receipt of notice from a treating physician under
6 Subsection (a) of this section, an insurance carrier shall, not
7 later than the fifth day after the day of receipt:
8 (1) concur in the recommendation; or
9 (2) require that the claimant be examined within 14
10 days by a second physician chosen by the insurance carrier to
11 ascertain whether or not the procedure recommended by the treating
12 physician is necessary and not ordinarily unsafe.
13 (c) A second physician who examines a claimant at the
14 request of an insurance carrier as provided by Subsection (b)(2) of
15 this section shall, not later than the fifth day after the day of
16 his examination of the claimant, either concur in or dissent from
17 the opinion of the treating physician. The second physician shall
18 immediately file a copy of his opinion with the claimant, the
19 executive director, the insurance carrier, and the treating
20 physician.
21 SECTION 4.71. PAYMENT OF HEALTH CARE PROVIDER. Unless the
22 amount of the payment or the entitlement to payment is disputed, an
23 insurance carrier shall pay a fee charged by a health care provider
24 not later than the 45th day after the date of receipt by the
25 insurance carrier of a charge for services rendered by the
26 provider. The commission may adopt rules to require payment in
27 less than 45 days.

SECTION 4.72. CUSTODIAL CARE. (a) This Act does not prevent an insurance carrier from reimbursing reasonable costs incurred by a family member who provides custodial care to an injured employee.

(b) For the purposes of this section, "custodial care" includes nursing services that do not require professional training.

[Sections 4.73-4.80 reserved for expansion]

CHAPTER E. VOCATIONAL REHABILITATION PILOT PROGRAM

SECTION 4.81. DEFINITIONS. In this chapter:

(1) "Qualified rehabilitation provider" means an individual who:

(A) is a licensed professional counselor and holds the speciality designation of rehabilitation counselor, as recognized by the Texas State Board of Examiners of Professional Counselors;

(B) is a certified rehabilitation counselor, certified rehabilitation registered nurse, or certified insurance rehabilitation specialist licensed by the Commission on Certification of Rehabilitation Counselors; or

(C) is employed by the Texas Rehabilitation Commission as a vocational rehabilitation counselor.

(2) "Qualified worker" means an individual who:

(A) because of a compensable injury or occupational disease, has incurred such a reduction in pre-injury physical capacity that it appears unlikely the worker will be able to return to the pre-injury job;

(B) reasonably can be expected to return to suitable gainful employment through the provision of vocational rehabilitation services; and

(C) meets the criteria established by the commission for eligibility to participate in the pilot program established under this chapter.

(3) "Suitable gainful employment" means any employment that restores the injured worker, to the greatest extent possible, to the pre-injury level of income earned at the time of the injury, modified to consider:

(A) the worker's employment qualifications, interests, incentives, pre-injury earnings, and probable future earning capacity;

(B) the nature and extent of the worker's injury; and

(C) the current and probable future condition of the labor market in the state.

(4) "Vocational rehabilitation services" means the services reasonably necessary to provide a qualified injured worker with the opportunity to return to suitable gainful employment. The term includes vocational and medical evaluation, counseling, job analysis, assistance with job modification, alternative employment assistance, job placement assistance, and retraining, including on-the-job training.

SECTION 4.82. PILOT PROGRAM; PURPOSE; AUTHORITY TO CONTRACT; REQUIRED REPORTS. (a) The Vocational Rehabilitation Pilot Program is created under the direction of the commission and shall be

1 administered by the division of vocational rehabilitation of the
2 commission.
3 (b) The general purposes of the pilot program are to
4 evaluate and improve the commission's ability to identify qualified
5 workers and to determine the cost-effectiveness of vocational
6 rehabilitation services in restoring qualified workers to suitable
7 gainful employment. The commission shall refer all qualified
8 workers to qualified rehabilitation providers for vocational
9 rehabilitation services and shall follow the progress of the group
10 for the duration of the program in order to measure the following
11 items:
12 (1) optimal time after injury for vocational
13 rehabilitation intervention, if any;
14 (2) types of injuries requiring vocational
15 rehabilitation, if any;
16 (3) cost benefit ratio of various vocational
17 rehabilitation approaches;
18 (4) short-term recidivism rates; and
19 (5) characteristics of vocational rehabilitation
20 successes and failures.
21 (c) The commission shall contract with private providers and
22 enter into interagency contracts or adopt memoranda of
23 understanding with the Texas Rehabilitation Commission as necessary
24 to implement the pilot program.
25 (d) Funds may not be spent by the commission on the pilot
26 program other than those appropriated for that purpose.
27 (e) As appropriate, the commission shall attempt to

1 administer the program with a reasonably equal division between
2 private providers and the Texas Rehabilitation Commission.
3 (f) Nothing in this pilot program shall replace or supersede
4 the Texas Rehabilitation Commission's provision of services to
5 other workers' compensation claimants under Section 5.08 of this
6 Act.
7 (g) The commission shall report to the governor and the
8 legislature on the following schedule:
9 (1) the first report shall be filed not later than
10 October 31, 1990;
11 (2) the second report shall be filed not later than
12 October 31, 1992; and
13 (3) the final report shall be filed not later than
14 August 31, 1993.
15 (h) The commission may release the worker's claim file to
16 the worker's qualified rehabilitation provider.
17 SECTION 4.83. ADVISORY COMMITTEE. (a) The advisory
18 committee on vocational rehabilitation is composed of five members
19 as follows:
20 (1) one member must be a qualified rehabilitation
21 provider employed in the public sector;
22 (2) one member must be a qualified rehabilitation
23 provider employed in the private sector;
24 (3) one member must be an employer;
25 (4) one member must be a wage earner; and
26 (5) one member must be an employee of the commission
27 within the vocational rehabilitation division.

(b) The members of the advisory committee serve for terms of two years. A member may not serve more than two consecutive terms.

(c) A member of the advisory committee is not entitled to compensation for service on the advisory committee. A member is entitled to reimbursement for reasonable and necessary expenses incurred in performing duties as a member of the advisory committee, subject to any limitation in the General Appropriations Act.

(d) The advisory committee shall advise the commission on vocational rehabilitation issues and may recommend to the commission the adoption of rules, policies, and procedures relating to the provision of vocational rehabilitation services.

SECTION 4.84. IDENTIFICATION OF QUALIFIED WORKERS. (a) The commission shall develop procedures for identifying, selecting, and referring potential qualified workers for vocational rehabilitation services.

(b) The providers participating in the program shall screen the referrals to identify and establish a rehabilitation plan for each qualified worker. The objective of the rehabilitation plan is to return the worker to suitable gainful employment, according to the following order of priorities:

(1) the pre-injury job with the pre-injury employer;

(2) a modification of the pre-injury job with the pre-injury employer, including transitional return to work;

(3) a new job with the pre-injury employer in keeping with any limitations or restrictions;

(4) a modification of the pre-injury job with a new

employer;

(5) a new job with a new employer based on transferable skills;

(6) a new job with a new employer involving on-the-job training; and

(7) short-term retraining and job placement.

(c) Participation in this pilot program is voluntary and does not affect the injured workers' entitlement to benefits otherwise provided by this Act. The commission may order the carrier to pay total disability income benefits to participants in this program.

SECTION 4.85. DURATION OF SERVICES. Vocational rehabilitation services provided to a qualified worker under this pilot program may not be provided for longer than 26 weeks. If the commission determines that the worker needs additional rehabilitation services, the commission is authorized to extend the services for not longer than an additional 13 weeks.

SECTION 4.86. PAYMENT OF JOB MODIFICATION COSTS. Modification of the injured worker's previous job is recognized as a desirable method of returning the injured worker to suitable gainful employment. In order to assist employers in meeting the costs of job modification and to encourage employers to modify jobs to accommodate retraining or hiring workers with disabilities resulting from work-related injuries, the commission may reimburse employers for job modification costs in an amount not to exceed $1,000 per worker per job modification. That reimbursement is payable from the subsequent injury fund.

SECTION 4.87. EXPIRATION DATE. This chapter expires August 31, 1993.

ARTICLE 5. COMPENSATION PROCEDURE

CHAPTER A. INJURY RECORDS, REPORTS, AND CLAIMS

SECTION 5.01. NOTICE OF INJURY TO EMPLOYER. (a) An employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs. If an injury is an occupational disease, the employee or person shall notify the employer of the injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment.

(b) An employee or a person acting on the employee's behalf shall file with the commission a claim for compensation. For an injury, the claim must be filed not later than one year after the date of the occurrence of the injury. For an occupational disease, the claim must be filed not later than one year after the date on which the employee knew or should have known that the disease was related to the employment.

(c) The notice required by this section may be given to the employer or any employee of the employer who holds a supervisory or management position.

(d) If the injury is an occupational disease, for purposes of this section the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease.

SECTION 5.02. EFFECT OF FAILURE TO NOTIFY. An employee's

failure to notify the employer as required under Section 5.01 of this Act relieves the employer and the employer's insurance carrier of liability under this Act unless:

(1) the employer or insurance carrier has actual knowledge of the injury;

(2) good cause exists for failure to give notice in a timely manner; or

(3) the employer or insurance carrier does not contest the claim.

SECTION 5.03. RECORD OF INJURY OR DEATH; ADMINISTRATIVE VIOLATION. (a) Each employer shall maintain a record of injuries to employees as reported by an employee or otherwise made known to the employer. These records shall be made available to the commission at reasonable times and under conditions as prescribed by the commission.

(b) The commission may adopt rules relating to the information that must be contained in an employer record.

(c) Maintaining a record of an injury may not be considered an admission by the employer that the injury did in fact occur or that any fact maintained in the record is true.

(d) A person who fails to comply with this section commits a Class C administrative violation.

SECTION 5.04. EMPLOYER REPORT OF INJURY; ADMINISTRATIVE VIOLATION. (a) If an injury results in the absence of the employee from work for more than one day, or if the employee notifies the employer of an occupational disease as provided by Section 5.01 of this Act, the employer shall file a written report

with the commission and the insurance carrier. The employer shall file the report required by this subsection not later than the eighth day after:

(1) the employee's absence from work for one day due to an injury; or

(2) the employer receives notice as provided by Section 5.01(a) that the employee has contracted an occupational disease.

(b) The report may not be considered an admission of any information it contains.

(c) The employer shall file subsequent reports as required by commission rule.

(d) The commission may adopt rules relating to the information that must be contained in an employer report.

(e) A person who fails to comply with this section commits a Class C administrative violation.

SECTION 5.05. CLAIMS FOR DEATH BENEFITS. (a) To claim death benefits, a person must file a claim with the commission not later than the first anniversary of the date of the employee's death.

(b) Noncompliance with the requirements of this section may bar the claim unless:

(1) the person is a minor or incompetent; or

(2) good cause exists for failure to give notice in a timely manner.

SECTION 5.06. SUBCLAIMS. A person may file a claim with the commission as a subclaimant if the person has:

(1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and

(2) sought and been refused reimbursement from the insurance carrier.

SECTION 5.07. INFORMATION TO EMPLOYEE OR LEGAL BENEFICIARY. Immediately on receiving notice of injury or death from any person, the commission shall mail to the employee or legal beneficiary a clear and concise description of the services provided by the commission, including the services of the public assistance program, the commission procedures, and the person's rights and responsibilities under this Act.

SECTION 5.08. VOCATIONAL REHABILITATION REFERRAL. (a) The commission shall analyze each employer report of injury received under this chapter to determine if the injured employee would be assisted by vocational rehabilitation. If the commission determines that the injured employee would be assisted, the commission shall notify the injured employee in writing of the services and facilities available through the Texas Rehabilitation Commission and private providers of vocational rehabilitation registered with the commission. The commission shall notify the Texas Rehabilitation Commission and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(b) The commission shall cooperate with the Texas Rehabilitation Commission and private providers of vocational rehabilitation in the provision of services and facilities to

employees by that commission.

(c) A private provider of vocational rehabilitation services may register with the commission.

[Sections 5.09-5.20 reserved for expansion]

CHAPTER B. PAYMENT OF COMPENSATION

SECTION 5.21. INITIATION OF COMPENSATION; CARRIER'S REFUSAL. (a) An insurance carrier shall initiate compensation under this Act promptly. If the carrier does not contest compensability of the injury on or before the 60th day after the date on which the carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of the injury during the 60-day period. If the insurance carrier does not initiate payment or file a notice of refusal in a timely manner as required by Subsection (b) of this section, the insurance carrier commits a Class B administrative violation. Each day of noncompliance constitutes a separate violation. The insurance carrier shall notify the commission in writing of the initiation of income or death benefit payments in the manner prescribed by commission rules. For good cause, an insurance carrier shall be allowed to reopen the issue of compensability.

(b) Not later than the 14th day after the date on which the insurance carrier receives written notice of the injury, the insurance carrier either shall begin the payment of benefits as required under this Act or shall notify the commission and the employee in writing of its refusal to pay and advising the employee

of the right to request a benefit review conference and the means to obtain additional information from the commission.

(c) The insurance carrier's notice must specify the grounds for the refusal. The grounds specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date. If the commission determines that the insurance carrier did not have reasonable grounds for the refusal, the insurance carrier is subject to a Class A administrative violation.

SECTION 5.22. COMPENSATION PAID; ADMINISTRATIVE VIOLATION. (a) The insurance carrier shall continue to pay compensation promptly as and when it accrues without final decision, order, or other action of the commission, except as otherwise provided by this Act.

(b) An insurance carrier that fails to comply with this section commits a Class B administrative violation. Each day of noncompliance is a separate violation.

(c) A carrier that commits multiple violations of this section commits a Class A administrative violation and, by a majority vote of the commission, may be certified by the commission to the State Board of Insurance with a recommendation that the carrier's license be suspended or revoked. If the insurance carrier is a certified self-insurer, the commission may revoke the certification of self-insurance under Section 3.67 of this Act.

SECTION 5.23. COMPENSATION TERMINATED OR REDUCED; FILING

REQUIRED. Not later than the 10th day after the date on which compensation is terminated or reduced, the insurance carrier shall file notice of that fact, including the reasons for the termination or reduction, with the commission.

[Sections 5.24-5.40 reserved for expansion]

CHAPTER C. PUBLIC ASSISTANCE PROGRAM

SECTION 5.41. PUBLIC ASSISTANCE PROGRAM. (a) The commission shall establish a public assistance program to assist injured workers, persons claiming death benefits, employees, and other interested parties in understanding their rights and responsibilities under this Act and in proceedings in the commission.

(b) Public assistance personnel shall meet with or otherwise provide information to interested parties, investigate complaints, and communicate with other parties to facilitate the processing of a claim. A public assistance worker shall otherwise assist unrepresented claimants, employers, and other parties to enable them to protect their rights in the workers' compensation system. At least one specially qualified employee in each regional office shall be designated a public assistance worker, and duties under this chapter shall be that person's primary responsibility.

SECTION 5.42. PUBLIC INFORMATION. The commission shall take the necessary steps to disseminate information about the public assistance program.

ARTICLE 6. DISPUTE RESOLUTION

CHAPTER A. BENEFIT REVIEW CONFERENCE

SECTION 6.01. BENEFIT REVIEW CONFERENCE. (a) On receipt of

a request from a party, or on its own motion, the commission may direct the parties to a dispute relating to a workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on the disputed issues.

(b) The commission by rule shall adopt guidelines relating to claims that do not require a benefit review conference and that may proceed directly to a contested case hearing or mediation conference. Except as otherwise provided by law or commission rule, unless a benefit review conference is conducted as provided by this section, the parties are not entitled to a contested case hearing or a mediation conference on the claim.

SECTION 6.02. PURPOSE OF BENEFIT REVIEW CONFERENCE. A benefit review conference is a nonadversarial, informal, dispute resolution proceeding designed to:

(1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues; and

(3) mediate and resolve the dispute by mutual agreement of the parties in accordance with the purposes of this Act and the policies of the commission.

SECTION 6.03. REQUEST FOR BENEFIT REVIEW CONFERENCE; PROCEDURES. (a) A claimant may request a benefit review conference at any time. An insurance carrier may request a benefit review conference to attempt to resolve any disputed issue related

to the payment of benefits. The benefit review conference shall be held not later than the 30th day after the date the commission receives the request. A claimant may be represented by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An insurance carrier may be represented by an attorney or adjuster.

(b) A party who desires a benefit review conference must file a written request for the conference with the commission in the form prescribed by the commission. Unless the benefit review officer determines that good cause exists for the selection of a different location, a benefit review conference may not be conducted at a site more than 75 miles from the claimant's residence.

(c) Not later than the 10th day before a benefit review conference, the commission shall send written notice of the benefit review conference to the parties to the claim. A party who does not attend a benefit review conference commits a Class D administrative violation unless the benefit review officer determines that the party had good cause not to attend.

SECTION 6.04. DUTIES OF THE BENEFIT REVIEW OFFICER. (a) The benefit review officer shall:

(1) mediate disputes between the parties and assist in the adjustment of the claim consistent with the purposes of this Act and the policies of the commission;

(2) thoroughly inform all parties of their rights and responsibilities under this Act, especially in cases in which the claimant is not represented by an attorney or other representative;

and

(3) ensure that all documents and information relating to the claimant's employment, wages, medical condition, and any other information pertinent to the resolution of disputed issues are provided to all parties not later than the seventh day before the benefit review conference and are contained in the claim file at the conference.

(b) A benefit review officer may reschedule a benefit review conference if the benefit review officer determines that any available information pertinent to the resolution of disputed issues is not produced at the benefit review conference.

(c) The benefit review officer may not take testimony or make a formal record.

SECTION 6.05. RESOLUTION AT A BENEFIT REVIEW CONFERENCE. (a) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement or in a settlement, the benefit review officer shall reduce the agreed issues or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement. Except as otherwise provided by commission rule, an agreement is binding as to the resolved issues and takes effect on the date signed. A settlement takes effect only on the approval of the director of the division of hearings.

(b) If the dispute is not entirely resolved at the benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not settled at the

conference. The report must also include:

(1) a statement of each resolved issue;

(2) a statement of each unresolved issue;

(3) a memorandum setting forth the positions of the parties on each unresolved issue;

(4) the officer's recommendations regarding the payment or denial of benefits;

(5) the officer's basis for those recommendations;

(6) a statement of the procedures required to request a contested case hearing or mediation conference; and

(7) a statement that was read and signed by the claimant explaining the claimant's right to a contested case hearing or a mediation conference and the procedures for requesting those proceedings.

(c) If a benefit review officer recommends payment of benefits, the benefit review officer may issue an interlocutory order to pay the benefits.

(d) The benefit review officer shall complete, sign, and deliver to the parties the officer's report at the conclusion of the benefit review conference.

(e) The benefit review officer shall file the signed agreement or the report with the director of the division of hearings not later than the seventh day after the date on which the benefit review conference is concluded. The division director shall furnish a copy of the file-stamped report to the employer not later than the seventh day after the director receives the report.

[Sections 6.06-6.20 reserved for expansion]

CHAPTER B. MEDIATION AND ARBITRATION

SECTION 6.21. ELECTION OF MEDIATION AND ARBITRATION. (a) If issues remain unresolved after the benefit review conference, the claimant may elect that the parties engage in mediation and arbitration in the manner provided by this chapter. Mediation and arbitration is an alternative to a contested case hearing.

(b) By the act of selling a policy of workers' compensation insurance in this state, an insurance carrier is deemed to have consented to mediation and arbitration at the election of the claimant in the manner provided by this chapter.

(c) By the act of engaging in self-insurance under this Act, an authorized self-insurer is deemed to have consented to mediation and arbitration at the election of the claimant in the manner provided by this chapter.

(d) To elect mediation and arbitration, the claimant must file the election with the commission not later than the 10th day after the last day of the benefit review conference. The commission shall prescribe a form for that purpose.

(e) Any election to engage in mediation and arbitration under this chapter is binding and irrevocable.

SECTION 6.22. PURPOSE OF MEDIATION CONFERENCE. (a) Mediation is a structured dispute resolution process for the purpose of encouraging voluntary resolution of disputed issues. The commission shall institute and maintain an education and training program for the benefit of mediation officers. The officers shall be trained in the principles and procedures of dispute mediation, and the commission is authorized and directed to

consult or enter into contracts with the Federal Mediation and Conciliation Service or other appropriate organization to accomplish this purpose.

(b) The purposes of the mediation conference are:

(1) to enter into formal, binding stipulation of issues that are not the subject of dispute;

(2) to attempt to amicably settle, resolve, and compromise issues about which there is a dispute;

(3) to attempt to achieve a settlement or agreement of the disputed issues; and

(4) to disclose all reasonably available evidence in order to promote the purposes of the mediation.

SECTION 6.23. MEDIATION PROCEDURES. (a) The mediation conference shall be scheduled to be held not later than the 30th day after the last day of the benefit review conference.

(b) The mediation conference shall be conducted by a mediator. The mediator may be the same individual who presided over the benefit review conference.

(c) The notification for the mediation conference must state that both parties are required to attend the mediation conference fully prepared to set forth their respective positions, and the basis for those positions, in detail. Not later than the third day before a mediation conference, the parties shall exchange and submit to the commission all medical reports and other available documentary information pertinent to the case, including statements of witnesses.

(d) A party who does not attend a mediation conference

without good cause, or who fails to comply with the other requirements of Subsection (c) of this section, commits a Class C administrative violation.

(e) A mediator shall review the benefit review conference file and the documents produced by the parties before the mediation conference.

(f) A mediation conference begins with oral presentations in the presence of the other parties and the mediator. The mediator shall determine the order of the oral presentations. The oral presentations must be brief, informal statements, and must include any additional information pertinent to the claim that is not contained in the preconference filings required by Subsection (c) of this section.

(g) After oral presentations, a mediator shall attempt to assist the parties in achieving resolution of issues. Cross-examination may not be allowed, but each party may present questions to the mediator and request that the mediator present the questions to the other party or parties. The mediator may:

(1) direct questions to the parties and require that the questions be answered in the presence of the other party or parties;

(2) require parties to meet separately with the mediator or to return from those meetings to the conference table;

(3) advise parties of the mediator's evaluation of any offers and of the probable outcome of adjudication of the case; and

(4) exercise other mediation techniques consistent with the purposes set forth in this section.

(h) If the parties achieve resolution of all of the issues, the mediator shall reduce the agreement to writing. For the purpose of correcting a clerical error, the mediator retains jurisdiction of the agreement for the 20 days after its delivery to the parties. The commission shall adopt the agreement of the parties as a final order of the commission.

(i) The mediator shall determine when a conference is closed and shall make a statement to that effect. A party who unilaterally and without good cause terminates the conference before that statement commits a Class D administrative violation.

(j) After the conference has closed, the mediator shall prepare a written list of stipulations according to the mediator's determination of uncontested issues based on the information presented by the parties and their answers to the mediator's inquiries. The mediator shall provide the list of stipulations to the parties not later than the seventh day after the conference closes and shall at the same time request their written agreement to the stipulations. A party objecting to the mediator's determination of an uncontested issue shall file a written statement of disagreement and list the reasons for disagreement. A party who is found in a subsequent proceeding to have refused to agree to a mediator's proposed stipulation without good cause is guilty of a Class C administrative violation.

(k) The mediator shall prepare a report of the mediation conference. The report is part of the claim file and must include:

(1) copies of all documents produced by the parties;

(2) a summary of additional pertinent factual

information disclosed during the oral presentations by the parties; and

(3) the written stipulations signed by the parties, excluding proposed stipulations to which a party refused to agree.

(l) A copy of the mediator's report shall be sent to the parties not later than the fifth day after the receipt of agreements or objections filed pursuant to Subsections (j) and (m) of this section.

(m) A party objecting to the mediator's summary of factual evidence that was orally presented, or any part of that evidence, shall file a written objection not later than the seventh day after the party receives the mediator's report and the reasons for the objection.

(n) The mediator's report may not include:

(1) references to offers of settlement or agreement;

(2) oral statements of a nonfactual nature except for a health care practitioner's medical opinions; or

(3) any statements made outside the presence of the other party.

(o) If issues go to arbitration, the commission shall forward the mediator's report to the arbitrator. The mediator's report is admissible at arbitration.

(p) Any material evidence that was available to a party at the time of the mediation conference but not disclosed or described at the conference may not be offered into evidence by that party at arbitration in the absence of good cause.

(q) With the exception of the material contained in the

mediator's report, no statement made by a party at the mediation conference may be offered against that party at arbitration or in any other forum.

(r) A party's objection to the mediator's report may be heard by the arbitrator prior to hearing the merits.

(s) The written stipulations contained in the mediator's report are binding at arbitration.

SECTION 6.24. UNRESOLVED ISSUES GO TO ARBITRATION. If issues remain unresolved after a mediation conference, as evidenced by the mediator's report, the issues shall go to arbitration. The commission shall appoint an arbitrator not later than the 10th day after the commission receives the mediator's report.

SECTION 6.25. PURPOSES OF ARBITRATION. The purposes of arbitration are:

(1) to enter into formal, binding stipulations on issues on which the parties agree;

(2) to resolve issues on which the parties disagree; and

(3) to render a final award with respect to all issues in dispute.

SECTION 6.26. ARBITRATORS. (a) The commission shall approve regional lists of consenting arbitrators.

(b) A person who is a resident of this state and who is either a member of the National Academy of Arbitrators or is on an approved list of the American Arbitration Association or Federal Mediation and Conciliation Service shall be considered qualified for the lists approved by the commission under Subsection (a) of

1 this section and, if the person consents, shall be included in the
2 lists by the commission.
3 (c) A person who does not meet the qualifications set out in
4 Subsection (b) of this section may be certified for inclusion as an
5 approved arbitrator on the lists approved by the commission under
6 Subsection (a) of this section if the person meets qualifications
7 established by the commission for inclusion on the lists and is
8 approved by an affirmative vote of at least two commission members
9 representing employers of labor and at least two commission members
10 representing wage earners. The commission by rule shall adopt
11 qualifications for an arbitrator under this subsection.
12 (d) The commission shall review the lists of consenting
13 arbitrators annually. An arbitrator shall be removed from the
14 approved lists unless, on review, the arbitrator receives an
15 affirmative vote as described in Subsection (c) of this section.
16 (e) Each regional list shall be initially prepared in a
17 random name order and subsequent additions to each list shall be
18 added in consecutive chronological order. The arbitrator for a
19 particular case shall be assigned by the commission by selection of
20 the next name after the previous case's selection in consecutive
21 order. The commission may not change the order of names once the
22 order is established under this subsection, except that once each
23 arbitrator on the list has been assigned to a case, the names shall
24 be randomly reordered.
25 (f) When an arbitrator has been assigned to a case under
26 Subsection (e) of this section, the parties shall be notified
27 immediately. A party is entitled, in its sole discretion, to

reject the arbitrator. If a party rejects an arbitrator, another arbitrator shall be assigned as provided by Subsection (e) of this section. Each party is entitled to only one rejection for each case, and when all parties have exercised their right of rejection or when no rejection is registered, the assignment is final.

(g) If an assigned arbitrator is unable to schedule a hearing to be held on or before the 30th day after the date of the arbitrator's appointment, the commission shall appoint the next arbitrator on the applicable list and this appointment is final.

(h) The commission's lists are strictly confidential and not subject to disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). The lists may not be revealed by any commission employee to any noncommission employee. The lists are exempt from discovery in civil litigation unless the party seeking the discovery establishes reasonable cause to believe that a violation of the requirements of this section occurred and that the violation is relevant to the issues in dispute.

SECTION 6.27. ARBITRATION PROCEDURE. (a) The arbitrator shall schedule an arbitration to be held not later than the 30th day after the date of the arbitrator's appointment and shall notify the parties and the commission of the scheduled date.

(b) A request by a party for a continuance of the hearing to another date must be directed to the commission. The commission may grant a continuance only if the commission determines, giving due regard to the availability of the arbitrator, that there is good cause for the continuance. If the commission grants a

continuance under this subsection, the date of the rescheduled hearing may not be later than the 30th day after the date of the original hearing. Notwithstanding the existence of good cause, the commission may not grant more than one continuance to each party.

(c) The commission shall adopt rules for arbitration consistent with generally recognized arbitration principles and procedures.

(d) The arbitration shall be conducted at a location within 75 miles of the claimant's residence at the time of injury, unless the arbitrator finds good cause for a different location.

(e) Each party shall attend the arbitration prepared to set forth in detail its position on unresolved issues and the issues with respect to which it is prepared to stipulate. A party who does not attend the conference commits a Class C administrative violation unless the arbitration officer determines that the party had good cause not to attend.

(f) Not later than the seventh day before an arbitration conference, the parties shall exchange and file with the arbitrator all medical reports and other documentary evidence pertinent to the resolution of the claim, with information as to their proposed resolution of the disputed issues.

(g) A claimant may be represented at arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An insurance carrier may be represented by an attorney or adjuster.

(h) An arbitrator shall protect the interests of all parties, ensure that all relevant evidence has been disclosed to

the arbitrator and to all parties, and shall render an award consistent with the terms of this Act.

(i) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by a party. An official stenographic record may not be made of the hearing, but any party wishing to record the hearing by stenographic or electronic means may do so and is responsible for the expenses of making the record.

(j) The parties may offer evidence as they desire and shall produce additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator is the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence is not necessary. The parties may present such closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

(k) Except in regard to procedural matters, a party and an arbitrator may not communicate outside the arbitration conference unless the communication is in writing with copies provided to all parties.

(l) The commission shall bear the expenses and fees of arbitration under this chapter.

SECTION 6.28. AWARD AT ARBITRATION. (a) Not later than the seventh day after the last day of arbitration, the arbitrator shall enter the final award. The arbitrator shall base the award on the facts established at arbitration, including stipulations of the parties, and the law as properly applied to those facts.

(b) The award must be:

(1) in writing;

(2) signed by the arbitrator; and

(3) a statement of the arbitrator's decision on the contested issues and the parties' stipulations on uncontested issues.

(c) The arbitrator shall file a copy of the award as part of the permanent claim file at the commission and shall notify the parties in writing of the decision.

(d) An award entered under this section is final and binding on all parties. Except as provided in Section 6.30 of this Act, there is no right of appeal.

(e) The commission shall adopt the arbitrator's award as a final order of the commission.

SECTION 6.29. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for the 20 days after its delivery to the parties.

SECTION 6.30. VACATING AN AWARD. (a) On application of an aggrieved party, a court of competent jurisdiction shall vacate an arbitrator's award on a finding that:

(1) the award was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary and capricious; or

(3) the arbitration award was outside the jurisdiction of the commission.

(b) If an award is vacated, the case shall be remanded to

the commission for another arbitration proceeding.

(c) A suit to vacate an award must be filed not later than the 30th day after the date of the award or not later than the 30th day after the date the appealing party obtained knowledge of a basis for suit under this section. Venue for suit is in the county in which the arbitration was conducted.

SECTION 6.31. JUDICIAL ENFORCEMENT. (a) If an insurance carrier refuses or fails to comply with an arbitrator's award, the claimant may bring suit in the county of the claimant's residence or the county in which the injury occurred, in any court of competent jurisdiction to enforce the award as a final and binding order of the commission.

(b) In addition to a judgment enforcing the order, the claimant is entitled to 18 percent penalties on the amount of benefits recovered in the judgment with reasonable attorney's fees for the prosecution and collection of the claim.

[Sections 6.32-6.40 reserved for expansion]

CHAPTER C. CONTESTED CASE HEARING

SECTION 6.41. CONTESTED CASE HEARING REQUEST. (a) A party to a claim for which a benefit review conference is held and for which the claimant does not elect mediation and arbitration, or a party eligible to proceed directly to a contested case hearing as otherwise provided by this Act, is entitled to a contested case hearing on the issues not resolved by agreement or stipulation at the benefit review conference. The report of the benefits review officer shall be incorporated into the contested case record by official notice.

(b) On request by an entitled party, the commission shall schedule a contested case hearing to be held not later than the 45th day after the date of the request. The commission shall notify the parties of the hearing not later than the 20th day before the date of the hearing.

(c) A claimant may be represented by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An insurance carrier may be represented by an attorney or adjuster.

SECTION 6.42. CONTESTED CASE HEARING PROCEDURE. (a) A contested case hearing shall be conducted by an administrative law judge who is a licensed attorney. Unless the administrative law judge determines that good cause exists for the selection of a different location, a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(b) The commission shall adopt rules governing procedures under which contested case hearings are conducted. The rules must provide for:

(1) the swearing of witnesses;

(2) the receipt of testimony;

(3) the examination and cross-examination of witnesses; and

(4) the production of documents.

(c) The proceedings of the contested case hearing shall be electronically recorded. A party may request a transcript of the proceeding and shall pay the reasonable cost of the transcription.

(d) A party may request that the proceedings of the contested case hearing be recorded by a court reporter. The party making the request shall bear the cost.

(e) The administrative law judge is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence, and conformity to legal rules of evidence is not necessary; however, any written stipulations and agreements filed in the record or oral stipulations and agreements preserved in the record made between the parties shall be final and binding. The administrative law judge may accept written statements signed by a witness.

(f) An issue that is material to a decision on the claim and is not raised or on which no evidence is introduced at the contested case hearing is waived and may not be raised at a trial on the claim, except as provided by Section 6.52(f) of this article.

(g) Not later than seven days before the date of the contested case hearing, the parties shall exchange:

(1) all medical reports;

(2) all medical records;

(3) any witness statements; and

(4) the names of any witnesses known to the parties to have knowledge of relevant facts.

(h) Any party may have discovery in preparation for the contested case hearing as provided under Section 14a, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) Not later than the 12th day after the request for a contested case hearing, any party may serve on the other party not more than 20 interrogatories. The interrogatories may not have subparts. The party receiving the interrogatories must serve answers to the interrogatories not later than the seventh day before the scheduled date of the contested case hearing.

SECTION 6.43. FORMAL STIPULATION OF NONDISPUTED ISSUES. (a) The parties shall enter into formal, binding stipulation of issues about which there is no reasonable basis for dispute. The stipulation must be in writing, signed by the insurance carrier, the claimant, and the claimant's attorney, if any, and made a matter of record.

(b) The stipulation is binding through the final conclusion of all matters relating to the claim, unless the commission or a court, upon a finding of fraud, newly discovered evidence that could not reasonably have been discovered at the time of the stipulation, or other good and sufficient cause, relieves the parties of the effect of the stipulation.

SECTION 6.44. AWARD. (a) Not later than the seventh day after the last day of the contested case hearing, the administrative law judge shall render a written decision that includes findings of fact and conclusions of law, file the decision with the division, and record the decision as the award.

(b) The division shall notify each party in writing of the decision not later than the seventh day after the date on which the decision of the administrative law judge is received and file-stamped by the division.

(c) If no party files suit in court on or before the 30th day after notification of the decision, the award becomes a final and binding order of the commission.

SECTION 6.45. EFFECT OF DECISION. The decision of the administrative law judge is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal.

SECTION 6.46. MULTIPLE INSURANCE CARRIERS. (a) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the administrative law judge may issue an order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. The proportionate share shall be determined by dividing the compensation due by the number of insurance carriers involved.

(b) On final determination of liability, any insurance carrier determined not to be liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier from any insurance carrier determined to be liable.

SECTION 6.47. MODIFICATION OF COMMISSION ORDERS. (a) The commission may not modify, suspend, or revoke its decision in a contested case hearing that has become final except on a showing of:

(1) newly discovered evidence;

(2) a substantial change of condition;

(3) misrepresentation;

(4) mistake of fact; or

(5) fraud.

(b) A modification made under Subsection (a) of this section must be made within 12 months of the date of an order denying compensation and within the compensation period for other orders of the commission.

(c) The commission may not modify, suspend, or revoke a decision in a contested case hearing if the decision is appealed to a district court as provided in this Act.

SECTION 6.48. MODIFICATION BASED ON CLERICAL ERROR. The executive director is authorized to modify a decision in a contested case hearing on a finding of clerical error.

SECTION 6.49. MODIFIED ORDERS APPEAL; JUDICIAL REVIEW. An order of modification entered under this chapter is subject to judicial review as provided by this chapter.

SECTION 6.50. RECOVERY OF PAYMENT OF COMPENSATION ORDERED. (a) In all cases in which the commission makes a final order directing payment of benefits and the insurance carrier fails and refuses without justifiable cause to obey or comply with the order, the employee may bring suit in any court of competent jurisdiction to enforce the final ruling and order of the commission. In addition to a judgment enforcing the order, the claimant is entitled to 18 percent of the amount of benefits recovered in the judgment as penalty, with reasonable attorney's fees for the prosecution and collection of the claim.

(b) If the commission has entered an order requiring the payment by the insurance carrier of periodic payments and the insurance carrier fails and refuses without justifiable cause to make income benefit payments promptly as they mature and accrue,

the employee has the right to mature the entire claim, excluding future medical benefits, and to institute suit to collect the full amount without discount for present payment, with 18 percent as penalty and with attorney's fees for the prosecution and collection of the claim.

(c) In a case in which the commission has approved a settlement, or in which the court has entered a judgment, and the insurance carrier fails and refuses without justifiable cause to pay income benefits when due, the claimant is entitled to institute suit in a court of competent jurisdiction to collect the full amount of income benefits provided for in the settlement or judgment, to an additional 18 percent as penalty, and to reasonable attorney's fees for the prosecution and collection of the claim.

(d) Venue for suits brought under this section is as provided by Section 6.51(d) of this Act.

SECTION 6.51. JUDICIAL ENFORCEMENT OF COMPENSATION RIGHTS. (a) Following a contested case hearing, a claimant or insurance carrier who is not willing to abide by the commission's award may, not later than the 30th day after the date of the award, file suit to enforce the rights and liabilities of the parties under this Act.

(b) The suit of the claimant shall be against the insurance carrier and not against the employer. Any suit against the claimant must be brought by the insurance carrier and not the employer.

(c) Suit may be filed in any court of competent jurisdiction.

(d) Venue for a suit under this section is in the county in which the injury occurred or in the county in which the claimant resided at the time the injury occurred or, if the employee is deceased, in the county where the employee resided at the time of death. For all cases of occupational diseases, venue shall be in the county in which the employee was last exposed to the alleged disease before the manifestation of the disease or death from the disease or in any county agreed to by the parties.

(e) If both the claimant and the insurance carrier bring suit, then the suit brought by the insurance carrier shall be consolidated into the suit brought by the claimant, and all matters and issues between the parties shall be decided in the suit brought by the claimant.

(f) At any time before the jury has retired in the trial of the suit, the plaintiff may take a nonsuit after notice to the other parties to the suit and a hearing held by which time all parties must perfect their cause of action, but the plaintiff does not thereby prejudice the right of an adverse party to be heard on the party's claim for affirmative relief. When the suit is tried by the judge of a district or county court, the nonsuit, after notice and hearing, may be taken at any time before the decision is announced.

SECTION 6.52. TRIAL OF WORKERS' COMPENSATION CLAIM. (a) Regardless of which party filed suit, the court shall determine the issues in the claim in a civil trial pursuant to the Texas Rules of Civil Procedure and the Texas Rules of Civil Evidence, and the burden of proof on the whole case shall be on the party claiming

compensation. Evidence shall be adduced as in other civil trials and either party shall be entitled to a jury for determination of disputed issues of fact.

(b) The commission shall furnish any interested party in the claim with a certified copy of the notice of the employer securing compensation with the insurance carrier, filed with the board. The certified copy of the notice shall be admissible in evidence on trial of the claim pending and shall be prima facie proof of the facts stated in the notice unless the facts are denied under oath by the opposing party.

(c) A formal stipulation made between the parties at the contested case hearing is final and binding during the trial of the claim as a judicial admission unless the court, for good cause, relieves a party from the binding effect of a stipulation.

(d) The commission, on payment of a reasonable fee, shall make available to the parties a certified copy of the commission's record, and all facts and evidence it contains are admissible to the extent allowed under the Texas Rules of Civil Evidence. The report of the benefit review officer, the findings of fact and conclusions of law contained in the decision of the administrative law judge, the award, and any witness statements are not admissible except that witness statements may be used for impeachment.

(e) Only an issue raised and on which evidence was introduced at the contested case hearing may be raised at trial.

(f) An issue not raised and on which no evidence was introduced at the contested case hearing may be raised only on the basis of newly discovered evidence and only if the party seeking to

raise the issue shows that:

(1) the evidence has come to the party's knowledge since the contested case hearing;

(2) the evidence could not have been discovered earlier with due diligence by the party;

(3) the evidence is not cumulative of other evidence; and

(4) the evidence is so material that it would probably produce a different result if it is admitted into evidence at the trial.

SECTION 6.53. ATTORNEY'S FEES REGULATED BY THE COURT. (a) For representing the interest of any claimant in any matter carried from the commission into the courts, an attorney representing the interest may contract with any claimant under this Act for an attorney's fee for the representation, not to exceed 25 percent of the amount recovered, the fee for services so rendered to be fixed and allowed by the trial court in which the matter may be heard and determined.

(b) In fixing and allowing the attorney's fee, the court must take into consideration the benefit accruing to the claimant as a result of the attorney's services. Attorney's fees, other than the amount which the commission may have approved, may not be allowed for representing a claimant in the trial court unless the court finds that benefits have accrued to the claimant because of the representation, and then the attorney's fees shall be allowed only on a basis of services performed and benefits accruing to the claimant.

(c) Notwithstanding Subsections (a) and (b) of this section, in all cases involving fatal injuries where the insurance carrier admits liability on all issues involved and tenders payments of maximum benefits in writing under this Act while the death benefits claim of the beneficiaries is pending before the benefits review conference, attorney's fees may not be allowed.

SECTION 6.54. COURT-APPROVED SETTLEMENTS. On the application of either party to a suit under this Act, a court may approve a settlement agreement if the claimant has reached maximum medical improvement. In approving the settlement agreement, the court may either conduct a hearing on the agreement or approve it without a hearing if the claimant submits a sworn affidavit acknowledging the agreement to settle a cause of action, evidencing the claimant's full understanding of the provisions of the agreement, and providing sufficient information for the court to arrive at a determination of the advisability of the agreement under this section.

ARTICLE 7. WORKERS' HEALTH AND SAFETY

SECTION 7.01. TEXAS DEPARTMENT OF HEALTH RESPONSIBILITY. (a) The Texas Department of Health shall adopt rules as provided by this section defining and prohibiting unsafe work practices and providing for enforcement of those rules through a system of administrative penalties.

(b) To the extent that any rules adopted under Subsection (a) assume responsibility for the development and enforcement of occupational health and safety standards relating to any occupational health or safety issue with respect to which a federal

standard has been adopted under 29 U.S.C. Sec. 655, the department shall submit a plan to the secretary of labor, designating the department as the responsible state agency under 29 U.S.C. Sec. 667(c), and meeting the federal requirements for such a plan.

(c) The commission may propose rules and make recommendations to the department relating to worker health and safety issues, which shall be considered by the department. The department may not go outside the scope of the commission's recommendations in adopting the rules.

(d) The department shall collect and serve as a repository for statistical information on workers' health and safety. The department shall analyze and use the information to identify and assign priorities to safety needs and to better coordinate the safety services provided by public or private organizations, including insurance carriers. The department shall promote workers' health and safety through educational programs and other innovative programs developed by the division.

(e) The department shall coordinate or supervise the collection of information relating to job safety by state or federal entities, including information collected for the supplementary data system and the annual survey of the bureau of labor statistics of the United States Department of Labor.

(f) The department shall:

(1) consult with employers regarding compliance with state and federal occupational safety laws and rules, and with good safety work practices; and

(2) collect information relating to occupational

safety as required by state or federal laws, rules, or agreements.

(g) The department shall create and issue educational books, pamphlets, brochures, films, videotapes, and other informational and educational material. Specific educational material shall be directed to high risk industries and employments and shall specifically address methods of avoiding high frequency, but preventable, worker injuries. Other educational material shall be directed to business and industry generally and shall specifically address methods of avoiding common injuries. The department shall make specific decisions as to what issues and problems should be addressed by the information after assigning appropriate priorities, based on frequency of injuries, degree of hazard, severity of injuries, and similar considerations. The educational materials must include specific references to:

(1) the requirements of state and federal laws and regulations;

(2) recommendations and practices of business, industry, and trade associations; and

(3) as needed, recommended work practices based on recommendations made by the department for the prevention of injury.

(h) The department shall cooperate with business and industry trade associations, labor organizations, and other entities to develop means and methods of educating employees and employers with regard to workplace safety.

(i) The department shall advise insurance carrier loss control service organizations of:

(1) hazard classifications;

(2) specific employers, industries, occupations, or geographic regions to which loss control services should be directed;

(3) the identity and types of injuries or occupational diseases and means and methods for prevention of those injuries or diseases to which loss control services should be directed; and

(4) the safety needs and priorities developed by the department.

(j) From the appropriate insurance carriers, the involved employer, and other reasonable sources, the department shall obtain information and investigation reports relating to compensable fatal injuries and injuries for which lifetime income benefits are payable, with special regard to repetitive conditions or incidents giving rise to those injuries, and shall publish and disseminate educational material setting forth specific types of safety practices and programs to be implemented or observed by employers and employees for the prevention of those incidents.

SECTION 7.02. JOB SAFETY INFORMATION SYSTEM. (a) The Texas Department of Health shall establish and maintain a job safety information system. The department may obtain from any state agency, including the commission, the State Board of Insurance, the Texas Department of Labor and Standards, and the Texas Employment Commission, necessary information and statistics, including those compiled for the purpose of rate-making. The department shall consult with the State Board of Insurance and the Texas Employment Commission in the design of data information and retrieval systems

that will accomplish the mutual purposes of those agencies and of the department.

(b) The job safety information system shall include a comprehensive data base that incorporates all pertinent information relating to each workers' compensation claim, except the identity of the employee, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the employee;

(2) the nature, source, and severity of the injury;

(3) the reported cause of the injury and whether the cause was an unsafe practice or condition;

(4) the part of the body affected;

(5) any equipment involved in the injury;

(6) the number of prior worker compensation claims by that employee;

(7) the prior loss history of the employer;

(8) the industry code of the employer; and

(9) any other information considered useful for the purpose of statistical analysis.

(c) The statistical data base must specifically identify each fatal injury and each injury for which lifetime income benefits are paid under this Act.

SECTION 7.03. EXTRA-HAZARDOUS EMPLOYER PROGRAM. (a) The Texas Department of Health shall develop a program including claim or loss guidelines to identify "extra-hazardous employers." For the purpose of this section, "extra-hazardous employer" means an employer whose injury frequencies or loss levels substantially

exceed those that may reasonably be expected in that employer's business or industry. The department shall notify each identified extra-hazardous employer and the insurance carrier for that employer that the employer has been identified as an extra-hazardous employer.

(b) An employer that is identified as an extra-hazardous employer under Subsection (a) of this section must obtain a safety consultation from the Texas Department of Health, the employer's insurance carrier, or another professional source approved by the department for that purpose not later than the 30th day after the date of the notification. The safety consultant shall file with the department, the commission, and the affected employer an initial written report not later than the 30th day after the date on which the consultation is completed, and a final written report not later than the 60th day after the date the consultation is completed. Those reports shall set out any hazardous conditions or practices identified by the safety consultation.

(c) The employer and the consultant shall formulate a specific accident prevention plan for the affected employer that addresses the hazards identified by the consultant. The accident prevention plan shall clearly and specifically state the nature and frequency of the claims and losses incurred in the employer's business and specific actions that should be taken by the employer to reduce and control those claims and losses. The accident prevention plan shall be finalized by an agreement between the employer and the consultant not later than the 60th day after the date that the employer receives notification of its extra-hazardous

status. A copy of the accident prevention plan and a final report, if necessary, shall be filed with the department, the commission, and the loss prevention service organization of the employer's insurance carrier. The employer shall comply with the accident prevention plan.

(d) The Texas Department of Health may investigate accidents occurring at the work sites of an employer for whom a plan has been formulated under Subsection (c) of this section. The department may enter and inspect any workplace subject to this section without advance notice to monitor the implementation of the accident prevention plan.

(e) The safety consultant shall monitor the implementation of the plan for a period of at least one year from the date of implementation of the plan and shall conduct a follow-up inspection of the employer's work site at six-month intervals for as long as the employer continues to be identified as an extra-hazardous employer. At the end of each year that the employer remains in the extra-hazardous employer program, the safety consultant, in consultation with the Texas Department of Health, shall calculate the employer's applicable claim frequencies and loss levels, determine whether or not those levels substantially exceed the levels that may reasonably be expected in that employer's business or industry, and notify the employer as to whether the employer remains identified as an extra-hazardous employer.

(f) If, at the time of an inspection required under Subsection (e) of this section, the employer continues to exceed the claim or loss guidelines, the Texas Department of Health shall

1 continue to monitor the safety conditions at the work site and may
2 formulate additional safety plans reasonably calculated to abate
3 hazards. The employer shall comply with those plans and is subject
4 to additional penalties for failure to implement the plans.
5 (g) In addition to any other penalties imposed under this
6 Act, an employer that remains identified as an extra-hazardous
7 employer under Subsection (e) of this section may be assessed a
8 penalty in an amount not less than the amount of the income
9 benefits paid on any injury sustained by an employee of the
10 employer because the employer is not in compliance with an accident
11 prevention plan prescribed under this section. The penalty shall
12 be paid at the same time the income benefits are paid. The penalty
13 shall be deposited in the state treasury to the credit of the Texas
14 Department of Health and shall be used to defray the costs of
15 administering this article.
16 (h) The Texas Department of Health shall bill the employer
17 for the reasonable cost of the services provided under this
18 section. The costs of services shall be set at a
19 cost-reimbursement level, including a reasonable allocation of the
20 department's administrative costs.
21 (i) An employer who, one year after the initial accident
22 prevention plan has been implemented, continues to exceed the claim
23 and loss guidelines established under this article without
24 substantial improvement shall be so notified by the Texas
25 Department of Health. On issuance of the notification, the
26 department shall investigate to determine the reasons for the
27 failure to show improvement and may take action as it considers

1 necessary.

2 (j) An employer may request a hearing to contest findings
3 made by the Texas Department of Health under this section.

4 (k) For the purposes of this section, "employer" means any
5 person who employs one or more employees in this state.

6 SECTION 7.04. ACCIDENT PREVENTION SERVICES. (a) Any
7 insurance company that desires to write workers' compensation
8 insurance in this state must maintain or provide accident
9 prevention facilities as a prerequisite for a license to write the
10 insurance. The facilities must be adequate to furnish accident
11 prevention services required by the nature of the policyholder's
12 operations and shall include surveys, recommendations, training
13 programs, consultations, analyses of accident causes, industrial
14 hygiene, and industrial health services. Each field safety
15 representative of an insurance company must be a college graduate
16 with a bachelor's degree in science or engineering, a registered
17 professional engineer, a certified safety professional, or a
18 certified industrial hygienist. An insurer may provide accident
19 prevention facilities through a certified safety consultant
20 certified by the Texas Department of Health.

21 (b) The Texas Department of Health shall certify safety
22 consultants as qualified to render safety consultations under this
23 article. A qualified safety consultant must be a college graduate
24 with at least a bachelor's degree in science or engineering with
25 special training in the area of safety, a registered professional
26 engineer with special training in the area of safety, a certified
27 safety professional, or a certified industrial hygienist. Before

the certification, the department shall investigate the background and training of the consultant, determine the nature of the surveys, recommendations, training programs, consultations, analyses, and industrial hygiene and industrial health services that the consultant is qualified to render, and certify the consultant as qualified in the appropriate specialties.

(c) At least biennially, the Texas Department of Health shall conduct inspections to determine the adequacy of the accident prevention services required by Subsection (a) of this section offered by each insurance company writing workers' compensation insurance in Texas.

(d) The insurer shall render accident prevention services reasonably commensurate with the risks and exposures and experience of the employer's business. An employer that has an experience rating must receive a safety consultation from a field safety representative at least annually. The consultation shall specifically recommend accident prevention measures to be implemented by the employer based on the employer's business and accident record. Each fatal injury and each injury for which lifetime income benefits are payable must be investigated by a field safety representative of the employer's insurer to identify the causes of the incident and measures that should be taken to prevent similar incidents in the future. The preventive measures must be set forth in a written report that the field service representative shall deliver to the employer, and must be explained to the employer in a personal conference. Notice that accident prevention services are available to the policyholder from the

insurer must appear in at least 10-point bold-faced type on the front of each workers' compensation insurance policy delivered or issued for delivery in this state. The insurer shall deliver requested accident prevention services to any employer not later than the 30th day after the date on which a request for those services is received.

(e) At least annually each insurer writing workers' compensation insurance in this state must submit to the Texas Department of Health detailed information on the type of accident prevention facilities offered to that insurer's policyholders. The information must include:

(1) the amount of money spent by the insurer on accident prevention services;

(2) the number of field safety representatives employed by the insurer;

(3) the number of site inspections performed;

(4) any accident prevention services for which the insurer contracts; and

(5) any additional information required by the department.

(f) The administration of this article is an expense of regulating workers' compensation insurance under Subchapter D, Chapter 5, Insurance Code.

SECTION 7.05. BACK INJURY PREVENTION TRAINING PROGRAM. (a) The Texas Department of Health shall prepare and administer a back injury prevention training program designed to instruct workers in methods of performing job-related movements and tasks that minimize

strain and safeguard against injury or reinjury to the back.

(b) The department shall:

(1) set minimum standards by rule for instruction, qualifications for instructors, program content, and supplementary materials and equipment;

(2) contract with other state agencies, political subdivisions of the state, or other suitable public and private agencies to provide approved back injury prevention training programs;

(3) compile information to evaluate the programs; and

(4) establish a maximum cost for the training, not to exceed $35 per participant, to be paid by the insurance carrier.

(c) An employee who suffers a back injury and receives income benefits for four or more weeks shall participate in this program.

(d) The program created under this section is a pilot program, to be administered in one metropolitan area and in one rural area determined by the commission, for a period of two years.

SECTION 7.06. LABOR/MANAGEMENT SAFETY GRANTS. (a) An employer, labor organization, trade organization, nonprofit organization, or educational institution is eligible to apply for a grant under the program established under this section.

(b) The Texas Department of Health shall fund these grants through the maintenance tax established under Chapter B, Article 2, of this Act.

(c) Any project conducted by an eligible applicant that provides occupational safety and health, education, or training

services to employees or employers relating to the prevention of occupational disease and injuries, and any other services considered by the department to be effective in promoting the prevention of occupational accidents and illnesses, is eligible for funding under this section.

(d) A grant application must be submitted in triplicate to the department in a format and in accordance with instructions prescribed by the department.

(e) The information provided by the application must include the following:

(1) the nature, duration, and purpose of the project for which the application is filed;

(2) the names and qualifications of the personnel, including the project director, if any, responsible for the proposed project;

(3) a description of the facilities, staff, support services, and other organizational resources available to carry out the project;

(4) the intended number of participants in the project and the process by which they were identified and selected;

(5) a description of the plan for evaluating the proposed project;

(6) a budget for the proposed project and a justification of the amount of grant funds requested; and

(7) an analysis of the impact of the project, including its significance for occupational safety and health.

(f) All applications shall be reviewed and evaluated by the

department. The evaluation of the application must consider:

(1) the program impact, including the seriousness of the safety and health hazards to which the project will be directed and the number of persons who will benefit from the project;

(2) the program design, including the proven effectiveness of the methods to be utilized, the extent to which the technical and scientific approaches to be utilized are accepted in the health and safety professions, the qualifications and competency of the project director and proposed staff, and the past experience of the training group or the project sponsor in offering programs related to occupational safety and health;

(3) the lack of duplication and the uniqueness of the project;

(4) the administrative capacity of the grant recipient; and

(5) the extent to which the grant applicant is currently receiving funds from grant programs and other sources for safety and health programs.

(g) Grants awarded under this section are subject to the following conditions:

(1) the grantee may not materially change the quality, nature or duration of the project unless the written approval of the department is obtained before the change;

(2) the grantee shall submit project progress reports to the department as prescribed by the department; and

(3) the grantee must submit proof, in the form requested by the department, for expenditures made under a grant

funded under this section.

(h) A grantee may spend funds received under this section only in accordance with the approved application and budget, the requirements of this section, and the terms and conditions of the grant award.

(i) The department may impose additional conditions before the award of a grant under this section if it is determined by the department that the conditions are necessary to implement the purposes of the grant.

SECTION 7.07. SAFETY TRAINING. The Texas Department of Health shall establish safety training programs for hazardous occupations. Each worker shall complete a minimum of 10 hours in a safety training course conducted through an educational institution, organized labor, or a trade association representing contractors.

SECTION 7.08. PROJECT SAFETY MANAGEMENT. (a) The general contractor for the construction of a building, industrial facility, or other structure that has a total contract cost of $10 million or more, or for the construction of any other project that has a total contract cost of $25 million or more, shall appoint a project safety manager for the construction site. If the total contract cost exceeds $100 million, the owner of the project shall contract to have project safety management performed by a person wholly independent of the general contractor and subcontractors for the project. A project safety manager for a project subject to this subsection must be a qualified safety engineer who is:

(1) a college graduate with a conferred baccalaureate

degree in science or engineering;

(2) a registered professional engineer;

(3) a safety professional certified by the Texas Department of Health; or

(4) an industrial hygienist certified by the department.

(b) The general contractor for a construction project that is not subject to Subsection (a) of this section but that has a total contract cost of $500,000 or more shall appoint a project safety manager as provided by this subsection. The project safety manager must meet the requirements of Subsection (a) of this section, or must have at least 10 years' experience in the construction industry and have completed a training course developed or approved by the department. A training course may not exceed 40 hours in length.

(c) The contractor shall furnish the project safety manager with a staff appropriate to the size and nature of the project.

(d) The project safety manager shall develop and implement appropriate safety plans and programs for the prevention of accidental injuries at the construction site. The project safety manager and staff shall inspect the construction site and identify any unsafe conditions or practices affecting the project. On behalf of the general contractor, the project safety manager and staff may order an immediate cessation of work as necessary for the health or safety of persons at the construction site.

(e) The project safety manager shall review the safety practices of persons involved in the public works project, and

shall conduct safety meetings relating to the project at least weekly. The project safety manager may perform other duties. If 10 or more employees are performing work at the construction site, the project safety manager must be physically present at the site.

(f) For the purposes of this section, the total contract cost of a construction project does not include land costs.

SECTION 7.09. PROJECT SAFETY MANAGEMENT FOR PUBLIC WORKS. (a) Each public entity that awards a construction contract shall consider the safety record of the bidders in awarding the contract. The Texas Department of Health by rule shall adopt requirements relating to project safety management for public entities and the factors to be considered in evaluating a safety record.

(b) In the bid, a bidder shall include:

(1) a statement of the bidder's accident frequencies, claim frequencies, and loss levels;

(2) the bidder's workers' compensation insurance experience rating;

(3) documentation relating to the bidder's safety record for the 10 years immediately preceding the bid; and

(4) other information as required by the rules adopted by the department.

(c) Each construction contract entered into by a public entity must contain a provision requiring safe practices and a pay item to cover the cost of implementing safe practices. The pay items shall be in the form of a specific bid item as part of the proposal prepared by the public entity that awards the contract. The contract must also include a provision that provides a penalty

for a contractor with a below-average safety record and a bonus payment for each day that a contractor works on the project without a lost-time injury. The penalty and bonus schedules may be determined by the public entity that awards the contract, and must specify amounts. A bonus may be increased for each additional day without lost-time injuries. The department shall develop recommended contract clauses relating to project safety management and recommended penalty and bonus schedules.

(d) The general contractor on a public works construction project shall require that all workers on the project be covered by workers' compensation insurance.

(e) Each contractor that performs work on a public works contract must have a project safety manager for the project who meets the requirements imposed under Section 7.08(a) of this article.

(f) The project safety manager shall report all unsafe conditions to an officer of the general contractor. If the conditions are not corrected, the project safety manager shall report the conditions to the general contractor. If the conditions remain uncorrected, the project safety manager shall report the unsafe conditions to the governing body of the public entity that awarded the contract.

(g) If in the opinion of the department specific training is necessary for specific job skills, such as crane operation, the department shall develop the necessary training program and make it available through educational institutions, organized labor, and trade associations representing contractors. Training in specific

job skills may be required only if required by the public entity awarding the contract.

(h) This section does not apply to the construction of habitable buildings. It does apply to the construction of roads, dams, airports, water and sewer lines, treatment plants, highways, bridges, and similar projects normally designed by registered professional engineers.

ARTICLE 8. MEDICAL SERVICES

CHAPTER A. DIVISION OF MEDICAL REVIEW

SECTION 8.01. DIVISION OF MEDICAL REVIEW. (a) The commission by rule shall establish medical policies and fee guidelines governing the provision and payment of medical services that are designed to assure the quality of medical care and achieve effective medical cost control. Medical policies adopted by the commission must be consistent with Section 8.21 of this Act. The commission shall establish a division of medical review to ensure compliance with the rules and implement this article under the policies adopted by the commission.

(b) Insurance carriers are responsible for receiving, reviewing, auditing, and making appropriate payment of charges for medical services provided under this Act. After charges for medical services have been processed by insurance carriers, the division shall periodically review the medical charges submitted and payments made to ensure compliance of providers and carriers with the medical policies and fee guidelines adopted by the commission. The division shall maintain a statewide data base of medical charges, actual payments, and treatment protocols that may

be used by the commission in adopting the medical policies and fee guidelines and by the division in administering the medical policies, fee guidelines, or rules of the commission.

(c) The division shall ensure that:

(1) the data base contains data necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols;

(2) the data base can be utilized in a meaningful way to allow the commission to control medical costs as provided by this Act; and

(3) the data base shall be available for public access for a reasonable fee to be established by the commission, except that the identities of injured workers and beneficiaries may not be disclosed.

(d) The division shall monitor health care providers, insurance carriers, and workers' compensation claimants who receive medical services to assure the compliance of those persons with the medical policies and fee guidelines, as well as with other rules adopted by the commission relating to health care.

(e) If the division determines that a health care provider has violated this Act, the division shall order a refund of all charges received in excess of those allowed by the medical policies or fee guidelines. The division shall also refer the health care provider alleged to have violated this Act to the division of compliance and practices.

(f) If the division determines that an insurance carrier has paid medical charges that are inconsistent with the medical

1 policies or fee guidelines adopted by the commission, the division
2 shall refer the insurance carrier alleged to have violated this Act
3 to the division of compliance and practices. If the insurance
4 carrier has reduced a charge of a health care provider when the
5 charge was within the guidelines, the carrier shall be directed to
6 submit the difference to the provider unless the reduction is in
7 accordance with an agreement between the health care provider and
8 the insurance carrier.

9 (g) The commission by rule shall provide for the periodic
10 review of medical care provided in claims in which lost-time
11 guidelines or other appropriate guidelines are exceeded. The
12 division shall review the medical treatment provided in a claim
13 that exceeds the guidelines and may take appropriate action to
14 assure that necessary and reasonable care is provided.

15 (h) The division shall take appropriate action to be aware
16 of and maintain the most current information on developments in the
17 treatment and cure of injuries and diseases common in workers'
18 compensation cases.

19 SECTION 8.02. AUTHORITY TO CONTRACT FOR FUNCTIONS. (a) The
20 commission may contract with other private or public entities to
21 perform any of the duties or functions of the division.

22 (b) The commission may contract with health care providers
23 for independent medical examinations, medical case reviews,
24 establishment of medical policies and fee guidelines, or other
25 medical consultant services.

26 SECTION 8.03. COORDINATION WITH PROVIDERS. (a) The medical
27 review division shall coordinate its activities with health care

1 providers as necessary to perform its duties under this article.
2 (b) The coordination may include:
3 (1) conducting educational seminars on commission
4 rules and procedures; and
5 (2) providing information to and requesting assistance
6 from professional peer review organizations.
7 [Sections 8.04-8.20 reserved for expansion]
8 CHAPTER B. MEDICAL POLICIES AND FEE GUIDELINES
9 SECTION 8.21. REGULATION OF MEDICAL SERVICES. (a) The
10 commission shall adopt rules relating to the use of medical
11 services by employees who suffer compensable injuries and the fees
12 charged or paid for those services.
13 (b) All fees for medical services provided under this Act
14 must be fair and reasonable and may not exceed the fees charged for
15 the similar treatment of an injured individual with an equivalent
16 standard of living when the fees for the treatment are paid by the
17 injured individual or by someone acting on the injured individual's
18 behalf. In evaluating the fees, the commission shall consider the
19 increased security of payment afforded by this Act. The rules
20 adopted by the commission shall include:
21 (1) guidelines relating to reasonable fees for
22 specific medical treatments or services;
23 (2) medical policies relating to necessary treatments
24 for specific injuries;
25 (3) a program for the systematic monitoring of the
26 necessity of treatments administered and fees actually charged and
27 paid for medical treatments or services, including the

1 authorization of prospective, concurrent, or retrospective review
2 as provided by the medical policies of the commission to ensure
3 that the medical policies or guidelines are not exceeded;
4 (4) a program to detect practices and patterns by
5 insurance carriers in unreasonably denying authorization of payment
6 for medical services requested or performed if authorization is
7 required by the medical policies of the commission;
8 (5) a program to increase the intensity of review for
9 compliance with the medical policies or fee guidelines for any
10 health care provider who has established practices and patterns in
11 medical charges and treatments inconsistent with the medical
12 policies and fee guidelines established by the commission;
13 (6) rules necessary to enable the commission to compel
14 the production of documents, establish standards of reporting
15 governing both form and content, and charge an insurance carrier a
16 reasonable fee for access to or evaluation of health care
17 treatment, fees, or charges under this Act;
18 (7) rules necessary to enable the commission to charge
19 a health care provider who exceeds a fee or utilization guideline
20 instituted under this Act a reasonable fee for evaluation of health
21 care treatment, fees, or charges pursuant to this Act; and
22 (8) rules necessary to enable the commission to charge
23 an insurance carrier who unreasonably disputes charges set in
24 accordance with a fee or guidelines instituted under this Act a
25 reasonable fee for evaluation of health care treatment, fees, or
26 charges under this Act.
27 SECTION 8.22. CONTRACTS WITH REVIEW ORGANIZATIONS. The

commission may contract with a health care provider professional organization or other entity to develop, maintain, or review medical policies or fee guidelines or to review compliance with the medical policies or fee guidelines. For the purposes of review or resolution of a dispute as to compliance with the medical policies or fee guidelines, the commission may contract only with a health care provider professional organization that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review.

SECTION 8.23. SPECIAL ADVISORY COMMITTEES. (a) The following special advisory committees are created to assist the medical review division in administering the medical policies and fee guidelines established under Section 8.21 of this Act:

(1) the health care facility advisory committee;

(2) the medical care advisory committee;

(3) the osteopathic care advisory committee;

(4) the chiropractic care advisory committee;

(5) the podiatric care advisory committee;

(6) the physical therapy advisory committee;

(7) the pharmaceutical advisory committee; and

(8) the occupational therapy advisory committee.

(b) Each advisory committee is composed of nine members appointed by the commission as provided by this section. A member of an advisory committee is not entitled to remuneration but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee, not

to exceed any limit established in the General Appropriations Act.

(c) The commission shall appoint five health care practitioners to each advisory committee. Each health care practitioner member of a committee must be a health care provider of that particular provider group who is knowledgeable and qualified regarding work-related injuries and diseases. The commission shall consider the advice of the appropriate professional associations in making the committee appointments.

(d) The commission shall appoint four additional members to each advisory committee, one to represent employers, one to represent employees, and two to represent the general public.

(e) The health care advisory committee is created to assist the division. The committee is composed of eight members appointed by the commission and one member elected from each of the committees created under Subsection (a) of this section. The commission shall designate the chair of the committee, which shall meet at the call of its chair. A member of this committee is not entitled to remuneration but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee, not to exceed any limit established in the General Appropriations Act.

SECTION 8.24. MEDICAL POLICY AND GUIDELINE UPDATES REQUIRED. The medical policies and fee guidelines shall be reviewed and revised every two years to reflect fair and reasonable charges and amended to reflect current reasonable or necessary medical treatment or ranges of treatment. The health care advisory committee and the appropriate special advisory committee

established under Section 8.23 of this Act shall assist the commission or professional organization in the review and revision.

SECTION 8.25. PRESUMPTIONS. Medical services consistent with the medical policies and fee guidelines adopted by the commission and medical services that are provided subject to prospective, concurrent, or retrospective review as required by the medical policies of the commission and that are authorized by an insurance carrier are presumed reasonable.

SECTION 8.26. MEDICAL DISPUTE RESOLUTION. (a) A health care provider is entitled to a review of medical services that are provided or for which authorization of payment is sought if the health care provider has:

(1) been denied payment for medical services rendered;

(2) been denied authorization for the payment of services requested or performed when authorization is required by the medical policies of the commission; or

(3) been ordered by the division to refund payments received for the provision of medical services.

(b) A health care provider who submits charges in excess of the commission fee guidelines or treatment policies is entitled to a review of medical services to determine if reasonable medical justification exists for the deviation.

(c) A health care provider who is a party to a medical dispute that remains unresolved after a review of medical services as provided by this section is eligible to proceed directly to a hearing as provided by this Act.

(d) A review of medical services under this section shall be

provided by a health care provider professional organization.

SECTION 8.27. INTEREST EARNED FOR DELAYED PAYMENT. A fee or charge consistent with the guidelines for fees and charges earns interest at the rate provided in Section 1.04 of this Act from the 60th day after the date the health care provider submits the bill to an insurance carrier to the date the bill is paid.

[Sections 8.28-8.40 reserved for expansion]

CHAPTER C. OTHER MEDICAL ISSUES

SECTION 8.41. PROVIDERS' DISCLOSURE. A health care provider that refers a workers' compensation claimant to another health care provider in which the referring provider has more than a five percent financial interest shall file an annual disclosure statement with the commission as provided by rules adopted by the commission and shall disclose the interest to the insurance carrier at the time of the referral. The referring provider shall specify the degree of the financial interest and shall provide other information as required by the rules of the commission.

SECTION 8.42. PRIVATE CLAIMS. (a) A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless the injury is finally adjudicated not to be compensable under this Act.

(b) A health care provider who violates Subsection (a) of this section commits a Class B administrative violation.

ARTICLE 9. COMPLIANCE AND PRACTICES

SECTION 9.01. DIVISION OF COMPLIANCE AND PRACTICES. (a) The compliance and practices division of the commission shall

monitor the conduct of all persons subject to this Act other than persons monitored by the medical review division including:

(1) persons claiming benefits under this Act;

(2) employers;

(3) insurance carriers; and

(4) attorneys and other representatives of parties.

(b) The division shall monitor those persons for compliance with commission rules, this Act, and other laws relating to workers' compensation.

SECTION 9.02. PERFORMANCE REVIEW OF INSURANCE CARRIERS. The division shall review the workers' compensation records of insurance carriers on a regular basis as required to ensure compliance with this Act. Each insurance carrier shall cooperate with the division and shall make available to the division any records or other necessary information. The insurance carrier shall allow the division access to the information at reasonable times at the offices of the insurance carrier. The insurance carrier shall pay the reasonable expenses, including travel expenses, of an auditor who audits the workers' compensation records at the offices of the insurance carrier.

SECTION 9.03. MONITORING OF TIMELY PAYMENTS. The division shall also monitor payments to health care providers on behalf of workers' compensation claimants who receive medical services to assure that the payments are made on a timely basis as provided in Section 4.71 of this Act.

SECTION 9.04. COMPILATION OF INFORMATION. The division shall compile and maintain statistical and other information as

necessary to detect practices or patterns of conduct by persons subject to monitoring under this article that violate this Act or commission rules, or that otherwise adversely affect the workers' compensation system of this state. The commission shall use the information to assess appropriate penalties and other sanctions under Article 10 of this Act.

SECTION 9.05. PENALTIES AND SANCTIONS FOR HEALTH CARE PROVIDERS. The division shall review information and referrals from the division of medical review concerning alleged violations of this Act and shall assess appropriate penalties or sanctions.

SECTION 9.06. INVESTIGATIONS. (a) The division shall conduct investigations relating to alleged violations of this Act or commission rules.

(b) The division may refer the persons involved in a case subject to an investigation to the hearings division or to other appropriate authorities, including licensing agencies, district and county attorneys, or the attorney general of the State of Texas, for further investigation or institution of appropriate proceedings.

ARTICLE 10. PENALTIES AND SANCTIONS

CHAPTER A. PROHIBITED ACTS

SECTION 10.01. DISCRIMINATION PROHIBITED. (a) A person may not discharge or otherwise discriminate against an employee because the employee, in good faith:

(1) initiated a workers' compensation claim;

(2) retained a representative or an attorney to represent the employee regarding a claim;

(3) instituted or caused to be instituted a proceeding under this Act;

(4) testified or is about to testify at a proceeding under this Act;

(5) refuses to perform a task that is unreasonably dangerous; or

(6) reported a hazardous working condition or hazardous practice.

(b) A person who violates this section is liable for reasonable damages suffered by the employee as a result of the violation. An employee who is discharged in violation of this section is entitled to reinstatement in the same or an equivalent position of employment with commensurate pay. The burden of proof is on the employee.

(c) The district courts of this state have jurisdiction, for cause shown, to restrain a violation of this section.

(d) Liability incurred by an employer because of a violation of this section is not a benefit payable under this Act.

SECTION 10.02. LIABILITY FOR FAILURE TO REHIRE. (a) Unless reasonable cause exists, an employer may not refuse to rehire an employee who suffered a compensable injury while working for that employer if:

(1) the employer employs at least 25 employees at the time the injured workers applied for reemployment; and

(2) employment suited to the injured employee's physical and mental limitations is available.

(b) An employee who is not rehired in violation of this

1 section may file suit in district court. The burden of proof is on
2 the employee.
3 (c) In determining the availability of suitable employment,
4 the court shall consider any written rules adopted by the employer,
5 the provisions of any collective bargaining agreement relating to
6 seniority, and whether the employee meets the basic qualifications
7 and experience typically required by the employer for the available
8 employment.
9 (d) An employer found to be in violation of this section is
10 liable to the employee for the wages lost during the period of the
11 refusal, not to exceed 52 weeks. This liability is exclusive to
12 the employer and may not be transferred to an insurance carrier.
13 SECTION 10.03. EMPLOYER CHARGEBACKS PROHIBITED. (a) Except
14 as provided in Section 3.05 of this Act, an employer may not
15 collect from an employee, directly or indirectly, any premium or
16 other fee paid by the employer to obtain workers' compensation
17 insurance coverage.
18 (b) An employee or legal beneficiary of an employee has a
19 right of action to recover damages against an employer who violates
20 Subsection (a) of this section.
21 (c) A violation of Subsection (a) of this section is a Class
22 B administrative violation.
23 SECTION 10.04. FRAUDULENTLY OBTAINING OR DENYING BENEFITS.
24 A person commits an administrative violation if the person, to
25 obtain or deny payments of workers' compensation benefits or the
26 provision of those benefits for himself or another, knowingly and
27 intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a document; or

(4) conspires to commit an act listed in Subdivision (1), (2), or (3) of this section.

SECTION 10.05. ADMINISTRATIVE VIOLATIONS FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS. (a) In this section, "benefits" means all rights and privileges arising under this Act, including compensation.

(b) A person who, for the purpose of obtaining or denying payments or benefits under this code, knowingly commits any of the acts described by Section 10.04 of this article commits a Class B administrative violation.

(c) A person who has obtained excess payments in violation of this section or Section 10.04 of this article is liable for full repayment plus interest calculated as prescribed by Section 1.04 of this Act. If the person is an employee or person claiming death benefits, the repayment may be subtracted from future income or death benefits to which the person is otherwise entitled.

(d) An employer who has committed an act described by Section 10.04 of this Act that results in denial of payments is also liable for past compensation payments and the interest due on those payments, calculated as prescribed by Section 1.04 of this Act.

(e) If an administrative violation proceeding is pending under this section against an employee or person claiming death

benefits, the commission may not take final action on the person's compensation.

SECTION 10.06. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION. A person who knowingly brings, prosecutes, or defends an action for compensation under this Act that has no basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law commits a Class B administrative violation.

SECTION 10.07. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION. A party to an agreement approved by the commission who knowingly breaches a provision of the agreement commits a Class B administrative violation.

SECTION 10.08. WRONGFUL ACTS. (a) The compliance and practices division shall monitor the conduct described in this section and refer persons engaging in that conduct to the hearings division. The following acts by the representative of an employee or legal beneficiary, if undertaken wilfully or intentionally, constitute administrative violations and are subject to Chapter B of this article:

(1) failing without good cause to attend a proceeding before the commission;

(2) committing an act of barratry as defined by the laws of this state;

(3) withholding amounts from the employee's or legal beneficiary's weekly compensation or from advances without authorization by the commission;

(4) entering into a settlement or agreement without

the knowledge, consent, and signature of the employee or legal beneficiary;

(5) taking a fee or withholding expenses in excess of the amounts authorized by the commission;

(6) refusing or failing to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order, or award;

(7) violating the Code of Professional Responsibility of the State Bar of Texas;

(8) misrepresenting a provision of this Act to an employee, an employer, a health care provider, or legal beneficiary;

(9) attending a benefit review conference or contested case hearing without complete authority or failing to exercise authority to effectuate an agreement or settlement; or

(10) violating any rule of the commission.

(b) The following acts by an insurance carrier or its representative, if undertaken wilfully or intentionally, constitute administrative violations and are subject to Chapter B of this article:

(1) misrepresenting a provision of this Act to an employee, an employer, a health care provider, or a legal beneficiary;

(2) failing to submit to the commission any settlement or agreement of the parties;

(3) failing to timely notify the commission of the

termination or reduction of compensation and the reason for that action;

(4) terminating or reducing compensation without substantiating evidence that that action is reasonable and authorized by law;

(5) instructing employers not to file required documents with the commission;

(6) instructing or encouraging employers to violate the claimant's right to medical benefits under this Act;

(7) failing to tender promptly full death benefits if a legitimate dispute does not exist as to the liability of the carrier;

(8) allowing an employer, other than a self-insured employer, to dictate the methods by which and the terms on which a claim is handled and settled; however, this subdivision does not prohibit the free discussion of a claim, prohibit the employer's assistance in the investigation and evaluation of a claim, or prohibit the employer's attendance at proceedings of the commission and participation at those proceedings as a witness or observer;

(9) failing to confirm medical benefits coverage to any person or facility providing medical treatment to a claimant if a legitimate dispute does not exist as to the liability of the carrier;

(10) failing, without good cause, to attend a benefit review conference or a contested case hearing;

(11) attending a benefit review conference or a contested case hearing without complete authority or failing to

exercise authority to effectuate agreement or settlement;

(12) adjusting workers' compensation claims in any manner contrary to the requirements for licensure as an insurance adjuster, including the requirements of Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code), or the rules of the State Board of Insurance;

(13) failing to process claims promptly in a reasonable and prudent manner;

(14) failing to initiate or reinstate compensation when due if a legitimate dispute does not exist as to the liability of the insurance carrier;

(15) misrepresenting the reason for not paying compensation or terminating or reducing the payment of compensation;

(16) misdating documents to misrepresent the true date of the initiation of compensation;

(17) making notations on drafts or other instruments to indicate that the draft or instrument represents a final settlement of a claim if the claim is still open and pending before the commission;

(18) failing or refusing to pay compensation from week to week as and when the compensation entitlement matures and accrues directly to the person entitled to the compensation;

(19) failing to pay an order awarding compensation if an appeal to the order is not perfected;

(20) controverting claims if the evidence clearly

1 indicates liability; or

2 (21) violating any rule of the commission.

3 (c) The following acts by a health care provider if
4 undertaken wilfully or intentionally constitute administrative
5 violations and are subject to Chapter B of this article:

6 (1) submitting charges for health care that was not
7 furnished;

8 (2) administering improper, unreasonable, or medically
9 unnecessary treatment or services;

10 (3) failing or refusing to timely file required
11 reports or records;

12 (4) violating Section 8.42 of this Act;

13 (5) making unnecessary referrals;

14 (6) failing to disclose an interest as required by
15 Section 8.41 of this Act;

16 (7) violating the commission's fee and treatment
17 guidelines; or

18 (8) violating any rule of the commission.

19 (d) In addition to penalties assessed for the violations, a
20 person who engages in acts prohibited under this section as a
21 matter of practice may be subject to:

22 (1) a reduction or denial of fees;

23 (2) public or private reprimand by the commission;

24 (3) suspension from practice before the commission; or

25 (4) restriction, suspension, or revocation of the
26 right to receive reimbursement under this Act.

27 [Sections 10.09-10.20 reserved for expansion]

CHAPTER B. PENALTY AND SANCTION PROCEDURES

SUBCHAPTER 1. ADMINISTRATIVE VIOLATIONS AND PENALTIES

SECTION 10.21. ADMINISTRATIVE VIOLATIONS AND PENALTIES. (a) The commission may assess an administrative penalty against a person who commits an administrative violation.

(b) The commission may assess an administrative penalty not to exceed $10,000 and may enter a cease and desist order against a person who:

(1) commits repeated administrative violations;

(2) allows, as a business practice, the commission of repeated administrative violations; or

(3) violates an order or decision of the commission.

(c) The commission shall consider the following factors in assessing an administrative penalty:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(2) the history and extent of previous administrative violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(4) any economic benefit resulting from the prohibited act;

(5) the penalty necessary to deter future violations; and

(6) any other matters that justice may require.

(d) A penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under Subchapter 2 of this chapter.

SECTION 10.22. CLASSIFICATIONS OF ADMINISTRATIVE VIOLATIONS AND PENALTIES. Administrative violations are classified as follows:

(1) a Class A administrative violation, punishable by an administrative penalty not to exceed $10,000;

(2) a Class B administrative violation, punishable by an administrative penalty not to exceed $1,000;

(3) a Class C administrative violation, punishable by an administrative penalty not to exceed $500; and

(4) a Class D administrative violation, punishable by an administrative penalty not to exceed $100.

[Sections 10.23-10.30 reserved for expansion]

SUBCHAPTER 2. ADMINISTRATIVE VIOLATION PROCEEDINGS

SECTION 10.31. INITIATION OF ADMINISTRATIVE VIOLATION PROCEEDINGS. Any person may request the initiation of administrative violation proceedings by filing written allegations with the director of the division of compliance and practices.

SECTION 10.32. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE. (a) If investigation by the division of compliance and practices indicates that an administrative violation has occurred, the division shall notify the person in writing of:

(1) the charge;

(2) the proposed penalty;

(3) the right to consent to the charge and the

penalty; and

(4) the right to request a hearing.

(b) Not later than the 20th day after the date on which notice is received, the charged party shall:

(1) remit the amount of the penalty to the commission; or

(2) submit to the commission a written request for a hearing.

SECTION 10.33. HEARING PROCEDURES. (a) On request of the charged party, or at the discretion of the director of the division of hearings, the division of hearings shall set an administrative violation hearing. An administrative violation hearing under this article shall be conducted by the hearings division and is subject to the procedures established in Article 6.

(b) At the close of the hearing, the hearing examiner conducting the hearing shall make findings of fact and conclusions of law and shall issue a written decision. If the examiner determines that an administrative violation has occurred, the decision shall set forth the amount of the penalty assessed and shall order payment of the penalty.

(c) The findings of fact, the decision, and the order shall be sent immediately to the charged party.

SECTION 10.34. FAILURE TO RESPOND. If, without good cause, a charged party fails to respond as required under Section 10.32 of this Act, the penalty is due and the commission shall initiate enforcement proceedings.

SECTION 10.35. JUDICIAL REVIEW. (a) A decision in an

administrative hearing conducted under Section 10.33 of this Act is subject to judicial review under Chapter C of Article 6 of this Act.

(b) If an administrative penalty is assessed, the person charged must either:

(1) forward the amount of the penalty to the executive director for deposit in an escrow account; or

(2) post with the executive director a bond for the amount of the penalty, to be effective until all judicial review of the violation determination is final.

(c) Failure to comply with Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) If the court determines that the penalty should not have been assessed or should be reduced, the executive director shall:

(1) remit the appropriate amount, plus accrued interest, if the administrative penalty was paid; or

(2) release the bond.

[Sections 10.36-10.40 reserved for expansion]

CHAPTER C. ACTIONS AGAINST INSURANCE CARRIER FOR BREACH OF DUTY

SECTION 10.41. CERTAIN CAUSES OF ACTION PRECLUDED. An action taken by an insurance carrier pursuant to an order of the commission may not be the basis of a cause of action against the insurance carrier for a breach of duty of good faith and fair dealing.

SECTION 10.42. EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b) of this section, in an action against an

insurance carrier for a breach of the duty of good faith and fair dealing, recovery of exemplary damages is limited to four times the amount of actual damages.

(b) If the action that gives rise to the exemplary damages recovery was intentional or malicious, the limitation on damages under Subsection (a) of this section does not apply.

ARTICLE 13. INSURANCE ISSUES

CHAPTER A. INSURANCE RATE REGULATION

SECTION 13.01. Section 1, Article 1.24A, Insurance Code, is amended to read as follows:

Sec. 1. DEFINITIONS. In this article:

(1) "Casualty [~~Liability~~] insurance" means the following types of insurance:

(A) general liability;

(B) medical professional liability;

(C) professional liability other than medical professional liability;

(D) commercial automobile liability;

(E) the liability portion of commercial multiperil coverage; [~~and~~]

(F) workers' compensation insurance; and

(G) any other types or lines of liability insurance designated by the State Board of Insurance under Section 3 of this article.

(2) "Insurer" means:

(A) each insurance company or other entity admitted to do business and authorized to write casualty

[~~liability~~] insurance in this state, including county mutual insurance companies, Lloyd's plan companies, and reciprocal or interinsurance exchanges but excluding farm mutual insurance companies and county mutual fire insurance companies writing exclusively industrial fire insurance as defined by Article 17.02 of this code; and

(B) each pool, joint underwriting association, or self-insurance mechanism or trust authorized by law to insure its participants, subscribers, or members against liability, or for workers' compensation coverage.

SECTION 13.02. Subsection (a), Section 2, Article 1.24A, Insurance Code, is amended to read as follows:

(a) On or before May 1 of each year, each insurer shall file with the State Board of Insurance a report covering its direct writings of casualty [~~liability~~] insurance in this state.

SECTION 13.03. Subsection (a), Section 3, Article 1.24A, Insurance Code, is amended to read as follows:

(a) The State Board of Insurance may adopt necessary rules and forms to carry out this article and to add other types and lines of casualty insurance [~~against liability~~] to the types and lines for which reports must be made under this article.

SECTION 13.04. Article 5.55, Insurance Code, is amended to read as follows:

Art. 5.55. WORKERS' [~~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

Texas Workers' Compensation Act, or [~~Workmen's--Compensation--Law and/or~~] by the "Longshoremen's and Harbor Workers' Compensation Act" as enacted by the Congress of the United States. The [~~Said~~] Board shall publish all rates and rating plans promulgated by it as affecting compensation insurance [~~Compensation-Insurance~~] in this State, which [~~and-said--rates--and--rating--plans,--or--any--change therein,~~] shall be published fifteen (15) days before they become effective [~~and-in-force~~].

SECTION 13.05. Article 5.58, Insurance Code, is amended to read as follows:

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 annually [~~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) Content of Data Reports. The following information

shall be reported on each workers' compensation claim:

(1) the hazard classification of the affected employee;

(2) the date of injury;

(3) the social security number of the claimant;

(4) the severity classification of the claim, including separate classifications for death claims, claims paid for injuries for which lifetime income benefits are payable under the Texas Workers' Compensation Act, claims paid for incapacity, claims in which income benefits are paid only for temporary disability, and claims in which only medical benefits are paid;

(5) the amount paid in periodic payments;

(6) the amount paid in lump-sum payments;

(7) the amount paid for temporary disability;

(8) the amount paid for incapacity;

(9) the amount paid for death and burial benefits;

(10) the total amount paid for income, death, or burial benefits;

(11) the total amount of incurred losses for income, death, or burial benefits;

(12) the amount paid to doctors and other medical practitioners;

(13) the amount paid to hospitals and other health care facilities;

(14) the amount paid to pharmacies;

(15) the total amount paid for medical benefits;

(16) the total amount of incurred losses for medical

1 benefits; and

2 (17) other information required by the Board.

3 (c) Information Confidential. A person may not distribute
4 or otherwise disclose a social security number or any other
5 information collected under Subsection (b) of this article which
6 would disclose the identity of any claimant.

7 (d) Payments Excluded From Rates. In any statistical plan
8 promulgated by the Board, direct expenditures by an insurer to
9 influence public policy and any amounts paid by an insurer as
10 damages in a suit against the insurer for malice or bad faith or as
11 fines or penalties shall be reported separately, and the
12 expenditures and payments shall not be considered as a loss or
13 expense for rate-making purposes under this subchapter or for the
14 calculation of any premium rate modifier or surcharge of an
15 insured.

16 (e) Transmission of Statistical Reports. The statistical
17 reports filed under Subsection (b) of this article shall be updated
18 by each insurer and transmitted to the Board in accordance with the
19 filing requirements of the Board's promulgated statistical plan.
20 Each insurer writing at least one-half of one percent of the
21 workers' compensation insurance in this state shall report its data
22 in a compatible electronic format prescribed by the Board. The
23 Board shall take necessary measures to ensure the accuracy of the
24 data and the adequacy of the format for data reported in an
25 electronic format.

26 (f) Reports of Aggregate Data. The Board by rule may permit
27 the information required by Subsection (b) of this article to be

reported in the aggregate for each risk for claims in which benefit payments are less than $2,000. The Board may by rule adjust the dollar threshold for aggregate reporting to account for inflationary changes.

(g) 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 promulgated by the Board under this subchapter.

(h) [~~(e)~~] Consultation with Other States. In order to further uniform administration of rating laws, the Board and every insurer and advisory [~~rating~~] organization may exchange information and experience data with the National Association of Insurance Commissioners, insurance supervisory officials, insurers, and advisory [~~rating~~] organizations in other states and may consult and cooperate with them with respect to rate-making and the application of rating systems.

(i) [~~(d)~~] Rules and Regulations. The Board may make reasonable rules and regulations necessary to effect the purposes of this subchapter.

SECTION 13.06. Article 5.60, Insurance Code, is amended to read as follows:

Art. 5.60. RATING. (a) 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.

Those rates[~~,-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 workers' compensation insurance [~~workmen's--Compensation--Insurance~~] in this State. To ensure [~~insure~~] the adequacy and reasonableness of rates, the Board shall take into consideration the premium, loss, claim, and payroll 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 ensure [~~insure~~] that the rates determined [~~therefrom~~] shall be just, reasonable, [~~and~~] adequate, and not excessive [~~rates~~].

(b) In making its rate determination under this subchapter, the Board shall consider the probable investment income to be earned by insurers from writing workers' compensation insurance in this state at the rates prescribed by the Board for that insurance.

(c) Under Subsection (a) of this article, the Board shall establish for each hazard classification a manual rate, based on the average expected experience of risks in the classification, and subject to the actuarial credibility of the class. In addition to any other modifications, the Board shall adopt rules to modify the manual rate to provide for equity among employers of high and low

1 wage earners. The rules may include a limited payroll as a basis
2 for rates, adjustments to the experience rating plan, or other
3 appropriate methods. If a limited payroll basis is provided, the
4 limit must be at least 150 percent of the maximum weekly income
5 benefit provided by Article 4, Texas Workers' Compensation Act.
6 (d) The Board shall adopt rating plans designed to encourage
7 the prevention of accidents. The rating plans shall consider the
8 peculiar hazard and experience of individual risks, past and
9 prospective, within and outside this state, and all other relevant
10 factors.
11 (e) This subchapter may not be construed to prohibit any
12 stock company, mutual company, reciprocal or interinsurance
13 exchange, or Lloyd's association from issuing participating
14 policies; however, a dividend to policyholders under the Texas
15 Workers' Compensation Act may not take effect until approved by the
16 Board. Such a dividend may not be approved until an adequate
17 reserve has been provided, that reserve to be computed on the same
18 basis for all classes of companies operating under this subchapter
19 as prescribed under this article.
20 (f) The Board shall conduct a study to determine the
21 feasibility of establishing a system of rate deviations to account
22 for differences in the hazard levels of different geographical
23 regions of this state. The Board shall report the findings of the
24 study to the 72nd Legislature not later than January 1, 1991.
25 (g) An insurer that desires to write workers' compensation
26 insurance at a rate lower than the rate promulgated by the Board
27 shall file a written application with the Board for permission to

write workers' compensation insurance using a uniform percentage deviation for a lesser rate, but not less than 25 percent of the promulgated statewide rate. The application must specify the basis of the deviation and must be accompanied by the supporting information on which the applicant relies. An application filed under this subsection is considered approved by the Board unless the Board finds that the filing does not meet the requirements of this subchapter. The application is considered approved unless disapproved on or before the 60th day after the date it is received by the Board. On and after the date on which an application is approved or considered approved under this article, the insurer may write workers' compensation insurance in accordance with the approval. The right to write insurance at the approved lesser rate may be suspended or revoked by the Board after notice and hearing if, on examination or at any other time, it appears to the Board that the rate no longer meets the requirements of this subchapter. The Board may promulgate rules specifying the forms and requirements of an application for deviation.

SECTION 13.07. Article 5.61, Insurance Code, is amended to read as follows:

Art. 5.61. ADEQUATE RESERVES. (a) Each workers' compensation insurer transacting business in this state shall maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses and claims incurred, whether reported or unreported, but not in an amount greater than reasonably required for those purposes. The reserves shall be computed in accordance with any rules approved by the Board for the

purpose of adequately protecting the insureds, securing the solvency of the insurer, and preventing unreasonably large reserves.

(b) Each workers' compensation insurer shall provide a separate report to the Board showing its year-end loss, expense, and unearned premium reserves for workers' compensation insurance results in this state. The report must be filed not later than June 30 of each year, and must show the reserve development over a period of years sufficiently long to allow the Board to determine whether the reserves are adequate, inadequate, or unreasonably large. The report shall be audited by an independent accountant in accordance with generally accepted auditing standards and the rules of the Board. The reserve amounts reported may be taken from an audited financial report prepared by an independent auditor as prescribed by law.

(c) If the reserves are determined to be inadequate, the Board shall notify the insurer and require the insurer to establish and maintain reasonable additional reserves. If the reserves are determined to be unreasonably large, the Board shall notify the insurer and require the insurer to reduce its reserves to a reasonable amount.

(d) Not later than the 60th day after the date of the notification by the Board that its reserves have been determined not to be in compliance with the requirements of this article, the insurer shall restore compliance and file a statement of restored compliance, together with such documentation as the Board may require. [~~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.]~~

SECTION 13.08. Subchapter D, Chapter 5, Insurance Code, is amended by adding Articles 5.55B, 5.55C, 5.57A, 5.58A, 5.60A, and 5.65A to read as follows:

Art. 5.55B. OPTIONAL DEDUCTIBLE PLANS. (a) The Board shall require each company or association that writes workers' compensation insurance in this state to offer optional deductible plans for purposes of allowing policyholders to self-insure for the deductible amount.

(b) Not later than January 1, 1991, the Board shall promulgate at least three plans with varying deductible options. In addition, it shall by rule permit an employer to enter into an agreement with an insurer for a negotiated deductible in excess of the largest promulgated deductible.

(c) The Board shall perform an actuarial analysis for purposes of determining the amount of rate reduction applicable to policies under this article as opposed to standard policies without

a deductible. In subsequent years, the Board shall determine the amount of rate reduction according to rating procedures to be adopted by the Board.

(d) The Board shall adopt rules to ensure the security of payments of benefits up to the deductible amount if the policyholder cannot or does not pay the benefits because of insolvency, bankruptcy, or any other reason. In those instances the company or association writing workers' compensation insurance is entitled to indemnity from the policyholder or its estate up to the deductible limit, including collection costs.

(e) The Board shall adopt rules as necessary allocating responsibility between the policyholder and the company or association for servicing of claims up to the deductible amount. The rules shall provide that on the written consent of the company or association for any separate claim until the deductible is exceeded, the policyholder may service any such claim if serviced by an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

Art. 5.55C. PREMIUM INCENTIVES FOR SMALL EMPLOYERS. (a) In this article:

(1) "Small employer" means an employer who is not experience-rated by the State Board of Insurance for workers' compensation insurance purposes and whose annual workers' compensation premium is less than $5,000.

(2) "Board" means the State Board of Insurance.

(b) The Board shall promulgate a plan by which all insurance

1 companies writing workers' compensation insurance in this state
2 shall grant a premium discount to small employers who qualify for
3 the discount under this article and by which surcharges are
4 assessed against small employers who experience two or more
5 compensable lost-time injuries during a one-year period.
6 (c) A small employer who has not experienced a compensable
7 lost-time injury during the most recent one-year period for which
8 statistics are available shall receive a discount of 10 percent on
9 the amount of the employer's workers' compensation insurance
10 premium.
11 (d) A small employer who has not experienced a compensable
12 employee lost-time injury during the most recent two-year period
13 for which statistics are available shall receive a discount of 15
14 percent on the amount of the employer's workers' compensation
15 insurance premium.
16 (e) A small employer who has experienced one compensable
17 employee lost-time injury during the most recent one-year period
18 for which statistics are available is not eligible for a discount
19 on the amount of the employer's workers' compensation insurance
20 premium.
21 (f) A small employer who has experienced two or more
22 compensable employee lost-time injuries during the most recent
23 one-year period for which statistics are available shall be
24 assessed a surcharge of 10 percent on the amount of the employer's
25 workers' compensation premium.
26 (g) The discounts and surcharges established under this
27 article are not cumulative; however, a small employer is entitled

to receive the discount provided by this article in addition to any lesser deviation in the rate at which a policy is written under Article 5.60 of this code. For any annual workers' compensation premium, an employer may not receive a discount of more than 15 percent, and a small employer may not be required to pay a surcharge of more than 10 percent.

Art. 5.57A. GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE. (a) In this article:

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

(2) "Business entity" means a business enterprise owned by a single person or a corporation, organization, business trust, trust, partnership, joint venture, association, or other business entity.

(3) "Group" means two or more business entities that join together with the approval of the board to purchase a single workers' compensation insurance policy covering all the business entities that are a part of the group.

(b) On receiving approval of the board as provided by this article, two or more business entities may join together to form a group to purchase a single workers' compensation insurance policy covering all members of the group.

(c) To be eligible to join a group, a business entity:

(1) must have gross annual revenues of less than $500,000; and

(2) must be engaged in a business pursuit that is the same as or similar to the other business entities participating in the group as determined by the board.

(d) The board shall establish a certification program for groups organized under this article and shall issue certificates of approval to eligible business entities authorizing formation and maintenance of a group.

(e) The board by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this article.

(f) A group certified under this article may purchase a single workers' compensation insurance policy covering all members of the group from any insurer authorized to write workers' compensation insurance in this state. Under such a policy, the group is entitled to any premium or volume discount provided to large business entities that are experience rated for the purchase of workers' compensation insurance.

(g) A group shall apportion any discount received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

(h) Manual rates shall be used in computing the rate for a group policy under this article, and the board shall determine any experience rating factor that shall be applied to the group as provided by the board's rules.

(i) A group shall adopt a plan of operation that shall include the composition and selection of a governing board, the methods for administering the group, and guidelines for the workers' compensation insurance coverage obtained by the group including the payment of premiums, the distribution of discounts,

and the methods for providing risk management. A group shall file a copy of its plan of operation with the board.

(j) The board may not regulate the risk management practices of a group.

Art. 5.58A. REPORTING OF STATISTICAL DATA. (a) Each insurer transacting workers' compensation insurance business in or through a licensed agent in this state shall file annually with the State Board of Insurance, on or before April 1 of each year, the statistical information required under this subsection for all workers' compensation insurance coverage for the preceding calendar-accident year and policy years. The required statistical information shall include:

(1) premiums written;

(2) premiums earned;

(3) payroll;

(4) number and total amount of claims paid;

(5) number and total amount of claims unpaid;

(6) number and total amount of claims incurred;

(7) loss reserves for all known claims at the beginning and at the end of the year;

(8) reserves for losses incurred but not reported at the beginning and at the end of the year;

(9) adjustments to loss reserves;

(10) itemized direct incurred allocated loss adjustment expenses, including:

(A) attorney's fees for claims; and

(B) other allocated loss adjustment expenses;

(11) itemized direct incurred unallocated loss adjustment expenses;

(12) underwriting income or loss;

(13) commissions and brokerage fees;

(14) taxes, licenses, and fees;

(15) other acquisition costs;

(16) itemized general expenses;

(17) policyholder dividends;

(18) net surplus allocated to workers' compensation business in this state; and

(19) net investment gain on surplus and reserves for losses, loss expenses, and unearned premiums arising from writing workers' compensation insurance in this state.

(b) Information filed under this article shall include actual experience only, without application of loss trends, loss development factors, or other adjustments.

(c) The board shall adopt procedures for the verification of the information filed by insurers under this article. The board may be assisted by a licensed advisory organization and the Office of Public Insurance Counsel in adopting those procedures.

(d) A summary of the information provided under this section shall be included in the board's annual report.

(e) The board may require any additional information it considers necessary to be filed in the annual statistical report required by this article.

(f) The board shall aggregate all of the information filed under this article, to be used for rate-making purposes by the

board. The board shall provide the information on request to all parties to rate hearings free of charge.

(g) The board shall promulgate rules and forms necessary to implement this article.

(h) This section does not prohibit an advisory organization from receiving copies of the statistical reports filed with the board, or any additional data it may seek from its members.

Art. 5.60A. RATE HEARINGS. (a) The board shall conduct an annual hearing to review rates to be charged for workers' compensation insurance written in this state under this subchapter. The hearing shall be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) To assist the board in making rates and to provide additional information on certain trends that may affect the costs of workers' compensation insurance, the executive director of the Texas Workers' Compensation Commission or a person designated by that officer shall testify at any rate hearing conducted under this article. The testimony shall relate to trends in:

(1) claims resolution of workers' compensation cases; and

(2) cost components in workers' compensation cases.

(c) The testimony of the executive director or designee is subject to cross-examination by the board and any party to the hearing.

Art. 5.65A. NOTIFICATION TO POLICYHOLDER. (a) A company or association that writes workers' compensation insurance in this

state shall notify each policyholder of any claim that is filed against the policy. Thereafter a company shall notify the policyholder, on receiving a written request therefrom, of any proposal to settle a claim or any administrative or judicial proceeding relating to the resolution of a claim, including a benefit review conference or contested case hearing conducted by the Texas Workers' Compensation Commission.

(b) Each company or association that writes workers' compensation insurance in this state, on written request of the policyholder, shall provide the policyholder with a list of claims charged against the policy, payments made and reserves established on each claim, and a statement explaining the effect of claims on premium rates. The information required by this subsection shall be provided to the policyholder not later than the 60th day before the date on which the term of the policy expires, and at other times when requested in writing by the policyholder.

[Sections 13.09-13.10 reserved for expansion]

CHAPTER B. INSURANCE FACILITY

SECTION 13.11. Chapter 5, Insurance Code, is amended by adding Article 5.76A to read as follows:

Art. 5.76A. TEXAS WORKERS' COMPENSATION INSURANCE FACILITY

PART 1. GENERAL PROVISIONS

Sec. 1.01. DEFINITIONS. In this article:

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

(2) "Designated insurer" means any insurer authorized by the facility to issue small premium policies through the plan.

(3) "Facility" means the Texas workers' compensation

1 insurance facility established under this article.
2 (4) "Fund" means the employers' accident prevention
3 fund for providing workers' compensation insurance coverages for
4 rejected risks.
5 (5) "Good faith" for the purposes of this article only
6 means honesty in fact in any conduct or transaction.
7 (6) "Insurance" means those types of insurance
8 described in Section 2.05 of this article.
9 (7) "Insurer" means a stock company, mutual company,
10 reciprocal, interinsurance exchange, or Lloyd's association
11 authorized to write workers' compensation insurance in this State.
12 (8) "Member" means an insurer that is a member of the
13 facility.
14 (9) "Plan" means the employers' safety plan for
15 providing workers' compensation insurance coverages for a small
16 premium policy.
17 (10) "Rejected risk" means an employer, other than one
18 eligible for a small premium policy through the plan, that is in
19 good faith entitled to insurance but is unable to procure or retain
20 insurance through ordinary methods in the voluntary market. The
21 term includes any and all legal entities that may be combined for
22 experience rating purposes according to the rules of the Board.
23 (11) "Servicing company" means a member of the
24 facility that is designated by the Board to issue a policy that
25 evidences the insurance coverages provided by the fund to a
26 rejected risk and to service the risk as provided by this Act.
27 (12) "Small premium policy" means a Texas standard

workers' compensation insurance policy issued to an employer in this State for which the annual premium is less than $5,000 and which is not expected to develop more than $5,000 in premiums during the next 12 months. A policy's governing classification must be in hazard group I, II, or III as determined in retrospective rating plans approved in the State of Texas to be considered a small premium policy. An employer with a loss ratio in excess of .70 during two of the most recent three years or in excess of 1.00 in any one year during the most recent three years for which data are available shall not be eligible for a small premium policy.

PART 2. TEXAS WORKERS' COMPENSATION INSURANCE FACILITY

Sec. 2.01. ORGANIZATION. For the purpose of carrying into effect the provisions of this article, and with the approval of the Board, the Texas workers' compensation assigned risk pool is revised, amended, and continued as the Texas workers' compensation insurance facility, a nonprofit unincorporated association of insurers, and every such insurer shall be a member of the facility and shall remain a member as a condition of its authority to write or provide or to continue writing or providing in this state any of the insurance coverages provided for in this article. As a prerequisite to the writing of such insurance in this state every member of the facility shall file with the Board written authority permitting the facility to act in its behalf, as provided by this article.

Sec. 2.02. PURPOSE. The facility shall provide workers'

compensation coverages for employers in this state, as follows:

(1) for small premium policy employers, the insurance shall be provided under the employers' safety plan; and

(2) for rejected risks, the insurance shall be provided through the employers' accident prevention fund.

A member company which is not a designated insurer is not prohibited from voluntarily writing any workers' compensation insurance policies for which it is authorized.

Sec. 2.03. GOVERNING COMMITTEE. The facility shall be governed by a governing committee of 15 members appointed by the Board as follows:

(1) Nine members shall be workers' compensation insurance companies which are not servicing carriers, initially appointed by the Board as follows: three members for a two-year term; three members for a four-year term; and three members for a six-year term. At the expiration of the appointed terms, three members shall be appointed every two years by the Board for six-year terms. No member shall serve more than two consecutive terms.

(2) Three members shall be insurance companies which are servicing carriers. These members shall be appointed for two-year terms.

(3) The remainder of the governing committee shall be composed of one representative appointed by the State Board of Insurance, one representative appointed by the Texas Workers' Compensation Commission, and one representative appointed by the public counsel of the State Board of Insurance.

(4) The governing committee members provided for in Subdivisions (2) and (3) of this section are full participating members in the deliberations of the committee but shall have no vote. Their attendance shall not count in determining a quorum for the conduct of business.

(5) The duties and responsibilities of the members shall be provided in the bylaws, rules, and regulations of the facility adopted by the membership of the facility and approved by the Board as provided by Section 2.04 of this article.

Sec. 2.04. FACILITY BYLAWS, RULES, AND REGULATIONS. (a) Subject to the approval of the Board, the facility may adopt, amend, and repeal bylaws, rules, and regulations necessary to implement this article. All bylaws, rules, regulations, practices, policies, and procedures of the facility shall provide for the economic, fair, efficient, and nondiscriminatory administration of this article.

(b) The facility may adopt, amend, or repeal bylaws, rules, and regulations at any regular meeting of the members of the facility or at any special meeting called for that purpose by a majority 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 meeting at which adoption, amendment, or repeal is to be considered. The adoption, amendment, or repeal shall become effective on approval of the Board.

(c) All bylaws, rules, and regulations of the facility shall be subject to the continuing jurisdiction of the Board. If the

Board at any time believes that any bylaw, rule, or regulation is not in keeping with the purposes of this article, it shall notify the governing committee of the facility in writing so that corrective action may be taken.

Sec. 2.05. DUTIES, FUNCTIONS OF THE FACILITY. (a) The facility shall provide insurance, in the manner herein provided, for any risk, under the Texas Workers' Compensation Law, the Longshore and Harbor Workers' Compensation Act, or the Federal Coal Mine Health and Safety Act of 1969, as amended, 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 this state, heretofore or hereafter enacted. After the rules adopted under Section 2.04 of this article have been approved by the Board, the procedures and remedies established under this article shall be the exclusive procedure for any applicant to the facility to secure or maintain the insurance available under this article.

Sec. 2.06. FINANCING. The facility shall pay all costs and expenses of operating and maintaining the facility, including any allowances for servicing policies issued through or reinsured by the facility. 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 facility.

Sec. 2.07. INVESTMENTS. The facility shall invest its funds only in interest-bearing time deposits or certificates of deposit in 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 any other investments as may be proposed by the governing committee and approved by the Board.

Sec. 2.08. LIABILITY. There shall be no liability on the part of and no cause of action shall arise against the governing committee, the facility, its executive director, or any of its staff, agents, servants, or employees, or against any member of the facility or any of its officers, directors, agents, servants, or employees, arising out of or in connection with any activities in carrying out the purposes of this Act or for any inspections, safety engineering investigations performed, or recommendations made in good faith by them in any such reports or in communications concerning employers due to their applying for or being provided insurance coverages by the facility, or at any administrative hearing or inquiry conducted in connection therewith pursuant to the purposes and objectives of this article.

Sec. 2.09. APPEALS. (a) An applicant for insurance, an insured, or an insurer aggrieved by an act or decision of the facility may appeal to the Board not later than the 30th day after the affected party discovered that the act occurred or the decision was made. If the fund is aggrieved by an act or decision of the Board, it may make a written request to the Board for a hearing not later than the 30th day after the act or decision.

(b) The Board shall hear the appeal by the facility or the appeal from an act or decision of the facility not later than the 30th day after the day the request for hearing is made. If the facility is aggrieved by an act of the Board, it may make a written

request to the Board not later than the 30th day after the receipt of the request or appeal. The Board shall notify the facility 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 on the act appealed to the Board.

(c) A hearing does not suspend the operation of any classification, rate, policy, policy form, rule, regulation, order, or other action by the Board under this article or the operation of any act, ruling, decision, or order of the facility, unless the Board specifically so orders.

(d) The facility or the aggrieved party may appeal as provided by Article 1.04(f) of this code.

Sec. 2.10. FACILITY REPORTS. The facility shall file annually with the Board a report containing information with respect to its transactions, conditions, operations, and investments during the preceding year. The report shall contain such information as prescribed by and in such form as approved by the Board. The Board may at any time require the facility 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 article.

Sec. 2.11. OPEN MEETINGS AND OPEN RECORDS REQUIREMENTS. Except as otherwise provided in this section, the facility is a governmental body only for purposes of the open meetings law,

Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). Workers' compensation claims files in possession of the facility or servicing companies are not subject to disclosure under this section.

PART 3. EMPLOYERS' SAFETY PLAN FOR SMALL EMPLOYERS

Sec. 3.01. PROVISION FOR COVERAGES. There is hereby established within the facility an employers' safety plan through which a designated insurer shall provide insurance coverages for any employer eligible therefor under a small premium policy. No eligible employer applying for coverage may be rejected by a designated insurer when application is made through the company's appointed agent. The insurer may retain such risk for its own account or may reinsure the risk through the plan. In either case, the designated insurer must provide such employer with the services required by law.

Sec. 3.02. APPOINTMENT OF DESIGNATED INSURERS. (a) The Board shall establish standards, practices, and procedures for member companies to act as designated insurers. Any member company eligible to act as a designated insurer shall be a designated insurer unless the Board allows an exemption from services as such. To be exempt, a carrier must show good cause for such exemption.

(b) To be eligible to act as a designated insurer, an insurer must be a member of the facility, must have written in Texas at least $7 million in premiums for workers' compensation

insurance policies in each of the past three calendar years, and meet such other requirements as may be established by the Board. A designated insurer shall be subject to the service requirements of the facility and comply with other reasonable requirements applicable to designated insurers.

(c) The Board may order a limit on the writings of a designated insurer if there is good cause shown for such limitation. Whenever in any year a designated insurer shall accept small premium policies which approximately equal that designated insurer's proportionate share of the total market of small premium policies, it shall constitute good cause hereunder, and the Board shall authorize and may require the cessation of acceptance of such small premium policies as a designated insurer for the balance of that year.

(d) An insurer which has not met the premium eligibility test set forth in Subsection (b) may apply to the Board for appointment as a designated insurer. If it be shown that such insurer meets the qualifications established by the Board, it may be appointed.

(e) A designated insurer may contract with other appropriately licensed entities to provide all services necessary for small premium policies.

Sec. 3.03. CREATION OF REINSURANCE ACCOUNT: ACCEPTANCE OF CEDED REINSURANCE ON SMALL PREMIUM POLICIES. (a) There shall be established within the facility a separate account to be known as the reinsurance account. Through this reinsurance account, the facility shall accept ceded reinsurance of small premium policies

from designated insurers. The reinsurance account shall be available to and shall accept reinsurance of any small premium policy.

(b) Upon accepting such reinsurance the facility shall pay, as ceding commission, a portion of the premium applicable to such policy in a uniform amount determined from time to time by the Board. The amount of the ceding commission shall be sufficient to reimburse the designated insurer for premium tax, maintenance taxes, general overhead expenses, loss adjustment expenses, agent's commissions, and other acquisition expenses.

(c) The facility must be notified that the small premium policy is to be ceded within 30 days from the date coverage under the policy becomes effective.

(d) Services on a reinsured policy will be provided by the designated insurer on the same basis as other policies written by the insurer and retained for its own account. Settlements on reinsured transactions shall be made quarterly between the designated insurer and the facility.

Sec. 3.04. EMPLOYERS' SAFETY PLAN COSTS: RESERVES. (a) The facility shall pay all costs and expenses of operating and maintaining the plan, and funds of this state shall not be appropriated or expended for payment of any costs or expenses incurred in its operation.

(b) From funds received through the plan from reinsurance transactions, the facility shall set up and maintain reserves in accordance with rules approved by the Board.

Sec. 3.05. EMPLOYERS' SAFETY PLAN REINSURANCE DEFICIT.

Premiums and losses of small premium policies reinsured through the plan shall be consolidated with premiums and losses from other policies issued through the employers' accident prevention fund and shall thereafter be accounted for in accordance with the procedures applicable to the facility as approved by the Board. Deficits accruing from small premium policies reinsured through the plan shall be transferred to the fund and not charged to any designated insurer as such.

Sec. 3.06. REINSURANCE. Insurance companies are hereby authorized to establish a voluntary pool for purposes of reinsuring among themselves small premium policies written pursuant to this section.

PART 4. TEXAS WORKERS' COMPENSATION EMPLOYERS' ACCIDENT PREVENTION FUND

Sec. 4.01. PURPOSE. The employers' accident prevention fund shall provide insurance coverages for employers in this state who are unable to secure insurance in the voluntary market or are ineligible for coverage through the employers' safety plan as provided for in this article.

Sec. 4.02. DUTIES, FUNCTIONS OF THE FUND. (a) The fund shall provide insurance, in the manner herein provided, for any risk, other than an employer eligible for coverage as a small premium policy, which risk shall have been tendered to and rejected in writing by any two members of the facility, not of the same insurance group. Any applicant for insurance through the fund which has refused to accept a retrospective rating plan promulgated by the Board as a fair, reasonable, and nondiscriminatory plan

shall not be considered a rejected risk for purposes of this article. After the rules adopted under Section 2.04 of this article have been approved by the Board, the procedures established under this article shall be the exclusive procedure of any applicant for such insurance whose insurance has been rejected or canceled by any member.

(b) When any rejected risk applies for coverage from the facility and it appears that said risk is in good faith entitled to insurance through the fund, the facility shall calculate the deposit premium therefor in accordance with the classifications and rates promulgated by the Board and, upon payment thereof, the facility shall designate a servicing company 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 but the undertaking of said policy shall be entirely reinsured by all members of the facility, and the liability of the servicing company issuing said policy shall be limited to its liability as a reinsurer. On all such policies all members of the facility shall be reinsurers as among themselves in proportion to the amount which the premiums of such insurance written in this state during the preceding calendar year by such member bear to the total of such premiums written in this state during the preceding calendar year by all members of the facility, and each said policy may be endorsed to reflect the plan of reinsurance hereinabove provided.

Sec. 4.03. FUND COSTS. The facility shall pay all costs and expenses of operating and maintaining the fund, including all allowances 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 fund.

Sec. 4.04. FACILITY DEFICITS. (a) The facility shall annually report its operating results to the Board. In the event there is a deficit from operations, the amount of such deficit shall be assessed upon the members based upon the proportion to the amount that a member company's voluntary workers' compensation insurance writings bears to the total voluntary workers' compensation insurance writings in this state for the preceding calendar year.

(b) If at the end of any calendar year there is a deficit in the operation of the facility and the governing committee makes an assessment on the members for each member's proportionate share thereof, the maximum annual assessment of a member company may not exceed five percent of such member company's voluntary workers' compensation insurance writings for the preceding calendar year. Any portion of the assessment which is not met because the annual limit herein established becomes an obligation of the member on the basis of the assessment formula, but the payment of the obligation is deferred from year to year as herein provided. The total of the deferred balance and the current year assessment shall be subject to the limit herein provided. Any deferred balance shall be carried forward from year to year until fully paid.

(c) When an assessment is made and the limit under Subsection (b) of this section is applicable, the total amount assessed is to be applied first to the current year's deficit, if

any, with any remainder to be applied to any deferred balance from prior years in the order in which it arose.

(d) If in any year the accumulated deficit, after the maximum assessment is levied, is in excess of seven percent of total Texas voluntary workers' compensation premiums then the fund shall levy a secondary assessment to decrease the accumulated deficit to an amount no greater than seven percent of the total voluntary workers' compensation insurance writings in Texas. A secondary assessment shall be made so that any deficit from prior years' deferral shall be allocated among the member companies in accordance with their share of any accumulated deferral.

(e) The fact that a member insurer or, if applicable, a group of insurers discontinues or substantially reduces its workers' compensation writings shall in no way diminish or otherwise affect the legal responsibility of the insurer for the accrued amount of its pro rata share of pool deficits at the time of such discontinuation or reduction. Provided that such insurer may pay the accrued amount in increments of not less than 20 percent per year over a period not to exceed five years.

(f) Funds shall always be maintained so that the facility can meet all cash flow obligations. Estimates shall be made to be sure adequate funds are available to meet obligations and, if necessary, interim assessments in addition to those provided in Subsections (b) and (d) of this section may be levied as deemed necessary by the facility. An interim assessment shall be made so that any deficit from prior years' deferral shall be allocated among the member companies in accordance with their share of any

accumulated deferral.

(g) Each insurance company shall reflect in its books and records the amount of any assessment paid to the facility. Any deferred amount shall be disclosed in the annual statement section entitled "Notes to the Financials."

(h) A designated insurer may cede any risk eligible for a small premium policy. One-half of that portion of written premiums from risks eligible for small premium policies which is not ceded to the reinsurance account shall be removed from a member company's voluntary writings when calculating the assessment ratio of that member company as set out in Subsection (a) of this section.

(i) The foregoing deficit deferment and payment limitation provisions of this section shall be applicable to any fund deficits arising out of calendar years 1989, 1990, and 1991. Commencing with calendar year 1992, a member company's deficit shall (1) be assessed to each member company ratably on the basis of its total share of the voluntary insurance market in the preceding calendar year and (2) be fully paid by such member upon the levying of such assessment. Any remaining deferred deficit owed by a member company from years prior to 1992 shall be paid by that member company in no more than four equal annual installments which do not extend beyond 1995.

Sec. 4.05. FUND RATES. (a) The Board, in addition to the provisions prescribed by Subchapter D, Chapter 5, of the Insurance Code, is authorized and directed to determine, fix, prescribe, promulgate, change, or amend endorsements, rates, rating plans, or minimum premiums normally applicable to a risk so as to apply to

any and every rejected risk assigned by the facility such endorsements, rates, rating plans, and minimum premiums as are commensurate with the greater hazard of the rejected risk, considering in connection therewith the experience and physical, financial, and other conditions of such risk.

(b) In promulgating a rate or rates for rejected risks assigned by the facility, the Board shall give due consideration to an appropriate allowance for the greater hazard of the risks' losses, claims expense, audit expenses, premium taxes, maintenance taxes, general administration expense, agent's commissions, other acquisition expense, inspection expense, an allowance for profit or contingencies, and any other relevant facts in connection with insuring and servicing such rejected risks.

(c) The Board shall establish a surcharge program for risks insured by the fund for the purposes of encouraging safety and funding any deficit caused by excessive losses. The surcharge program shall include provisions that if an individual insured's actual losses are equal to or less than the insured's modified expected losses, as determined under the Texas workers' compensation experience rating plan, then there is to be no surcharge. The maximum surcharge shall be 100 percent of standard premiums and shall be related to the difference between each insured's actual losses and its modified expected losses.

(d) The Board shall adopt a retrospective rating plan to be applicable to a risk insured by the fund which has no prior loss experience by which its rate should be modified.

(e) The Board shall promulgate a special form of all states

endorsement, in keeping with the purposes of this Act, which may be used in connection with any risk insured by the fund, and shall establish premiums for the use of such endorsement.

Sec. 4.06. INJURY PREVENTION REQUIREMENTS. (a) The facility 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 facility, any of its members, or representatives of the Board shall be granted free access to the premises of each such policyholder or applicant during regular working hours.

(b) Failure or refusal by any such policyholder or applicant to comply with any reasonable rule prescribed by the facility for the prevention of injuries, or failure or refusal to make full disclosure of all information pertinent to the insuring or servicing of the policyholder or applicant, shall be sufficient grounds for the facility to cancel a policy or deny an application for insurance.

Sec. 4.07. DISCLOSURES BY REJECTED RISKS. 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 Texas Workers' Compensation Commission, 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.

Sec. 4.08. REPORTING. (a) Failure or refusal by any rejected risk to make full disclosure to the facility of

information concerning its true ownership, change of ownership, operations, or payroll or in maintaining and fully disclosing any of its records pertaining to workers' compensation insurance shall be sufficient ground for the facility to terminate the insurance of such employer as one not in good faith entitled thereto. To the end that no employer shall evade the burdens imposed by an unfavorable or high cost experience, incurred experience shall be used in future ratings regardless of any change in ownership, control, management, or operations.

(b) The Board, upon application of an affected party, may modify the foregoing rating rule if it be shown that a change in management of operations is clearly probable to reduce loss experience of the insured.

Sec. 4.09. SERVICING COMPANIES. (a) The Board shall establish standards, qualifications, requirements, and all other particulars regarding servicing companies necessary to service adequately the fund, the method of selecting servicing companies, and the terms and conditions of such service.

(b) Any member company desiring to be a servicing company shall make application to the Board providing satisfactory evidence that such applicant possesses the demonstrated records of competence, financial stability, and resources sufficient to assure the Board that it is able to provide all services required by the Board, including the following:

(1) investigating, reporting and paying claims;

(2) compliance with requirements of the Texas Workers' Compensation Commission;

(3) conducting safety inspections and presenting loss prevention programs or courses of instruction at the insured's office or work location;

(4) inspecting risks for classification purposes;

(5) promptly issuing policies, endorsements, and certificates of insurance;

(6) making and preparing final payroll audits;

(7) preparing for litigation, litigating, and conducting legal support required under the policy contract;

(8) preparation and timely submission of all appropriate financial and statistical reports; and

(9) all other services required for servicing workers' compensation policies in all particulars throughout this state. When such standards, qualifications, requirements, and other particulars regarding servicing companies necessary to serve the residual market have been determined, such information shall be published as rules and regulations of the Board and distributed to all member companies of the facility.

(c) The Board shall establish practices, policies, and procedures for the selection of member companies to be servicing companies and shall set the amount of the servicing allowance to such companies for the performance of such services at the same level as that granted to voluntary market writings in the most recent workers' compensation rate decision, made pursuant to Articles 5.55 and 5.60A, of this code for general expense, taxes, company acquisition expense, and unallocated loss adjustment expense.

(d) The performance of servicing companies and the amount of servicing allowances shall be subject to the continuing jurisdiction of the Board.

(e) No servicing company shall be allowed to write insurance in the fund during any calendar year in excess of twice the amount of such insurance such servicing company and the group of which the company is a member write in the voluntary market for the preceding calendar year.

(f) A company may not be a servicing carrier unless the group of which the company is a member writes at least one-half percent of the total voluntary market for workers' compensation insurance in this state.

(g) The Board shall develop a fair and nondiscriminatory plan for assignments to servicing companies. Such plan shall assign risks on a random basis and equitably distribute the number and size of risks among member companies based on their proportionate voluntary insurance writings for the preceding calendar year.

PART 5. MARKET ASSISTANCE PROGRAM

Sec. 5.01. MARKET ASSISTANCE PROGRAM. The Board shall establish a voluntary market assistance program to monitor the operation of the fund with the object of reducing the number of risks insured by the fund. Pursuant to such program each rejected risk making a request shall be reviewed before its assignment under Section 4.02 of this article. The market assistance program shall attempt to find an insurer to voluntarily insure the risk before its initial assignment to the fund, assignment to a specific

company under Section 4.02 of this article, or renewal of the risk's assignment to the fund. The Board shall adopt rules as necessary to implement this section. A licensed local recording agent need not be appointed by an insurer willing to accept business offered by the agent for review by the market assistance program. The market assistance program may establish reasonable fees for market assistance review.

PART 6. TRANSITION

Sec. 6.01. After the effective date of this article:

(1) All obligations, liabilities, assets, investments, properties, equipment, accounts payable and receivable, and all other burdens and benefits under the ownership, jurisdiction, custody, and control of the Texas workers' compensation assigned risk pool are hereby transferred to or assumed by the Texas workers' compensation facility created by this Act.

(2) All members of the pool shall continue as members of the facility.

(3) All members of the governing committee of the pool shall continue in office until the initial appointment of members of the governing committee of the facility as provided for in this article.

(4) The State Board of Insurance shall implement Section 4.09 of this article by January 1, 1990. All servicing companies of the pool shall continue as servicing companies of the facility until the Board has promulgated rules and regulations pertaining to the selection of servicing carriers as provided for in this article and carriers have been selected.

(5) All rules, regulations, policy forms, endorsements, rates, rating plans, premiums, surcharges, and premium discounts applicable to the pool shall continue in effect until the Board has altered them to conform to the provisions of this article.

(6) All insurance companies heretofore exempt from membership in the Texas workers' compensation assigned risk pool by order of the State Board of Insurance shall continue to be exempt from membership in the facility so long as they remain in compliance with such order of the Board.

(7) The provisions of Sections 3.05 and 4.04 of this article shall apply to operations of the fund beginning with calendar year 1989. Deferred deficit balances from the years 1986, 1987, and 1988, occurring pursuant to the then existing plan of operation and Board order, shall be levied upon the member companies owing such deferred deficits and separately from assessments levied under Section 4.04 of this article. Member companies shall be required to pay their unpaid deferred deficit balances in four equal annual installments commencing in the year 1989.

(8) Article 5.76, Insurance Code, is repealed.

(9) Statutes, rules, regulations, and bylaws in effect at the time of issuance of Texas workers' compensation assigned risk pool insurance policies in force prior to the effective date hereof shall continue to govern all aspects of such policies.

(10) It is the intention of the legislature that the implementation of this article be accomplished with a minimum of

disruption of policyholders, insureds, member companies, servicing carriers, employee retirement benefits, management of the assigned risk procedures reformed by this article, and the organization's tax exempt status under the Internal Revenue Code.

ARTICLE 14. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING WORKERS' COMPENSATION BENEFITS

SECTION 14.01. Subchapter D, Chapter 32, Penal Code, is amended by adding Section 32.51 to read as follows:

Sec. 32.51. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING WORKERS' COMPENSATION BENEFITS. (a) A person commits an offense if the person, to obtain or deny payments of workers' compensation benefits under the workers' compensation laws of this state for himself or another, knowingly and intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact; or

(3) fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) A person commits an offense if the person receives workers' compensation benefits that the person knows he is not legally entitled to receive.

(c) An offense under Subsection (a) of this section is a Class A misdemeanor. An offense under Subsection (b) of this section is:

(1) a Class A misdemeanor if the value of the benefits received is less than $750;

(2) a felony of the third degree if the value of the benefits received is $750 or more but less than $10,000; and

(3) a felony of the second degree if the value of the benefits received is $10,000 or more.

ARTICLE 15. CONFORMING AMENDMENTS

SECTION 15.01. Section 23.101(a), Government Code, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with criminal actions against defendants who are detained in jail pending trial given preference over other criminal actions;

(3) election contests and suits under the Texas Election Code; and

(4) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] and claims under the Federal Employers' Liability Act and the Jones Act.

SECTION 15.02. Section 25.0032(a), Government Code, as amended by Section 8.04(a), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Anderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court

in:

(A) probate matters and proceedings, including will contests;

(B) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(C) family law cases and proceedings; and

(D) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) concurrent jurisdiction with the county and district courts over all suits arising under the Family Code.

SECTION 15.03. Section 25.0222(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) family law cases and proceedings.

SECTION 15.04. Section 25.0312(a), Government Code, as amended by Section 8.07, Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section

25.0003 and other law, a county court at law in Calhoun County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings; and

(D) suits on behalf of the state to recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(E) suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(F) suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(G) suits for the trial of right to property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(H) contested elections; and

(3) concurrent jurisdiction with the justice courts in criminal matters prescribed by law for justice courts.

SECTION 15.05. Section 25.0592(a), Government Code, is

amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Dallas County has original and concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500, excluding interest, but does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs; and

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.06. Section 25.0702(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Ector County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.07. Section 25.0862(b), Government Code, is

amended to read as follows:

(b) A statutory county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(2) family law cases and proceedings; and

(3) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.08. Section 25.1032(b), Government Code, as amended by Section 8.10(a), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) In addition to other jurisdiction provided by law, a county civil court at law has:

(1) concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500, excluding interest, and does not exceed $50,000, excluding interest, statutory or punitive damages and penalties, attorney's fees, and costs; and

(2) original and concurrent jurisdiction with the district court in appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.09. Section 25.1072(a), Government Code, as amended by Section 8.12(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section

25.0003 and other law, a county court at law in Hays County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy.

SECTION 15.10. Section 25.1092(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Henderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees in cases in which attorney's fees are taxed as costs of court;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident~~

~~Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.11. Section 25.1182(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hunt County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~].

SECTION 15.12. Section 25.1482(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Liberty County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~]; and

(C) family law cases and proceedings.

SECTION 15.13. Section 25.1542(a), Government Code, as amended by Section 8.14(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Lubbock County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy.

SECTION 15.14. Section 25.1672(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Midland County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court

in:

(A) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.15. Section 25.1732(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Moore County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial-Accident Board~~]; and

(C) family law cases and proceedings.

SECTION 15.16. Section 25.1792(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Nolan County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial-Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.17. Section 25.1852(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Panola County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500, but does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.18. Section 25.1862(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Parker County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~], regardless of the amount in controversy; and

(3) family law cases and proceedings.

SECTION 15.19. Section 25.1892(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Polk County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy;

(C) cases and proceedings involving the collection of delinquent taxes, penalties, interest, and costs and the foreclosure of tax liens; and

(D) family law cases and proceedings.

SECTION 15.20. Section 25.1902(b), Government Code, as amended by Section 8.18(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County also has, concurrent with the county court, the probate jurisdiction provided by general law for county courts. A county court at law also has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) family law cases and proceedings.

SECTION 15.21. Section 25.1932(a-2), Government Code, as added by Section 8.19(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a-2) The County Court at Law No. 2 of Randall County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest and attorney's fees;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~]; and

(3) cases under the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code).

SECTION 15.22. Section 25.2142(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Smith County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.23. Section 25.2162(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Starr County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~]; and

(C) family law cases and proceedings.

SECTION 15.24. Section 25.2222(b), Government Code, as amended by Section 8.20(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs;

(2) nonjury family law cases and proceedings; and

(3) final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~], regardless of the amounts in controversy.

SECTION 15.25. Section 25.2292(a), Government Code, as amended by Section 8.21(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Travis County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district courts in civil cases and proceedings in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(3) appeals of final rulings and decisions of the

Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.26. Section 25.2412(a), Government Code, as added by Section 8.23(a), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Washington County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.27. Section 25.2422(a), Government Code, as amended by Section 8.11(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Webb County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court

in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings;

(C) cases and proceedings involving justiciable controversies and differences between spouses, or between parents, or between parent and child, or between any of these and third persons; and

(D) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy.

SECTION 15.28. Section 25.2452(d), Government Code, as amended by Section 8.24(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(d) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) family law cases and proceedings;

(3) suits brought under the authority of the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code) or the Uniform Interstate Compact on Juveniles (Section 25.01 et seq., Family Code);

(4) other juvenile and child welfare cases in which the district and county courts have jurisdiction; and

(5) appeals of final rulings and decisions of the

Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~], regardless of the amount in controversy.

SECTION 15.29. Section 25.2482(a), Government Code, as amended by Section 8.25(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Williamson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(3) family law cases and proceedings; and

(4) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~], regardless of the amount in controversy.

SECTION 15.30. Article 1.07, Insurance Code, is amended to read as follows:

Art. 1.07. TEXAS WORKERS' COMPENSATION COMMISSION [~~INDUSTRIAL--ACCIDENT--BOARD~~]. Nothing in this Code shall be construed to in any manner affect the duties [~~new~~] imposed by law on the Texas Workers' Compensation Commission [~~Industrial-Accident Board~~] or to take from said commission [~~board~~] the performance of the duties [~~new~~] imposed on said commission [~~board~~] by law.

SECTION 15.31. Section 3A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION OF TEXAS WORKERS' COMPENSATION COMMISSION [~~INDUSTRIAL-ACCIDENT-BOARD~~]. (a) The liquidator shall notify the Texas Workers' Compensation Commission [~~Industrial--Accident-Board~~] immediately upon a finding of insolvency or impairment upon any insurance company which has in force any workers' compensation coverage in Texas.

(b) The Texas Workers' Compensation Commission [~~Industrial Accident-Board~~] shall, upon said notice, submit to the liquidator a list of active cases pending before the Texas Workers' Compensation Commission [~~Industrial--Accident-Board~~] in which there has been an acceptance of liability by the carrier, where it appears that no bona fide dispute exists and where payments were commenced prior to the finding of insolvency or impairment and where future or past indemnity or medical payments are due.

(c) Notwithstanding the provisions of Section 3 of this Article, the liquidator is authorized to commence or continue the payment of claims based upon the list submitted in Subsection (b) above.

(d) In order to avoid undue delay in the payment of covered workers' compensation claims, the liquidator shall contract with the Texas Workers' Compensation [~~Assigned-Risk~~] Pool or any other qualified organization for claims adjusting. Files and information delivered by the Texas Workers' Compensation Commission [~~Industrial Accident-Board~~] to the liquidator may be delivered to the Texas Workers' Compensation [~~Assigned-Risk~~] Pool or any organization with which the liquidator has contracted for claims adjusting services.

(e) The Texas Workers' Compensation Commission [~~Industrial~~

~~Accident--Board~~] shall report to the State Board of Insurance any occasion when a workers' compensation insurer has committed acts that may indicate insurer financial impairment, delinquency or insolvency.

SECTION 15.32. Section 2(5)(A), Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Department of Commerce;

(iii) a member of the Texas Aeronautics Commission;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Purchasing and General Services Commission;

(viii) a member of the Texas Board of Corrections;

(ix) a member of the Board of Trustees of the Employees Retirement System of Texas;

(x) a member of the State Highway and Public

Transportation Commission;

(xi) a member of the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~];

(xii) a member of the State Board of Insurance;

(xiii) a member of the Board of Pardons and Paroles;

(xiv) a member of the Parks and Wildlife Commission;

(xv) a member of the Public Safety Commission;

(xvi) the Secretary of State;

(xvii) a member of the State Securities Board;

(xviii) a member of the Texas Amusement Machine Commission;

(xix) a member of the Texas Water Development Board;

(xx) a member of the Texas Water Commission;

(xxi) a member of the governing board of a state senior college or university as defined by Section 61.003, Education Code;

(xxii) a member of the Texas Higher Education Coordinating Board[~~, Texas College and University System~~];

(xxiii) a member of the Texas Employment Commission;

(xxiv) a member of the State Banking Board;

(xxv) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvi) a member of the Credit Union Commission;

or

(xxvii) a member of the School Land Board.

SECTION 15.33. Section 3(1), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], and institutions of higher education, that makes rules or determines contested cases.

SECTION 15.34. Section 2(1), Texas Administrative Code Act (Article 6252-13b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], and institutions of higher education, that makes rules or determines contested cases.

SECTION 15.35. Section 3A(h), Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer

having statewide jurisdiction, other than the Texas Workers' Compensation Commission [~~Industrial--Accident---Board~~] or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be clearly identified in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Any public official or person who is designated or authorized to post notices of meetings by a governmental body in accordance with Section 3A of this Act shall post the notice taking at face value the reason for the emergency as stated by the governmental body. Cases of emergency and urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the governmental body. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all

pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

SECTION 15.36. Section 2, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Department" whenever used in this law shall be held to mean the State [~~Highway~~] Department of Highways and Public Transportation [~~Texas~~].

(2) [~~2.~~] "Employee" shall mean every person in the service of the [~~State-Highway~~] Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the [~~State-Highway~~] Department.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall-mean-Workmen's-Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Commission [~~shall-mean-the-Industrial-Accident-Board-of--the--State of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall--mean--the--relatives--named--in-Section-8a-of-Article-8306,~~

~~Revised-Civil-Statutes-of-Texas-of-1925,-adopted-in--Section--7--of this-law~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall--be--as defined-in-Section-1,-Article-8309,-Revised-Civil-Statutes-of-Texas of-1925~~].

(b) [~~8.~~] Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

SECTION 15.37. Section 7, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. (a) The following provisions of the Texas Workers' Compensation Act [~~laws-as-amended--or--as--they--may--hereafter--be amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Article 1, except Section 1.03(19);

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.05, 3.06, 3.13 through 3.16, and 3.18;

(4) Article 4, except Sections 4.02(b), 4.11, 4.12, 4.68, 4.681, and 4.69;

(5) Article 5, except Sections 5.03 and 5.04;

(6) Article 6 through Article 9; and

(7) Section 10.01

[~~(1)--Article-8306,--except--Sections--5--and--28,--and Articles--8307,--8307b,--and-8309,-Revised-Civil-Statutes-of-Texas, 1925,-as-amended,~~

[~~(2)--Chapter-248,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8306a, Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter-77,-Acts-of-the-65th-Legislature,-Regular Session,-1977-(Article-8306b,-Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter-208,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8307a, Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts--of--the--62nd---Legislature, Regular---Session,---1971--(Article--8307c,--Vernon's--Texas--Civil Statutes),~~

[~~(6)--Chapter-358,-Acts-of-the-64th--Legislature,--1975 (Article-8307d,-Vernon's-Texas-Civil-Statutes),-and~~

[~~(7)--Chapter--179,--General--Laws,--Acts--of--the-42nd Legislature,-Regular-Session,--1931,--as--amended--(Article--8309a, Vernon's-Texas-Civil-Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber,"-or~~] "employer" appears [~~or-their-equivalents-appear~~], it [~~they~~] shall be construed to and shall mean "the department."

SECTION 15.38. Section 14, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas

Civil Statutes), is amended to read as follows:

Sec. 14. The [~~State--Highway~~] Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the [~~State--Highway~~] Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the [~~State-Highway~~] Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the [~~State Highway~~] Department to determine who may be physically fit to be classified as "employees" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the [~~State-Highway~~] Department a complete transcript of said examination in writing upon a form to be furnished by the [~~State Highway~~] Department. It shall be the duty of the [~~State-Highway~~] Department to preserve as a part of the permanent records of the [~~State--Highway~~] Department all reports of such examinations so filed. Such reports shall be admissible in evidence before the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~], and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Texas Workers' Compensation Commission [~~Industrial--Accident-Board~~] in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such

reports so admitted shall be prima facie evidence as to the facts set out therein.

SECTION 15.39. Sections 2, 7, 9, and 13, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The Texas A&M University System [~~Board--of--Directors--of--the--Agricultural--and Mechanical-College-of-Texas-including-the-following:~~

[~~Agricultural-and-Mechanical-College-of-Texas~~

[~~Texas-Agricultural-Experiment-Station~~

[~~Extension-Service,-A.-and-M.-College-of-Texas~~

[~~Texas-Forest-Service~~

[~~Rodent-Control-Service~~

[~~Firemen's-Training-School~~

[~~John-Tarleton-Agricultural-College~~

[~~North-Texas-Agricultural-College~~

[~~Prairie-View-State-Normal-and-Industrial-College~~

[~~Any--other--agencies--now-or-hereafter-under-the direction-and-control-of-said-Board-of-Directors~~].

(2) [~~2.~~] "Workman" shall mean every person employed in the service of any institution as defined above, whose name appears on the payroll thereof.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall-mean-Workmen's-Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Commission [~~shall--mean-the-Industrial-Accident-Board-of-the-State of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean-the-relatives-named-in--Section--8a--of--Article--8306, Revised--Civil--Statutes--of-Texas-of-1925,-adopted-in-Section-7-of this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall-be-as defined-in-Section-1,-Article-8309,-Revised-Civil-Statutes-of-Texas of-1925~~].

(b) [~~8.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. (a) Unless otherwise provided in this Act, the following provisions of the Texas Workers' Compensation Act [~~herein,-Sections-1,-6,-7,-7b,-7c,-7d,-7e,-8,-8a,-8b,--9,--10,--11, 11a,--12,--12a,--12b,-12c,-12d,-12e,-12f,-12i,-13,-15,-15a,-16,-17, 19,-20,-21,-22,-23,-24,-25,-26,-and-27--of--Article--8306,--Revised Civil--Statutes-of-Texas,-1925,-as-amended,-and-Article-8306a,-Acts 1931,-42nd-Legislature,-as-amended,-and-Sections-4a,--6a,--11,--12,~~

~~13,-and-14-of-Article-8307,-of-the-Revised-Civil-Statutes-of-Texas, 1925,--as--amended,--and-Sections-4,-and-5,-of-Article-8309,-of-the Revised-Civil-Statutes-of-Texas,--1925,--as--amended,~~] are hereby adopted and shall govern insofar as applicable under the provisions of this law:

(1) Article 1, except Section 1.03(19);

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.05 through 3.09;

(4) Article 4, except Sections 4.02, 4.04, 4.11, 4.12, 4.15, 4.68, 4.681, and 4.69;

(5) Article 5, except Sections 5.03 and 5.04;

(6) Articles 6 through 9; and

(7) Section 10.03.

(b) Provided that whenever [~~in-the-above-adopted-Sections-of Articles-8306,-8307,-and-8309-of--the--Revised--Civil--Statutes--of Texas,--1925,--as--amended,-or-herein-amended,~~] the word "employer" appears in this Act, it means [~~"association,"--"subscriber,"--or "employer,"--or--their--equivalents--appear--in-such-Articles,-they shall-be-construed-to-and-shall-mean~~] "the institution."

Sec. 9. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~provided-in~~

~~Section-7,-Article-8306,-as-amended,~~] will remain available to the workman but no workmen's compensation payment will accrue or become due and payable to the injured workman.

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection-2-of~~] Section 2(2) of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

SECTION 15.40. Sections 2, 7, 9, 13, and 18, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d,

Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The University of Texas System [~~including the following:~~

[~~Main University, Austin~~

[~~Medical Branch, Galveston~~

[~~Dental Branch, Houston~~

[~~M. D. Anderson Hospital for Cancer Research, Houston~~

[~~Southwestern Medical School, Dallas~~

[~~Texas Western College, El Paso~~

[~~Postgraduate School of Medicine, Houston~~

[~~Any other agencies now or hereafter under the direction and control of said Board of Regents~~].

(2) [~~2.~~] "Workman" shall mean every person in the service of The University of Texas System under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of The University of Texas System.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall mean Workmen's Compensation Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Commission [~~shall mean the Industrial Accident Board of the State of Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean-the-relatives-named-in--Section--8a--of--Article--8306, Revised--Civil--Statutes--of-Texas-of-1925,-adopted-in-Section-7-of this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall-be-as defined-in-Section-1,-Article-8309,-Revised-Civil-Statutes-of-Texas of-1925~~].

(b) [~~7.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. (a) The following provisions of the Texas Workers' Compensation Act [~~sections~~] are adopted and shall govern as applicable under the provisions of this Act:

(1) Article 1, except Section 1.03(19);

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.05 through 3.09;

(4) Article 4, except Sections 4.02, 4.04, 4.11, 4.12, 4.15, 4.68, 4.681, and 4.69;

(5) Article 5, except Sections 5.03 and 5.04;

(6) Articles 6 through 9; and

(7) Section 10.03 [~~Sections-1,-6,-7,-7b,-7c,-7d,-7e,~~

~~8,-8a,-8b,-9,-10,-11,-11a,-12,-12a,-12b,-12c,-12d,-12e,--12f,--12i,-13,--15,--15a,--16,--17,--19,-20,-21,-22,-23,-24,-25,-26,-and-27-of-Article-8306,-Revised-Civil-Statutes-of-Texas,--1925,--as--amended,-and--as--may--be-hereafter-amended,-Section-1,-Chapter-248,-Acts-of-the--42nd--Legislature,--Regular--Session,--1931--(Article---8306a,-Vernon's--Texas--Civil--Statutes),--as--last--amended-by-Section-2,-Chapter-26,-Acts-of-the-54th-Legislature,--Regular--Session,--1955,-and--as--may-be-hereafter-amended,-Sections-4a,-6a,-10,-11,-12,-13,-and-14-of-Article-8307,-Revised-Civil-Statutes-of-Texas,--1925,--as-amended,-and-as-may-be-hereafter-amended,-Sections-4-and-5,-Article-8309,-Revised-Civil-Statutes-of-Texas,-1925,-as-amended,-and-as-may-be--hereafter--amended,--Section--1,--Chapter-179,-Acts-of-the-42nd-Legislature,-Regular-Session,-1931-(Article-8309a,--Vernon's--Texas-Civil--Statutes),-as-amended-by-Section-7,-Chapter-178,-Acts-of-the-53rd-Legislature,-Regular-Session,-1953,-and-as--may--be--hereafter-amended~~].

(b) Wherever the word "employer" appears in the Texas Workers' Compensation Act [~~words--"association,"--"subscriber,"--or-"employer,"--or--the--equivalent-of-any-of-these-words,-are-used-in-Article-8306,-8307,-or-8309,-Revised-Civil-Statutes--of--Texas,--as-amended,--or-as-may-be-hereafter-amended,-and-in-Section-1,-Chapter-179,-Acts-of-the-42nd-Legislature,-Regular-Session,--1931--(Article-8309a,--Vernon's--Texas--Civil--Statutes),-as-amended-by-Section-7,-Chapter-178,-Acts-of-the-53rd-Legislature,-Regular--Session,--1953,-and--as--may--be-hereafter-amended~~], for the purpose of this Act it means [~~they-mean~~] "the institution."

Sec. 9. It is the purpose of this Act that compensation

herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~in-Section-7, Article-8306,-Revised-Civil-Statutes-of-Texas,--1925,--as--amended, and--as--may--be--hereafter--amended,~~] will remain available to the workman, but no workmen's compensation payment will accrue or become due and payable to the injured employee.

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection-2-of~~] Section 2(2) of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the institution all

reports of such examinations so filed with it.

Sec. 18. When an injured workman has sustained an injury in the course of employment and [~~filed--claim--for--compensation--and~~] given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

SECTION 15.41. Section 3(1), Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Board" means the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~].

SECTION 15.42. The Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) is amended by adding Section 3a to read as follows:

Sec. 3a. Any powers, duties, and responsibilities given to the board in this Act are delegated to the executive director of the Texas Workers' Compensation Commission.

SECTION 15.43. Subsection (b), Article 1269t, Revised Statutes, is amended to read as follows:

(b) An employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

(1) the disease is not an "ordinary disease of life" as that term is used in the context of a workers' compensation claim [~~by the Industrial Accident Board~~];

(2) the exposure to the disease occurs during the course of the employment; and

(3) the employee requires preventative medical treatment because of exposure to the disease.

SECTION 15.44. Section 1A, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 1A. In this article:

(1) "Association" means the Texas Employers' Insurance Association.

(2) "Board" means the Texas Workers' Compensation Commission.

(3) "Chiropractic service" means [~~The term "chiropractic service" shall include, but shall be limited to,~~] chiropractic as defined by the laws [~~Laws~~] of this State.

(4) "Chiropractor" means a person [~~and the term "chiropractor" shall include, but be limited to chiropractors~~] licensed by the Texas Board of Chiropractic Examiners [~~whose licenses are properly registered and in good standing as required by the Laws of this State~~].

SECTION 15.45. Section 7, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 7. Any employer of labor in this State who may be subject to the terms of the Texas Workers' Compensation Act [~~this Law~~] or to the terms of the "Longshoremen's and Harbor Worker's

Compensation Act" of the United States may become a subscriber to the Association.

SECTION 15.46. Section 20a(c), Article 8308, Revised Statutes, is amended to read as follows:

(c) Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Texas Workers' Compensation Commission [~~Industrial--Accident--Board~~], or until a subsequent notice is filed under the provisions of Section 18a of this article, at which time the subsequent insurance company shall be deemed to be the only insurance company liable under the provisions of the Texas Workers' Compensation [~~this~~] Act from and after the effective date of such subsequent policy of insurance.

SECTION 15.47. Sections 1(3) and (4), Article 8309g, Revised Statutes, are amended to read as follows:

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meanings applied to those terms in the context of a workers' compensation claim brought under the Texas Workers' Compensation Act [~~meaning assigned to them in Section 1, Article 8309, Revised Civil Statutes of Texas, 1925, as amended~~].

(4) "Board" means the Texas Workers' Compensation Commission [~~Industrial Accident Board~~].

SECTION 15.48. Sections 15(a) and (b), Article 8309g, Revised Statutes, are amended to read as follows:

(a) The following provisions of the Texas Workers' Compensation Act [~~laws as amended or as they may hereafter be~~

~~amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Article 1, except Section 1.03(19);

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.13 through 3.16, and 3.18;

(4) Article 4, except Section 4.02(b);

(5) Articles 5 through 9; and

(6) Sections 10.01 and 10.03

[~~(1)--Article--8306,--except--Sections--5--and--28,-and Articles-8307,-8307b,-and-8309,-Revised-Civil--Statutes--of--Texas, 1925,-as-amended,~~

[~~(2)--Chapter--248,--General--Laws,--Acts--of--the-42nd Legislature,-Regular-Session,--1931,--as--amended--(Article--8306a, Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter-77,-Acts-of-the-65th-Legislature,-Regular Session,-1977-(Article-8306b,-Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter--208,--General--Laws,--Acts--of--the-42nd Legislature,-Regular-Session,--1931,--as--amended--(Article--8307a, Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter---115,--Acts--of--the--62nd--Legislature, Regular--Session,--1971--(Article--8307c,--Vernon's---Texas---Civil Statutes),~~

[~~(6)--Chapter--358,--Acts-of-the-64th-Legislature,-1975 (Article-8307d,-Vernon's-Texas-Civil-Statutes),-and~~

[~~(7)--Chapter-179,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8309a,~~

~~Vernon's Texas Civil Statutes)~~].

(b) Wherever the word [~~words--"association,"~~] "insurer[~~,~~]" [~~"subscriber,"~~] or "employer" is [~~are~~] used in the adopted law [~~laws~~], the word "state," "division" or "director," whichever is applicable, is substituted for the purposes of this article.

SECTION 15.49. Section 17, Article 8309g, Revised Statutes, is amended to read as follows:

Sec. 17. COVERAGE FOR OUT-OF-STATE EMPLOYEES. An [~~Notwithstanding--Section--19,-Article-8306,-Revised-Civil-Statutes of-Texas,-1925,-as-amended,--an~~] employee who performs services outside this state is entitled to benefits under this article even if the person is hired or not hired in this state, does not work in this state, works both in this state and out of state, is injured outside this state, or has been outside this state for more than one year. An employee who elects to pursue remedies provided by the state or the District of Columbia in which an injury occurs is not entitled to benefits under this article.

SECTION 15.50. Section 1, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 1. DEFINITIONS. The following words and phrases as used in this article shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) "Political subdivision" means a county, home-rule city, a city, town, or village organized under the general laws of this state, a special district, a school district, a junior college district, a housing authority, a community center for mental health and mental retardation services established under Chapter 67, Acts

of the 59th Legislature, Regular Session, 1965 (Article 5547-203, Vernon's Texas Civil Statutes), or any other legally constituted political subdivision of the state.

(2) "Employee" means every person in the service of a political subdivision who has been appointed in accordance with the provisions of the article. A [~~No~~] person in the service of a political subdivision who is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year, who is a patient or client of a political subdivision involved in vocational training, or who is a prisoner incarcerated by a political subdivision is not [~~shall--be-considered~~] an employee and is not entitled to compensation under [~~the-terms--of--the--provisions--of~~] this article. Provided, however, a political subdivision may cover volunteer firefighters, policemen, emergency medical personnel, and other volunteers that are specifically named who shall be entitled to full medical benefits and the minimum compensation payments under the law. A political subdivision may cover an elected official as an employee by a majority vote of the members of the governing body of the political subdivision. A political subdivision may cover children who are in a program established by the political subdivision to assist children in rendering personal services to a charitable or educational institution as authorized by Subsection (b), Section 54.041, Family Code. Members of the board of trustees of a self-insurance fund created hereunder may provide coverage for themselves as well as their staff, including persons with whom it has contracted to perform staff functions, or for any other self-insurance fund created under The Interlocal

Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) by a majority vote of such members of the fund. No class of persons who are paid as a result of jury service or an appointment to serve in the conduct of elections may be considered employees under this article unless declared to be employees by a majority vote of the members of the governing body of a political subdivision.

(3) "Board" means the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~].

SECTION 15.51. Section 3, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 3. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~laws--as--amended-or-as-they-may-hereafter-be-amended~~] are adopted except to the extent that they are inconsistent with this article:

(1) Article 1, except the sections defining "employer" and "employee";

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.03, 3.04, 3.07, 3.08, 3.09, 3.10, 3.11, 3.13 through 3.16, and 3.18;

(4) Article 4, except Section 4.02(b);

(5) Article 5;

(6) Articles 6 through 8;

(7) Article 9, except Section 9.02; and

(8) Section 10.03. [~~(1)--Article----8306,----except Sections--5--and--28,--and--Articles-8307,-8307b,-and-8309,-Revised Civil-Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter-248,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8306a, Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter-77,-Acts-of-the-65th-Legislature,-Regular Session,-1977-(Article-8306b,-Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter-208,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8307a, Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts--of--the--62nd---Legislature, Regular---Session,---1971--(Article--8307e,--Vernon's--Texas--Civil Statutes),-except-that-if-the-city-provides-by-Charter-or-ordinance for-ultimate-access-to-the-district-court-for--wrongful--discharge, Chapter--115,--Acts--of-the-62nd-Legislature,-Regular-Session,-1971 (Article-8307e,-Vernon's-Texas-Civil-Statutes)-is--not--applicable,~~

[~~(6)--Chapter--358,--Acts-of-the-64th-Legislature,-1975 (Article-8307d,-Vernon's-Texas-Civil-Statutes),-and~~

[~~(7)--Chapter-179,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8309a, Vernon's-Texas-Civil-Statutes).~~]

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words--"association,"--"subscriber,"--or~~] "employer[~~,~~]" appears [~~or-their-equivalents-appear~~], it [~~they~~] shall be construed to and shall mean "a political subdivision."

(c) For purposes of determining the compensation benefits of an employee of a school district, the average weekly wage as of the time of injury shall be computed in a manner that is fair and just to both parties.

(d) A person may not bring an action for wrongful discharge under both Section 10.01, Texas Workers' Compensation Act and Chapter 832, Acts of the 68th Legislature, Regular Session, 1983 (Article 6252-16a, Vernon's Texas Civil Statutes).

SECTION 15.52. Section 9, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 9. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES [~~CETA--EMPLOYEES~~]. An entity that provides transportation subsidized in whole or in part by, and provided to clients of, the Texas Department on Aging, Texas Commission on Alcoholism, Texas Commission for the Blind, Texas Cancer Council, Texas Department of Community Affairs, Texas Commission for the Deaf, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Rehabilitation Commission, or Texas Youth Commission may contract with political subdivisions' joint funds for workers' compensation coverage as provided under Section 4 of this article. [~~Notwithstanding any other provision of this law or any applicable workers' compensation law, an employee hired in accordance with the federal Comprehensive Employment and Training Act of 1973 shall be considered an employee of the federal Comprehensive Employment and Training Act prime sponsor, or its contractor or subcontractor, whichever assumes responsibility for disbursement of wages directly to the employee, and the "borrowed servant doctrine" shall not apply.~~]

ARTICLE 16. REPEALER

SECTION 16.01. The following laws are repealed:

(1) Article 4413a.2, Revised Statutes;

(2) Section 1, Chapter 29, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145a, Vernon's Texas Civil Statutes);

(3) Section 2, Chapter 29, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145b, Vernon's Texas Civil Statutes);

(4) Section 3, Chapter 29, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145c, Vernon's Texas Civil Statutes);

(5) Section 11, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(6) Section 16, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(7) Article 8306, Revised Statutes;

(8) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes);

(9) Sections 1 and 2, Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(10) Article 8307, Revised Statutes;

(11) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8307a, Vernon's Texas Civil Statutes);

(12) Article 8307b, Revised Statutes;

(13) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);

(14) Chapter 358, Acts of the 64th Legislature, Regular Session, 1975 (Article 8307d, Vernon's Texas Civil Statutes);

(15) Sections 18, 18a, 19, 20, and 20a, Article 8308, Revised Statutes;

(16) Article 8309, Revised Statutes;

(17) Section 11, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(18) Section 17, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(19) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes);

(20) Section 11, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas Civil Statutes);

(21) Article 5.55A, Insurance Code; and

(22) Article 5.76-1, Insurance Code.

ARTICLE 17. TRANSITION; EFFECTIVE DATE; EMERGENCY

SECTION 17.01. NAME CHANGE. The name of the Industrial Accident Board is changed to the Texas Workers' Compensation Commission. Any reference in the law to the Industrial Accident

Board means the Texas Workers' Compensation Commission.

SECTION 17.02. TRANSFER OF CERTAIN PROGRAMS TO WORKERS' COMPENSATION COMMISSION. (a) The programs created under Article 5.76-1, Insurance Code, and administered by the State Board of Insurance are transferred to the Texas Department of Health on the effective date of this Act. The property and records in the custody of the State Board of Insurance that relate specifically to the implementation and enforcement of those programs shall be transferred to the Texas Department of Health not later than September 1, 1990.

(b) The Texas Department of Health shall adopt rules relating to the transfer of the programs assigned to that department not later than March 31, 1990. Notwithstanding amendments and repeals made by this Act, programs and rules in effect on the effective date of this Act remain in effect and shall be enforced by the appropriate agency until provided otherwise by the rules of the department, and the laws providing authority for those rules and programs are continued in effect for that time and purpose. Except as otherwise provided in this section, the department shall assume full control over those programs not later than September 1, 1990.

SECTION 17.03. INITIAL POLICY STATEMENT. The policy statement required under Section 2.10(k) of this Act must be filed not later than July 31, 1990.

SECTION 17.04. ADMINISTRATIVE PENALTIES. Article 10 of this Act, providing for the assessment of penalties and sanctions by the Texas Workers' Compensation Commission, applies only to a violation

that occurs on or after the effective date of this Act.

SECTION 17.05. SUBSEQUENT INJURY FUND. The subsequent injury fund is created on the effective date of this Act. All money in, and all liabilities of, the second injury fund created under Article 8306, Revised Statutes, as of that date, are transferred to the subsequent injury fund.

SECTION 17.06. SELF-INSURANCE. (a) The initial board of directors of the Texas Certified Self-Insurer Guaranty Association created under Section 3.69, Texas Workers' Compensation Act, shall be appointed by the Texas Workers' Compensation Commission.

(b) Notwithstanding the requirement imposed under Section 3.53(b), Texas Workers' Compensation Act, the Texas Workers' Compensation Commission is not required to process an application for a certificate of authority to self-insure within 60 days of the receipt of the application by that commission until September 1, 1990.

SECTION 17.07. TEXAS WORKERS' COMPENSATION POOL. The initial appointments to the governing board of the Texas Workers' Compensation Pool shall be made by January 1, 1990.

SECTION 17.08. (a) For all workers' compensation insurance policies issued on or after September 1, 1989, and through August 31, 1990, the premium rates charged shall be adjusted to reflect at least a four-percent reduction in the overall premium rate effective on January 1, 1989, distributed among rate classifications in accordance with sound actuarial principles.

(b) For all workers' compensation insurance policies issued on or after September 1, 1990, through August 31, 1991, the premium

rates charged shall be adjusted to reflect at least a 10-percent reduction in the overall premium rate effective January 1, 1989, distributed among rate classifications in accordance with sound actuarial principles.

(c) For all workers' compensation insurance policies issued on or after September 1, 1991, through August 31, 1992, the premium rates charged shall be adjusted to reflect at least a 15-percent reduction in the overall premium rate effective January 1, 1989, distributed among rate classifications in accordance with sound actuarial principles.

(d) The reductions in rates required by this section take effect only on a finding by the State Board of Insurance that the reductions would be consistent with the following factors:

(1) encourage the prevention of accidents;

(2) take into account 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;

(3) that such reductions would be fair, reasonable, and not confiscatory as to any class of insurer authorized by law to write workers' compensation insurance in this state; and

(4) the statistical data or other information provided to justify the reductions indicates that approval of the reductions are reasonable.

(e) Any rates, rating plans, rate reductions, or changes in those rates, plans or reductions, must be published at least 15 days before the changes become effective.

SECTION 17.09. TRANSITION OVERSIGHT COMMITTEE. (a) The Joint Transition Oversight Committee is created on the effective date of this Act. The committee is composed of six members as follows:

(1) three members must be members of the senate, appointed by the lieutenant governor; and

(2) three members must be members of the house of representatives, appointed by the speaker of the house of representatives.

(b) The committee may:

(1) meet with the Texas Workers' Compensation Commission as considered necessary by the committee or the commission;

(2) review rules adopted by the commission or proposed for adoption by the commission; and

(3) request reports and other information from the commission relating to the operation of the commission.

(c) The committee shall review the specific recommendations for legislation proposed by the commission.

(d) The committee shall prepare a written report relating to the transition of the workers' compensation system from the Industrial Accident Board to the Texas Workers' Compensation Commission that indicates the compliance of the transition process with this Act. This report shall include the committee's recommendations on items proposed by the commission for legislation. The committee shall file the report with the governor, lieutenant governor, and speaker of the house of

representatives not later than December 31, 1990, and December 31, 1992.

(e) This section expires and the committee is abolished January 1, 1993.

SECTION 17.10. COMMISSION AUTHORITY DURING TRANSITION. (a) The Texas Workers' Compensation Commission created under this Act shall begin immediately to adopt rules to implement this Act. The rules adopted under this section may not have an effective date before June 1, 1990.

(b) The commission shall delegate appropriate powers and duties to the executive director to administer the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) and the workers' compensation law in effect prior to the effective date of this Act.

(c) The State Board of Insurance and the commission shall develop a plan to provide for the orderly transfer to the State Board of Insurance by September 1, 1992, of coverage and cancellation notices required to be filed with the commission by Sections 3.22, 3.23, 3.24, 3.25, and 3.26 of this Act.

SECTION 17.11. SEVERABILITY. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that 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 17.12. EFFECTIVE DATE; EFFECT ON PENDING CLAIMS. (a) This Act takes effect June 1, 1990, except as provided in

1 Subsection (b) of this section.

2 (b) Sections 2.01 through 2.07, 17.01, 17.08, 17.09, and
3 17.10 take effect September 1, 1989; Chapter D of Article 3 takes
4 effect January 1, 1990; and Articles 9 and 10 take effect January
5 1, 1991.

6 (c) The change in law made by this Act applies only to an
7 injury for which the date of injury is on or after the effective
8 date of this Act. The date of injury for an occupational disease
9 is the date on which the employee knew or should have known that
10 the disease may be related to the employment.

11 (d) The Texas Workers' Compensation Commission created under
12 this Act shall process claims for injuries occurring before June 1,
13 1990, in accordance with the law in effect on the date that the
14 injury occurred, and the former law is continued in effect for this
15 purpose.

16 SECTION 17.13. EMERGENCY. The importance of this
17 legislation and the crowded condition of the calendars in both
18 houses create an emergency and an imperative public necessity that
19 the constitutional rule requiring bills to be read on three several
20 days in each house be suspended, and this rule is hereby suspended.

ADOPTED
25 yeas 5 nays
MAY 27 1989

Secretary of the Senate

AMENDMENT NO. 1 BY

Amend C.S.H.B. 1 as follows:

(1) On page 1, strike the preamble (lines 8-15) and substitute the following:

PREAMBLE; LEGISLATIVE INTENT

The Texas Workers' Compensation Act is remedial in nature. It is the intent of the legislature to carry forward determinations made under prior law except to the extent of any conflict with this Act.

(2) On page 1, line 17, strike "11" and substitute "10".

(3) On page 5, line 2, between "podiatry" and the period, insert ", who is licensed and authorized to practice".

(4) On page 5, strike lines 20-26 and substitute the following:

(20) "Employer" means, unless otherwise specified, a person that makes a contract of hire or that employs one or more employees. The term includes a governmental entity.

(5) On page 6, line 20, strike "physician" and substitute "doctor".

(6) On page 7, line 5, strike "accidental injuries and".

(7) On page 7, lines 2-3, strike "or mental".

(8) On page 8, line 21, between "further" and "recovery", insert "material".

(9) On page 9, strike lines 17-27 and substitute the following:

(35) "Occupational disease" means any disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, and such other diseases or infections as naturally result therefrom. The term includes damage or harm to the physical structure of the body that occurs as the result of repetitious physical traumatic activities extending over a period of time and arising in the course of employment; provided, that the date of the cumulative injury is the date incapacity was caused thereby. Ordinary diseases of life to which the general public is exposed outside of employment are not compensable, except where those diseases follow as an incident to an "occupational disease" or "injury" as those terms are defined by this Act.

(10) On page 11, lines 17-18, strike "doing the usual tasks of a worker".

(11) On page 18, line 3, strike "arbitration" and substitute "mediation".

(12) On page 21, strike lines 11-13 and substitute the following:

(3) division of hearings; and

(4) division of self-insurance regulation.

(13) On page 22, line 14, strike "Section 4.28" and substitute "Section 4.46".

(14) On page 24, strike lines 3-6 and substitute the following:

(1) the crime victims compensation fund; or

(2) the division of self-insurance regulation.

(15) On page 27, strike lines 20-25 and substitute the following:

(2) a legislative committee for legislative purposes; and

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 2.31(d) of this Act, if the request is provided to the commission.

(16) On page 30, lines 5 and 6, strike "commission, research center, or any other" and substitute "commission or any other".

(17) On page 33, lines 16 and 17, strike Subdivision (3) and substitute the following:

(3) "Motor carrier" means a person operating a motor vehicle over any public highway in this state for the purposes of providing transportation services or contracting to provide those services. An owner-operator is an independent contractor.

(18) On page 59, line 12, strike "provide for" and substitute "obtain".

(19) On page 68, line 22, strike "under Section 4.17 of this Act".

(20) On page 73, between lines 24 and 25, insert a new Section 4.011 to read as follows:

SECTION 4.011. POLICY STATEMENT ON MENTAL TRAUMA INJURIES. It is the express intent of the legislature that nothing in this Act shall be construed to limit or expand recovery in cases of mental trauma injuries.

(21) On page 81, strike line 2 and substitute the following: "of 300 times if a six-day worker, or 260 times if a five-day."

(22) On page 81, line 7, strike the comma.

(23) On page 81, strike lines 9-10 and substitute the following: "average weekly wage consists of 300 times if a six-day worker, or 260 times if a five-day worker, the average daily wage or salary".

(24) On page 82, strike lines 11-22 and substitute the following:

(1)(A) for the first 26 weeks following the beginning date of incapacity for any compensable injury, but not to exceed beyond the date of maximum medical improvement unless the employee is totally incapacitated, (B) for all injuries for which lifetime income benefits are payable, and (C) for injuries resulting in death benefits, an amount equal to 100 percent of the annual

average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission, rounded to the nearest whole dollar amount divisible by seven; provided, that if maximum medical improvement occurs before the expiration of 26 weeks following the beginning date of incapacity and the employee claims total incapacity, the carrier shall have the right to an independent medical examination by a doctor of the carrier's choice; if, based on such medical examination and all other evidence the employee is found to be totally incapacitated and to have attained maximum medical improvement, then the benefits payable under (A) of this Subdivision (1) shall continue for the full 26 weeks; and

(2) for all other incapacity after August 31, 1988, the maximum weekly income benefit is $238; provided, that if the annual average of the manufacturing production workers average weekly wage in this state exceeds by $10 the average weekly wage for those workers in 1988, as determined by the Texas Employment Commission and published by that commission in its report on the average weekly wage, the maximum weekly benefit shall be increased by $7 above the amounts specified in this section beginning with the commencement of the state fiscal year following the publication of the report; and provided that thereafter, each cumulative $10 increase in the average weekly wage for manufacturing production workers in this state as annually determined and reported by the Texas Employment Commission shall increase cumulatively the maximum weekly benefit by an additional $7 beginning with the commencement of the state fiscal year following the publication of the report.

(25) On page 83, strike lines 5-10 and substitute the following:

SECTION 4.12. MINIMUM WEEKLY BENEFITS. (a) Effective September 1, 1988, the minimum weekly benefit is $40. If the annual average of the manufacturing production workers average weekly wage in this state exceeds by $10 the average weekly wage for those workers in 1988, as determined by the Texas Employment Commission and published by that commission in its report on the average weekly wage, the minimum weekly benefit shall be increased by $1 above the amounts specified in this section beginning with the commencement of the state fiscal year following the publication of the report. Thereafter, each cumulative $10 increase in the average weekly wage for manufacturing production workers in this state as annually determined and reported by the Texas Employment Commission shall increase cumulatively the minimum weekly benefit by an additional $1 beginning with the commencement of the state fiscal year following the publication of the report.

(26) On page 84, line 4, strike "Section 4.25" and substitute "Section 4.26".

(27) On page 84, line 21, between "injury" and "is entitled", insert "and who has not attained maximum medical improvement".

(28) On page 85, line 21, strike "While" and substitute "If, after the employee has attained maximum medical improvement,".

(29) On page 85, line 27, strike "After" and substitute "If

1 after".

2 (30) On page 86, line 1, strike "and while the" and
3 substitute ", the".

4 (31) On page 91, line 11, strike "at least".

5 (32) On page 96, between lines 24 and 25, insert a new
6 Section 4.441 to read as follows:
7 SECTION 4.441. EFFECT OF DISPUTE AS TO BENEFICIARY. On
8 settlement of a case in which the insurance carrier admits
9 liability for death benefits but a dispute exists as to the proper
10 beneficiary or beneficiaries, the settlement shall be paid in
11 periodic payments as provided by law, with a reasonable attorney's
12 fee not to exceed 25 percent of the settlement. The attorney's fee
13 shall be paid periodically and not in a lump sum.

14 (33) On page 99, lines 10-11, strike ", but not for the
15 purpose of obtaining an impairment rating".

16 (34) On page 110, line 5, between "EMPLOYER" and the period,
17 insert "; CLAIM FOR COMPENSATION".

18 (35) On page 111, between lines 9 and 10, insert a new
19 Section 5.021 to read as follows:
20 SECTION 5.021. EFFECT OF FAILURE TO FILE CLAIM. An
21 employee's failure to file a claim for compensation with the
22 commission as required under Section 5.01(b) of this article
23 relieves the employer and the employer's insurance carrier of
24 liability under this Act unless:

1 (1) good cause exists for failure to give notice in a
2 timely manner; or
3 (2) the employer or insurance carrier does not contest
4 the claim.

5 (36) On page 112, between lines 16 and 17, insert a new
6 Section 5.041 to read as follows:
7 SECTION 5.041. LIMITATION TOLLED. If the employer or
8 insurance carrier has been given notice or has knowledge of an
9 injury or death of an employee, and the employer or carrier fails,
10 neglects, or refuses to file a report as required under Section
11 5.04 of this article, the limitation in Section 5.01 of this
12 article with respect to the filing of a claim for compensation does
13 not begin to run against the claim of the injured employee or the
14 employee's beneficiaries who are entitled to compensation, or in
15 favor of the employer or insurance carrier, until the report has
16 been furnished as required under Section 5.04 of this article.

17 (37) On page 115, line 8, strike "at an earlier date" and
18 substitute "before the date of filing of the notice".

19 (38) On page 116, between lines 4 and 5, insert a new
20 Section 5.24 to read as follows:
21 SECTION 5.24. MEDICAL DISPUTES AFTER JUDGMENT OR AWARD.
22 Notwithstanding any other provision of this Act, no award of the
23 commission and no judgment of a court having jurisdiction of a
24 claim against an insurance carrier for the cost or expense of
25 medical aid, hospital services, nursing, chiropractic services,

1 medicines, or prosthetic appliances furnished to an employee under
2 circumstances that create a liability for payment on the part of
3 the carrier under this Act shall include in the award or judgment
4 any cost of any such item that is not actually furnished to and
5 received by the employee before the date of the award or judgment.
6 The first such final award or judgment rendered on the claim is res
7 judicata of the liability of the carrier for the cost or expense
8 that could have been claimed up to the date of the award or
9 judgment and of the issue that the employee's injury is subject to
10 the provisions of this Act with respect to the items, but is not
11 res judicata of the obligation of the carrier to furnish or pay for
12 any such item after the date of the award or judgment. After the
13 first such final award or judgment, the commission shall have
14 continuing jurisdiction in the case to render successive awards to
15 determine the liability of the carrier for the cost or expense of
16 any such item actually furnished to and received by the employee
17 not more than six months before the date of each successive award,
18 until the carrier has fully discharged its obligation under this
19 Act to furnish the medical aid, hospital services, nursing,
20 chiropractic services, medicines, or prosthetic appliances to which
21 the employee may be entitled; provided, that a claim for
22 compensation must be filed with the commission in accordance with
23 Section 5.01 of this article to make a claim for such compensation
24 benefits, and the provisions of Article 6 of this Act apply to
25 those claims.

26 (39) On page 122, line 13, strike "The" and substitute

1 "Except as otherwise provided by this subsection, the".

2 (40) On page 122, line 15, after the period insert: "On the
3 mutual written agreement of the parties, the period for the
4 scheduling of a mediation conference may be extended for an
5 additional 30 days."

6 (41) On page 127, line 11, after the period insert: "An
7 arbitrator may not be an employee of the commission."

8 (42) On page 128, line 3, strike "only".

9 (43) On page 128, line 9, strike "and this appointment is
10 final." and substitute ". Each party is entitled to reject the
11 arbitrator in the manner provided under Subsection (f) of this
12 section.".

13 (44) On page 132, line 4, strike "obtained knowledge" and
14 substitute "knew or should have known".

15 (45) On page 132, line 8, strike "an arbitrator's" and
16 substitute "the arbitration".

17 (46) On page 133, line 5, after the period insert: "On the
18 mutual written agreement of the parties, the period for the
19 scheduling of a contested case hearing may be extended for an
20 additional 30 days.".

21 (47) On page 248, line 25, strike "4.02(b),".

22 (48) On page 262, line 7, strike ", except Section 4.02(b)".

(49) On page 265, line 21, strike "<u>, except Section 4.02(b)</u>".

(50) On page 271, line 17, strike "POOL" and substitute "FACILITY".

(51) On page 271, line 19, strike "Pool" and substitute "Facility".

(52) On page 272, line 24, strike "are" and substitute "is".

ADOPTED
by 22 yeas 9 nays
MAY 22 1989

Secretary of the Senate

AMENDMENT NO. 2 BY

Amend C.S.H.B. 1 as follows:

(1) On pages 193 and 194, amend Section 13.08 by striking the new Article 5.55B, Insurance Code.

(2) On page 272, after line 27, insert a new Section 17.081 to read as follows:

SECTION 17.081. SMALL BUSINESS STUDY OF OPTIONAL DEDUCTIBLE POLICIES. (a) The Texas Worker's Compensation Commission shall conduct a study relating to the offering of policies providing for deductibles to small employers and shall report the results of the study to the 72nd Legislature. On the request of the commission, the State Board of Insurance shall assist the commission.

(b) The study conducted under Subsection (a) of this section must include a plan containing specific recommendations for the protection of employees from intimidation and securing the payment of compensation benefits up to the deductible amount directly from the insurance carrier.

(c) This section expires August 31, 1991.

Floor

AMENDMENT NO. 8 BY: Mastland

Amend C.S.H.B. 1 as follows:

On page 29, line 18 after "distributes", strike "confidential information" and substitute "information which is confidential under this chapter".

On page 29, line 22 after "information" insert "which is confidential under this chapter".

ADOPTED

MAY 22 1989

Secretary of the Senate

AMEND THE CAPTION TO CONFORM

TO THE BODY OF THE BILL

ADOPTED

MAY 22 1989

Secretary of the Senate

SENATE AMENDMENTS

2nd Printing

89 MAY 23 PM 5:44
HOUSE OF REPRESENTATIVES

By Smith of Brazos, et al. H.B. No. 1

A BILL TO BE ENTITLED

AN ACT

relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. Articles 1-11 of this Act may be cited as the Texas Workers' Compensation Act.

SECTION 1.02. DEFINITIONS. In this Act:

(1) "Adjuster" means a person licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(2) "Advisory council" means the Labor-Business Advisory Council on Workers' Compensation.

(3) "Agreement" means the resolution by the parties to a dispute based on a workers' compensation claim of one or more issues regarding the claim. The term does not include a settlement.

(4) "Benefit" means a benefit received by a claimant based on a compensable injury. The term includes a medical benefit, an income benefit, and a death or burial benefit.

(5) "Board" means the Texas Workers' Compensation Board.

(6) "Child" means a son, daughter, stepson, or

stepdaughter. The term includes an adopted child.

(7) "Commute" means to pay in a lump sum.

(8) "Compensable injury" means an injury that arises in the course and scope of employment for which compensation is payable under this Act.

(9) "Compensation" includes medical benefits, income benefits, death benefits, or burial benefits.

(10) "Course and scope of employment" means an activity of any kind or character that originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes activities conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of such transportation are under the control of the employer; or

(iii) the employee is directed in his employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of his employer if such travel is also in furtherance of personal or private affairs of the employee unless:

(i) the trip to the place of occurrence of the injury would have been made even had there been no personal or

private affairs of the employee to be furthered by the trip; and

(ii) the trip would not have been made had there been no affairs or business of the employer to be furthered by the trip.

(11) "Dependent" means an individual who is classified as a dependent for federal income tax purposes under 26 U.S.C. Sec. 152.

(12) "Designated health care practitioner" means a health care practitioner who is appointed by the parties or the board to resolve a dispute as to the disability or impairment of an injured employee.

(13) "Disability" means the inability to obtain and retain substantial gainful employment because of the physical incapacity to perform the functions required for employment, when a compensable injury was a producing cause of the incapacity.

(14) "Employee" means each person in the service of another under any contract of hire, whether express or implied, or oral or written. The term includes an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business. The term also includes a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer. The term does not include a master of, or a seaman on, a vessel engaged in interstate or foreign commerce, or a person whose employment is not in the usual course and scope

of the employer's business. A person who is an employee for purposes of this Act and is engaged in work that otherwise may be legally performed is an employee despite any license, permit, or certificate violation arising under state law or municipal ordinance or violation of a law regulating wages, hours, or work on Sunday.

(15) "Employer" means, unless otherwise specified, a person that makes a contract of hire, that employs one or more employees, and that has workers' compensation coverage, either through self-insurance obtained as provided by this Act or through private insurance obtained from a licensed insurance carrier. The term includes a governmental entity that self-insures, either individually or collectively.

(16) "Health care" includes all reasonable and necessary medical aid, examinations, treatments, diagnoses, and evaluations. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, nursing, physical therapy practices, and psychological services provided by a health care provider;

(B) the services of a hospital or other health care facility;

(C) prescription drugs, medicines, and other remedies; and

(D) medical and surgical supplies, appliances, artificial members, and prosthetics.

(17) "Health care facility" means a hospital,

emergency clinic, outpatient clinic, or other facility providing health care.

(18) "Health care practitioner" means a licensed individual who provides or renders health care or a nonlicensed individual who provides or renders health care under the supervision of a physician.

(19) "Health care provider" means a health care facility or health care practitioner.

(20) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from the compensable injury and is reasonably presumed to be permanent.

(21) "Income benefit" means a payment made to an employee for disability or impairment.

(22) "Injury" means damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm.

(23) "Insurance carrier" means:

(A) a person authorized and admitted by the State Board of Insurance to do insurance business in Texas pursuant to a certificate of authority that includes authorization to write workers' compensation insurance;

(B) a certified self-insurer under this Act; or

(C) a governmental entity that self-insures, either individually or collectively.

(24) "Intoxication" means physical or mental impairment resulting from the introduction into the body of:

(A) an alcoholic beverage, as that term is defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as those terms are defined by the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes);

(C) a dangerous drug, as defined by Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes);

(D) an abusable glue or aerosol paint, as defined by Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes); or

(E) any similar substance, the use of which is regulated under state law.

Intoxication does not include physical or mental impairment resulting from the introduction into the body of a substance taken pursuant to and in accordance with a prescription written for the employee by the employee's treating practitioner.

(25) "Legal beneficiary" means a spouse, child, grandchild, or other relative of a deceased employee who is eligible to receive benefits under this Act.

(26) "Maximum medical improvement" means the point after which further recovery from, or lasting improvement to, an injury can no longer reasonably be anticipated, based on the reasonable professional opinion of a health care practitioner.

(27) "Medical benefits" means the provision of health care reasonably required by the nature of a compensable injury and

intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational diseases before the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment, including any medical supplies or equipment necessary to the maintenance of the employee's ability to function, such as a prosthesis or a wheelchair.

(28) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. The term includes other diseases or infections that naturally result from the work related disease, and damage or harm to the physical structure of the body that occurs as the result of repetitious, physically traumatic activities that occur over time and arise in the course and scope of employment. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is a reasonable incident to a compensable injury or occupational disease.

(29) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(30) "Settlement" means a final resolution of all the

issues in a workers' compensation claim that are permitted to be resolved under the terms of this Act.

(31) "Wages" includes every form of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and other advantages that can be estimated in money, that the employee receives from the employer as part of his remuneration.

(32) "Workers' compensation insurance coverage" means an insurance policy to secure the payment of workers' compensation benefits as provided by this Act and includes coverage obtained through self-insurance as provided by this Act.

ARTICLE 2. TEXAS WORKERS' COMPENSATION BOARD

SECTION 2.01. BOARD. (a) The Texas Workers' Compensation Board is composed of six members appointed by the governor with the advice and consent of the senate.

(b) Three members must be employers of labor and three members must be wage earners. In making appointments to the board, the governor shall attempt to reflect the social, geographic, and economic diversity of the state. To ensure balanced representation, the governor may consider the geographic location of a prospective appointee's domicile, the prospective appointee's experience as an employer or wage earner, the number of employees employed by a prospective member who would represent employers, and the type of work performed by a prospective member who would represent wage earners, and shall consider those factors in appointing members to fill vacancies on the board. In making the appointments, the governor shall consider recommendations made in

groups that represent employers or wage earners.

(c) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(d) A member of the board is not liable in a civil action for any act performed in good faith in the execution of duties as a board member.

SECTION 2.02. APPLICATION OF SUNSET ACT. The board is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the board is abolished and this Act expires September 1, 2001.

SECTION 2.03. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A person is not eligible for appointment as a member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care or insurance;

(2) is employed by or participates in the management of a business entity or other organization regulated by the board, other than as an employer who has obtained workers' compensation insurance coverage, or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board, other than as an employer who has obtained workers' compensation insurance coverage, or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible

goods, services, or funds from the board, other than remuneration or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of law, health care, or insurance may not be a member of the board or an employee of the board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

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

(d) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for remuneration on behalf of a profession related to the operation of the board.

(e) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in

promoting their common interest.

SECTION 2.04. TERMS; VACANCY. (a) Members of the board hold office for staggered terms of six years. Three members' terms expire February 1 of each odd-numbered year.

(b) If a vacancy occurs during a term, the governor shall appoint a replacement to fill the unexpired part of the term.

SECTION 2.05. CHAIRMAN. The board shall elect one of its members to serve as chairman for a term of two years. The chairman may vote on all matters before the board.

SECTION 2.06. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by Section 2.03 of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or incapacity; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

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

(c) If the executive director of the board has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

SECTION 2.07. REMUNERATION. A member of the board may not receive remuneration for serving on the board. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the board, not to exceed any limit established in the General Appropriations Act.

SECTION 2.08. MEETINGS. (a) The board shall meet at least once in each quarter of the calendar year.

(b) The board may meet at other times at the call of the chairman or as provided by the rules of the board.

SECTION 2.09. EXECUTIVE DIRECTOR; PERSONNEL. (a) The board shall appoint an executive director to administer this Act in accordance with the policies set by the board. The board shall organize the board's personnel into the administrative divisions the board determines necessary, which must include the divisions established by this Act. The board shall appoint the directors of the various divisions of the board. The executive director or the executive director's designee shall hire the other employees of the board.

(b) The executive director shall hire persons to conduct benefit review conferences and contested case hearings under this Act. The executive director shall determine reasonable qualifications for benefit review officers, who are not required to

be licensed to practice law, and for hearings officers who conduct contested case hearings, who must be licensed to practice law in this state. The executive director also shall hire qualified persons licensed to practice law in this state to serve on agency appeals panels under Section 5.01(b) of this Act.

(c) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting.

(d) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

(e) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the board's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board's work force of all persons for whom federal or state guidelines encourage a more equitable

balance; and

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

(f) A policy statement prepared under Subsection (e) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

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

SECTION 2.091. LIAISONS. (a) The board shall employ one person to act as a liaison for employers and one person to act as a liaison for employees.

(b) In addition to any other duties prescribed by the board, the employer liaison shall advise and assist employers in dealing with the board.

(c) In addition to any other duties prescribed by the board, the employee liaison shall advise and assist employees in dealing with the board and shall ensure that a claimant has all information necessary to initiate and pursue a claim for benefits as provided by this Act.

(d) The executive director shall supervise the activities of the employer and employee liaisons.

SECTION 2.10. GENERAL POWERS AND DUTIES OF BOARD. (a) The board may adopt rules as necessary for the implementation and enforcement of this Act in accordance with Sections 1-12, except Section 4(a)(3) and 4(b), Administrative Procedure and Texas

Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The procedures set forth in Section 19A, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), apply to the enforcement of an order, decision, or rule of the board.

(c) The board may delegate all powers and duties, except rule-making and except as otherwise provided by this Act, to employees of the agency.

(d) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board. The agency is composed of the board, the executive director, and the professional, technical, and clerical personnel appointed by the board or employed by the executive director.

(f) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(g) The board may accept gifts, grants, or donations as provided by rules adopted by the board.

SECTION 2.11. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board shall keep an information file about each written complaint filed with the board that is unrelated to a specific workers' compensation claim. If such a complaint is filed with the board, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(c) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on issues under the general jurisdiction of the board.

(d) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental handicap may be provided reasonable access to workers' compensation benefits.

ARTICLE 3. WORKERS' COMPENSATION COVERAGE

SECTION 3.01. VOLUNTARY COVERAGE; EMPLOYER ELECTION. (a) For purposes of this section, "employer" means a person that employs one or more employees.

(b) Except as otherwise provided by this subsection or other law, an employer may elect to obtain workers' compensation

insurance coverage. An employer shall obtain workers' compensation insurance to cover an employee who is employed on a construction project if the project is the result of a contract between the employer and the United States, a federal agency, this state, a state agency, a political subdivision of this state, or any other public entity. Except for public employers covered under other law, an employer may obtain coverage through a licensed insurance carrier or through self-insurance as provided by Article 9 of this Act. An employer who elects to obtain coverage is subject to the provisions of this Act.

(c) An employer who does not elect to obtain coverage must notify the board in writing, within a time period, and as prescribed by board rule, that the person does not elect to obtain coverage. The board shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the board about the nature of the employer's business. The board may contract with the Texas Employment Commission or the comptroller of public accounts for assistance in collecting the notification required under this section. These agencies shall cooperate with the board in enforcing this section.

(d) An employer shall notify each employee as to whether or not the employer has workers' compensation insurance coverage. The employer shall notify a new employee at the time the employee is hired. An employer who has workers' compensation insurance coverage shall notify all employees at least annually. A covered employer who elects to terminate employer's workers' compensation

insurance coverage, or whose coverage is canceled, must notify each employee of the termination or cancellation of the coverage not later than the 10th day after the date on which the termination or cancellation is effective. An employer who does not have workers' compensation coverage shall notify each employee individually at least semiannually and shall include in the notice a statement prescribed by the board that explains to the employee the consequences of the employer's lack of coverage. All employer notifications required under this subsection must be made in writing.

SECTION 3.02. EMPLOYEE ELECTION; WAIVER OF RIGHT TO COMPENSATION VOID. (a) Except as otherwise provided by this Act, unless the employee gives notice as provided by Subsection (b) of this section, an employee of an employer waives the employee's right of action at common law or under any statute of this state to recover damages for personal injuries or death sustained in the course of the employment.

(b) An employee who desires to retain the employee's right of action to recover those damages shall notify the employer in writing that the employee does not want to be covered under this Act and retains all rights of action. The employee shall notify the employer not later than the fifth day after the date the employee begins the employment. If the employer is not a covered employer at the time of the employment but later obtains workers' compensation insurance coverage, to retain the right of action the employee must notify the employer in writing not later than the fifth day after the date on which the employee receives notice in

writing from the employer that the employer has obtained the coverage.

(c) An employee of an employer who elects to retain the right of action, and the legal beneficiaries of that employee, may bring a cause of action for damages for injuries sustained in the course of the employment under common law or under a statute of this state. Notwithstanding Section 3.03 of this Act, the cause of action is subject to all defenses available under the common law and the statutes of this state.

(d) An agreement by an employee to waive the employee's right to compensation under this Act is void.

SECTION 3.03. COMMON LAW DEFENSES. (a) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) The employer may defend the action on the ground that the injury was caused by an intentional act of the employee to bring about the injury or while the employee was in a state of intoxication.

(c) In all such actions against an employer who does not

have workers' compensation insurance coverage, it shall be necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of his employment.

SECTION 3.04. GENERAL APPLICATION; EXCEPTIONS. (a) This Act applies to actions to recover damages for personal injuries or death sustained by employees whose employers have workers' compensation insurance coverage.

(b) An employee is not entitled to benefits under this Act based on an injury that was caused by an intentional act of the employee to bring about injury or that occurred while the employee was in a state of intoxication.

(c) The following employees are not covered by this Act:

(1) domestic servants;

(2) casual employees engaged in employment incidental to a personal residence;

(3) except as provided by Section 3.05 of this Act, farm or ranch employees; or

(4) an employee covered by a method of compensation established under federal law.

(d) An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees otherwise exempted from coverage under Subsection (c) of this section. Self-insurance or purchase by the employer of workers' compensation insurance applicable to that employee or classification of employees constitutes acceptance by the employer of the rights and responsibilities imposed under this Act as of the

effective date of the certificate of authority to self-insure or the insurance policy and as long as the certificate or policy remains in effect. An employer who does not obtain coverage for exempt employees is not deprived of the common law defenses listed under Section 3.03 of this Act.

SECTION 3.05. APPLICATION TO FARM OR RANCH EMPLOYEES. (a) This Act applies to actions to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker covered by Subsection (b) of this section; or

(3) employed by an employer with a gross annual payroll for the preceding year in the amount provided by Subsection (c) of this section.

(b) To be covered by this Act, a farm or ranch employee who is a seasonal worker must be employed on a truck farm, orchard, or vineyard or employed by an employer with a gross annual payroll for the preceding year in an amount provided by this subsection. The preceding year's gross annual payroll must be equal to or exceed the prior year's required payroll adjusted for inflation, but not less than $25,000. To adjust for inflation, the comptroller of public accounts shall develop a consumer price index for this state. The comptroller shall certify the applicable index factor to the board before October 1 of each year. The board shall adjust the gross annual payroll requirement accordingly. A seasonal worker is covered by this law as if the seasonal worker were a migrant worker if:

(1) the seasonal worker is working for a farmer, ranch operator, or labor agent who employs migrant workers; and

(2) the seasonal worker is doing the same work at the same time at the same location as migrant workers.

(c) To be covered by this law, a farm or ranch employee other than a migrant or seasonal worker must:

(1) for the years before 1991, be employed by an employer with a gross annual payroll for the preceding year of at least $50,000; and

(2) for 1991 and thereafter, be employed by an employer:

(A) with a gross annual payroll in the amount required for coverage of seasonal workers under Subsection (b) of this section; or

(B) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(d) For purposes of Subsections (b) and (c) of this section, the gross annual payroll of an employer includes any amount paid by the employer to a labor agent for that agent's services and for the services of migrant or seasonal workers, but does not include:

(1) wages paid to the employer or a member of the employer's family, if the employer is a sole proprietor;

(2) wages paid to a partner or a member of a partner's family, if the employer is a partnership; or

(3) wages paid to a shareholder or a member of a shareholder's family, if the employer is a corporation in which all shareholders are family members.

(e) If a labor agent furnishes migrant or seasonal workers, the labor agent is liable under this law as if the labor agent were the employer of the workers, without regard to the right of control or other factors used to determine an employer-employee relationship. However, if the labor agent is not an employer, the person with whom the labor agent contracts for the services of the migrant or seasonal workers is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by any of the migrant or seasonal workers as provided by this Act. For that purpose, the migrant or seasonal workers are considered the employees of the person with whom the labor agent contracts, and that person may obtain workers' compensation insurance coverage for those workers as provided by this Act.

(f) A labor agent must notify each person with whom the agent contracts of whether or not the agent is an employer. If the agent is an employer, the agent must present evidence of the workers' compensation insurance coverage to each person with whom the agent contracts.

(g) If migrant or seasonal workers are covered by workers' compensation insurance, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this Act.

(h) A person who subscribes to a workers' compensation insurance policy covering farm or ranch employees may cover himself, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual

to be covered, and the elected coverage continues while the policy is in effect and the named individual is endorsed on the policy. A member of an employer's family is exempt from coverage under the policy unless covered voluntarily as provided by this section.

(i) In this section:

(1) "Agricultural labor" means the planting, cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.A. Sec. 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who labor for the benefit of a third party.

(4) "Migrant worker" means an individual who is employed in agricultural labor of a seasonal or temporary nature and who is required to be absent overnight from the worker's permanent place of residence.

(5) "Person" means an individual, corporation, or association.

(6) "Seasonal worker" means an individual who is employed in agricultural or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from the worker's permanent place of residence.

(7) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

(j) This section does not affect the application or interpretation of this Act as it relates to persons engaged in activities previously determined not to be farm or ranch labor.

(k) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this section is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of a person acting as an independent contractor. For the purposes of this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of that employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

SECTION 3.06. AGGRAVATION OF PREVIOUSLY EXISTING DISEASES. Where an occupational disease is aggravated by any other noncompensable disease or infirmity, or where incapacity or death from any other noncompensable cause is aggravated, prolonged, accelerated, or in anywise contributed to by an occupational disease, the number of weeks of compensation payable by the insurance carrier shall be reduced and limited to such proportion only of the total number of weeks of compensation that would be payable if the occupational disease were the sole cause of the incapacity or death, as such occupational disease, as a causative factor, bears to all the causes of such incapacity or death, such reduction in compensation to be effected by reducing the number of weekly payments of compensation for which the insurance carrier is liable.

SECTION 3.07. APPLICATION TO INDEPENDENT CONTRACTORS. (a) In this section:

(1) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of, or method of payment to, any employee; and

(C) is required to furnish or have his

employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(2) "General contractor" means a person who has undertaken to procure the performance of work or services, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or an analogous term.

(3) "Subcontractor" means a person who has contracted with a general contractor to perform all or any part of the work or services that a general contractor has undertaken to perform.

(b) For the purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a general contractor who is an employer under this Act is an employee of that general contractor, unless the person is operating as an independent contractor or is hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(c) A subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this Act if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(d) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor. If a general contractor elects to provide that coverage, then, notwithstanding Section 10.02 of this Act, the actual premiums, based on payroll, that are paid or incurred by the general contractor for the coverage may be deducted from the contract price or any other amount owed to the subcontractor by the general contractor.

(e) If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the purpose and intent to avoid liability as an employer under this Act, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation, and shall also have a separate right of action against the subcontractor, which right of action does not affect the employee's right to compensation under this Act.

(f) This section does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to cease or change unsafe work practices.

SECTION 3.08. LIABILITY OF GENERAL CONTRACTOR FOR CERTAIN SUBCONTRACTORS. (a) If a general contractor has workers' compensation insurance to protect the general contractor's employees, and if, in the execution of any work in the course and scope of the general contractor's business, the general contractor

enters a contract with a subcontractor who is a sole proprietor with no employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this Act.

(b) The general contractor and subcontractor may enter into a written agreement regarding the payment of the premiums for coverage of the subcontractor as provided by Section 3.07(d) of this Act.

ARTICLE 4. BENEFITS

CHAPTER A. GENERAL PROVISIONS

SECTION 4.01. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b) of this section, a recovery of workers' compensation benefits under this Act is the exclusive remedy of an employee or legal beneficiary against the employer or an agent, servant, or employee of the employer for the death of or a work related injury sustained by a covered employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer, or by the employer's gross negligence. For the purposes of this section, "gross negligence" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

SECTION 4.02. EXEMPT FROM LEGAL PROCESS; ASSIGNABILITY. (a) Benefits received under this Act are exempt from garnishment, attachment, judgment, and other actions or claims.

(b) Except as provided by Subsection (c) of this section, benefits are not assignable.

(c) A legal beneficiary may, with board approval, assign the

right to death benefits if the assignment is executed not later than six months after the date on which the right to the death benefits is established.

SECTION 4.03. ALLOWABLE LIENS. (a) Except as provided by board rule, income or death benefits are not subject to any lien or other claim. The board may allow as a lien or claim against income or death benefits:

(1) an attorney's fee for representing an employee or legal beneficiary in any matter arising under this Act;

(2) court ordered child support; or

(3) a subrogation interest established under this Act.

(b) The board by rule shall establish the priority of liens and claims authorized under this section.

SECTION 4.04. NOTICE OF INJURY TO EMPLOYER. (a) An employee who sustains a work related injury other than an occupational disease shall notify the employer not later than the 30th day after the date on which the injury occurs. If the injury is an occupational disease, the employee shall notify the employer not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment.

(b) An employee's failure to notify the employer as required under Subsection (a) of this section relieves the employer and the employer's insurance carrier of liability under this Act unless:

(1) the employer or carrier has actual knowledge of the injury;

(2) the board determines that good cause exists for

failure to give notice in a timely manner; or

(3) the employer or carrier does not contest the claim.

(c) The notice required in this section may be given to the employer or any employee of the employer who holds a supervisory or management position.

(d) When the injury is an occupational disease, the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease.

(e) The Texas Workers' Compensation Board shall design and produce a sign giving notice to employees of the requirements of this section of this Act as pertaining to them. The employer must post these signs in a conspicuous place in the workplace for a period of five years from the effective date of this Act. The board shall adopt rules to implement this section.

SECTION 4.05. EMPLOYER RECORD. (a) Each employer shall maintain a record of all employee injuries reported by an employee or otherwise made known to the employer. Maintenance of a record as required by this section does not constitute an admission by the employer that the injury did occur or that any fact reported in the record is true.

(b) The employer shall allow the board reasonable access to the record.

(c) The board may adopt rules relating to the information that must be contained in an employer record.

SECTION 4.06. EMPLOYER RIGHT TO CONTEST COMPENSABILITY. (a) An employer may contest the compensability of an injury even if the

insurance carrier has initiated payments to the claimant or has otherwise accepted liability for payment of the benefits as provided under Section 4.10(a) of this Act. An employer who desires to contest compensability must request a benefit review conference under Section 5.02 of this Act on the issue of the compensability of the injury not later than the 30th day after the date on which the carrier accepts liability.

(b) The resolution of a dispute as to compensability is separate from the processing of the claim by the carrier, who may not suspend the payment of benefits based on the employer's action.

(c) If the board determines that the injury was not compensable, the insurance carrier shall expunge the claim from the employer's loss records and shall reimburse the employer for the costs incurred by the employer in disputing the claim. The carrier may not reflect the loss or the expense of the claim in any information compiled for ratemaking purposes, and the State Board of Insurance may not consider those losses or expenses in establishing rates.

SECTION 4.07. RIGHT TO NOTICE. An employer and employee are entitled to notification by the board of any benefit review conference, contested case hearing, or review by an agency appeals panel relating to a compensable injury incurred by an employee of an employer.

SECTION 4.08. EMPLOYER REPORT. (a) If an injury results in the absence of the employee from work for more than one day or if the employee notifies the employer of an occupational disease as provided by Section 4.04 of this Act, the employer shall file a

written report with the board and the carrier. The employer shall file the report required by this subsection not later than the eighth day after:

(1) the employee's absence from work for one day due to an injury; or

(2) the employer receives notice that the employee has contracted an occupational disease.

(b) The report must include:

(1) the name and business address of the employer;

(2) a description of the nature of the employer's business;

(3) the name, age, and sex of the injured employee;

(4) the social security number of the employee;

(5) the character of work in which the employee was engaged at the time of the injury;

(6) the occupation of the employee;

(7) the date and time of the injury or date of the first distinct manifestation of an occupational disease;

(8) the nature and cause of the injury or disease; and

(9) any other information required by board rule.

(c) A report filed under this section does not constitute an admission by the employer of any information contained in the report.

(d) On receipt of the employer report, the board shall provide the employee with a written statement that briefly describes the procedures relating to workers' compensation benefits. The statement must include:

(1) the name of the board;

(2) the address of the board's main administrative office;

(3) the telephone number of a board office to call for assistance;

(4) a description of the services provided by the board; and

(5) a brief description of an employee's rights and responsibilities under this Act.

SECTION 4.09. VOCATIONAL REHABILITATION REFERRAL. (a) The board shall analyze each report of injury received under Section 4.08 of this Act to determine if the injured employee would be assisted by vocational rehabilitation. If the board determines that the injured employee would be assisted, the board shall notify the injured employee in writing of the services and facilities available through the Texas Rehabilitation Commission and private providers of vocational rehabilitation registered with the board. The board shall notify the Texas Rehabilitation Commission and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(b) The board shall cooperate with the Texas Rehabilitation Commission in the provision of services and facilities to employees by that commission.

(c) A private provider of vocational rehabilitation services may register with the board.

SECTION 4.10. INITIATION OF COMPENSATION; CARRIER'S REFUSAL.

(a) An insurance carrier obligated to pay compensation under this Act shall pay promptly. If the carrier does not contest compensability of the injury on or before the 60th day after the date on which the carrier is notified of the injury, the carrier waives its right to contest the compensability. The initiation of payments by a carrier does not affect the right of the carrier to continue to investigate or deny the compensability of the injury during the 60-day period. If the carrier does not initiate payment or file a notice of refusal in a timely manner as required by this Act, the carrier waives the right to contest the compensability of the injury under this Act. The carrier shall notify the board in writing of the initiation of income or death benefit payments in the manner prescribed by board rules. Notwithstanding the terms of this section, the board may, on a showing of clear and convincing evidence that a claim was fraudulent, allow a carrier to reopen the issue of compensability.

(b) Not later than the 14th day after the date on which the insurance carrier receives written notice of the injury, the carrier either shall begin the payment of benefits as required under this Act or shall notify the board, the employer, and the employee in writing of its refusal to pay. A notice of refusal to pay must include a request for a benefit review conference under Section 5.02 of this Act.

(c) The carrier's notice must specify the grounds for the refusal. The grounds specified in the notice constitute the only basis for the carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly

discovered evidence that could not reasonably have been discovered at an earlier date. If the board determines that the carrier did not have reasonable grounds for the refusal, the carrier is subject to sanctions as provided by Section 10.11 of this Act and Article 1.10, Insurance Code.

SECTION 4.11. SUBROGATION. (a) If a third party is liable to pay damages for an injury that is compensable under this Act, the employee or legal beneficiary may seek damages from the third party. An employee or legal beneficiary who seeks damages from a third party remains entitled to pursue a claim for workers' compensation benefits under this Act.

(b) If the employee or legal beneficiary elects to seek damages from a third party, notice of the election shall be given by certified mail to the insurance carrier and the board. If an action is filed by the employee or legal beneficiary, a copy of the original petition shall be sent to the insurance carrier and the board.

(c) An insurance carrier that is liable for the payment of benefits to that employee is subrogated to the rights of the employee or legal beneficiary against the third party.

(d) If under the provisions of this Act, a state special fund is liable for the payment of the benefits, the board is subrogated to the rights of the employee or legal beneficiary against the third party.

(e) Damages recovered from a third party under this section shall be distributed as follows:

(1) the costs and reasonable attorney's fees shall be

paid proportionately by the employee, the carrier, and the board, as appropriate;

(2) the carrier and the subsequent injury fund, as appropriate, shall be reimbursed for any compensation paid; and

(3) any remaining balance shall be paid to the injured employee or the legal beneficiary.

(f) After the recovery has been distributed as provided, no payment of compensation shall be made to or on behalf of the employee or legal beneficiary until the amount of further compensation equals the remaining balance paid to the employee or beneficiary under Subsection (e)(3) of this section. Thereafter, compensation shall be resumed.

(g) Attorney's fees under this section shall be subject to the approval of the court and may not exceed 33 percent of the total amount recovered.

SECTION 4.12. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death.

SECTION 4.13. EMPLOYER LIABILITY TO THIRD PARTY. Except as provided by Section 7(b), Chapter 41, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1436c, Vernon's Texas Civil Statutes), if an action for damages is brought by an injured employee, the legal beneficiary of a deceased employee, or an insurance carrier, against a third party liable to pay damages for the injury as provided by Section 4.11 of this Act, and the action results in a judgment against the third party or a settlement by the third party, the employer is not liable to the third party for

any reimbursement or damages based on the judgment or settlement unless the employer executed, before the injury occurred, a written agreement with the third party to assume the liability.

[Sections 4.14-4.20 reserved for expansion]

CHAPTER B. MEDICAL BENEFITS

SECTION 4.21. ENTITLEMENT TO MEDICAL BENEFITS. (a) An injured employee is entitled to all health care reasonably required by the nature of the compensable injury as and when needed. The employee is specifically entitled to health care that:

(1) cures or relieves pain;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment, including medical supplies or equipment necessary to the maintenance of the employee's ability to function, such as a prosthesis or a wheelchair.

(b) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

SECTION 4.22. CHOICE OF HEALTH CARE PROVIDER; EFFECT OF EMPLOYEE NONCOMPLIANCE. (a) The employee is entitled to the employee's initial choice of health care provider. An initial choice of a health care provider made by the employer or the insurance carrier, or medical treatment provided to an injured employee in an emergency situation, does not constitute the employee's choice for purposes of this section.

(b) A subsequent choice of health care provider by the employee is subject to the approval of the insurance carrier. The denial of approval by the insurance carrier of the employee's

subsequent choice of health care provider is subject to review by the board.

(c) A referral made by the employee's initial choice of health care provider that is medically reasonable or necessary does not constitute a change in the employee's initial choice for the purposes of this section and is not subject to the approval of the insurance carrier.

(d) Except as otherwise provided by this Act, the board, after notice and hearing, may relieve an insurance carrier of liability for medical benefits furnished by a health care provider or other person that is selected by an employee in a manner inconsistent with the requirements of this section.

(e) The limitations imposed by this section do not apply:

(1) if surgical or other procedures require ancillary medical services; or

(2) when the employee desires a second opinion on the appropriateness of the diagnosis or treatment.

(f) The insurance carrier may not require the employee to use pharmaceutical services designated by the carrier. The carrier shall notify the injured employee, on a form prescribed by the board, that the employee is entitled to the employee's choice of provider of pharmaceutical services.

SECTION 4.23. REPORTS BY HEALTH CARE PROVIDER. The board by rule shall adopt reasonable requirements for reports required to be filed with the board by health care providers.

SECTION 4.24. BURDEN OF PROOF FOR CONTINUING MEDICAL BENEFITS. If, for two consecutive years, an employee does not

1 receive health care for a compensable injury, whether or not paid
2 for by the insurance carrier, the employee has the burden of proof
3 to establish that any additional medical care is required and
4 directly related to the compensable injury.

5 SECTION 4.25. REQUIRED MEDICAL PROCEDURES; AUTOPSY. (a) To
6 resolve a medical dispute in a claim, a benefit review officer or
7 hearings officer may order an employee to submit to a medical
8 examination, including an examination by a designated health care
9 practitioner, or to obtain health care considered reasonably
10 necessary. Surgery may be ordered only if, based on reasonable
11 medical evidence, the surgery will substantially improve the
12 condition of the employee. An order for surgery may be entered
13 only by the director of the hearings division.

14 (b) When, in a claim for benefits for death from an
15 occupational disease, an autopsy is necessary to determine the
16 cause of death, a hearings officer may, after notice and hearing,
17 order the legal beneficiaries of a deceased employee to permit an
18 autopsy. A legal beneficiary is entitled to have a representative
19 present at an autopsy ordered under this section.

20 (c) The board shall require the insurance carrier to pay the
21 costs of a procedure ordered under this section.

22 (d) If a person fails to comply with a procedure ordered
23 under this section, the board, after notice and hearing and for as
24 long as the person remains out of compliance, may deny the person
25 access to further proceedings before the board and may order the
26 carrier to suspend or reduce income or death benefits. If a person
27 refuses to comply with a procedure ordered under this section, the

1 person is entitled to administrative hearings and judicial review
2 in the manner provided for the resolution of other disputes under
3 Article 5 of this Act.
4 SECTION 4.26. REQUIRED MEDICAL EXAMINATIONS. (a) The board
5 may require the employee to submit to medical examinations if there
6 is a dispute about the appropriateness of the health care received
7 by the employee, the disability of the employee, the percentage of
8 impairment caused by the compensable injury, or analogous issues.
9 (b) The insurance carrier may require the employee to submit
10 to a medical examination conducted by a health care provider chosen
11 by the carrier. A carrier may require an employee to submit to
12 additional medical examinations only with the prior written
13 approval of the board. A referral made by the carrier's choice of
14 health care provider that is reasonable or necessary does not
15 constitute a change in the carrier's choice for the purposes of
16 this subsection and does not require the prior approval of the
17 board.
18 (c) The board shall adopt rules regulating the actions of
19 the carrier under this section and establishing reasonable
20 compliance requirements for employees.
21 (d) The employee is entitled to have a health care provider
22 of the employee's choice present at the carrier's expense at an
23 examination required by the insurance carrier.
24 SECTION 4.27. COMPENSABILITY OF HEART ATTACKS. A heart
25 attack is a compensable injury under this Act only if:
26 (1) the attack can be identified as:
27 (A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a pre-existing heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors.

SECTION 4.28. PAYMENT OF HEALTH CARE PROVIDER. (a) Unless the amount of the payment or the entitlement to payment is disputed by the carrier, an insurance carrier shall pay a fee charged by a health care provider not later than the 30th day after the date of receipt by the carrier of a charge for services rendered by the provider.

(b) To dispute the fee charged by the health care provider, the carrier must request a benefit review conference not later than the 10th day after the receipt of the provider's charge for the services in dispute.

[Sections 4.29-4.40 reserved for expansion]

CHAPTER C. INCOME BENEFITS

SECTION 4.41. INCOME BENEFITS; DETERMINATION BY BOARD. (a) An employee is entitled to income benefits to compensate the employee for impairment or disability caused by the compensable injury.

(b) Except as otherwise provided by this Act, income benefits shall be paid on a weekly basis. Entitlement to income benefits under this chapter terminates on the death of the

employee.

(c) The board shall adopt rules and guidelines for the determination of the existence and degree of an employee's impairment or disability. An employee's impairment rating is based on the percentage of physical impairment to the whole body caused by the injury, modified to reflect the effects that the employee's age, education, and work experience may have on the employee's ability to obtain or retain substantial gainful employment. Modifications must be based on objective criteria. The board by rule shall adopt formulas relating to modifications of impairment for the purposes of this Act. All determinations of impairment and disability must be made in accordance with the rules, guidelines, and formulas adopted by the board.

SECTION 4.42. TEMPORARY DISABILITY INCOME BENEFITS. (a) An employee who is totally or partially disabled by a compensable injury is entitled to temporary disability income benefits beginning on the eighth day of disability. On the initiation of compensation as provided under Section 4.10(b) of this Act, the insurance carrier shall pay temporary disability income benefits as provided by this section.

(b) Temporary disability income benefits continue until the earlier of:

(1) the employee reaching maximum medical improvement; or

(2) the expiration of 401 weeks.

(c) Except as provided by Subsection (e) of this section, temporary disability income benefits are payable at the rate of

66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.48 of this Act.

(d) If the disability continues for at least 28 days, the employee is also entitled to temporary disability income benefits for the first seven days of disability.

(e) An employee who returns to work or is offered a position of employment by the employer, or any other employer, that the treating health care practitioner has certified the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, but who has not reached maximum medical improvement, is entitled to temporary disability income benefits at the rate of 66-2/3 percent of the difference between the employee's average weekly wage and the average weekly earnings in the position that the employee is performing or has been offered.

SECTION 4.43. IMPAIRMENT INCOME BENEFITS. (a) After the employee has been certified by a health care practitioner as having reached maximum medical improvement, the certifying practitioner shall evaluate the condition of the employee, using the guidelines adopted by the board, to determine the percentage of impairment caused to the employee by the injury. If the certification and evaluation are performed by a health care practitioner other than the employee's treating practitioner, the certification and evaluation shall be submitted to the treating practitioner and the treating practitioner shall indicate agreement or disagreement with the certification and evaluation. The certifying health care practitioner shall issue a written report to the board, the

employee, and the insurance carrier certifying that maximum medical improvement has been reached and stating the percentage of impairment. The insurance carrier shall pay the employee impairment income benefits based on that percentage of impairment as modified under Section 4.41(c) of this Act or, if the carrier disputes the percentage of impairment, based on its assessment of the correct percentage.

(b) An employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement and continues until the earliest of:

(1) the death of the employee;

(2) the expiration of a period computed at the rate of three weeks for each percentage point of impairment as modified under Section 4.41 of this Act, but not to exceed 300 weeks; or

(3) the expiration of 401 weeks of receipt of all income benefits combined.

(c) The insurance carrier shall begin to pay the impairment income benefits not later than the fifth day after the date on which the carrier receives the health care practitioner's report.

(d) If the percentage of impairment is disputed, the board shall direct the employee to be examined by a designated health care practitioner selected by the mutual agreement of the parties. If the parties are unable to agree on a designated health care practitioner, the board may direct the employee to be examined by a designated health care practitioner selected by the board. The designated health care practitioner shall report to the board in writing. The board shall base the award of impairment income

benefits on the report of the designated health care practitioner.

(e) Impairment income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.48 of this Act.

SECTION 4.44. EXTENDED DISABILITY INCOME BENEFITS. (a) During the period that impairment income benefits are paid, the insurance carrier shall file written reports with the board that specify the employment status of the employee at six-month intervals and as of the 60th day before the date on which the impairment income benefits are scheduled to end. The board may order any evaluations of the employee considered necessary by the board to determine:

(1) the employee's ability to perform the functions reasonably required for employment; and

(2) the reasons for any extended unemployment.

(b) An employee is eligible for consideration for an extension of income benefits as provided by this section if the employee:

(1) as of the date of the payment of the final weekly impairment income benefit and because of continued disability has:

(A) not returned to employment; or

(B) returned to employment at not more than 30 percent of the employee's pre-injury wage; and

(2) has been eligible for and has received impairment income benefits for at least 104 weeks.

(c) The board may order the payment of extended disability income benefits to an employee determined by the board to meet the

requirements imposed under Subsection (b) of this section. The board may order an initial payment of extended disability income benefits for a period not to exceed 52 weeks. At the expiration of each 52-week period thereafter, the board shall reevaluate the condition of the employee and may order the continued payment of extended disability income benefits for an additional 52-week period until the combined duration of the temporary disability income benefits, the impairment income benefits, and the extended disability income benefits received by that employee equals 600 weeks.

(d) Extended disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.48 of this Act.

SECTION 4.45. LIFETIME DISABILITY INCOME BENEFITS. (a) Income benefits for disability shall be paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss or total loss of use of both feet at or above the ankle;

(3) loss or total loss of use of both hands at or above the wrist;

(4) loss or total loss of use of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

(6) an injury to the skull resulting in incurable insanity or imbecility.

(b) Lifetime disability income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit provided by Section 4.48 of this Act.

SECTION 4.46. ADVANCE OF BENEFITS BASED ON HARDSHIP. (a) The board may grant an employee who is suffering financial hardship advances as provided by this Act against the amount of income benefits to which the employee may be entitled.

(b) An employee who desires an advance shall apply to the board on a form prescribed by the board describing the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the state average weekly wage as determined by the Texas Employment Commission. The board may not grant more than two advances to a particular employee based on the same injury.

SECTION 4.461. CONTINUATION OF WAGES. (a) After an injury and during the time that the insurance carrier is not paying benefits, the employer may continue to pay the employee's wages or may initiate weekly payments to the employee.

(b) If the injury is found compensable and the carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of compensation to which the employee was entitled under this Act during the period that the insurance carrier was not making payments and the employer continued to pay the employee's wages or made weekly payments to the employee.

(c) The employer shall notify the board and the insurance carrier on forms prescribed by the board of the initiation of and the amount of payments made under this section.

(d) Such employer payments shall not be construed as an admission of compensability and shall not affect the payment of benefits from any other source.

SECTION 4.47. AVERAGE WEEKLY WAGE. (a) Except as otherwise provided by this section, the average weekly wage of an employee shall be computed as of the date of the compensable injury and equals the quotient of the amount of wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13.

(b) If the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, or if the wage at the time of injury has not been fixed or cannot be determined, the average weekly wage equals the usual wage that the employer pays a similar employee for similar services or that are paid in that vicinity for the same or similar services provided for remuneration taking into account the number of hours normally worked per week.

(c) In this subsection, "part-time employee" means an employee who, at the time of the compensable injury, was working less than the full-time hours or full-time workweek of a similar employee in the same employment, whether for the same or a different employer. The average weekly wage of a part-time employee who has voluntarily elected to limit the employee's work to part-time employment as a regular course of that employee's conduct shall be computed as provided by Subsections (a) and (b) of this section. For all other part-time employees, the average

weekly wage shall be computed for the purpose of determining impairment income benefits, extended disability income benefits, lifetime income benefits, and death benefits as follows:

(1) if the employee has worked for the employer for at least 13 weeks immediately preceding the compensable injury, the average weekly wage equals the quotient of the amount of wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13 and adjusted to the weekly wage level the employee would have attained by working a 40-hour week at the same rate of pay; and

(2) if the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, the average weekly wage equals the weekly wage that the employer pays a similar employee for similar services in full-time employment or that are paid in that vicinity for the same or similar services provided for compensation in full-time employment.

(d) In this subsection, "seasonal employee" means an employee who, as a regular course of that employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year. The average weekly wage of a seasonal employee shall be computed for the purpose of determining temporary disability income benefits as provided by Subsections (a) and (b) of this section, adjusted as often as necessary to reflect the wages the employee could reasonably have expected to earn during the period of temporary disability. The average weekly wage of a seasonal employee shall be computed for the purpose of determining impairment income benefits, extended disability income benefits,

lifetime income benefits, or death benefits by dividing the amount of total wages earned by the employee during the 12 months immediately preceding the injury by 50. If, for good and sufficient reasons as determined by the board, it is impracticable to compute the average weekly wage for a seasonal employee as provided by this subsection, the board shall compute the average weekly wage as of the time of the injury in a manner that is fair and just to both parties.

(e) The average weekly wage for an employee who is a minor, apprentice, trainee, or student at the time of the injury, whose employment or earnings at the time of the injury are limited primarily because of apprenticeship, continuing formal training, or education intended to enhance the employee's future wages, and whose wages would reasonably be expected to change, based on a change of employment during the period in which impairment income benefits, extended disability income benefits, lifetime income benefits, or death benefits are payable, shall be adjusted to reflect the level of expected wages during that period for the purpose of computing those benefits. The adjustment shall not consider expected wage levels for a period occurring more than three years after the date of the injury.

(f) To expedite the payment of income benefits, the board may adopt rules establishing a presumption that the employee's last paycheck accurately reflects the employee's usual wage, or establishing other reasonable presumptions relating to the wages earned by an employee.

(g) If the methods adopted under Subsections (a) and (b) of

this section cannot be applied, the board may determine the employee's average weekly wage by any method that it considers fair, reasonable, and consistent with the methods established under this section.

SECTION 4.48. MAXIMUM WEEKLY BENEFITS. (a) The maximum weekly benefit for temporary disability income benefits or lifetime disability income benefits is 100 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission. The maximum weekly benefit for extended disability income benefits is 66-2/3 percent of that average weekly wage.

(b) The maximum weekly benefit for impairment income benefits is 75 percent of the maximum weekly benefit for temporary disability income benefits.

(c) The board shall determine the maximum weekly income benefit for the succeeding fiscal year not later than September 1 of each year. The board shall round the maximum to the nearest whole dollar.

(d) The maximum weekly benefit in effect on the date of the injury is applicable for the entire period during which income benefits are payable.

SECTION 4.49. CONTRIBUTING INJURY. (a) On the written request of the insurance carrier, the board may order that income benefits for impairment be reduced to the extent of a documented impairment that results from an earlier compensable injury affecting the same body part.

(b) The board shall consider the cumulative impact of the

two injuries on the employee's overall impairment in determining a reduction under this section.

(c) If the combination of two injuries results in an injury compensable under Section 4.45 of this Act, the benefits for that injury shall be paid as provided by Section 4.65 of this Act.

SECTION 4.50. OFFSETS. (a) To ensure that the amount received by an employee in benefits under multiple employer sponsored disability benefit programs or public disability benefit programs does not exceed the employee's net average weekly wage before the injury, adjusted for inflation, the board may order, on a written request from the insurance carrier, that impairment income benefits or extended disability income benefits be reduced to the extent that the employee receives:

(1) board approved disability benefits for the injury from a source other than workers' compensation or social security; or

(2) social security retirement benefits.

(b) A reduction under this section is calculated on the after-tax value of the workers' compensation benefits and the offsetting benefits.

(c) An offset under this section does not reduce or eliminate a carrier's liability for continuing medical benefits.

(d) The board may not order a reduction under this section based on a disability program to which the employee has contributed.

SECTION 4.51. COMMUTING OF IMPAIRMENT INCOME BENEFITS. (a) Impairment income benefits may be commuted as provided by this

section. Only impairment income benefits may be commuted. A commutation of impairment income benefits must be approved by the board.

(b) The parties may agree to a commutation of impairment income benefits if the employee:

(1) has returned to substantial gainful employment and has worked for at least six months; and

(2) has not required or obtained medical treatment calculated and intended to promote final recovery from the injury for at least three months.

(c) The parties shall reduce the commutation agreement to writing and shall submit the agreement to the board for its approval. The board shall approve the agreement if the board determines that the agreement meets the requirements established under Subsection (b) of this section and is in the best interest of the employee.

(d) Impairment income benefits that are commuted under this section are subject to discounting for present payment at four percent, compounded annually.

[Sections 4.52-4.60 reserved for expansion]

CHAPTER D. DEATH AND BURIAL BENEFITS

SECTION 4.61. DEATH BENEFITS. (a) The insurance carrier shall pay death benefits to the legal beneficiary of the employee if the compensable injury results in death. Death benefits shall be calculated in the same manner as impairment income benefits.

(b) A person must file a claim for death benefits with the board not later than one year after the date on which the employee

died. A failure to file a timely claim for death benefits bars the claim unless:

(1) the claimant is a minor or legally incompetent; or

(2) the board determines that a good cause exists for the delay.

SECTION 4.62. DISTRIBUTION OF DEATH BENEFITS. (a) Death benefits shall be paid to the legal beneficiaries according to the priority established by this section.

(b) If there is no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is an eligible child or grandchild, half of the death benefits shall be paid to the eligible spouse, and half shall be paid in equal shares to the eligible children. If a child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(d) If the employee is not survived by an eligible spouse, child, or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, stepparent, sibling, or grandparent of the deceased. If more than one of those dependents survives the deceased, the death benefits shall be divided among them in equal shares.

(e) If the employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 4.65 of this Act.

(f) For the purposes of this section:

(1) "Eligible spouse" means the surviving spouse of

the deceased employee unless the spouse abandoned the employee for more than one year immediately preceding the death without good cause, as determined by the board.

(2) "Eligible child" means a child of the deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age;

(C) because of a physical or mental handicap, a dependent of the deceased employee at the time of death; or

(D) a child who is otherwise a dependent of the deceased employee at the time of death.

(3) "Eligible grandchild" means a grandchild who is a dependent of the deceased employee if:

(A) the grandchild is a minor; and

(B) the grandchild's parent is not an eligible child.

SECTION 4.63. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by board rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive the benefits until the child attains the age of 18 years.

If at age 18 the child is enrolled as a full-time student in an accredited educational institution, the child is entitled to continue to receive the benefits until the earliest of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(d) A child who is eligible for death benefits because the child on the date of the employee's death is enrolled as a full-time student in an accredited educational institution is entitled to receive the benefits until the earlier of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(e) A child who is eligible for death benefits because the child on the date of the employee's death is a handicapped dependent is entitled to receive the benefits until the earlier of:

(1) the date on which the child is no longer handicapped; or

(2) the date on which the child dies.

(f) A child who is otherwise eligible for death benefits as a dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the death of the child; or

(2) the expiration of 360 weeks of death benefit payments.

(g) An eligible grandchild is entitled to death benefits until the grandchild dies or ceases to be a minor.

(h) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

(1) the death of the beneficiary; or

(2) the expiration of 360 weeks of death benefit payments.

SECTION 4.64. BURIAL BENEFITS. (a) If death results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $2,500.

(b) The carrier shall also pay the reasonable cost of transporting the body if the employee died away from the usual place of employment, not to exceed the cost equivalent to transporting the body to the employee's usual place of employment.

SECTION 4.65. SUBSEQUENT INJURY FUND. (a) The subsequent injury fund is created as a special fund in the state treasury.

(b) If a covered employee dies without a legal beneficiary, or no claims for death benefits are made in a timely manner, the insurance carrier shall pay to the board for deposit in the subsequent injury fund an amount equal to 360 weeks of the death benefits otherwise payable.

(c) If a subsequent compensable injury, together with the

effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime disability income benefits under Section 4.45 of this Act, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund shall compensate the employee for the remainder of the benefits to which the employee is entitled under Section 4.45 of this Act.

ARTICLE 5. ADJUDICATION OF DISPUTES

SECTION 5.01. HEARINGS DIVISION; APPEALS PANEL. (a) The hearings division of the board shall conduct benefit review conferences and contested case hearings related to workers' compensation claims. A decision made in a contested case hearing may be appealed by a party to the claim to an agency appeals panel as provided by Section 5.04 of this Act.

(b) An appeals panel is composed of three persons. Members of an appeals panel may not conduct benefit review conferences or contested case hearings. The board by rule shall provide for appeals hearings, which shall be conducted in Travis County.

SECTION 5.02. BENEFIT REVIEW CONFERENCES. (a) On receipt of a request from a party, or on its own motion, the board may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) The board by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may

proceed directly to a contested case hearing. Except as otherwise provided by law or board rule, unless a benefit review conference is conducted as provided by this section the parties are not entitled to a contested case hearing on the claim.

(c) A benefit review conference is a nonadversarial, informal, dispute resolution proceeding designed to:

(1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues; and

(3) mediate and resolve the dispute by mutual agreement of the parties in accordance with the purposes of this Act and the policies of the board.

(d) A claimant may request a benefit review conference at any time. An insurance carrier may request a benefit review conference to attempt to resolve any disputed issue related to the payment of benefits. A health care provider may request a benefit review conference to resolve any disputed issue relating to the payment of the health care provider for services provided by that health care provider. An employer may request a benefit review conference only to contest compensability. An employer who elects to request a benefit review conference must request the conference not later than the 30th day after the date on which the insurance carrier accepts the compensability of the injury. A party may be represented at a benefit review conference by an attorney or other

representative designated by the party.

(e) A party that desires a benefit review conference must file a written request for the conference with the board in the form prescribed by the board. Unless the benefit review officer determines that good cause exists for the selection of a different location, a benefit review conference may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(f) At least 10 days before a benefit review conference, the board shall send written notice of the benefit review conference to the parties to the claim and the employer. A party who fails to attend the conference without good cause as determined by the benefit review officer waives the right to a contested case hearing on the claim. If a party disputes the determination of the benefit review officer as to the existence of good cause, the party is entitled to administrative hearings and judicial review in the manner provided for the resolution of other disputes under this article.

(g) The benefit review officer shall assist in the adjustment of the claim. The officer may not take testimony or make a formal record. The officer shall assist in the resolution of disputed issues consistent with the purposes of this Act and the policies of the board.

(h) A benefit review conference is not subject to:

(1) common law or statutory rules of evidence or procedure; or

(2) the Administrative Procedure and Texas Register

Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement, or in a settlement, the benefit review officer shall reduce the agreed issues or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement. Except as otherwise provided by board rule, an agreement is binding as to the resolved issues and takes effect on the date signed. A settlement must be approved by the director of the hearings division and takes effect on the date it is approved by that director. If the director of hearings does not approve the settlement, he shall state his reasons and remand the settlement to the appropriate benefit review officer for further action in accordance with the statement of reasons given by the director of hearings. The director of hearings shall approve a settlement if he is satisfied that:

(1) the settlement accurately reflects the terms of the agreement between the parties;

(2) the settlement reflects adherence to all appropriate provisions of law; and

(3) under the law and facts, the settlement is in the best interests of the claimant if the claimant was not represented by counsel during the benefit review conference.

(j) If the dispute is not entirely resolved at the benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not settled at the

conference. The report must also include:

(1) a statement of each resolved issue;

(2) the officer's recommendations regarding the payment or denial of benefits;

(3) the officer's basis for those recommendations; and

(4) a statement of the procedures required to request a contested case hearing.

(k) The benefit review officer shall file the signed agreement or the report with the director of the hearings division not later than the seventh day after the date on which the benefit review conference is concluded. The division director shall furnish a copy of the file stamped report to the claimant, the employer, and the insurance carrier not later than the seventh day after the receipt of the report by the director.

SECTION 5.03. CONTESTED CASE HEARING. (a) A party to a claim for which a benefit review conference is held or a party eligible to proceed directly to a contested case hearing as provided by Section 5.02(b) of this Act is entitled to a contested case hearing. If a benefit review conference is held, the hearing may not consider the issues resolved at the benefit review conference and may not consider issues not raised at the benefit review conference except by consent of the parties or unless the board determines that good cause existed for not considering an issue at the benefit review conference. Unless the board determines that good cause exists for a longer period, the party must request the hearing in writing not later than the 52nd day after the benefit review conference report is filed with the

director of the hearings division and sent to the parties.

(b) A contested case hearing shall be conducted by a division hearings officer but may not be conducted by the same person who conducted a benefit review conference on the claim. Except as otherwise provided by this section, the hearing shall be conducted in accordance with Sections 13, 14, 15, and 17, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). Unless the hearings officer determines that good cause exists for the selection of a different location, a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence.

(c) The hearings officer shall issue a written decision that includes findings of fact and conclusions of law and shall file the decision with the division not later than the 15th day after the date on which the hearing is concluded. The division shall notify each party in writing of the decision not later than the seventh day after the date on which the decision of the hearings officer is received by the division.

(d) The decision of the hearings officer is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal except as to nonessential medical services.

SECTION 5.04. REVIEW BY AGENCY APPEALS PANEL. (a) A party that desires to appeal the decision of the hearings officer shall file a written appeal request with the hearings division not later than the 37th day after the date on which the decision of the hearings officer is filed with the director of the hearings division, and shall on the same date serve a copy of the appeal

1 request on the other party. The respondent party shall file a
2 written response with the division not later than the 30th day
3 after the date on which the appeal request is served, and shall on
4 the same date serve a copy of the response on the appellant party.
5 (b) An appeal request or response must clearly and concisely
6 rebut or support the decision of the hearings officer and must cite
7 statutes, case law, and evidence in support of the party's
8 position.
9 (c) The division director shall assign the appeal to an
10 appeals panel.
11 (d) The appeals panel shall consider:
12 (1) the record developed at the contested case
13 hearing; and
14 (2) the written appeal and response filed with the
15 division.
16 (e) The appeals panel may consider any new evidence
17 presented to the panel by a party and may allow oral argument.
18 (f) The appeals panel may:
19 (1) affirm the decision of the hearings officer;
20 (2) reverse that decision and render a new decision;
21 or
22 (3) reverse that decision and remand the claim to the
23 hearings officer for further consideration and development of
24 evidence.
25 (g) The appeals panel shall issue its decision in writing
26 not later than the 15th day after the date on which the appeal is
27 heard by the panel and shall file a copy of the decision with the

division director.

(h) The decision of the appeals panel is final in the absence of a timely appeal by a party for judicial review and is binding during the pendency of an appeal.

SECTION 5.05. JUDICIAL REVIEW. (a) A party who has exhausted all administrative remedies available under this article and who is aggrieved by a final decision of an agency appeals panel is entitled to seek judicial review under this section.

(b) Proceedings for judicial review are instituted by filing a petition not later than the 30th day after the date on which the final decision of the appeals panel is filed with the division director. The petition must be filed in district court in the county where the employee resides or where the injury occurred. A copy of the petition must be served on the board and on all parties of record in the proceedings before the appeals panel.

(c) Except as otherwise provided by this section, judicial review shall be conducted in the manner provided for judicial review of a contested case under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) Judicial review conducted under this article is governed by the substantial evidence rule.

SECTION 5.06. CONTINUATION OF BOARD JURISDICTION. The board retains jurisdiction of a workers' compensation claim during an appeal of a ruling on any disputed issue relating to the claim. The board may not modify, suspend, or revoke a final order of the board while such order is on appeal, except on a showing of a

change of condition, mistake, or fraud and within 12 months of an order denying compensation and within the compensation period for other orders of the board.

SECTION 5.07. EXPEDITED PROCEDURES. The board by rule shall provide for expedited benefit review conferences, contested case hearings, or review by an agency appeals panel in cases in which compensability is in dispute.

ARTICLE 6. ISSUES RELATED TO

HEALTH CARE PROVIDERS; MEDICAL REVIEW

SECTION 6.01. GUIDELINES; MEDICAL REVIEW DIVISION. (a) The board shall adopt rules relating to the use of medical services by employees who suffer compensable injuries and the fees charged for those services.

(b) All fees for medical services provided under this Act must be fair and reasonable and may not exceed the fees charged for similar treatment of an injured individual of an equivalent standard of living when the fees for the treatment are paid by the injured individual or someone acting on the injured individual's behalf. To facilitate that fairness, the board shall consider the increased security of payment afforded by this Act. The rules adopted by the board shall include:

(1) guidelines relating to reasonable fees or ranges of reasonable fees for specific medical treatments or services;

(2) guidelines relating to necessary treatments or ranges of treatments for specific injuries;

(3) a program for systematic monitoring of the necessity of treatments administered and fees actually charged for

medical treatments or services to ensure that the guidelines are not exceeded;

(4) rules necessary to enable the board to compel the production of documents and to charge an insurance carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges pursuant to this Act; and

(5) rules necessary to enable the board to charge the health care provider who exceeds a fee or utilization guideline instituted under this Act a reasonable fee for evaluation of health care treatment, fees, or charges pursuant to this Act.

(c) The board may contract with a health care provider professional organization or other entity to develop, maintain, or review the guidelines or to review compliance with the guidelines. The board may contract for that purpose only with an organization or other entity that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review. The guidelines shall be reviewed and updated to reflect current "fair and reasonable" charges and amended to reflect current reasonable or necessary medical treatment or ranges of treatment. The appropriate special advisory committee established under Section 6.02 of this Act shall assist the board or professional organization in the review and update.

(d) The medical review division of the board shall administer the guidelines adopted by the board and perform other duties as directed by the board.

(e) The division shall maintain a statewide data base of

1 medical charges and treatment protocols to be used by the board in
2 adopting the guidelines and by the division in administering the
3 guidelines. The division shall ensure that the data base provided
4 by this subsection contains the data necessary to allow the
5 division to detect practices and patterns of charges and protocols
6 and that the data base can be utilized in a meaningful way to allow
7 the board to control medical costs as provided by this Act.
8 (f) The division shall monitor health care providers and
9 workers' compensation claimants who receive medical services to
10 assure the compliance of those persons with the guidelines, as well
11 as with other rules adopted by the board relating to health care.
12 (g) The board by rule shall provide for the periodic review
13 of medical care provided in claims in which lost-time guidelines or
14 other appropriate guidelines are exceeded. The division shall
15 review the medical treatment provided in a claim that exceeds the
16 guidelines and may take appropriate action to assure that necessary
17 and reasonable care is provided.
18 (h) The division shall take appropriate action to be aware
19 of and maintain the most current information on developments in the
20 treatment and cure of injuries and diseases common in workers'
21 compensation cases.
22 (i) The board may contract with other public or private
23 entities to perform any of the duties or functions of the division.
24 (j) A fee that is within the range of fees for that specific
25 medical treatment or service is presumed to be reasonable. A
26 specific treatment or service that is included in a treatment
27 protocol is not presumed to be reasonable based only on its

1 inclusion in the protocol.

2 (k) A fee or charge consistent with the guidelines for fees
3 and charges earns interest at a rate computed by the Industrial
4 Accident Board by taking the auction rate quoted on a discount
5 basis for the 52-week treasury bills issued by the United States
6 government, as published by the Federal Reserve Board on the most
7 recent date preceding the date of computation, from 60 days after
8 the date the health care provider submits the bill to an insurance
9 carrier to the date the bill is paid. The rate shall be computed
10 on December 15 and June 15 for the following six-month period
11 beginning January 1 and July 1, respectively.

12 SECTION 6.02. SPECIAL ADVISORY COMMITTEES. (a) The
13 following special advisory committees are created to assist the
14 medical review division in administering the guidelines established
15 under Section 6.01 of this Act:

16 (1) the hospital care advisory committee;
17 (2) the medical care advisory committee;
18 (3) the osteopathic care advisory committee;
19 (4) the chiropractic care advisory committee;
20 (5) the podiatric care advisory committee;
21 (6) the physical therapy advisory committee; and
22 (7) the pharmaceutical advisory committee.

23 (b) Each committee is composed of nine members appointed by
24 the board as provided by this section. A member of a committee is
25 not entitled to remuneration but is entitled to reimbursement for
26 actual and necessary expenses incurred in performing functions as a
27 member of the committee, not to exceed any limit established in the

General Appropriations Act.

(c) The board shall appoint five health care practitioner members to each advisory committee. Each health care practitioner member of a committee must be a health care provider of that particular provider group who is knowledgeable and qualified regarding work related injuries and diseases. The board shall consider the advice of the appropriate professional associations in making the committee appointments.

(d) The board shall appoint four additional members to each advisory committee, one to represent employers, one to represent employees, and two to represent the general public.

(e) The health care advisory committee is created to assist the division. The committee is composed of eight members appointed by the board and one member elected from each of the committees created under Subsection (a) of this section. The board shall designate the chairman of the committee, which shall meet at the call of its chairman. A member of this committee is not entitled to remuneration but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee, not to exceed any limit established in the General Appropriations Act.

SECTION 6.03. COORDINATION WITH PROVIDERS. The medical review division shall coordinate its activities with health care providers as necessary to perform its duties under this article. The coordination may include:

(1) conducting educational seminars on board rules and procedures;

(2) providing information to and requesting assistance from professional peer review organizations; or

(3) contracting with health care providers for independent medical examinations, medical case reviews, establishment of guidelines, or other medical consultant services.

SECTION 6.04. PROVIDERS' DISCLOSURE. A health care provider that refers a workers' compensation claimant to another health care provider in which the referring provider has more than a five percent financial interest shall file an annual disclosure statement with the Texas Workers' Compensation Board as provided by rules adopted by the board and shall disclose the interest to the insurance carrier at the time of the referral. The referring provider shall specify the degree of the financial interest and shall provide other information as required by the rules of the Texas Workers' Compensation Board.

SECTION 6.05. PRIVATE CLAIMS. A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless the injury is finally adjudicated not to be compensable under this Act.

ARTICLE 7. COMPLIANCE MONITORING

SECTION 7.01. COMPLIANCE AND PRACTICES DIVISION. (a) The compliance and practices division shall monitor the conduct of all persons subject to this Act other than persons monitored by the medical review division. The monitoring shall include monitoring the conduct of:

(1) employees;

(2) persons claiming death benefits;

(3) employers;

(4) insurance carriers; and

(5) attorneys and other representatives of parties.

(b) The division shall monitor those persons for compliance with board rules, this Act, and other laws relating to workers' compensation.

SECTION 7.02. AUDIT OF INSURANCE CARRIERS. The division shall audit the workers' compensation records of insurance carriers on a regular basis. Each carrier shall cooperate with the division and shall make available to the division any records or other necessary information. The carrier shall allow the division access to the information at reasonable times at the offices of the carrier. On the request of the division, the carrier shall also make the information available to the division at the offices of the board in Austin.

SECTION 7.03. MONITORING OF TIMELY PAYMENTS. The division shall also monitor payments of health care providers and workers' compensation claimants who receive medical services to assure that the payments are made on a timely basis as established by rule of the board.

SECTION 7.04. COMPILATION OF INFORMATION. The division shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this article that violate this Act or board rules, or that otherwise adversely affect the workers' compensation system of this state. The board shall use the

information to assess appropriate penalties and other sanctions under Article 10 of this Act.

SECTION 7.05. INVESTIGATIONS. (a) The division shall conduct investigations relating to alleged violations of this Act or board rules.

(b) The division may refer the persons involved in a case subject to an investigation to the hearings division or to other appropriate authorities for further investigation and institution of appropriate proceedings.

ARTICLE 8. WORKERS' HEALTH AND SAFETY

SECTION 8.01. WORKERS' HEALTH AND SAFETY DIVISION. (a) The workers' health and safety division of the board shall coordinate and enforce the implementation of state laws and rules relating to workers' health and safety issues.

(b) The division shall collect and serve as a repository for statistical information on workers' health and safety. The division shall analyze and use the information to identify and assign priorities to safety needs and to better coordinate the safety services provided by public or private organizations, including insurance carriers. The division shall promote workers' health and safety through educational programs, certify employers who complete such programs for eligibility for rate reductions, as set out in Article 5.55A, Insurance Code, and other innovative programs developed by the division.

(c) The division shall coordinate or supervise the collection of information relating to job safety by state or federal entities, including information collected for the

supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

(d) The division shall monitor loss control services provided by insurance carriers. The board by rule shall require that reasonable loss control services be provided by insurance carriers to employers classed as small, medium, or large risks. The board shall require that services be directed to specific employers, industries, occupations, or geographic regions, or to the prevention of certain injuries or occupational diseases. The services may be provided through on-site inspections and consultations, training programs, or other means considered appropriate by the division.

(e) In accordance with Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C. Sec. 656), the division shall:

(1) consult with employers regarding compliance with federal occupational safety laws and rules; and

(2) collect information relating to occupational safety as required by federal laws, rules, or agreements.

(f) With the approval of the board, the division may enter contracts with the federal government to perform occupational safety projects and may apply for funds from the federal government through any federal program relating to occupational safety.

SECTION 8.02. JOB SAFETY INFORMATION SYSTEM. (a) The workers' health and safety division shall establish and maintain a job safety information system.

(b) The job safety information system shall include a comprehensive data base that incorporates all pertinent information

relating to each workers' compensation claim, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee;

(2) the nature, source, and severity of the injury;

(3) if the injury resulted from an accident, a description of the workplace site at which the accident occurred;

(4) a statement of whether the injury resulted from an unsafe practice or condition, as determined by the board;

(5) the part of the body affected;

(6) the compensation rate;

(7) the amount paid as income or death benefits;

(8) the amount paid on behalf of the claimant as medical benefits;

(9) the industry code for the claimant's occupation;

(10) the premium amount paid by the employer;

(11) the number of prior workers' compensation claims by that employee; and

(12) the total claim costs of the employer.

(c) Based on the information compiled for the job safety information system, the division shall issue periodic reports relating to workers' health and safety and shall issue specialized reports and studies for public and private entities that are working to improve safety.

SECTION 8.03. CLAIM AND LOSS GUIDELINES. (a) The workers' health and safety division shall develop a program to identify an employer whose claim frequencies or loss levels exceed those that

may be reasonably expected in that employer's business or industry. Based on the information developed by the division, the board shall adopt guidelines for the identification of such an employer. In adopting the guidelines, the board shall consider the hazards of the particular industry and the size of the affected business entities.

(b) If the division identifies an employer that exceeds the claim or loss guidelines for that employer's industry, the division shall notify the employer in writing that the employer has exceeded the claim and loss guidelines. The division shall reexamine that employer for compliance with the claim and loss guidelines not later than six months after the date on which the employer is notified.

(c) An employer who continues to exceed the claim and loss guidelines as determined by the division must obtain a safety consultation from the board, the employer's insurance carrier, or another professional source approved by the board for that purpose. The safety consultant shall issue a written statement to the employer to certify that the employer has participated in the safety consultation. The employer shall submit a copy of the statement to the board not later than the seventh day after the date on which the consultation is completed and shall include a statement of corrective actions contemplated by the employer.

(d) An employer who, six months after the initial safety consultation under Subsection (c) of this section, is determined by the board to continue to exceed the claim and loss guidelines shall receive a follow-up safety consultation from the board. For each

additional workers' compensation claim filed by that employer's employees, the employer shall file a special accident report in the form prescribed by the board, specifying the nature and causes of the injury and measures implemented to prevent similar injuries in the future. If the board determines that the employer is still exceeding the guidelines six months after the date of the follow-up safety consultation, the employer shall file an adequate safety plan with the board.

(e) The board may assess an administrative penalty as provided by Article 10 of this Act against an employer who fails to comply with this section. This section does not create an independent cause of action at law or in equity. This section provides the sole remedy for violation of this section.

(f) The board shall adopt rules and prescribe forms as necessary to implement this section.

SECTION 8.04. SAFETY EDUCATION. (a) The workers' health and safety division shall provide safety education services to the employers and employees of this state and to the general public.

(b) The division may:

(1) conduct seminars on occupational health and safety concerns;

(2) issue public service announcements on safety; and

(3) publish informational material on safety for general dissemination.

(c) The board may charge fees for division publications and for seminars and training programs offered by the division. If a fee is charged, the board shall set the fee in the amount

reasonable and necessary to cover its administrative costs.

(d) The board may accept grants and gifts from any source for the benefit of the safety programs conducted by the division.

(e) The board may coordinate its safety programs with those of insurance carriers or those of other public or private entities.

SECTION 8.05. PREMIUM INCENTIVES FOR CERTAIN EMPLOYERS. (a) In this section:

(1) "Covered employer" means an employer who is not experience-rated by the State Board of Insurance for workers' compensation insurance purposes and whose annual workers' compensation premium is less than $5,000.

(2) "Board" means the State Board of Insurance.

(b) The board shall promulgate a plan by which all insurance companies writing workers' compensation insurance in this state shall grant a premium discount to covered employers who qualify for the discount pursuant to the provisions of this Act, and by which surcharges are assessed against covered employers who experience two or more compensable lost-time injuries during a one-year period.

(c) A covered employer who has not experienced a compensable employee lost-time injury during the most recent one-year period for which statistics are available shall receive a discount of 10 percent on the amount of the employer's workers' compensation insurance premium.

(d) A covered employer who has experienced one compensable employee lost-time injury during the most recent one-year period for which statistics are available shall not be eligible for a

discount on the amount of the employer's workers' compensation insurance premium.

(e) A covered employer who has experienced two or more compensable employee lost-time injuries during the most recent one-year period for which statistics are available shall be assessed a surcharge of 10 percent on the amount of the employer's workers' compensation premium.

(f) The discounts and surcharges established under this Act shall not be cumulative. For any annual workers' compensation premium, no covered employer shall receive a discount of more than 10 percent, nor may any covered employer be required to pay a surcharge of more than 10 percent.

(g) Article 5.55A, Insurance Code, is repealed.

(h) This section takes effect on the effective date of this Act.

SECTION 8.06. RISK MANAGEMENT FOR CERTAIN STATE AGENCIES. (a) In this section, "state agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that was created by the constitution or a statute of this state and that has authority that is not limited to a specific geographical portion of the state. The term includes an institution of higher education as defined by Section 61.003, Education Code. The term does not include an entity with fewer than five employees.

(b) The director of the workers' health and safety division shall serve as the state risk manager. In that capacity, the director shall supervise the development and administration of

division systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses; and

(4) reduce the property and liability losses incurred by each state agency.

(c) Based on the recommendations of the director, the board shall report to each legislature relating to methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation losses, the operation and management of those risks, and the handling of claims brought against the state. The report must include:

(1) the number and amount of claims settled in the preceding biennium;

(2) the number and amount of final judgments paid in the preceding biennium; and

(3) recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory changes.

(d) The workers' health and safety division shall administer guidelines adopted by the board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses.

(e) A state agency that has its own risk management program shall submit to the division any information or reports required by the division relating to the agency's program. Based on the material submitted, the division shall determine whether the agency program is effective and shall notify the agency in writing of its determination.

(f) The division shall assist a state agency that has not implemented an effective risk management program in the implementation of a comprehensive program that meets the division guidelines.

(g) Each state agency shall reimburse the board for the costs incurred by the board in administering this section as it relates to that state agency through an interagency contract that meets the requirements of The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes). Reimbursable costs include the cost of:

(1) services of board employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(h) The board may adopt rules to implement this section, including rules relating to reporting requirements for state agencies.

SECTION 8.07. REVIEW OF CERTAIN SAFETY COMMITTEES. The workers' health and safety division shall review and, on behalf of the board, approve or disapprove labor-management safety committees established to qualify for workers' compensation insurance premium

discounts through promotion of occupational health and safety within an individual employer's work force, as provided by Article 5.55A, Insurance Code. To be eligible for approval, a committee must be composed of representatives of the employer and employees. A committee may make recommendations that can be implemented by the employer and employees to reduce job-related accidents.

ARTICLE 9. SELF-INSURANCE

SECTION 9.01. DEFINITIONS. In this article:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) "Certified self-insurer" means a private employer who has been granted a certificate of authority to self-insure under this article.

(3) "Director" means the director of workers' compensation self-insurance.

(4) "Impaired employer" means a certified self-insurer:

(A) who has suspended payment of compensation as determined by the board;

(B) who has filed for relief under bankruptcy laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

(5) "Incurred liabilities for compensation" means the sum of the estimate of liabilities for outstanding workers'

compensation claims plus the estimated amount necessary to provide for the administration of those claims, including legal costs.

(6) "Qualified claims servicing contractor" means:

(A) an insurance company authorized by the State Board of Insurance to write workers' compensation insurance;

(B) a subsidiary of an insurance company that provides claim service under contract;

(C) an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code); or

(D) a third-party administrator that has on its staff an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(7) "Self-insured retention" means the total dollar amount of liability under this Act retained by a certified self-insurer.

SECTION 9.02. ADMINISTRATION. (a) The board shall appoint a director of workers' compensation self-insurance to administer the board's certification program for self-insurers as provided by this article.

(b) The board may adopt rules as necessary to administer this article.

SECTION 9.03. APPLICATION FOR CERTIFICATION. (a) An employer who desires to self-insure under this article must submit an application to the board for a certificate of authority to self-insure. The application must be submitted on a form adopted

by the board and be accompanied by a nonrefundable application fee of $1,000. The application fee shall be deposited in the workers' compensation self-insurance fund created under Section 9.10 of this Act.

(b) Not later than the 60th day after the day on which the form is received, the board shall issue a certificate of authority to self-insure to an applicant who meets the requirements for certification under this article. The certificate of authority is valid for one year after the date of issuance and may be renewed under procedures prescribed by the board. The director may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division. There is no renewal fee.

SECTION 9.04. REQUIREMENTS FOR CERTIFICATION TO SELF-INSURE; ISSUANCE OF CERTIFICATION. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the board of sufficient financial strength and liquidity under standards adopted by the board to assure that all workers' compensation obligations incurred by the applicant under this article are promptly met. In assessing financial strength and liquidity, the board shall consider:

(1) the applicant's organizational structure and management background;

(2) the applicant's profit and loss history;

(3) the applicant's compensation loss history;

(4) the source and reliability of the financial information submitted by the applicant;

(5) the number of employees affected by self-insurance;

(6) the applicant's access to excess insurance markets;

(7) financial ratios, indexes, or other financial measures that the board finds appropriate; and

(8) any other information considered appropriate by the board.

(b) The applicant must present a plan for claims administration that is acceptable to the board and designates a qualified claims servicing contractor.

(c) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(d) If the provider of services is not an employee of the applicant, the applicant must provide to the board a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services. If the board has adopted a standard form for such a contract, the contract must be submitted in that form. The board must approve the contract before the applicant may self-insure.

(e) The board shall review a contract submitted under Subsection (d) of this section. A contract submitted to the board is considered approved by the board unless the board notifies the applicant in writing not later than the 30th day after the date on which the contract is submitted that the contract is not approved. If the board does not approve the contract, the notice must specify

the reasons for the disapproval.

(f) The applicant must provide security for incurred liabilities for compensation through a deposit with the director, in a combination and from institutions approved by the director, of the following security:

(1) cash or negotiable securities of the United States or this state;

(2) a surety bond that names the director as payee; or

(3) a letter of credit that:

(A) is irrevocable; and

(B) names the director as payee.

(g) If an applicant who has provided a letter of credit as all or part of the security required under this section desires to cancel the existing letter of credit and substitute a different letter of credit, the applicant must notify the board in writing not later than the 60th day before the date on which the original letter of credit is to be canceled.

(h) The estimate of incurred liabilities must be signed and sworn to by a certified casualty actuary.

(i) The sum of the deposited securities must be at least equal to the greater of $300,000 or 125 percent of the applicant's incurred liabilities for compensation.

(j) The applicant shall provide for excess insurance to cover liability that is not covered by the applicant's self-insured retention in amounts considered necessary by the certified self-insurer, but not less than the amounts required by the director. The director shall require excess insurance in at least

1 the amount of $1 million per occurrence, and may require excess
2 insurance in a higher amount if the director determines that a
3 higher amount is reasonable and necessary.
4 (k) If the applicant is a subsidiary, the parent
5 organization must guarantee the obligations imposed by this
6 article.
7 (l) The board shall issue a certificate of authority to
8 self-insure to an applicant who meets the requirements of this
9 article and pays the required fee.
10 (m) If an applicant is granted a certificate of authority to
11 self-insure, any interest or other income that accrues from cash or
12 negotiable securities deposited by the applicant as security under
13 Subsection (f) of this section while the cash or securities are on
14 deposit with the director shall be paid to the applicant on a
15 quarterly basis.
16 SECTION 9.05. INITIAL PREMIUM REQUIREMENTS TO SELF-INSURE.
17 (a) In addition to meeting the other eligibility requirements
18 imposed under this article, an applicant for an initial certificate
19 of authority to self-insure must present evidence satisfactory to
20 the board of a total unmodified premium in this state for workers'
21 compensation insurance coverage as follows:
22 (1) if the application is filed before September 1,
23 1990, $250,000;
24 (2) if the application is filed on or after September
25 1, 1990, but before September 1, 1991, $200,000;
26 (3) if the application is filed on or after September
27 1, 1991, but before September 1, 1992, $150,000;

(4) if the application is filed on or after September 1, 1992, but before September 1, 1993, $100,000; and

(5) if the application is filed on or after September 1, 1993, but before September 1, 1994, $50,000.

(b) In lieu of the state premiums required under Subsection (a) of this section, the applicant may present evidence of a total unmodified national workers' compensation insurance premium of at least $1 million.

(c) If the application to self-insure is filed on or after September 1, 1994, evidence of a workers' compensation insurance premium is not required.

SECTION 9.06. SPECIFIC SECURITY REQUIREMENTS. (a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or a document indicating issuance of an irrevocable letter of credit must be in a form approved by the director and must be issued by an institution acceptable to the director. Such an instrument may be released only according to its terms but may not be released by the depositing of additional security.

(c) The certified self-insurer shall deposit the security with the state treasurer on behalf of the director. The state treasurer may accept securities for deposit or withdrawal only on the written order of the director.

(d) On receipt by the director of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified self-insurer's assets

in favor of the director to the extent of any then unsecured portion of the self-insured's incurred liabilities for compensation. That perfected security interest transfers to any cash or securities deposited by the self-insured with the director after the date of the request, and may be released only on:

(1) the acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the director.

(e) The certified self-insurer loses all right, title, interest in, and control of, the assets or obligations submitted or deposited as security. The director may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) The director, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, any liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) the issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) the issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.

(g) A decision of the director may be appealed to the board on filing with the board a written request for an appeal not later than the 30th day after the date on which the director's decision is final.

(h) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the board issues a determination staying the payment of claims.

(i) If the director determines that a security deposit has not been made immediately available for the payment of compensation, the director shall determine the appropriate method of payment and claims administration, which may include payment by a surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the director.

SECTION 9.07. PROCEDURES ON DENIAL OF APPLICATION. (a) If the board determines that an applicant for a certificate of authority to self-insure does not meet the requirements for eligibility to self-insure provided by this article, the board shall notify the applicant not later than the 60th day after the date on which the completed application is received, stating the specific reasons for the denial and the conditions to be met before approval can be granted.

(b) The applicant is entitled to a reasonable period of time, as determined by the board, to meet the conditions for

approval before the application is considered rejected for purposes of appeal. An appeal is subject to the substantial evidence rule and must be filed in a district court of Travis County.

(c) During the pendency of approval or denial of the application for certification to self-insure, the applicant may not operate as a self-insurer under this article.

SECTION 9.08. ANNUAL REPORT. (a) Each certified self-insurer shall file an annual report with the board. The board shall prescribe the form of the report and shall furnish blank forms for preparation of the report to each certified self-insurer. The report must include payroll data in the form prescribed by this article and the board. The board may require that the report include other financial and statistical data.

(b) The annual report must present evidence of sufficient financial ability of the certified self-insurer to meet all obligations under this article.

(c) The report must state the number of injuries sustained in the three preceding calendar years and must report separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries. The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the board.

(d) If the board considers it necessary, it may order a certified self-insurer whose financial condition or claims record warrants closer supervision to report as provided by this section

more often than annually.

SECTION 9.09. EXAMINATION OF RECORDS. (a) The certified self-insurer shall maintain the books, records, and payroll data necessary to compile the annual report and any other information reasonably required by the board. The material shall be open to inspection and examination by an authorized agent or representative of the board at reasonable times for the purpose of ascertaining the correctness of the information.

(b) The examination may be made at any location, including the offices of the board in Austin, or, at the certified self-insurer's option, in offices of the certified self-insurer. The certified self-insurer must pay the reasonable expenses, including travel expenses, of an inspector who makes an inspection at its offices.

(c) The certified self-insurer may maintain the books, records, and payroll data in locations outside this state.

(d) An unreasonable refusal on the part of a certified self-insurer to make available for inspection books, records, payroll data, and other required information is grounds for revocation of the certificate of authority to self-insure.

SECTION 9.10. SELF-INSURANCE REGULATORY FEE. (a) Certified self-insurers shall pay annual fees to cover the administrative costs incurred by the board in implementing this article. The fees shall be based on the total amount of income benefit payments made in the preceding calendar year. The board shall assess each certified self-insurer a pro rata share based on the ratio the total amount of income benefit payments made by that self-insurer

bears to the total amount of income benefit payments made by all certified self-insurers.

(b) The fees shall be deposited in the state treasury to the credit of a fund to be known as the workers' compensation self-insurance fund and to be used only for the regulation of certified self-insurers. Any amount not used in a budget year shall be used to reduce the regulatory fees assessed in the succeeding budget year.

SECTION 9.11. TAX ASSESSMENTS. (a) Each certified self-insurer shall pay a tax equal to the premium tax paid by commercial insurance carriers under Article 4.10, Insurance Code, and a maintenance tax under Section 11.03 of this Act for the support of the Texas Workers' Compensation Board.

(b) To determine the tax liability of a certified self-insurer for the maintenance tax assessed under Section 11.03 of this Act and the premium tax assessed under Subsection (a) of this section, each certified self-insurer shall report its payroll by individual workers' compensation risk code classifications in its annual report to the board. The taxes assessed under this section shall be collected and paid in the same manner and at the same time that a commercial insurance carrier pays the maintenance tax imposed under Article 5.68, Insurance Code.

(c) The estimated premium for a certified self-insurer shall be determined by using the manual workers' compensation insurance rates in effect at the time the annual report is due. The taxes shall be calculated by multiplying the manual premium by 75 percent and multiplying the product by the same tax rates assessed against

other insurers under Article 5.68, Insurance Code.

(d) All amounts collected under this section shall be deposited in the general revenue fund.

SECTION 9.12. WITHDRAWAL FROM SELF-INSURANCE. A certified self-insurer may withdraw from self-insurance at any time with the approval of the board. The board shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the board that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer. A certified self-insurer who withdraws from self-insurance shall surrender its certificate of authority to self-insure to the board.

SECTION 9.13. CLAIMS. A claim or suit brought by a workers' compensation claimant shall be brought against the certified self-insurer.

SECTION 9.14. AGENT'S COMMISSION. This article does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

SECTION 9.15. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The board may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with any of the requirements or conditions provided by this article or the rules adopted by the board under this article.

(b) If the board believes that grounds exist to revoke a certificate of authority to self-insure, the board shall hold a

hearing to determine if the certificate should be revoked. The board shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date. At the hearing the certified self-insurer shall show cause why its certificate should not be revoked. If the certified self-insurer fails to show cause, the board shall immediately revoke the certificate.

(c) A certified self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations to its employees, and the required security shall be maintained with the board or under the board's control until each claim for workers' compensation benefits that arises out of an accident or occupational disease first distinctly manifested during the period of self-insurance has been paid, settled, or otherwise foreclosed by law.

SECTION 9.16. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty Association is established to provide for payment of workers' compensation benefits for the injured employees of an impaired employer. To be entitled to self-insure, each employer who desires to become a certified self-insurer must be a member of the association. The members shall provide by rule for the election of a board of directors composed of not fewer than four members. The board of directors shall also include, as voting members, the executive director of the Texas Workers' Compensation Board and the public counsel of the division of consumer protection of the State Board of Insurance. The director of the division shall serve as a

nonvoting member. The board of directors may adopt rules for the operation of the association. Rules adopted by the board of directors are subject to the approval of the Texas Workers' Compensation Board. Meetings of the association and its board of directors are subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and records of the association and its board of directors are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) Members of the association shall be assessed a fee, based on total paid indemnity losses in this state for the preceding reported calendar year, to create, over a period of five years, a trust fund of at least $1 million for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed $2 million. The board of directors of the association shall administer the trust fund in accordance with rules adopted by the Texas Workers' Compensation Board.

(c) If the director determines that the payment of benefits and claims administration shall be made through the association, the association shall assume the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director. The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association. On the assumption of

1 obligations by the association under the director's determination,
2 the association is entitled to immediate possession of any
3 deposited security, and the custodian, surety, or issuer of any
4 irrevocable letter of credit shall deliver the security to the
5 association together with any interest that has accrued since the
6 date on which the certified self-insurer became impaired.
7 (d) On determination by the director that a certified
8 self-insurer has become an impaired employer, the director shall
9 secure release of the security deposit required by this article,
10 and shall promptly estimate the amount of any additional funds
11 needed to supplement the security deposit, the available assets of
12 the impaired employer for the purpose of making payment of all
13 incurred liabilities for compensation, and the funds maintained by
14 the association for the emergency payment of compensation
15 liabilities. The director shall advise the board of directors of
16 the association of the estimate of any necessary additional funds,
17 and the board of directors shall promptly assess each certified
18 self-insurer, except impaired employers, to collect the required
19 funds. The assessments shall be made against all certified
20 self-insurers in proportion to the ratio that the total paid
21 indemnity losses for the preceding reported calendar year bear to
22 the total paid indemnity losses by all certified self-insurers,
23 except impaired employers, in this state in that calendar year.
24 (e) A certified self-insurer designated as an impaired
25 employer is exempt from assessment beginning on the date of that
26 designation until the board determines that the employer is no
27 longer impaired.

(f) Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through a suit brought for that purpose. Venue for the suit is in Travis County.

(g) Funds advanced by the association under this article do not become assets of the impaired employer but are considered a special fund advanced to the director, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the cost of claims administration and legal costs.

(h) The association or the surety making compensation payments under this article is entitled to the same preference over the other debts of the impaired employer or the impaired employer's estate as provided by law to the person directly entitled to the compensation.

(i) The board, after notice and hearing, may suspend or revoke the certificate of authority to self-insure of any certified self-insurer that fails to pay an assessment. The association promptly shall report such a failure to the director. A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(j) Notwithstanding Subsection (c) of this section, the association is not liable for the payment of any penalties assessed

for any act or omission on the part of any person other than the association.

(k) The association is a party in interest in any proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association. The association has the same rights and defenses as the impaired employer, including the right to:

(1) appear, defend, and appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, and pay a claim; and

(3) investigate, handle, and deny a claim.

ARTICLE 10. PROHIBITED ACTS; ENFORCEMENT

CHAPTER A. PROHIBITED ACTS

SECTION 10.01. DISCRIMINATION PROHIBITED. (a) No person may discharge or otherwise discriminate against an employee because the employee, in good faith:

(1) has initiated a workers' compensation claim;

(2) has hired an attorney to represent the employee regarding a claim;

(3) has instituted or caused to be instituted a proceeding before the board;

(4) has testified or is about to testify at an administrative or judicial proceeding regarding a claim; or

(5) has reported a hazardous working condition or a hazardous practice.

(b) A person who violates this section is liable for reasonable damages incurred by the employee as a result of the

violation. An employee who is discharged in violation of this section is entitled to reinstatement in the same or an equivalent position of employment. The burden of proof is on the employee.

(c) The district courts of this state have jurisdiction, for cause shown, to restrain a violation of this section.

(d) Liability incurred by an employer because of a violation of this section is not a benefit payable under this Act.

SECTION 10.02. EMPLOYER CHARGEBACKS PROHIBITED. An employer may not collect from an employee, directly or indirectly, any premium or other fee paid by the employer to obtain workers' compensation insurance coverage.

SECTION 10.03. LOANS BY ATTORNEY PROHIBITED. (a) An attorney who represents a claimant before the board may not lend money to the claimant during the pendency of the workers' compensation claim.

(b) The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable in any way for the credit extended to the claimant.

SECTION 10.04. CRIMINAL PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS. (a) A person commits an offense if the person, to obtain or deny payments of workers' compensation benefits or the provision of those benefits for himself or another, knowingly and intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a

1 document; or

2 (4) conspires to commit an act listed in Subdivisions

3 (1)-(3) of this subsection.

4 (b) An offense under this section is a felony of the third

5 degree.

6 [Sections 10.05-10.10 reserved for expansion]

7 CHAPTER B. ADMINISTRATIVE SANCTIONS

8 SECTION 10.11. GENERAL SANCTIONS; ADMINISTRATIVE PENALTY.

9 (a) After a hearing, the board may assess an administrative

10 penalty or impose other sanctions as provided by Subsection (b) of

11 this section against:

12 (1) a health care provider who violates the guidelines

13 adopted by the board under Section 6.01 of this Act, other

14 applicable provisions of this Act or other laws relating to

15 workers' compensation, or applicable board rules relating to health

16 care providers;

17 (2) an insurance carrier who violates this Act, other

18 laws relating to workers' compensation, or applicable board rules

19 relating to carriers who write workers' compensation insurance;

20 (3) an attorney who violates this Act, other laws

21 relating to workers' compensation, or applicable board rules

22 relating to legal practice before the board; or

23 (4) any other person subject to the jurisdiction of

24 the board, including a claimant, the legal beneficiary of a

25 claimant, or an employer, who violates this Act, other laws

26 relating to workers' compensation, or applicable board rules.

27 (b) If the board determines that a person subject to this

section is in violation, the board may:

(1) issue a written reprimand to the person that specifies the violation;

(2) refer the person to the occupational regulatory agency that supervises the person's practice for appropriate action, including the probation, suspension, or revocation of the person's license, certificate, or permit;

(3) suspend the person from practice before the board;

(4) if the person is a health care provider, suspend the person's right to remuneration under this Act; or

(5) assess an administrative penalty.

(c) If a suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the board; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis for the probation.

(d) If the board proposes to suspend a person's right to practice before the board, receive remuneration under this Act, or assess an administrative penalty against the person, the person is entitled to a hearing before the hearings division of the board.

(e) The board by rule shall prescribe the procedures by which a decision to suspend the right to practice or to assess an administrative penalty is made by or is appealable to the board.

Proceedings conducted under this section are subject to the requirements for a contested case hearing under Section 5.03 of this Act.

(f) In determining the degree of sanction or amount of administrative penalty imposed or assessed under this section, the board shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the sanction or penalty necessary to deter future violations; and

(4) any other appropriate matters.

(g) If the board determines that a violation has occurred and that the assessment of an administrative penalty is an appropriate remedy, the board shall notify the person charged in writing of the violation, stating the amount proposed to be assessed. The notice must include a statement of the right of the person to a hearing. Not later than the 20th day after the date on which the notice is received, the person shall either remit the amount of the penalty to the board or submit to the board a written request for a hearing.

(h) If the person requests a hearing, the board shall call and schedule a hearing, to be conducted not later than the 20th day after the date on which the person submits the request for a hearing. The board shall give written notice of the hearing to the person not later than the 10th day after the date on which the person submits the request for a hearing. The hearing shall be conducted by the hearings division of the board in the manner

provided for a contested case hearing under Article 5 of this Act. The decision of the hearings officer may be appealed to an agency appeals panel as provided by Section 5.04 of this Act. If it is determined by the hearing, and after any review by an agency appeals panel, that a violation has occurred, the board shall enter a written order to that effect and shall notify the person in writing of the decision, the amount of the penalty assessed, and the person's right to judicial review of the board's order.

(i) Not later than the 30th day after the date on which the board's order is final, the person shall either remit the penalty to the board or, if the person files a petition for judicial review contesting the fact of the violation or the amount assessed, forward the amount assessed to the board for deposit in an escrow account. Failure to forward the amount assessed within the specified period constitutes a waiver of the right to judicial review.

(j) If, after judicial review, the penalty is reduced or is not assessed, the board shall remit to the person the appropriate amount, plus accrued interest at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Interest under this section shall be paid for the period beginning on the date that the assessed penalty is paid to the board and ending on the date that the penalty is remitted.

(k) Amounts collected as penalties under this section shall be deposited in the state treasury.

SECTION 10.12. ENHANCEMENT OF AWARD FOR MALICE OR BAD FAITH. (a) In addition to the benefits granted under this Act, the board

shall order an insurance carrier to pay an employee an additional amount if the board determines that the failure of the insurance carrier to pay benefits determined to be owed to the employee, or the carrier's suspension or termination of payment of those benefits, was caused by malice or the failure of an insurance carrier to deal fairly and act in good faith.

(b) For the purposes of this section, "malice" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

(c) An additional amount awarded under this section is the employee's exclusive remedy against the carrier for malice or the failure to deal fairly and act in good faith.

(d) The board may award an amount not to exceed the lesser of twice the amount of income benefits payable to the employee, or $15,000.

(e) The board shall adopt rules as necessary to implement this section, including rules to define specific actions that demonstrate malice or the failure to deal fairly and act in good faith.

(f) Amounts paid by an insurance carrier under this section may not be used in the calculation of premium rates for workers' compensation insurance.

ARTICLE 11. MISCELLANEOUS PROVISIONS

SECTION 11.01. ATTORNEY'S FEES. (a) An attorney who represents a workers' compensation claimant under this Act is entitled to a fee equal to 25 percent of the difference between the amount of income benefits attained or ordered and the amount of

those benefits voluntarily paid or offered to be paid by the insurance carrier at the conclusion of the benefit review conference. The attorney is entitled to a minimum fee of $200.

(b) The board by rule may provide for the commutation of attorney's fees.

SECTION 11.02. CONFIDENTIALITY. (a) Information in a worker's claim file is confidential and may not be disclosed except as provided in this section.

(b) If a workers' compensation claim is open or pending before the board, on appeal to a court of competent jurisdiction from the board, or is the subject matter of a subsequent suit in which the insurance carrier is subrogated to the rights of the workers' compensation claimant at the time a record search or request for information is presented to the board, the board shall furnish the information as provided by this section.

(c) The person making a request for information under Subsection (b) of this section must furnish the following:

(1) the first, middle, and last name of the claimant;

(2) the claimant's age;

(3) the claimant's social security number; and

(4) the dates of injury and the names of the claimant's former employers, if possible.

(d) The board shall furnish the requested information or a record check only to the following:

(1) the claimant;

(2) the attorney for the claimant;

(3) the insurance carrier or the Texas Certified

1 Self-Insurer Guaranty Association when the association has assumed
2 the obligations of an impaired employer under Article 9 of this
3 Act;
4 (4) the employer at the time of the current injury;
5 (5) third-party litigants;
6 (6) the State Board of Insurance;
7 (7) the Texas Department of Human Services; or
8 (8) the Texas Workers' Compensation Insurance Research
9 Center.
10 (e) A third-party litigant in a suit arising out of an
11 occurrence with respect to which a workers' compensation claim was
12 filed is entitled to the information without regard to whether or
13 not the compensation claim is still pending.
14 (f) Information held by the board concerning any person who
15 has been finally adjudicated to be a fraudulent claimant is not
16 confidential and shall be furnished to any person requesting the
17 information, notwithstanding any other provision of this law.
18 (g) The board shall release to an employer with whom a
19 person has applied for employment the date of injury and nature of
20 injury to that person if that person has filed three or more claims
21 in the preceding five years in which weekly compensation payments
22 have been made and the employer requests the information not later
23 than the 14th day after the date on which the person applied for
24 employment. The request for information must provide the name,
25 address, and social security number of the person about whom
26 information is sought. The board shall release the information
27 only if the employer has written authorization from the person

about whom information is sought, a copy of which must be filed with the board before the information is released. The board may release the information by telephone. If the employer requests information about three or more persons at the same time, the board may refuse to release the information except on written request from the employer and receipt of the written authorization from each person about whom the information is sought.

(h) This section does not authorize the board to withhold information from committees of the legislature to use for legislative purposes.

(i) Any information relating to a workers' compensation file that is confidential under this Act remains confidential on release to any investigative, legislative, or law enforcement agency, including the attorney general, district attorneys, grand juries, or legislative committees. An individual who publishes, discloses, or distributes that information to any person not entitled to the information under this Act commits an offense. A person who receives the confidential information with knowledge that the person is not entitled to have received the information from the board under this Act commits an offense. An offense under this subsection is a Class A misdemeanor.

(j) Each district court of Travis County has jurisdiction to enjoin the possession or the use by any person of any information made confidential by this section if that possession or use is not authorized by this section. This subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment

if the information was lawfully acquired by the employer releasing the information.

(k) This section does not prohibit a person from receiving from the board information contained in any record or file of the board in statistical form and in a manner that does not disclose the name or identity of any injured employee.

(l) The board may charge a fee to a person requesting information under this section. The board shall set the fee in an amount reasonable and necessary to cover the board's costs in furnishing the information.

SECTION 11.03. MAINTENANCE TAX. (a) In addition to all other tax imposed on those insurers, each stock company, mutual company, reciprocal or interinsurance exchange, and Lloyd's association that writes workers' compensation insurance in this state shall pay an annual maintenance tax to support the Texas Workers' Compensation Board at a rate not to exceed two percent of the correctly reported gross workers' compensation insurance premiums as reported to the State Board of Insurance under Subchapter D, Chapter 5, Insurance Code. The tax shall be collected and paid in the same manner and at the same time that the insurers pay the maintenance tax imposed under Article 5.68, Insurance Code.

(b) The Texas Workers' Compensation Board shall set the rate of assessment each year to produce the amount of funds it estimates will be necessary to pay the expenses of the board in regulating workers' compensation insurance during the succeeding year. The Texas Workers' Compensation Board shall certify the rate of

assessment to be used during the succeeding year not later than October 1 of each calendar year.

(c) Amounts received under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 11.04. INJURIES SUSTAINED OUTSIDE THIS STATE. (a) This section applies to an employee:

(1) hired in this state; or

(2) if a resident of this state, recruited in this state.

(b) An employee subject to this section who sustains a compensable injury outside this state is entitled to benefits under this Act.

(c) This section applies only to a compensable injury that occurs not later than one year after the date on which the employee leaves this state. An injured employee may not recover under this section if the employee elects to recover under the law of the jurisdiction in which the injury occurred.

SECTION 11.05. EFFECT OF OTHER INSURANCE COVERAGE. (a) A contract entered to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this Act is void unless the contract also covers liability for payment of compensation under this Act.

(b) This section does not prohibit an employer who has elected not to obtain workers' compensation insurance coverage from obtaining any insurance coverage for the employer's employees if the insurance is not represented to any person as providing workers' compensation coverage under this Act.

SECTION 11.06. LEGALLY INCOMPETENT EMPLOYEES. If an injured employee is a minor or is otherwise legally incompetent, the employee's guardian may exercise on the employee's behalf the rights and privileges granted to the employee under this Act. The board by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees.

SECTION 11.07. ALIEN EMPLOYEES; LEGAL BENEFICIARIES. (a) In this section, "alien" means an individual who is not a citizen of the United States.

(b) A resident or nonresident alien employee or legal beneficiary is entitled to compensation under this Act.

(c) A nonresident alien claimant may be officially represented by a consular officer of the country of which the alien is a citizen. That officer may receive benefit payments for distribution to the alien employee.

SECTION 11.08. MULTIPLE INSURANCE CARRIERS. If an injury sustained by an employee is determined to be compensable but there is a dispute as to which of two or more employers for whom the employee was providing services at the time of the injury, the insurance carriers of each of the affected employers shall pay a proportionate share of the benefits due to that employee. On final determination of the liability, any insurance carrier determined not to be liable for the payment of benefits is entitled to reimbursement for the share paid by that carrier from the carrier determined to be liable.

SECTION 11.09. LIABILITY OF CARRIER FOR ACCIDENT PREVENTION. The insurance carrier, its agent, servant, or employee shall have

no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance carrier for the prevention of accidents in connection with operations of the employer except as provided by this Act; provided, however, this immunity shall not affect the liability of the insurance carrier for compensation or as otherwise provided in this law.

ARTICLE 12. AMENDMENTS

TEXAS WORKERS' COMPENSATION POOL

SECTION 12.01. Article 5.76, Insurance Code, is amended to read as follows:

Art. 5.76. PREVENTION OF INJURIES AND ASSIGNMENT OF CERTAIN [~~REJECTED~~] RISKS

Sec. 1. [~~(a)~~] In this Article [~~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 4 [~~(e)~~] 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 4 [~~(e)~~] 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 that has an estimated annual premium of at least $10,000 and that is in good faith entitled to insurance but is unable to procure or retain insurance through ordinary methods in the voluntary [~~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. The term does not include an insurance risk that qualifies for assignment to an individual company under Section 6 of this Article.

(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.

Sec. 2. (a) [~~(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 nonprofit 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. An [~~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.

(b) The pool shall be governed by a governing committee of twelve (12) members elected annually by the members of the pool. Seven of the elected members of the governing committee constitute a quorum. The [~~Their~~] qualifications, terms of office, duties, and responsibilities of the elected members 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 provided by Section 7 [~~(e)~~] of this Article.

(c) The Board also shall appoint three ex officio members of the governing committee, one of whom shall represent employers, one of whom shall represent labor, and one of whom shall represent the Board. An ex officio member may not vote and is not considered in

determining a quorum.

(d) Not more than eight elected 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 Article [~~Act~~].

(e) The pool is a governmental body for purposes of the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 3. (a) If an insurer rejects an insurance risk, the insurer shall notify the Board in writing of the specific reasons for rejecting the risk. The insurer must include a statement in the notice as to whether the loss experience of the risk was a factor in the decision to reject the risk.

(b) The Board shall select the servicing companies it determines necessary to serve the residual market. The selection shall be made on the basis of competitive bids according to bid specifications and procedures established by the rules of the Board, including rules relating to standards and requirements

for the qualification, performance, and operation of a servicing company that are adequate to assure employers assigned to the pool prompt and efficient service.

(c) A company may not be a servicing company unless the group of which the company is a member writes at least one-half percent of the total voluntary market for workers' compensation insurance in this state.

Sec. 4. (a) The [~~(e)--It-shall-be-the--duty--of the~~] pool shall [~~to~~] provide insurance, in the manner herein provided, for any risk under the Texas Workers' Compensation Act [~~Law-of-Texas~~], the Longshoremen's and Harbor Workers' Compensation Act, [~~and/~~]or the Federal Coal Mine Health and Safety Act of 1969, as amended, 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.

(b) From and after the date the rules made and adopted under Section 7 [~~(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.

Sec. 5. (a) [~~(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 9 [~~(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.

(b) 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.

Sec. 6. (a) The Board shall develop a fair and nondiscriminatory plan for the assignment to individual companies of insurance risks with estimated annual premiums of less than $10,000 that are not classified

by the Board as extra-hazardous businesses or activities.

(b) Except as provided by Subsection (c) of this section, each insurance company in this state writing insurance as defined in this Article shall participate in the assignment plan developed by the Board.

(c) The Board by rule may exempt from participation in the assignment plan a company or a group of companies whose total premium written for insurance as defined in this Article is less than 0.05 percent of the total voluntary market as of the most recent premium information reporting year.

Sec. 7. (a) [~~(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.

(b) The pool shall pay all costs and expenses of operating and maintaining the pool, including any fees or allowances paid [~~to members~~] for servicing rejected risks or making up deficits incurred by the pool. 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 or for making up deficits incurred by the pool.

(c) 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.

Sec. 8. [~~(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.

Sec. 9. (a) [~~(g)~~] The Board, in addition to the provisions prescribed by Subchapter D 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.

(b) 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, and allowance for profit and contingencies, and any other relevant factors in connection with insuring and servicing such risk or risks.

(c) 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.

(d) The Board shall create a division to monitor the operation of the pool with the object of reducing the number of risks insured by the pool. The division shall review each rejected risk before its assignment to the pool and shall review the assignment of each risk made under Section 6 of this Article. The

division shall attempt to find an insurer to voluntarily insure the risk before its initial assignment to the pool, assignment to a specific company under Section 6 of this Article, or renewal of the risk's assignment to the pool. The Board shall adopt rules as necessary to implement this subsection.

Sec. 10. [~~(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.

Sec. 11. [~~(i)~~] No rejected risk or applicant as a rejected risk shall be considered in good faith entitled to the remedies and benefits of this Article [~~Act~~] if such risk is in violation of rules or

regulations of the Texas Workers' Compensation [~~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.

Sec. 12. [~~(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.

Sec. 13. [~~(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.

Sec. 14. [~~(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 Article [~~Act~~].

OTHER INSURANCE MATTERS

SECTION 12.02. Subchapter D, Chapter 5, Insurance Code, is amended by adding Articles 5.55B, 5.60A, and 5.65A to read as follows:

Art. 5.55B. (a) The Board shall require each company or association that writes workers' compensation insurance in this state to offer an optional deductible plan or a range of deductible plans for purposes of allowing policyholders to self-insure up to the deductible amount.

(b) Upon the effective date of this Act, the Board shall perform an actuarial analysis for purposes of determining the amount of rate reduction applicable to policies with the various ranges of deductibles as opposed to standard policies without a deductible. In subsequent years, the Board shall determine the amount of rate reduction according to rating procedures to be adopted by the Board.

(c) The Board shall adopt rules as necessary to insure the security of benefits to employees up to the deductible amount in the event of the insolvency or bankruptcy of the policyholder or other similar contingencies. In such instances, the Board shall require the company or association writing workers' compensation insurance for such policyholder to be responsible for all benefits that might accrue, with

rights to indemnity from the policyholder or its estate up to the deductible limit.

(d) The Board shall adopt rules as necessary allocating responsibility between the policyholder and the company or association for servicing of claims up to the deductible amount. The rules shall provide that upon the written consent of the company or association for any separate claim until the deductible is exceeded, the policyholder may service any such claim if serviced by an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(e) The Board shall adopt additional rules as necessary to implement this article to insure the availability of deductible workers' compensation policies as an option to policyholders.

Art. 5.60A. TESTIMONY AT RATE HEARINGS BY CERTAIN WORKERS' COMPENSATION BOARD OFFICERS. (a) To obtain more immediate and accurate information on certain trends in workers' compensation insurance that may affect the costs of that insurance during a rating period, the executive director of the Texas Workers' Compensation Board shall testify at any rate hearing conducted by the Board on workers' compensation insurance relating to trends in:

(1) claims resolution of workers' compensation cases; and

(2) cost components in workers' compensation cases.

(b) The testimony of the executive director is subject to cross-examination by the Board and any parties to the hearing.

Art. 5.65A. NOTIFICATION TO POLICYHOLDER. (a) A company or association that writes workers' compensation insurance in this state shall notify each policyholder of:

(1) any case that is initiated against the policy;

(2) a proposal to settle a case; and

(3) an administrative or judicial proceeding relating to the resolution of a case, including a benefit review conference or contested case hearing conducted by the Texas Workers' Compensation Board.

(b) Not later than the 60th day before the date on which the term of a workers' compensation insurance policy expires, and at other times on the written request of the policyholder, each company or association that writes workers' compensation insurance in this state shall provide a policyholder with a list of claims charged against the policy, including payments made and reserves established on each case.

COURT REVIEW; JURISDICTION OF STATUTORY COUNTY COURTS

SECTION 12.03. Section 23.101(a), Government Code, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with criminal actions against defendants who are detained in jail pending trial given preference over other criminal actions;

(3) election contests and suits under the Texas Election Code; and

(4) [~~appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board-and~~] claims under the Federal Employers' Liability Act and the Jones Act.

SECTION 12.04. (a) Section 25.0032(a), Government Code, as amended by Section 8.04(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by

Section 25.0003 and other law, a county court at law in Anderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) probate matters and proceedings, including will contests;

(B) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(C) family law cases and proceedings; and

[~~(D)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~]

(3) concurrent jurisdiction with the county and district courts over all suits arising under the Family Code.

(b) Section 2(b), Chapter 665, Acts of the 67th Legislature, Regular Session, 1981 (Article 1970-377, Vernon's Texas Civil Statutes), as amended by Chapter 913, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) The County Court at Law of Anderson County has jurisdiction concurrent with the district court in:

(1) all probate matters and proceedings;

including will contests;

(2) eminent domain cases; and

(3) civil cases when the matter in controversy exceeds $500 and does not exceed $50,000, exclusive of interest[~~,-and~~

[~~(4)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.05. Section 25.0222(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless~~

~~of-the-amount-in-controversy,-and~~

[~~(3)~~] family law cases and proceedings.

SECTION 12.06. (a) Section 25.0312(a), Government Code, as amended by Section 8.07 of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Calhoun County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(B) [~~appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings; [~~and~~]

<u>(C)</u> [~~(B)~~] suits on behalf of the

state to recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(D) [~~(E)~~] suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(E) [~~(F)~~] suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(F) [~~(G)~~] suits for the trial of right to property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(G) [~~(H)~~] contested elections; and

(3) concurrent jurisdiction with the justice courts in criminal matters prescribed by law for justice courts.

(b) Section 2(c), Chapter 1076, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-385, Vernon's Texas Civil Statutes), as amended by Section 1, Chapter 938, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(c) The county court at law has concurrent civil jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(2) [~~appeals---of---final---rulings----and~~

~~decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy;~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy;

(3) [~~(4)~~] cases and proceedings involving adoptions, birth records, or removal of disability of reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support, custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses;

(4) [~~(5)~~] suits on behalf of the state to recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(5) [~~(6)~~] suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(6) [~~(7)~~] suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(7) [~~(8)~~] suits for the trial of right to

property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(8) [~~(9)~~] contested elections.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.07. Section 25.0592(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Dallas County has original and concurrent jurisdiction with the district court in[~~:~~

[~~(1)~~] civil cases in which the matter in controversy exceeds $500, excluding interest, but does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs[~~;--and~~

[~~(2)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

SECTION 12.08. Section 25.0702(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Ector County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.09. Section 25.0862(b), Government Code, is amended to read as follows:

(b) A statutory county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(2) family law cases and proceedings[~~, and~~

[~~(3) appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy~~].

SECTION 12.10. (a) Section 25.1032(b), Government Code, as amended by Section 8.10(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) In addition to other jurisdiction provided by law, a county civil court at law has[~~:~~

[~~(1)~~] concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500, excluding interest, and does not exceed $50,000, excluding interest, statutory or punitive damages and penalties, attorney's fees, and costs[~~;--and~~

[~~(2)--original--and-concurrent-jurisdiction with-the-district-court-in-appeals-of-final-rulings-and decisions-of-the-Industrial-Accident-Board;--regardless of-the-amount-in-controversy~~].

(b) Section 25.0013(d), Government Code, is repealed.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law,

Subsection (a) has no effect.

SECTION 12.11. (a) Section 25.1072(a), Government Code, as amended by Section 8.12(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hays County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(B) family law cases and proceedings[~~;--and~~

[~~(C)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 2(f), Chapter 298, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1970-358, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 231, Acts of the 70th

Legislature, Regular Session, 1987, is amended to read as follows:

(f) The county courts at law have concurrent jurisdiction with the district court in[~~:~~

[~~(1)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board;-and~~

[~~(2)~~] eminent domain cases and proceedings, regardless of the amount in controversy.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.12. Section 25.1092(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Henderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed

$50,000, excluding interest, court costs, and attorney's fees in cases in which attorney's fees are taxed as costs of court; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.13. Section 25.1182(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hunt County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in[~~:~~

[~~(A)~~] civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest[~~, and~~

[~~(B) appeals of final rulings and decisions of the Industrial Accident Board~~].

SECTION 12.14. Section 25.1482(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in

Liberty County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.15. (a) Section 25.1542(a), Government Code, as amended by Section 8.14(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Lubbock County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the

district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(B) family law cases and proceedings[~~,-and~~

[~~(C)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2b, Chapter 16, Acts of the 51st Legislature, 1st Called Session, 1950 (Article 1970-340, Vernon's Texas Civil Statutes), as amended by Section 28, Chapter 709, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2b. In addition to the jurisdiction now conferred upon the County Court at Law No. 1 of Lubbock County by the Constitution and Laws of the State of Texas said court shall hereinafter have and exercise concurrent civil jurisdiction with the district courts in Lubbock County in all civil cases and matters when the matter in controversy shall exceed Five Hundred Dollars ($500) and not exceed Fifty Thousand Dollars ($50,000), exclusive of interest. [~~The-County-Court-at Law--No.--1--of--Lubbock--County--also--has--concurrent jurisdiction-with-the--district--court--in--appeals--of final--rulings-and-decisions-of-the-Industrial-Accident Board,-regardless-of-the-amount-in-controversy.~~]

(c) Section 2b, Chapter 109, Acts of the 55th Legislature,

Regular Session, 1957 (Article 1970-340.1, Vernon's Texas Civil Statutes), as amended by Section 29, Chapter 709, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

Sec. 2b. In addition to the jurisdiction now conferred upon the County Court at Law No. 2 of Lubbock County by the Constitution and Laws of the State of Texas said court shall hereinafter have and exercise concurrent civil jurisdiction with the district courts in Lubbock County in all civil cases and matters when the matter in controversy shall exceed Five Hundred Dollars ($500) and not exceed Fifty Thousand Dollars ($50,000), exclusive of interest. [~~The County Court at Law No. 2 of Lubbock County also has concurrent jurisdiction with the district court in appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy.~~]

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.16. Section 25.1672(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by

Section 25.0003 and other law, a county court at law in Midland County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.17. Section 25.1732(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Moore County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the matter in controversy exceeds $500 and does not exceed $50,000,

excluding interest and attorney's fees; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.18. Section 25.1792(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Nolan County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.19. Section 25.1852(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in

Panola County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(B) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.20. Section 25.1862(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Parker County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(2) [~~appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy, and~~

[~~(3)~~] family law cases and proceedings.

SECTION 12.21. Section 25.1892(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Polk County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) [~~appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy;~~

[~~(C)~~] cases and proceedings involving the collection of delinquent taxes, penalties, interest, and costs and the foreclosure of tax liens; and

(C) [~~(D)~~] family law cases and proceedings.

SECTION 12.22. (a) Section 25.1902(b), Government Code, as amended by Section 8.18(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and

conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County also has, concurrent with the county court, the probate jurisdiction provided by general law for county courts. A county court at law also has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,-and~~

[~~(3)~~] family law cases and proceedings.

(b) Section 2a(a), Chapter 56, Acts of the 54th Legislature, Regular Session, 1955 (Article 1970-311a, Vernon's Texas Civil Statutes), as added by Section 2, Chapter 658, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law No. 1 of Potter County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest; and

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident--Board--regardless of-the-amount-in-controversy,~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy; [~~and~~]

(3) [~~(4)~~] cases and proceedings involving family law matters, including adoptions, birth records, or removal of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, and custody and support of minor children involved therein, incident to divorce or annulment proceedings; independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; paternity; termination of parental rights; independent actions involving child support and custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

(c) Section 2(b), Chapter 645, Acts of the 64th Legislature, Regular Session, 1975 (Article 1970-311b, Vernon's Texas Civil Statutes), as added by Section 6, Chapter 658, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) [~~appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy,~~

[~~(3)~~] eminent domain cases and proceedings, regardless of the amount in controversy; and

(3) [~~(4)~~] cases and proceedings involving family law matters, including adoptions, birth records, or removal of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, and custody and support of minor children involved therein, incident to divorce or annulment proceedings; independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; paternity; termination of parental rights; independent actions involving child support and custody of minors, and wife or child desertion; and independent actions involving controversies between parent and child, between parents, and between spouses.

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not

become law, Subsection (a) has no effect.

SECTION 12.23. (a) Section 25.1932(a-2), Government Code, as amended by Section 8.19(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a-2) The County Court at Law No. 2 of Randall County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest and attorney's fees; <u>and</u>

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(3)~~] cases under the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code).

(b) Section 2(b), Chapter 1027, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-371a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The County Court at Law No. 2 of Randall County has concurrent civil jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 but does not exceed $50,000,

excluding interest and attorney's fees; and

(2) [~~appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board;-and~~

[~~(3)~~] eminent domain cases and proceedings.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.24. Section 25.2142(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Smith County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs; and

(B) family law cases and proceedings[~~,-and~~

[~~(C)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

SECTION 12.25. Section 25.2162(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Starr County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees; and

(B) [~~appeals-of--final--rulings--and decisions-of-the-Industrial-Accident-Board,-and~~

[~~(C)~~] family law cases and proceedings.

SECTION 12.26. (a) Section 25.2222(b), Government Code, as amended by Section 8.20(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and

conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs; and

(2) nonjury family law cases and proceedings[~~,--and~~

[~~(3)--final--rulings--and--decisions-of-the Industrial-Accident-Board,-regardless-of-the-amounts-in controversy~~].

(b) Section 2(c), Chapter 592, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-62.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The County Court at Law No. 3 of Tarrant County has jurisdiction concurrent with the district court in civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs. The County Court at Law No. 3 of Tarrant County also has jurisdiction concurrent with the district court [~~in--appeals-of-final-rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of--the--amount--in--controversy,--and~~] in matters of eminent domain, regardless of the amount in

controversy.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.27. (a) Section 25.2292(a), Government Code, as amended by Section 8.21(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Travis County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; <u>and</u>

(2) concurrent jurisdiction with the district courts in civil cases and proceedings in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest[~~;--and~~

[~~(3)--appeals----of---final---rulings---and~~

~~decisions of the Industrial Accident Board, regardless of the amount in controversy~~].

(b) Section 6(b), Chapter 315, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-324a.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In addition to other jurisdiction provided by law, the courts created by this Act and the existing county courts at law have concurrent jurisdiction with the district court in[~~:~~

[~~(1)~~] civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest[~~; and~~

[~~(2) appeals of final rulings and decisions of the Industrial Accident Board, regardless of the amount in controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.28. (a) Section 25.2412(a), Government Code, as amended by Section 8.23(a) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive

codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Washington County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(B) family law cases and proceedings[~~,-and~~

[~~(C)--appeals-of--final--rulings--and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2(d), Chapter 943, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-308a, Vernon's Texas Civil Statutes), is repealed.

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature,

is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.29. (a) Section 25.2422(a), Government Code, as amended by Section 8.11(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Webb County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; <u>and</u>

(C) cases and proceedings involving justiciable controversies and differences between spouses, or between parents, or between parent and child, or between any of these and third persons[~~;--and~~

[~~(B)--appeals--of--final--rulings-and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(b) Section 3(a), Chapter 65, Acts of the 64th Legislature, Regular Session, 1975 (Article 1970-360, Vernon's Texas Civil Statutes), as amended by Section 1, Chapter 528, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law of Webb County has jurisdiction concurrent with the district court in:

(1) eminent domain cases; <u>and</u>

(2) civil cases when the matter in controversy exceeds $500 and does not exceed $50,000, exclusive of interest[~~,-and~~

[~~(3)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.30. (a) Section 25.2452(d), Government Code, as amended by Section 8.24(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and

corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(d) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) family law cases and proceedings;

(3) suits brought under the authority of the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code) or the Uniform Interstate Compact on Juveniles (Section 25.01 et seq., Family Code); and

(4) other juvenile and child welfare cases in which the district and county courts have jurisdiction[~~;-and~~

[~~(5)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2(f), Chapter 195, Acts of the 66th Legislature, Regular Session, 1979 (Article 1970-166d, Vernon's Texas Civil Statutes), as added by Section 3, Chapter 1094, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

(c) Section 2(f), Chapter 671, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-166e, Vernon's Texas Civil

Statutes), as added by Section 5, Chapter 1094, Acts of the 70th Legislature, Regular Session, 1987, is repealed.

(d) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsections (b) and (c) of this section have no effect. If that Act does not become law, Subsection (a) has no effect.

SECTION 12.31. (a) Section 25.2482(a), Government Code, as amended by Section 8.25(b) of the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Williamson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(3) family law cases and proceedings[~~,-and~~

[~~(4)--appeals---of---final---rulings----and decisions--of-the-Industrial-Accident-Board,-regardless of-the-amount-in-controversy~~].

(b) Section 2(a), Chapter 452, Acts of the 68th Legislature, Regular Session, 1983 (Article 1970-380, Vernon's Texas Civil Statutes), as amended by Chapters 985, 986, and 1088, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) The County Court at Law of Williamson County has concurrent jurisdiction with the district court in:

(1) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest; <u>and</u>

(2) cases and proceedings involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of names of persons; child welfare, custody, support and reciprocal support, dependency, neglect, or delinquency; paternity; termination of parental rights; divorce and marriage annulment, including the adjustment of property rights, custody and support of minor children involved therein, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child support and custody of minors and wife or child desertion; and independent actions

involving controversies between parent and child, between parents, and between spouses[~~,-and~~

[~~(3)--appeals----of---final---rulings---and decisions-of-the-Industrial-Accident-Board,--regardless of-the-amount-in-controversy~~].

(c) If the Act of the 71st Legislature, Regular Session, 1989, relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes and conforming codifications enacted by the 70th Legislature to other acts of that legislature, is enacted by the 71st Legislature and becomes law, Subsection (b) of this section has no effect. If that Act does not become law, Subsection (a) has no effect.

CONFORMING AMENDMENTS; NAME CHANGE

SECTION 12.32. Article 1.07, Insurance Code, is amended to read as follows:

Art. 1.07. TEXAS WORKERS' COMPENSATION [~~INDUSTRIAL--ACCIDENT~~] BOARD. Nothing in this Code shall be construed to in any manner affect the duties [~~new~~] imposed by law on the Texas Workers' Compensation [~~Industrial--Accident~~] Board or to take from said board the performance of the duties [~~new~~] imposed on said board by law.

SECTION 12.33. (a) For all workers' compensation insurance policies issued on or after September 1, 1989, and through August 31, 1990, the premium rates charged shall be adjusted to reflect at

1 least a four-percent reduction in the overall premium rate
2 effective on January 1, 1989, distributed among rate
3 classifications in accordance with sound actuarial principles.
4 (b) For all workers' compensation insurance policies issued
5 on or after September 1, 1990, through August 31, 1991, the premium
6 rates charged shall be adjusted to reflect at least a 10-percent
7 reduction in the overall premium rate effective January 1, 1989,
8 distributed among rate classifications in accordance with sound
9 actuarial principles.
10 (c) For all workers' compensation insurance policies issued
11 on or after September 1, 1991, through August 31, 1992, the premium
12 rates charged shall be adjusted to reflect at least a 15-percent
13 reduction in the overall premium rate effective January 1, 1989,
14 distributed among rate classifications in accordance with sound
15 actuarial principles.
16 (d) The reductions in rates required by this section take
17 effect only on a finding by the State Board of Insurance that the
18 reductions would be consistent with the following factors:
19 (1) encourage the prevention of accidents;
20 (2) take into account the peculiar hazard and
21 experience of individual risks, past and prospective, within and
22 outside the state, and all other relevant factors, within and
23 outside the state;
24 (3) that such reductions would be fair, reasonable,
25 and not confiscatory as to any class of insurer authorized by law
26 to write workers' compensation insurance in this state; and
27 (4) the statistical data or other information provided

to justify the reductions indicates that approval of the reductions are reasonable.

Any rates, rating plans, rate reductions or change therein, shall be published 15 days before they become effective.

SECTION 12.34. Article 5.76-1, Insurance Code, is amended to read as follows:

Art. 5.76-1. ACCIDENT PREVENTION SERVICES. (a) Any insurer desiring to write workers' 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 workers' health and safety division of the Texas Workers' Compensation Board [~~State Board of Insurance~~].

(b) [~~(a-1)~~] The workers' health and safety division of the Texas Workers' Compensation Board [~~State Board of Insurance~~] shall conduct [~~the~~] inspections to determine the adequacy of the accident prevention services required by Subsection (a) of this Article at least every two (2) years for each insurer writing workers' compensation insurance in Texas.

(c) [~~(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.~~] Notice that services are available to the policyholder from the insurer must appear in no less than 10-point bold type on the front of each workers' compensation insurance policy delivered or issued for delivery in the state. To provide such facilities, the insuror 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).

(d) [~~(c)~~] At least once each year each insurer writing workers' compensation insurance in Texas must submit to the Texas Workers' Compensation Board [~~State Board of Insurance~~] detailed information on the type

of accident prevention facilities offered to that insurer's policyholders. The information must include:

(1) the amount of money spent by the insurer on accident prevention services;

(2) the number of field safety representatives employed by the insurer;

(3) the number of site inspections performed;

(4) any accident prevention services for which the insurer contracts; and

(5) any additional information required by that board [~~the Board~~].

(e) [~~(d)~~] If the Commissioner of Insurance shall determine that reasonable accident prevention services are not being maintained or provided by the insuror or are not being used by the insuror in a reasonable manner to prevent injury to employees of its policyholders, the fact shall be reported to the Texas Workers' Compensation Board [~~State Board of Insurance~~], and that board [~~the Board~~] shall order a hearing to determine if the insuror is not in compliance with this Article. If it is determined that the insuror is not in compliance, the State Board of Insurance shall revoke its license to write workers' compensation insurance in Texas [~~shall be revoked~~].

(f) [~~(e)~~] The Texas Workers' Compensation Board [~~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.

(g) [~~(f)~~] The Texas Workers' Compensation Board shall employ the personnel necessary to enforce this Article and shall employ at least five (5) safety inspectors to perform inspections at the job site and at the insurance company to determine the adequacy of the accident prevention services provided by the insurer. The safety inspectors must have the qualifications required for field safety representatives required by Subsection (a) of this Article.

(h) [~~(g)~~] An Accident Prevention Advisory Committee is created to assist the Texas Workers' Compensation Board in developing rules to carry out this Article. The committee is composed of employer, employee, and insurance industry representatives and safety professionals appointed by that board [~~the Board~~] annually.

(i) [~~(h)~~] The administration of this Article is an expense of regulating workers' compensation insurance under Article 5.68, Insurance Code.

SECTION 12.35. Section 3A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION OF TEXAS WORKERS' COMPENSATION [~~INDUSTRIAL~~

~~ACCIDENT~~] BOARD. (a) The liquidator shall notify the Texas Workers' Compensation [~~Industrial-Accident~~] Board immediately upon a finding of insolvency or impairment upon any insurance company which has in force any workers' compensation coverage in Texas.

(b) The Texas Workers' Compensation [~~Industrial Accident~~] Board shall, upon said notice, submit to the liquidator a list of active cases pending before the Texas Workers' Compensation [~~Industrial-Accident~~] Board in which there has been an acceptance of liability by the carrier, where it appears that no bona fide dispute exists and where payments were commenced prior to the finding of insolvency or impairment and where future or past indemnity or medical payments are due.

(c) Notwithstanding the provisions of Section 3 of this Article, the liquidator is authorized to commence or continue the payment of claims based upon the list submitted in Subsection (b) above.

(d) In order to avoid undue delay in the payment of covered workers' compensation claims, the liquidator shall contract with the Texas Workers' Compensation [~~Assigned---Risk~~] Pool or any other qualified organization for claims adjusting. Files and information delivered by the Texas Workers' Compensation [~~Industrial--Accident~~] Board to the liquidator may be delivered to the Texas Workers' Compensation [~~Assigned-Risk~~] Pool or any organization

with which the liquidator has contracted for claims adjusting services.

(e) The Texas Workers' Compensation [~~Industrial Accident~~] Board shall report to the State Board of Insurance any occasion when a workers' compensation insurer has committed acts that may indicate insurer financial impairment, delinquency or insolvency.

SECTION 12.36. Section 2(5)(A), Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Department of Commerce;

(iii) a member of the Texas Aeronautics Commission;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Purchasing and General Services Commission;

(viii) a member of the Texas Board

of Corrections;

(ix) a member of the Board of Trustees of the Employees Retirement System of Texas;

(x) a member of the State Highway and Public Transportation Commission;

(xi) a member of the Texas Workers' Compensation [~~Industrial-Accident~~] Board;

(xii) a member of the State Board of Insurance;

(xiii) a member of the Board of Pardons and Paroles;

(xiv) a member of the Parks and Wildlife Commission;

(xv) a member of the Public Safety Commission;

(xvi) the Secretary of State;

(xvii) a member of the State Securities Board;

(xviii) a member of the Texas Amusement Machine Commission;

(xix) a member of the Texas Water Development Board;

(xx) a member of the Texas Water Commission;

(xxi) a member of the governing board of a state senior college or university as defined by Section 61.003, Education Code;

(xxii) a member of the Texas Higher Education Coordinating Board[~~,--Texas---College---and University-System~~];

(xxiii) a member of the Texas Employment Commission;

(xxiv) a member of the State Banking Board;

(xxv) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvi) a member of the Credit Union Commission; or

(xxvii) a member of the School Land Board.

SECTION 12.37. Section 3(1), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation [~~Industrial----Accident~~] Board, and institutions of higher education, that makes rules or determines contested cases.

SECTION 12.38. Section 2(1), Texas Administrative Code Act (Article 6252-13b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission,

department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation [~~Industrial----Accident~~] Board, and institutions of higher education, that makes rules or determines contested cases.

SECTION 12.39. Section 3A(h), Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Texas Workers' Compensation [~~Industrial--Accident~~] Board or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be clearly identified in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Any public official or person who is designated or authorized to post notices of meetings by a governmental body in accordance with Section 3A of this Act shall post the notice taking at face value the reason for the emergency as stated by the governmental

body. Cases of emergency and urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the governmental body. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

SECTION 12.40. Section 2, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Department" whenever used in this law shall be held to mean the State [~~Highway~~] Department of Highways and Public Transportation [~~Texas~~].

(2) [~~2.~~] "Employee" shall mean every person in the service of the [~~State-Highway~~] Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the [~~State-Highway~~] Department.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean----Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial--Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean--the--relatives--named--in Section--8a--of-Article-8306,-Revised-Civil-Statutes-of Texas-of-1925,-adopted-in-Section-7-of-this-law~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall--be--as--defined--in--Section--1,--Article-8309, Revised-Civil-Statutes-of-Texas-of-1925~~].

(b) [~~8.~~] Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

SECTION 12.41. Section 7, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~laws-as-amended-or as-they-may-hereafter-be-amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.27, 4.41-4.46, 4.48-4.51, and 4.61-4.65;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07

[~~(1)--Article-8306,-except-Sections--5--and 28,--and--Articles-8307,-8307b,-and-8309,-Revised-Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter-248,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter---77,---Acts---of---the--65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter--208,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts---of---the---62nd Legislature,--Regular--Session,--1971--(Article--8307c, Vernon's-Texas-Civil-Statutes),~~

[~~(6)--Chapter--358,--Acts---of---the---64th Legislature,--1975-(Article-8307d,-Vernon's-Texas-Civil Statutes),-and~~

[~~(7)--Chapter-179,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber,"~~ ~~or~~] "employer" appears [~~or-their--equivalents--appear~~], it [~~they~~] shall be construed to and shall mean "the department."

SECTION 12.42. Section 14, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. RULES AND REGULATIONS; EXAMINING PHYSICIANS; REPORTS AS EVIDENCE. The [~~State-Highway~~] Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the [~~State-Highway~~] Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the [~~State--Highway~~] Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the [~~State---Highway~~] Department to determine who may be physically fit to be classified as "employees" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the [~~State Highway~~] Department a complete transcript of said examination in writing upon a form to be furnished by the [~~State-Highway~~] Department. It shall be the duty of the [~~State-Highway~~] Department to preserve as a part of the permanent records of the [~~State--Highway~~]

Department all reports of such examinations so filed. Such reports shall be admissible in evidence before the Texas Workers' Compensation [~~Industrial--Accident~~] Board, and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Texas Workers' Compensation [~~Industrial Accident~~] Board in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such reports so admitted shall be prima facie evidence as to the facts set out therein.

SECTION 12.43. Sections 2, 7, 9, and 13, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the board of regents of The Texas A&M University System [~~Board-of-Directors-of-the-Agricultural-and--Mechanical College-of-Texas-including-the-following:~~

[~~Agricultural--and-Mechanical-College of-Texas~~

[~~Texas----Agricultural-----Experiment~~

~~Station~~

~~[Extension-Service,-A.-and-M.-College of-Texas~~

~~[Texas-Forest-Service~~

~~[Rodent-Control-Service~~

~~[Firemen's-Training-School~~

~~[John--Tarleton--Agricultural-College~~

~~[North-Texas-Agricultural-College~~

~~[Prairie--View---State---Normal---and Industrial-College~~

~~[Any--other-agencies-now-or-hereafter under-the--direction--and--control--of--said--Board--of Directors~~].

(2) [~~2.~~] "Workman" shall mean every person employed in the service of any institution as defined above, whose name appears on the payroll thereof.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean---Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial-Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall--mean--the-relatives-named-in Section-8a-of-Article-8306,-Revised-Civil--Statutes--of Texas-of-1925,-adopted-in-Section-7-of-this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925~~].

(b) [~~8.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. LAWS GOVERNING. (a) Unless otherwise provided in this Act, the following provisions of the Texas Workers' Compensation Act [~~herein, Sections 1, 6, 7, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and Article 8306a, Acts 1931, 42nd Legislature, as amended, and Sections 4a, 6a, 11, 12, 13, and 14 of Article 8307, of the Revised Civil Statutes of Texas, 1925, as amended, and Sections 4, and 5, of Article 8309, of the Revised Civil Statutes of Texas, 1925, as amended,~~] are hereby adopted and shall govern insofar as applicable under the provisions of this law:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.27, 4.41-4.46, 4.49-4.51, and 4.61-4.64;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07.

(b) Provided that whenever [~~in-the-above-adopted Sections-of--Articles--8306,--8307,--and--8309--of--the Revised--Civil--Statutes-of-Texas,-1925,-as-amended,-or herein-amended,~~] the word "employer" appears in this Act, it means [~~"association,"---"subscriber,"--or "employer,"--or--their--equivalents--appear---in---such Articles,--they--shall--be-construed-to-and-shall-mean~~] "the institution."

Sec. 9. PAYMENT OF COMPENSATION; EXHAUSTION OF EARNED ANNUAL AND SICK LEAVE. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~provided-in-Section-7,-Article-8306,-as-amended,~~] will remain available to the workman but no workmen's

compensation payment will accrue or become due and payable to the injured workman.

Sec. 13. RULES AND REGULATIONS; PHYSICIANS OR CHIROPRACTORS FOR EXAMINATIONS; REPORTS OF EXAMINATIONS. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection 2 of~~] Section 2(2) of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the

institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

SECTION 12.44. Sections 2, 7, 9, 13, and 18, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The University of Texas System [~~including the following:~~

[~~Main University, Austin~~

[~~Medical Branch, Galveston~~

[~~Dental Branch, Houston~~

[~~M. D. Anderson Hospital for Cancer Research, Houston~~

[~~Southwestern Medical School, Dallas~~

[~~Texas Western College, El Paso~~

[~~Postgraduate School of Medicine, Houston~~

[~~Any other agencies now or hereafter under the direction and control of said Board of Regents~~].

(2) [~~2.~~] "Workman" shall mean every person in the service of The University of Texas System under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of The University of Texas System.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall----mean---Workmen's Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Board [~~shall-mean-the-Industrial-Accident Board-of-the-State-of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall--mean--the-relatives-named-in Section-8a-of-Article-8306,-Revised-Civil--Statutes--of Texas-of-1925,-adopted-in-Section-7-of-this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall-be--as--defined--in--Section--1,--Article--8309, Revised-Civil-Statutes-of-Texas-of-1925~~].

(b) [~~7.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be

included.

Sec. 7. APPLICABILITY OF EXISTING LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~sections~~] are adopted and shall govern as applicable under the provisions of this Act:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.41-4.46, 4.49-4.51, and 4.61-4.64;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07

[~~Sections--1,--6,--7,-7b,-7c,-7d,-7e,-8,-8a,-8b,-9,-10,-11,-11a,-12,-12a,-12b,-12c,-12d,-12e,-12f,-12i,-13,-15,-15a,-16,-17,-19,-20,-21,-22,-23,-24,-25,-26,-and-27--of-Article-8306,-Revised-Civil-Statutes-of-Texas,-1925,-as-amended,--and--as--may-be-hereafter-amended,-Section-1,-Chapter-248,-Acts--of--the--42nd--Legislature,--Regular-Session,--1931--(Article--8306a,--Vernon's--Texas-Civil-Statutes),-as-last-amended-by-Section--2,--Chapter--26,-Acts--of--the--54th-Legislature,-Regular-Session,-1955,-and-as-may-be-hereafter-amended,-Sections-4a,--6a,--10,-11,--12,--13,--and--14--of--Article-8307,-Revised-Civil-Statutes-of-Texas,-1925,-as--amended,--and--as--may--be-hereafter--amended,--Sections--4--and--5,-Article-8309,-Revised-Civil-Statutes-of-Texas,-1925,-as-amended,--and~~

~~as--may--be--hereafter-amended,-Section-1,-Chapter-179,-Acts-of-the-42nd--Legislature,--Regular--Session,--1931-(Article--8309a,--Vernon's--Texas--Civil--Statutes),-as-amended-by-Section-7,-Chapter-178,--Acts--of--the--53rd-Legislature,--Regular--Session,--1953,--and--as--may-be-hereafter-amended~~].

(b) Wherever the word "employer" appears in the Texas Workers' Compensation Act [~~words-"association,"-"subscriber,"-or-"employer,"-or-the-equivalent--of--any-of--these--words,--are--used--in-Article-8306,-8307,-or-8309,-Revised-Civil-Statutes-of-Texas,-as--amended,--or-as--may-be-hereafter-amended,-and-in-Section-1,-Chapter-179,-Acts-of-the--42nd--Legislature,--Regular--Session,-1931-(Article-8309a,-Vernon's-Texas-Civil-Statutes),-as-amended--by--Section--7,--Chapter-178,-Acts-of-the-53rd-Legislature,-Regular--Session,--1953,--and--as--may--be-hereafter--amended~~], for the purpose of this Act it means [~~they-mean~~] "the institution."

Sec. 9. WEEKLY PAYMENTS; ANNUAL AND SICK LEAVE. It is the purpose of this Act that compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~in~~

~~Section-7,-Article--8306,--Revised--Civil--Statutes--of Texas,--1925,--as--amended,--and--as--may--be-hereafter amended,~~] will remain available to the workman, but no workmen's compensation payment will accrue or become due and payable to the injured employee.

Sec. 13. RULES AND REGULATIONS; DESIGNATION OF PHYSICIANS AND SURGEONS; REPORTS OF EXAMINATIONS. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection-2-of~~] Section 2(2) of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the

institution all reports of such examinations so filed with it.

Sec. 18. When an injured workman has sustained an injury in the course of employment and [~~filed--claim for--compensation-and~~] given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

SECTION 12.45. Section 3(1), Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Board" means the Texas Workers' Compensation [~~Industrial-Accident~~] Board.

SECTION 12.46. Subsection (b), Article 1269t, Revised Statutes, is amended to read as follows:

(b) An employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

(1) the disease is not an "ordinary disease of life" as that term is used in the context of

a workers' compensation claim [~~by--the---Industrial Accident-Board~~];

(2) the exposure to the disease occurs during the course of the employment; and

(3) the employee requires preventative medical treatment because of exposure to the disease.

SECTION 12.47. Section 1A, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 1A. In this article:

(1) "Association" means the Texas Employers' Insurance Association.

(2) "Board" means the Texas Workers' Compensation Board.

(3) "Chiropractic service" means [~~The-term "chiropractic--service"--shall--include,--but--shall-be limited-to,~~] chiropractic as defined by the laws [~~laws~~] of this State.

(4) "Chiropractor" means a person [~~and-the term-"chiropractor"-shall-include,-but--be--limited--to chiropractors~~] licensed by the Texas Board of Chiropractic Examiners [~~whose--licenses--are--properly registered-and-in-good-standing-as-required-by-the-laws of-this-State~~].

SECTION 12.48. Section 7, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 7. Any employer of labor in this State who may be subject to the terms of the Texas Workers'

Compensation Act [~~this--Law~~] or to the terms of the "Longshoremen's and Harbor Worker's Compensation Act" of the United States may become a subscriber to the Association.

SECTION 12.49. Section 20a(c), Article 8308, Revised Statutes, is amended to read as follows:

(c) Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Texas Workers' Compensation [~~Industrial--Accident~~] Board, or until a subsequent notice is filed under the provisions of Section 18a of this article, at which time the subsequent insurance company shall be deemed to be the only insurance company liable under the provisions of the Texas Workers' Compensation [~~this~~] Act from and after the effective date of such subsequent policy of insurance.

SECTION 12.50. Sections 1(3) and (4), Article 8309g, Revised Statutes, are amended to read as follows:

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meanings applied to those terms in the context of a workers' compensation claim brought under the Texas Workers' Compensation Act [~~meaning assigned--to--them--in-Section-1,-Article-8309,-Revised Civil-Statutes-of-Texas,-1925,-as-amended~~].

(4) "Board" means the Texas Workers'

Compensation [~~Industrial-Accident~~] Board.

SECTION 12.51. Sections 15(a) and (b), Article 8309g, Revised Statutes, are amended to read as follows:

(a) The following provisions of the Texas Workers' Compensation Act [~~following-laws-as-amended-or as-they-may-hereafter-be-amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.27, 4.41-4.46, 4.48-4.51, and 4.61-4.65;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07

[~~(1)--Article--8306,--except-Sections-5-and 28,-and-Articles-8307,-8307b,-and-8309,--Revised--Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter--248,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter--77,---Acts---of---the---65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter-208,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter---115,---Acts---of--the--62nd Legislature,--Regular--Session,--1971--(Article--8307e, Vernon's-Texas-Civil-Statutes),~~

[~~(6)--Chapter---358,---Acts---of--the--64th Legislature,-1975-(Article-8307d,-Vernon's-Texas--Civil Statutes),-and~~

[~~(7)--Chapter--179,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Wherever the words [~~"association,"~~] "insurer[~~,~~]" [~~"subscriber,"~~] or "employer" are used in the adopted law [~~laws~~], the word "state," "division" or "director," whichever is applicable, is substituted for the purposes of this article.

SECTION 12.52. Section 17, Article 8309g, Revised Statutes, is amended to read as follows:

Sec. 17. COVERAGE FOR OUT-OF-STATE EMPLOYEES. An [~~Notwithstanding-Section-19,-Article--8306,--Revised Civil-Statutes-of-Texas,-1925,-as-amended,-an~~] employee who performs services outside this state is entitled to benefits under this article even if the person is hired or not hired in this state, does not work in this state, works both in this state and out of state, is injured outside this state, or has been outside this state for more than one year. An employee who elects to pursue remedies provided by the state or the District of Columbia in which an injury occurs is not

entitled to benefits under this article.

SECTION 12.53. Section 1(3), Article 8309h, Revised Statutes, is amended to read as follows:

(3) "Board" means the Texas Workers' Compensation [~~Industrial-Accident~~] Board.

SECTION 12.54. Section 3, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 3. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~following-laws--as amended--or--as--they--may--hereafter--be--amended~~] are adopted except to the extent that they are inconsistent with this article:

(1) Sections 1.02(9) and (23);

(2) Section 3.03;

(3) Sections 4.05, 4.08(c), 4.09, 4.10, 4.21-4.24, 4.27, 4.41-4.46, 4.48-4.51, and 4.61-4.65;

(4) Sections 5.01-5.05;

(5) Article 6;

(6) Sections 10.01 and 10.04; and

(7) Sections 11.04, 11.06, and 11.07

[~~(1)--Article-8306,-except-Sections--5--and 28,--and--Articles-8307,-8307b,-and-8309,-Revised-Civil Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter-248,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8306a,-Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter---77,---Acts---of---the--65th Legislature,--Regular--Session,--1977--(Article--8306b, Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter--208,--General--Laws,-Acts-of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8307a,-Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts---of---the---62nd Legislature,--Regular--Session,--1971--(Article--8307e, Vernon's-Texas-Civil-Statutes),-except-that-if-the-city provides-by-Charter-or-ordinance-for-ultimate-access-to the-district-court-for-wrongful-discharge,-Chapter-115, Acts-of-the-62nd--Legislature,--Regular--Session,--1971 (Article--8307e,--Vernon's-Texas-Civil-Statutes)-is-not applicable,~~

[~~(6)--Chapter--358,--Acts---of---the---64th Legislature,--1975-(Article-8307d,-Vernon's-Texas-Civil Statutes),-and~~

[~~(7)--Chapter-179,-General--Laws,--Acts--of the-42nd-Legislature,-Regular-Session,-1931,-as-amended (Article-8309a,-Vernon's-Texas-Civil-Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber,"~~ ~~or~~] "employer[~~,~~]" appears [~~or---their---equivalents~~ ~~appear~~], it [~~they~~] shall be construed to and shall mean "a political subdivision."

(c) If a municipality provides by charter or ordinance for ultimate access to the district court in

the event of wrongful discharge, Section 11.01, Texas Workers' Compensation Act, does not apply.

ARTICLE 13. REPEALER

SECTION 13.01. The following laws are repealed:

(1) Section 2(e), Chapter 709, Acts of the 70th Legislature, Regular Session, 1987 (Article 1970-340.2, Vernon's Texas Civil Statutes);

(2) Article 4413a.2, Revised Statutes;

(3) Section 1, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145a, Vernon's Texas Civil Statutes);

(4) Section 2, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145b, Vernon's Texas Civil Statutes);

(5) Section 3, Chapter 29, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145c, Vernon's Texas Civil Statutes);

(6) Section 11, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(7) Section 16, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(8) Article 8306, Revised Statutes;

(9) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes);

(10) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(11) Article 8307, Revised Statutes;

(12) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8307a, Vernon's Texas Civil Statutes);

(13) Article 8307b, Revised Statutes;

(14) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);

(15) Chapter 358, Acts of the 64th Legislature, Regular Session, 1975 (Article 8307d, Vernon's Texas Civil Statutes);

(16) Sections 18, 19, and 20, Article 8308, Revised Statutes;

(17) Article 8309, Revised Statutes;

(18) Section 11, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(19) Section 17, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(20) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes);

(21) Section 11, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas

Civil Statutes); and

(22) Section 25.0013(d), Government Code.

ARTICLE 14. TRANSITION;

EFFECTIVE DATE; EMERGENCY

SECTION 14.01. CREATION OF BOARD; INITIAL APPOINTMENTS OF BOARD MEMBERS. (a) The Texas Workers' Compensation Board is created on the effective date of this Act.

(b) Except as provided by Subsection (c) of this section, in making the initial appointments to the Texas Workers' Compensation Board, the governor shall designate one employer representative and one wage earner representative for terms expiring February 1, 1991, one employer representative and one wage earner representative for terms expiring February 1, 1993, and one employer representative and one wage earner representative for terms expiring February 1, 1995.

(c) Unless the member is otherwise removed, each member of the Industrial Accident Board who is serving on that board on August 31, 1989, serves as a member of the Texas Workers' Compensation Board until the expiration of the term to which that member was originally appointed.

SECTION 14.02. JOINT TRANSITION OVERSIGHT COMMITTEE. (a) The Joint Transition Oversight Committee is created on the effective date of this Act. The committee is composed of six members as follows:

(1) two members must be representatives of the public, appointed by the governor;

(2) two members must be members of the senate,

appointed by the lieutenant governor; and

(3) two members must be members of the house of representatives, appointed by the speaker of the house of representatives.

(b) The committee may:

(1) meet with the Texas Workers' Compensation Board as considered necessary by the committee or the board;

(2) review rules adopted by the board or proposed for adoption by the board; and

(3) request reports and other information from the board relating to the operation of the board.

(c) The committee shall prepare a written report relating to the transition of the workers' compensation system from the Industrial Accident Board to the Texas Workers' Compensation Board that indicates the compliance of the transition process with this Act. The committee shall file the report with the governor, lieutenant governor, and speaker of the house of representatives not later than December 31, 1990.

(d) This section expires and the committee is abolished January 1, 1991.

SECTION 14.03. NAME CHANGE. The name of the Industrial Accident Board is changed to the Texas Workers' Compensation Board. Any reference in the law to the Industrial Accident Board means the Texas Workers' Compensation Board.

SECTION 14.04. TRANSFER OF CERTAIN PROGRAMS TO WORKERS' COMPENSATION BOARD. (a) The programs created under Articles 5.55A and 5.76-1, Insurance Code, and administered by the State Board of

Insurance are transferred to the Texas Workers' Compensation Board on the effective date of this Act.

(b) The property and records in the custody of the State Board of Insurance that relate specifically to the implementation and enforcement of those programs shall be transferred to the Texas Workers' Compensation Board not later than September 1, 1990.

(c) The Texas Workers' Compensation Board shall adopt rules relating to the transfer of the programs assigned to that board not later than March 31, 1990. Notwithstanding amendments and repeals made by this Act, programs and rules in effect on the effective date of this Act remain in effect and shall be enforced by the appropriate agency until provided otherwise by the rules of the board, and the laws providing authority for those rules and programs are continued in effect for that time and purpose. The board shall assume full control over those programs not later than September 1, 1990.

SECTION 14.05. INITIAL POLICY STATEMENT. The policy statement required under Section 2.09(e) of this Act must be filed not later than October 30, 1989.

SECTION 14.06. ADMINISTRATIVE PENALTIES. Section 10.11 of this Act, providing for the assessment of administrative penalties by the Texas Workers' Compensation Board, applies only to a violation that occurs on or after the effective date of this Act.

SECTION 14.07. SUBSEQUENT INJURY FUND. The subsequent injury fund is created on the effective date of this Act. All money in, and all liabilities of, the second injury fund created under Article 8306, Revised Statutes, as of that date, are

transferred to the subsequent injury fund.

SECTION 14.08. SELF-INSURANCE. (a) The initial board of directors of the Texas Certified Self-Insurer Guaranty Association created under Section 9.16, Texas Workers' Compensation Act, shall be appointed by the Texas Workers' Compensation Board.

(b) Notwithstanding the requirement imposed under Section 9.03(b), Texas Workers' Compensation Act, the Texas Workers' Compensation Board is not required to process an application for a certificate of authority to self-insure within 60 days of the receipt of the application by that board until September 1, 1990.

SECTION 14.09. EFFECTIVE DATE; EFFECT ON PENDING CLAIMS. (a) This Act takes effect September 1, 1989.

(b) The change in law made by this Act applies only to an injury for which the date of injury is on or after the effective date of this Act. The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

(c) The Texas Workers' Compensation Board created under this Act shall process claims for injuries occurring before the effective date of this Act in accordance with the law in effect on the date that the injury occurred, and the former law is continued in effect for this purpose.

SECTION 14.10. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

ADOPTED

MAY 22 1989

Secretary of the Senate

By Smith of Brazos, et al. H.B. No. 1

Substitute the following for H.B. No. 1:

By C.S.H.B. No. 1

A BILL TO BE ENTITLED

AN ACT

relating to the reform of the workers' compensation system; to the creation, powers, and duties of the Texas Workers' Compensation Commission; to work safety; authorizing an appropriation; providing criminal and administrative penalties; and providing for taxes and fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

PREAMBLE; CONSTRUCTION; LEGISLATIVE INTENT

(a) As a matter of public policy, questions concerning reasonable doubt as to whether the injured employee is entitled to compensation will be liberally construed in favor of the employee's right to recover.

(b) It is the intent of the legislature to carry forward determinations made under prior law except to the extent of any conflict with this Act.

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. Articles 1 through 11 of this Act may be cited as the Texas Workers' Compensation Act.

SECTION 1.02. APPLICATION OF OTHER ACTS; SUNSET. (a) Except as otherwise provided by this Act:

(1) the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to all proceedings under this Act, except prehearing conferences, mediation conferences, and other

proceedings involving determinations on workers' compensation claims; and

(2) the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), applies to all records of the commission except as otherwise provided by this Act.

(b) Chapter 325, Government Code (Texas Sunset Act), applies to the Texas Workers' Compensation Commission. Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2001.

SECTION 1.03. DEFINITIONS. In this Act:

(1) "Adjuster" means a person licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(2) "Administrative violation" means a violation of this Act or a rule adopted under this Act that is subject to penalties and sanctions as provided in this Act.

(3) "Agreement" means the resolution by the parties to a dispute under this Act of one or more issues regarding an injury. The term does not include a settlement.

(4) "Alien" means a person who is not a citizen of the United States of America.

(5) "Benefit" means a benefit received based on a compensable injury. The term includes a medical benefit, an income benefit, and a death or burial benefit.

(6) "Certified self-insurer" means a business entity, or one of the consolidated subsidiaries of the entity, that is

required to register under the Securities Act of 1933 (15 U.S.C. Section 77 et seq.) and that has been granted a certificate of authority to self-insure under this Act.

(7) "Child" means a son or daughter. The term includes an adopted child, or a stepchild who is a dependent of the employee.

(8) "Claim" means the process through which benefits are sought under this Act.

(9) "Claimant" means a person who obtains or attempts to obtain benefits.

(10) "Commission" means the Texas Workers' Compensation Commission.

(11) "Commute" means to pay in a lump sum.

(12) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this Act.

(13) "Compensation" means medical benefits, income benefits, death benefits, or burial benefits.

(14) "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes activities conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of such transportation are under the control of the employer; or

(iii) the employee is directed in his employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of his employer if such travel is also in furtherance of personal or private affairs of the employee unless:

(i) the trip to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the trip; and

(ii) the trip would not have been made had there been no affairs or business of the employer to be furthered by the trip.

(15) "Death benefit" means a payment made to a legal beneficiary for the death of an employee under this Act.

(16) "Dependent" means an individual who is eligible to be classified as a dependent for federal income tax purposes under 26 U.S.C. Section 152, or who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood if the individual is a parent or other person related in the first degree of consanguinity or affinity.

(17) "Designated doctor" means a doctor who is appointed by the parties or the commission to resolve a dispute as to the disability or impairment of an injured employee.

(18) "Doctor" means a doctor of medicine, a doctor of

1 chiropractic, a doctor of osteopathic medicine, or a doctor of
2 podiatry.
3 (19) "Employee" means each individual in the service
4 of another under any contract of hire, whether express or implied,
5 or oral or written. The term includes an employee employed in the
6 usual course of the employer's business who is directed by the
7 employer temporarily to perform services outside the usual course
8 of the employer's business. The term also includes a person, other
9 than an independent contractor or the employee of an independent
10 contractor, who is engaged in construction, remodeling, or repair
11 work for the employer at the premises of the employer. The term
12 does not include a master of, or a seaman on, a vessel engaged in
13 foreign or interstate commerce, or a person whose employment is not
14 in the usual course and scope of the employer's business. A person
15 who is an employee for purposes of this Act and is engaged in work
16 that otherwise may be legally performed is an employee despite any
17 license, permit, or certificate violation arising under state law
18 or municipal ordinance or violation of a law regulating wages,
19 hours, or work on Sunday.
20 (20) "Employer" means, unless otherwise specified, a
21 person that makes a contract of hire or that employs one or more
22 employees, and that has workers' compensation coverage, either
23 through self-insurance obtained as provided by this Act, or through
24 private insurance obtained from a licensed insurance carrier. The
25 term includes a governmental entity that self-insures, either
26 individually or collectively.
27 (21) "Health care" includes all reasonable and

1 necessary medical aid, examinations, treatments, diagnoses,
2 evaluations, and services. The term does not include vocational
3 rehabilitation. The term includes:
4 (A) medical, surgical, chiropractic, podiatric,
5 nursing, physical therapy, and psychological services provided by
6 or at the direction of a health care provider;
7 (B) the services of a hospital or other health
8 care facility;
9 (C) prescription drugs, medicines, and other
10 remedies; and
11 (D) medical and surgical supplies, appliances,
12 braces, artificial members, and prostheses, including training in
13 the use of these devices.
14 (22) "Health care facility" means a hospital,
15 emergency clinic, outpatient clinic, or other facility providing
16 health care.
17 (23) "Health care practitioner" means a licensed
18 individual who provides or renders health care or a nonlicensed
19 individual who provides or renders health care under the direction
20 or supervision of a physician.
21 (24) "Health care provider" means a health care
22 facility or health care practitioner.
23 (25) "Impairment" means any anatomic or functional
24 abnormality or loss existing after maximum medical improvement that
25 results from the compensable injury and is reasonably presumed to
26 be permanent.
27 (26) "Income benefit" means a payment made to an

employee for disability or impairment.

(27) "Injury" means damage or harm to the physical or mental structure of the body and those diseases or infections naturally resulting from the damage or harm. The term includes accidental injuries and occupational diseases.

(28) "Insurance carrier" means:

(A) a person authorized and admitted by the State Board of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance;

(B) a certified self-insurer under this Act; or

(C) a governmental entity that self-insures, either individually or collectively.

(29) "Insurance company" means a person authorized and admitted by the State Board of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(30) "Intoxication" means:

(A) the state of having an alcohol concentration of 0.10 or more, where "alcohol concentration" has the meaning assigned to it under Article 67011-1, Revised Statutes, or the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(i) an alcoholic beverage, as that term is defined by Section 1.04, Alcoholic Beverage Code;

(ii) a controlled substance or controlled substance analogue, as those terms are defined by the Texas

Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes);

(iii) a dangerous drug, as defined by Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes);

(iv) an abusable glue or aerosol paint, as defined by Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes); or

(v) any similar substance, the use of which is regulated under state law.

(B) The term does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance taken under and in accordance with a prescription written for the employee by the employee's doctor, or physical or mental incapacity resulting from the introduction into the body of a substance listed under Paragraph (A) of this subdivision that is incidental to the employee's work.

(31) "Legal beneficiary" means a person who is entitled to receive death benefits under this Act.

(32) "Maximum medical improvement" means the point after which further recovery from, or lasting improvement to, an injury can no longer reasonably be anticipated, based on reasonable medical probability.

(33) "Medical benefits" means health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable

expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational diseases before and after the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment.

(34) "Medical emergency" means a medical condition that is manifested by acute symptoms, including severe pain, that are of sufficient severity that the absence of immediate medical attention would:

(A) place the patient's health in serious jeopardy;

(B) result in impairment to bodily functions; or

(C) result in serious dysfunction of any bodily organ or part.

(35) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. The term includes other diseases or infections that naturally result from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is a reasonable incident to a compensable injury or occupational disease. The term includes repetitive trauma injuries. The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

(36) "Objective" means independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests or signs confirmable by physical examination.

(37) "Objective clinical or laboratory finding" means a medical finding of injury or impairment based on competent objective medical evidence that is independently confirmable by an examining doctor without relying on the employee's subjective symptoms.

(38) "Partial incapacity" means any degree of incapacity less than total incapacity, because of which a person suffers a reduction in earning capacity. A person cannot suffer from both total and partial incapacity at the same time.

(39) "Penalty" means a fine established by this Act.

(40) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(41) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment.

(42) "Representative" means a person, including an attorney, authorized by the commission to assist or represent an employee, a person claiming death benefits, or an insurance carrier, in a matter arising under this Act that relates to the payment of compensation.

(43) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be

resolved under the terms of this Act.

(44) "Subclaimant" means a person who has:

(A) provided compensation payable under this Act, directly or indirectly, to or for an employee or legal beneficiary;

(B) sought and been refused reimbursement from the insurance carrier; and

(C) filed a written subclaim with the commission.

(45) "Subjective" means perceivable only by an employee who is examined by a doctor and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

(46) "Total incapacity" means that a person is disabled from performing the usual tasks of a worker, not merely the usual tasks of any particular trade or occupation, to such an extent that the person cannot get and retain employment doing the usual tasks of a worker. The term does not imply absolute inability to perform any kind of labor.

(47) "Treating doctor" means the doctor who is primarily responsible for the employee's health care for an injury.

(48) "Wages" includes every form of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and other advantage that can be estimated in money which the employee receives from the employer as part of the employee's remuneration.

(49) "Workers' compensation insurance coverage" means an approved insurance policy to secure the payment of compensation, coverage secured by self-insurance as provided by this Act, or coverage provided by a governmental entity.

SECTION 1.04. INTEREST OR DISCOUNT RATE. Any interest paid or discount provided for in this Act shall be at the rate of four percent a year.

SECTION 1.05. COMPUTATION OF TIME. (a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting months from a particular day, the period ends on the same numerical day of the month from which the computation is begun. If the concluding month does not contain that number of days, the period ends on the last day of that month.

ARTICLE 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER A. ORGANIZATION

SECTION 2.01. COMMISSION. (a) The Texas Workers' Compensation Commission is created on the effective date of this Act, and the terms of members of the Industrial Accident Board expire on that date.

(b) The Texas Workers' Compensation Commission is composed of six members appointed by the governor with the advice and consent of the senate.

(c) Three members must be employers of labor and three members must be wage earners with demonstrated experience in representing fellow wage earners regarding wages, hours, or conditions of employment. In making appointments to the commission, the governor shall attempt to reflect the social, geographic, and economic diversity of the state. To ensure balanced representation, the governor may consider the geographic location of a prospective appointee's domicile, the prospective appointee's experience as an employer or wage earner, the number of employees employed by a prospective member who would represent employers, and the type of work performed by a prospective member who would represent wage earners and shall consider those factors in appointing members to fill vacancies on the commission. In making the appointments, the governor shall consider recommendations made by groups that represent employers or wage earners.

(d) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(e) A member of the commission is not liable in a civil action for any act performed in good faith in the execution of duties as a commission member.

SECTION 2.02. TERMS; VACANCY. (a) Members of the commission hold office for staggered terms of six years. The terms of one member representing employers and one member representing wage earners expire February 1 of each odd-numbered year.

(b) The governor shall designate one member representing

employers and one member representing wage earners for terms expiring February 1, 1991, one member representing employers and one member representing wage earners for terms expiring February 1, 1993, and one member representing employers and one member representing wage earners for terms expiring February 1, 1995.

(c) If a vacancy occurs during a term, the governor shall appoint a replacement to fill the unexpired part of the term. The replacement must be from the group represented by the member being replaced.

SECTION 2.03. CHAIR. (a) The commission shall biennially elect one of its members to serve as chair for a two-year term expiring February 1 of even-numbered years. The term as chair of the first member elected to that position expires February 1, 1990.

(b) The chair may vote on all matters before the commission.

SECTION 2.04. VOTING REQUIREMENTS. The commission may take action by majority vote of its membership. Decisions regarding the hiring of an executive director require the votes of at least two commissioners representing employers and at least two commissioners representing wage earners.

SECTION 2.05. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the commission;

(2) does not maintain during service on the commission the qualifications required for appointment to the commission;

(3) cannot discharge the member's duties for a substantial part of the term for which the member is appointed

because of illness or incapacity; or

(4) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director of the commission has knowledge that a potential ground for removal exists, the executive director shall notify the chair of the commission of the ground. The chair shall then notify the governor that a potential ground for removal exists.

SECTION 2.06. REMUNERATION. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission, not to exceed any limit established in the General Appropriations Act. A member is entitled to reimbursement for actual lost wages, if any, due to performance of commission duties, not to exceed $100 per day.

SECTION 2.07. MEETINGS. (a) The commission shall meet at least once in each quarter of the calendar year.

(b) The commission may meet at other times at the call of the chair or as provided by the rules of the commission.

SECTION 2.08. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission shall adopt rules as necessary for the implementation and enforcement of this Act in accordance with Sections 1-12, Administrative Procedure and Texas Register Act

(Article 6252-13a, Vernon's Texas Civil Statutes), except Sections 4(a)(3) and 4(b) of that Act.

(b) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(d) The commission may accept gifts, grants, or donations as provided by rules adopted by the commission.

(e) The commission shall establish qualifications for representatives as defined in Section 1.03 of this Act and shall adopt rules establishing procedures for authorization of those representatives. If the representative is not an adjuster representing an insurance carrier or is not licensed to practice law, the representative may not receive a fee for providing representation under this Act.

(f) Any sanction that deprives a person of the right to practice before the commission or the right to receive remuneration under this Act for a period exceeding 30 days, or any other sanction suspending for a period exceeding 30 days or revoking a license, certification, or permit required for practice in the

field of workers' compensation may only be imposed by the commission.

(g) The commission shall appoint the executive director of the commission.

(h) Except for fees established by this Act, the commission shall establish fees for services provided to persons requesting services from the commission.

(i) The commission shall approve or deny any recommendation of the director of self-insurance concerning the issuance or revocation of a certificate to self-insure.

(j) The commission shall certify that a certified self-insurer has suspended payment of compensation or has otherwise become an impaired employer as that term is used in Section 3.51(3) of this Act.

(k) The commission shall consider and recommend to the legislature changes to this Act. Recommended changes shall be forwarded to the legislature on or before December 1 of each even-numbered year.

(l) The commission may appoint advisory committees as it deems necessary.

(m) The rights and duties imposed on the commission by this section may not be delegated.

SECTION 2.09. EXECUTIVE DIRECTOR. (a) The executive director is the executive officer and administrative head of the commission. The executive director exercises all rights, powers, and duties imposed or conferred by law on the commission, except for rule making and other rights, powers, and duties specifically

reserved by this Act to members of the commission.

(b) The executive director shall hire persons to conduct benefit review conferences, arbitration proceedings, and contested case hearings under this Act and other personnel as necessary.

(c) The executive director serves at the pleasure of the commission.

SECTION 2.10. POWERS AND DUTIES OF THE EXECUTIVE DIRECTOR. (a) The executive director may delegate all powers and duties as necessary.

(b) The executive director shall conduct the day-to-day operations of the commission in accordance with policies established by the commission and otherwise implement commission policy.

(c) The executive director may:

(1) investigate misconduct;

(2) hold hearings;

(3) issue subpoenas to compel the attendance of witnesses and the production of documents;

(4) administer oaths;

(5) take testimony either directly or by deposition or interrogatory;

(6) assess and enforce penalties established by this Act; and

(7) enter appropriate orders as authorized by this Act.

(d) The executive director may correct clerical errors in the entry of orders.

(e) The executive director may institute an action in the commission's name to enjoin the violation of this Act.

(f) The executive director is the custodian of the commission's records and shall perform those duties required by law, including provision of copies and certification of records. The executive director may destroy any records maintained by the commission relating to an injury 50 years after the date of injury to which the records refer. Records maintained by the commission may be preserved in any format permitted by Chapter 441, Government Code, and rules adopted by the Texas State Library under that chapter.

(g) The executive director is the agent for service of process on out-of-state employers.

(h) The executive director shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(i) The executive director shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(j) The executive director shall prepare and maintain a written policy statement approved by the commission to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to

recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission's work force that meets federal and state guidelines;

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

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

(k) A policy statement prepared under Subsection (j) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

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

SECTION 2.11. LIAISONS. (a) The commission shall employ one person selected by the commission members representing employers of labor to act as their liaison. The commission shall employ one person selected by the commission members representing wage earners to act as their liaison.

(b) The employer and employee liaisons shall coordinate their activities with the executive director, but shall be under the general direction of members of the commission.

(c) The employer and employee liaisons shall have full access to the books and records of the commission.

SECTION 2.12. DIVISIONS OF THE COMMISSION. (a) The executive director may establish divisions within the commission for effective administration and performance of commission functions. The executive director may allocate and reallocate functions among the divisions.

(b) In addition to the divisions established under Subsection (a) of this section, the following divisions are established:

(1) division of medical review;

(2) division of compliance and practices;

(3) division of hearings;

(4) division of self-insurance regulation; and

(5) division of risk management.

(c) The executive director shall appoint the directors of the divisions of the commission. The directors serve at the pleasure of the executive director.

SECTION 2.13. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The executive director shall prepare information of public interest describing the functions of the commission and the procedures by which complaints are filed with and resolved by the commission. The executive director shall make the information available to the public and appropriate state agencies.

(b) The executive director shall keep an information file about each written complaint filed with the commission that is unrelated to a specific workers' compensation claim. If such a complaint is filed with the commission, the commission, at least quarterly and until final disposition of the complaint, shall

notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on issues under the general jurisdiction of the commission.

(d) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental handicap may be provided reasonable access to workers' compensation proceedings.

SECTION 2.14. SUBSEQUENT INJURY FUND. (a) The subsequent injury fund is established as a special fund in the state treasury.

(b) The subsequent injury fund is liable for the payment of compensation as provided by Section 4.28 of this Act.

(c) The executive director shall appoint an administrator for the subsequent injury fund.

[Sections 2.15-2.20 reserved for expansion]

CHAPTER B. COMMISSION FINANCING

SECTION 2.21. COMMISSION FUNDING. Unless otherwise provided, all proceeds, including administrative penalties and advance deposits for purchase of services, collected under this Act shall be deposited in the general revenue fund of the state treasury to the credit of the commission. The funds may be spent as authorized by legislative appropriation on warrants issued by the comptroller of public accounts under requisitions made by the commission.

SECTION 2.22. MAINTENANCE TAXES AND FEES. (a) To pay the

costs of administering this Act, all insurance carriers, except governmental entities, annually shall pay a maintenance tax. The total taxes assessed for this purpose may not exceed two percent of the correctly reported gross workers' compensation insurance premiums plus two percent of the total tax base of all certified self-insurers, as computed under Section 3.61(b) of this Act.

(b) Workers' compensation insurance companies shall be taxed at the rate established under Section 2.23 of this Act. Those taxes shall be collected in the manner provided for collection of other taxes on gross premiums from workers' compensation companies as provided in Article 5.68, Insurance Code.

(c) Certified self-insurers shall pay a fee and maintenance taxes as provided in Sections 3.60 and 3.62 of this Act.

SECTION 2.23. RATE OF ASSESSMENT. (a) The commission shall set and certify to the State Board of Insurance the rate of assessment no later than October 31 of each year, taking into account the following factors:

(1) expenditures projected as necessary for the commission to administer this Act during the fiscal year for which the rate of assessment is set;

(2) projected employee benefits paid from general revenues;

(3) surpluses or deficits produced by this tax in the preceding year; and

(4) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under this Act.

(b) In setting the rate of assessment, the commission shall not consider revenue or expenditures related to:

(1) the crime victims compensation fund;

(2) the division of risk management;

(3) the division of self-insurance regulation; or

(4) the research center.

SECTION 2.24. WITHDRAWAL FROM BUSINESS. If an insurance carrier withdraws from business in this state or the certificate of a certified self-insurer is terminated, the insurance commissioner or the executive director of the commission shall proceed at once to collect taxes due under this Act using legal process as necessary.

SECTION 2.25. TAX RATE SURPLUS OR DEFICIT. (a) If the tax rate assessed by the commission for a given year fails to produce sufficient revenue to make all expenditures authorized by legislative appropriation, the deficit shall be paid from the general revenue fund and reflected in the rate of assessment for the next year.

(b) If the tax rate assessed by the commission for a given year exceeds the revenues required to make all expenditures authorized by the legislature, the excess shall be deposited in the general revenue fund to the credit of the commission and reflected in the rate of assessment for the next year.

SECTION 2.26. FUNDING OF SUBSEQUENT INJURY FUND. (a) If a compensable death occurs and there is no legal beneficiary, or if a claim for death benefits is not made in a timely manner, the insurance carrier shall pay to the commission for deposit in the

subsequent injury fund an amount equal to 360 weeks of the death benefits otherwise payable.

(b) The carrier may elect, or the commission may order, that death benefits payable to the fund be commuted on written approval of the executive director. The commutation may be discounted for present payment at the interest rate established in Section 1.04 of this Act, compounded annually.

(c) If a claim for death benefits is not filed with the commission by a beneficiary or beneficiaries on or before the first anniversary of the death of the employee, it shall be presumed, for the purposes of this section only, that no legal beneficiary survived the deceased employee. The presumption does not apply against a minor beneficiary or an incompetent beneficiary for whom no guardian has been appointed.

(d) If the carrier makes payment to the subsequent injury fund and the commission later determines that a legal beneficiary is entitled to the death benefits, the commission shall order the fund to reimburse the carrier for the amount overpaid to the fund.

SECTION 2.27. AUDITS. The state auditor shall audit the financial transactions of the commission at least once during each biennium.

[Sections 2.28-2.30 reserved for expansion]

CHAPTER C. RECORDS

SECTION 2.31. INJURY INFORMATION CONFIDENTIAL. (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this Act.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment pursuant to Section 10.04 or 10.05 of this Act is not confidential.

(c) The commission shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (d) of this section if:

(1) the claim is open or pending before the commission, on appeal to a court of competent jurisdiction, or the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form developed by the commission for this purpose and provides all required information.

(d) Information on a claim may be released as provided in Subsection (c) of this section to:

(1) the employee or the employee's legal beneficiary;

(2) the employee's or the legal beneficiary's representative;

(3) the employer at the time of injury;

(4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty Association, if that association has assumed the obligations of an impaired employer;

(6) the Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company; or

(7) a third party litigant in a lawsuit in which the cause of action arises from the incident which gave rise to the injury, provided that Subsection (c)(1) of this section shall not apply.

SECTION 2.32. EXCEPTIONS. (a) The commission may release information regarding a claim to a governmental agency, political subdivision, or regulatory body for the following purposes:

(1) investigating an allegation of criminal offense or licensing or regulatory violation;

(2) providing unemployment benefits, crime victims compensation benefits, vocational rehabilitation services, or health care benefits;

(3) investigating occupational safety or health violations; or

(4) verifying income on an application for benefits under an income-based state or federal assistance program.

(b) The commission shall release information on a claim to:

(1) the State Board of Insurance for any statutory or regulatory purpose;

(2) a legislative committee for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 2.31(d) of this Act, if the request is provided to the commission; and

(4) the research center for research purposes.

SECTION 2.33. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS. (a) When a person applies for employment, the

prospective employer who has workers' compensation coverage is entitled, on compliance with this chapter, to obtain information on the applicant's prior injuries.

(b) The employer must make the request by telephone or file the request in writing not more than 14 days after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) The employer must obtain written authorization from the applicant before making the request.

(e) If the request is made in writing, the authorization shall be filed simultaneously. If the request is made over the telephone, the employer shall file the authorization not later than the 10th day after the date on which the request is made.

SECTION 2.34. REPORT OF PRIOR INJURY. (a) The commission shall review its records upon receipt of a valid request from a prospective employer.

(b) If the commission finds that the applicant has made three or more general injury claims in the preceding five years, the commission shall release the date and description of each injury to the employer.

(c) The information may be released in writing or by telephone.

(d) The commission may refuse to release information except on receipt of written authorization from each applicant if the employer requests information on three or more applicants at the same time.

(e) For the purposes of this section, "general injury" means an injury other than an injury limited to one or more of the following:

(1) an injury to a digit, limb, or member;

(2) an inguinal hernia; or

(3) vision or hearing loss.

SECTION 2.35. FAILURE TO FILE AUTHORIZATIONS; OFFENSE; ADMINISTRATIVE VIOLATION. An employer who receives information by telephone and fails to file the necessary authorization in a timely manner commits a Class B administrative violation. Each failure to file is a separate violation.

SECTION 2.36. CONFIDENTIALITY TRANSFERS. Any information pertaining to a claim that is confidential under this Act remains confidential when released to any person, except when used in court for the purposes of an appeal.

SECTION 2.37. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE. (a) A person who knowingly, intentionally, or recklessly publishes, discloses, or distributes confidential information to a person not authorized to receive such information directly from the commission commits an offense.

(b) A person who knowingly, intentionally, or recklessly receives information that the person is not authorized to receive commits an offense.

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

(d) An offense under this section may be prosecuted in the district courts of Travis County or of the county in which the information was unlawfully received, published, disclosed, or

distributed.

(e) The district court of Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

SECTION 2.38. STATISTICAL INFORMATION. The commission, research center, or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed.

SECTION 2.39. FEES AUTHORIZED. Unless a fee is specifically established, the commission may establish reasonable fees for services provided under this chapter.

ARTICLE 3. COVERAGE

CHAPTER A. COVERAGE REQUIREMENTS

SECTION 3.01. LIABILITY FOR COMPENSATION. (a) An insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if:

(1) at the time of injury, the employee is subject to this Act; and

(2) the injury arises out of and in the course and scope of employment.

(b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this Act.

SECTION 3.02. EXCEPTIONS. An insurance carrier is not liable for compensation if:

(1) the employee's intoxication was a producing cause

of the injury;

(2) the injury was caused by the employee's wilful intention and attempt to injure himself or to unlawfully injure another person;

(3) the employee's horseplay was the producing cause of the injury;

(4) the injury arose out of an altercation in which the employee was the aggressor, unless the employee is performing service as a peace officer acting in the line of duty according to established policies;

(5) the injury arose out of an act of a third person intended to injure the employee because of personal reasons and not directed at the employee as an employee or because of the employment;

(6) the injury arose out of voluntary participation in an off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of or are expressly or impliedly required by the employment; or

(7) the injury arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public.

SECTION 3.03. COMMON-LAW DEFENSES. (a) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) This section does not reinstate or otherwise affect the availability of these or other defenses at common law.

(c) The employer may defend the action on the ground that the injury was caused by an intentional act of the employee to bring about the injury or while the employee was in a state of intoxication if the intoxication was a producing cause of the injury to or death of the employee.

SECTION 3.04. BURDEN OF PROOF. In all such actions against an employer who does not have workers' compensation insurance coverage, it is necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of employment.

SECTION 3.05. APPLICATION TO INDEPENDENT CONTRACTORS. (a) In this section:

(1) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;

(C) is required to furnish or have his employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(2) "General contractor" means a person who has undertaken to procure the performance of work or services, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or an analogous term. The term does not include motor carriers that make use of owner operators in providing transportation service.

(3) "Motor carrier" means a person operating a motor vehicle over any public highway in this state.

(4) "Owner operator" means a person who provides transportation service for a motor carrier under contract.

(5) "Subcontractor" means a person who has contracted with a general contractor to perform all or any part of the work or services that a general contractor has undertaken to perform.

(6) "Transportation service" means providing a motor vehicle with a driver under contract used in transporting passengers or property.

(b) For the purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a

general contractor or motor carrier who is an employer under this Act is an employee of that general contractor or motor carrier, unless the person is operating as an independent contractor or is hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(c) A subcontractor and the subcontractor's employees are not employees of the general contractor or motor carrier for purposes of this Act if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(d) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor. If a general contractor elects to provide that coverage, then, notwithstanding Section 10.03 of this Act, the actual premiums, based on payroll, that are paid or incurred by the general contractor for the coverage may be deducted from the contract price or any other amount owed to the subcontractor by the general contractor.

(e) A motor carrier and an owner operator may enter into a written agreement under which the motor carrier provides workers' compensation insurance coverage to the owner operator and the employees of the owner operator. If a motor carrier elects to provide that coverage, then, notwithstanding Section 10.03 of this

Act, the actual premiums, based on payroll, that are paid or incurred by the motor carrier for the coverage may be deducted from the contract price or any other amount owed to the owner operator by the motor carrier.

(f) If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the purpose and intent to avoid liability as an employer under this Act, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation and shall also have a separate right of action against the subcontractor, which right of action does not affect the employee's right to compensation under this Act.

(g) This section does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to cease or change unsafe work practices.

(h) This section does not apply to farm or ranch employees.

SECTION 3.06. LIABILITY OF GENERAL CONTRACTOR FOR CERTAIN SUBCONTRACTORS. If a general contractor has workers' compensation insurance to protect the general contractor's employees, and if, in the execution of any work in the course and scope of the general contractor's business, the general contractor enters into a contract with a subcontractor who is a sole proprietor with no employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this Act.

SECTION 3.07. APPLICATION TO FARM OR RANCH EMPLOYEES. (a)

This Act applies to actions to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker covered by Subsection (b) of this section; or

(3) employed by a person with a gross annual payroll for the preceding year in the amount provided by Subsection (c) of this section.

(b) To be covered by this Act, a farm or ranch employee who is a seasonal worker must be employed on a truck farm, orchard, or vineyard or employed by a person with a gross annual payroll for the preceding year in an amount provided by this subsection. The preceding year's gross annual payroll must be equal to or exceed the prior year's required payroll adjusted for inflation, but not less than $25,000. To adjust for inflation, the comptroller of public accounts shall develop a consumer price index for this state. The comptroller shall certify the applicable index factor to the commission before October 1 of each year. The commission shall adjust the gross annual payroll requirement accordingly. A seasonal worker is covered by this law as if the seasonal worker were a migrant worker if:

(1) the seasonal worker is working for a farmer, ranch operator, or labor agent who employs migrant workers; and

(2) the seasonal worker is doing the same work at the same time at the same location as migrant workers.

(c) To be covered by this law, a farm or ranch employee other than a migrant or seasonal worker must:

(1) for the years before 1991, be employed by a person with a gross annual payroll for the preceding year of at least $50,000; and

(2) for 1991 and thereafter, be employed by a person:

(A) with a gross annual payroll in the amount required for coverage of seasonal workers under Subsection (b) of this section; or

(B) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(d) For purposes of Subsections (b) and (c) of this section, the gross annual payroll of a person includes any amount paid by the person to a labor agent for that agent's services and for the services of migrant or seasonal workers, but does not include:

(1) wages paid to the person or a member of the person's family, if the person is a sole proprietor;

(2) wages paid to a partner or a member of a partner's family in a partnership; or

(3) wages paid to a shareholder or a member of a shareholder's family by a corporation in which all shareholders are family members.

(e) If a labor agent furnishes migrant or seasonal workers, the labor agent is liable under this Act as if the labor agent were the person employing the workers, without regard to the right of control or other factors used to determine an employer-employee relationship. However, if the labor agent does not have workers' compensation insurance coverage, the person with whom the labor agent contracts for the services of the migrant or seasonal workers

is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by any of the migrant or seasonal workers as provided by this Act. For that purpose, the migrant or seasonal workers are considered the employees of the person with whom the labor agent contracts, and that person may obtain workers' compensation insurance coverage for those workers as provided by this Act.

(f) A labor agent must notify each person with whom the agent contracts of whether or not the agent has workers' compensation insurance coverage. If the agent does have workers' compensation insurance coverage, the agent must present evidence of the workers' compensation insurance coverage to each person with whom the agent contracts.

(g) If migrant or seasonal workers are covered by workers' compensation insurance, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this Act.

(h) A person who purchases a workers' compensation insurance policy covering farm or ranch employees may cover himself, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered, and the elected coverage continues while the policy is in effect and the named individual is endorsed on the policy. A member of an employer's family is exempt from coverage under the policy unless covered voluntarily as provided by this section.

(i) In this section:

(1) "Agricultural labor" means the planting,

cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.A. Sec. 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who labor for the benefit of a third party.

(4) "Migrant worker" means an individual who is employed in agricultural labor of a seasonal or temporary nature and who is required to be absent overnight from the worker's permanent place of residence.

(5) "Person" means an individual, corporation, or association.

(6) "Seasonal worker" means an individual who is employed in agricultural or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from the worker's permanent place of residence.

(7) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

(j) This section does not affect the application or

interpretation of this Act as it relates to persons engaged in activities previously determined not to be farm or ranch labor.

(k) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this section is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of a person acting as an independent contractor. For the purposes of this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of that employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

SECTION 3.08. EMPLOYEE ELECTION; WAIVER OF RIGHT TO COMPENSATION VOID. (a) Except as otherwise provided by this Act, unless the employee gives notice as provided by Subsection (b) of this section, an employee of an employer waives the employee's right of action at common law or under any statute of this state to recover damages for personal injuries or death sustained in the

course of the employment.

(b) An employee who desires to retain the common-law right of action to recover damages for personal injuries or death shall notify the employer in writing that the employee does not want to be covered under this Act and retains all rights of action under common law. The employee shall notify the employer not later than the fifth day after the date the employee begins the employment. If the employer is not a covered employer at the time of the employment but later obtains workers' compensation insurance coverage, to retain the right of action the employee must notify the employer in writing not later than the fifth day after the date on which the employee receives notice in writing from the employer that the employer has obtained the coverage. An employer may not require an employee to retain common-law rights under this subsection as a condition of employment.

(c) An employee of an employer who elects to retain the right of action and the legal beneficiaries of that employee may bring a cause of action for damages for injuries sustained in the course of the employment under common law or under a statute of this state. Notwithstanding Section 3.03 of this Act, the cause of action is subject to all defenses available under the common law and the statutes of this state.

(d) Except as provided for in this section, an agreement by an employee to waive the employee's right to compensation under this Act is void.

SECTION 3.09. EMPLOYEES EXEMPTED FROM THIS ACT. The following employees are not subject to this Act:

(1) a person employed as a domestic worker or a casual worker engaged in employment incidental to a personal residence;

(2) a person covered by a method of compensation established under federal law; or

(3) a farm or ranch employee, except as provided by Section 3.07 of this Act.

SECTION 3.10. VOLUNTARY COVERAGE OF EXEMPT EMPLOYEES. An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees otherwise exempted from coverage under Section 3.09(1) or (3) of this Act. Self-insurance or purchase by the employer of workers' compensation insurance applicable to that employee or classification of employees constitutes acceptance by the employer of the rights and responsibilities imposed under this Act as of the effective date of the certificate of authority to self-insure or the insurance policy and as long as the certificate or policy remains in effect. An employer who does not obtain coverage for exempt employees is not deprived of the common-law defenses listed under Section 3.03 of this Act.

SECTION 3.11. ALIEN EMPLOYEES; LEGAL BENEFICIARIES. (a) A resident or nonresident alien employee or legal beneficiary is entitled to compensation under this Act.

(b) A nonresident alien claimant may be officially represented by a consular officer of the country of which the alien is a citizen. That officer may receive benefit payments for distribution to the alien employee. The receipt of such payments constitutes full discharge of the insurance carrier's liability for

1 such payments.

2 SECTION 3.12. LEGALLY INCOMPETENT EMPLOYEES. If an injured
3 employee is a minor or is otherwise legally incompetent, the
4 employee's guardian may exercise on the employee's behalf the
5 rights and privileges granted to the employees under this Act. The
6 commission by rule shall adopt procedures relating to the method of
7 payment of benefits to legally incompetent employees.

8 SECTION 3.13. EXTRATERRITORIAL COVERAGE. If an employee,
9 while working in a foreign jurisdiction, suffers an injury that
10 would be compensable had it occurred within this state, the
11 employee is entitled to all rights and remedies under this Act if:

12 (1) the employee has had significant contacts with
13 this state; or

14 (2) the employment was principally located in this
15 state.

16 SECTION 3.14. SIGNIFICANT CONTACTS. An employee has
17 significant contacts with this state if the employee:

18 (1) was hired or recruited in this state and the
19 employee:

20 (A) was injured not later than one year after
21 the date of hire; or

22 (B) has worked in this state for at least 10
23 working days during the 12-month period preceding the date of
24 injury; or

25 (2) was hired or recruited in this state to work
26 outside the United States.

27 SECTION 3.15. PRINCIPAL LOCATION. The principal location of

a person's employment is where:

(1) the employer has a place of business at or from which the employee regularly works; or

(2) the employee resides and spends a substantial part of the employee's working time.

SECTION 3.16. AGREEMENT ON PRINCIPAL LOCATION; ADMINISTRATIVE VIOLATION. (a) An employee whose work requires regular travel between this and one or more other jurisdictions may agree in writing with the employer on the principal location of the employment.

(b) The employer shall file the agreement with the executive director on request.

(c) A person who violates Subsection (b) commits a Class C administrative violation.

SECTION 3.17. INTERJURISDICTIONAL AGREEMENTS. (a) The executive director may enter into agreements with the appropriate agencies of other jurisdictions that administer the workers' compensation laws of those jurisdictions with respect to:

(1) conflicts of jurisdiction;

(2) the assumption of jurisdiction in cases in which the contract of employment arises in one state and the injury is incurred in another;

(3) procedures for proceeding against a foreign employer who fails to comply with this Act; and

(4) procedures for the appropriate agency in a foreign jurisdiction proceeding against a Texas employer that fails to comply with the workers' compensation laws of the foreign

jurisdiction.

(b) When the agreement has been executed and adopted by the commission as a rule, it binds all subject employers and employees.

SECTION 3.18. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTIONS. (a) An injured employee who elects to pursue the employee's remedy and recovers compensation under the workers' compensation laws of another jurisdiction is barred from recovering under this Act.

(b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited against the compensation that the employee would have received had the claim been made under this Act.

[Sections 3.19-3.20 reserved for expansion]

CHAPTER B. SECURITY PROCEDURES

SECTION 3.21. DEFINITION. For purposes of this chapter, "employer" means a person that employs one or more employees.

SECTION 3.22. OBTAINING COVERAGE. (a) Except for public employers and as otherwise provided by this section or other law, an employer may elect to obtain workers' compensation insurance coverage. An employer required to obtain coverage under this section may obtain the coverage through a licensed insurance company or through self-insurance as provided by Chapter D of this article. An employer who obtains coverage is subject to this Act.

(b) An employer in the building or construction industry, whether a general contractor or a subcontractor, shall obtain workers' compensation insurance coverage for all employees of that employer as provided by this section.

(c) A general contractor, by written contract, may assume responsibility for securing workers' compensation insurance coverage for a subcontractor or the employees of a subcontractor with whom the general contractor has a contract for the performance of any part of the building or construction work in question.

(d) In a building or construction contract entered into by this state or a political subdivision of this state, including a municipality, the governmental entity shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for all employees of the contractor employed on the public project. A subcontractor on the project must provide such a certificate to the general contractor relating to the coverage of the employees of the subcontractor. The general contractor shall provide the certificate of a subcontractor to the governmental entity. A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(e) A person who offers or attempts to procure for employers the services of common workers, whether or not for compensation, shall obtain workers' compensation insurance coverage for the person's employees and for each common worker whose services the person procures for an employer. This subsection does not apply to a person who operates a labor bureau or employment office in conjunction with the person's own business for the exclusive purpose of employing individuals in that business, and who:

(1) pays federal social security taxes, makes state

and federal unemployment compensation insurance contributions, carries workers' compensation insurance coverage and posts notice of that coverage in a conspicuous place on its premises indicating the coverage provided, the insurance carrier writing the coverage, and the expiration date of those insurance policies;

(2) provides workers with complete information and maintains a record of the information for at least two years, relating to work assignments, rates of pay, hours of work, and the nature and duration of the work;

(3) pays wages in a timely manner for all hours worked, less only deductions required or authorized by law, by negotiable check or cash, obtaining a receipt;

(4) provides, for each pay period, each worker with an itemized statement of gross earnings, any advances on earnings, required deductions, and net earnings, irrespective of the form of wage payment;

(5) provides for payment of wages to a worker by personal delivery, mail, or as otherwise requested by the worker, but not by delivery to or with the requirement that a worker's check be cashed by an entity owned or controlled by the person or in which the person has a significant financial interest, or by or at any other specific place designated by the person;

(6) pays workers reporting to assigned work a minimum of four hours' wages if the work is begun or two hours' wages if the work is not begun;

(7) pays workers for work performed whether or not the person is paid by the person's clients;

(8) provides that if transportation or other accommodations are provided to workers the workers are not obligated to use them, either by contract or as an express or implied condition of employment;

(9) provides overall supervision, direction, and control of the workers, including the right to hire, offer work assignments, administer discipline, and terminate employment;

(10) may provide direct on-the-job supervision of the workers to the extent of directing both what is to be done and the details of how it shall be done; and

(11) accepts full responsibility for the actions of workers while performing the work and carries general liability and property damage insurance to discharge that responsibility.

(f) In this section "building or construction industry" includes:

(1) erecting or preparing to erect structures, including buildings, bridges, roadways, public utility facilities, or related appurtenances;

(2) remodeling, extending, repairing, or demolishing a structure; or

(3) otherwise improving real property or appurtenances to real property through similar activities.

(g) For the purposes of this section:

(1) if the issue of which of two or more possible building or construction industry employers is the employer of a particular employee is in question, the employer is the person who carries the employee on the person's payroll, or who pays the

employee's wages, for the work being done at the time the injury occurs; and

(2) the employment of maintenance employees by an employer who is not engaging in building or construction as the employer's primary business purpose does not constitute engaging in the building or construction industry.

(h) An employer subject to this section commits an offense if the employer fails to obtain workers' compensation insurance coverage as required by this section. A first offense under this subsection is a Class A misdemeanor. A second or subsequent offense is a felony of the third degree.

SECTION 3.23. NOTICE TO EMPLOYEES. (a) An employer shall notify each employee annually as to whether or not the employer has workers' compensation insurance coverage.

(b) In addition to the notice required in Subsection (a) of this section, the employer shall notify a new employee of the existence or absence of coverage at the time the employee is hired.

(c) In the absence of workers' compensation insurance coverage, the notices required in this section shall specifically explain the consequence of the lack of coverage. The commission shall prescribe the contents of the notices.

(d) A covered employer who does not replace workers' compensation insurance coverage that has been terminated or canceled must notify in writing each employee of the termination or cancellation of the coverage within 10 days after the date on which the termination or cancellation is effective.

(e) An employer who secures workers' compensation coverage

shall keep posted in the employer's place of business a notice that the employer has secured compensation insurance coverage, and the notice shall be revised whenever the information it contains is revised.

(f) The notice required by Subsection (e) shall:

(1) be posted in a conspicuous place as necessary to provide reasonable notice to employees;

(2) contain the name, address, and telephone number of the insurance carrier's claims service; and

(3) identify whom an employee should contact about a possible safety hazard in or about the work place.

(g) A person who fails to comply with this section commits a Class B administrative violation.

SECTION 3.24. EMPLOYER FILING REQUIRED. (a) An employer who does not obtain coverage shall notify the commission in writing, in the time and as prescribed by commission rule, that the employer does not elect to obtain coverage. The commission shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the commission about the employer's business. The commission may contract with the Texas Employment Commission or the comptroller of public accounts for assistance in collecting the notification required under this section. These agencies shall cooperate with the commission in enforcing this section.

(b) An employer who fails to comply with this section commits a Class D administrative violation and each day of noncompliance is a separate violation.

SECTION 3.25. COMPANY NOTICE OF COVERAGE; ADMINISTRATIVE VIOLATION. (a) If an employer has secured compensation, the insurance company shall within 10 days file notice of coverage with the commission. Coverage shall be effective on the date a binder is issued or at a later date and time agreed to by the parties.

(b) An insurance company that fails to file notice with the commission in accordance with this section commits a Class B administrative violation and each day of noncompliance is a separate violation.

SECTION 3.26. EMPLOYER WITHDRAWAL OF COVERAGE; EXTENSION OF COVERAGE. (a) If an employer that has obtained coverage under this Act terminates coverage, the employer shall file written notice by certified mail with the commission. The notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Section 3.23(d) of this Act.

(b) The effective date of withdrawal from coverage shall be the later of:

(1) 30 days after the filing of notice with the commission required in Subsection (a) of this section; or

(2) the cancellation date of the policy.

(c) The insurance coverage shall be extended until the effective date of withdrawal as established in Subsection (b) of this section and the employer is obligated for premiums due for that period.

SECTION 3.27. COOPERATION BETWEEN STATE BOARD OF INSURANCE AND TEXAS WORKERS' COMPENSATION COMMISSION. (a) On and after

September 1, 1992, the State Board of Insurance shall collect and maintain the information required to be provided under this chapter and shall provide this information in the time and manner prescribed by the commission. The State Board of Insurance shall monitor compliance with the requirements and notify the commission of possible violations in the time and manner prescribed by the commission. The State Board of Insurance may adopt rules as necessary to enforce this chapter.

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

SECTION 3.28. INSURANCE COMPANY CANCELLATION OF COVERAGE; EXTENSION OF COVERAGE. (a) If the insurance company cancels a policy or does not renew it on its anniversary date, the insurance company shall send notice of cancellation or nonrenewal by certified mail or in person to the employer and the commission prior to the effective date of cancellation or nonrenewal.

(b) The insurance company must send notice to the employer and the commission not later than the 30th day before the date on which the cancellation or nonrenewal becomes effective, except as provided by Subsection (c) of this section.

(c) The insurance company may send notice to the employer not later than the 10th day before the date on which the cancellation or nonrenewal becomes effective if the insurance company cancels or does not renew because of:

(1) fraud in obtaining coverage;

(2) misrepresentation of amount of payroll for

purposes of premium calculation; or

(3) failure to pay a premium when payment is due.

(d) Failure of the insurance company to give the notice as required by this section extends the policy until the required notice is given to the employer and to the commission.

SECTION 3.29. CLAIMS SERVICES; ADMINISTRATIVE VIOLATION. (a) The commission by rule may require an insurance carrier to provide claims services through its own offices located within the state or by other resident representatives with full power to act for the insurance carrier.

(b) A person who violates rules adopted under this section commits a Class B administrative violation. Each day of noncompliance is a separate violation.

SECTION 3.30. AUSTIN REPRESENTATIVE REQUIRED; ADMINISTRATIVE VIOLATION. (a) The commission by rule may require an insurance carrier to designate a person as an Austin representative to act as the carrier's agent before the commission in Austin. After designation, notice to an Austin representative is considered notice to the insurance carrier.

(b) A person who violates rules adopted under this section commits a Class B administrative violation. Each day of noncompliance is a separate violation.

[Sections 3.31-3.40 reserved for expansion]

CHAPTER C. COMMERCIAL INSURANCE

SECTION 3.41. SECURITY BY COMMERCIAL INSURANCE. (a) An insurance company may contract to secure an employer's liability and obligations and to pay compensation by issuing a workers'

compensation insurance policy under this chapter.

(b) The following obligations may not be transferred by the employer:

(1) the obligation to accept a report of an injury under Section 5.01 of this Act;

(2) the obligation to maintain records of injury under Section 5.03 of this Act;

(3) the obligation to report an injury to the commission under Section 5.04 of this Act;

(4) liability for violation of Section 10.01, 10.02, or 10.03 of this Act; or

(5) the obligation to comply with a commission order.

(c) The contract for coverage shall be written on a policy and endorsements approved by the State Board of Insurance.

SECTION 3.42. EFFECT OF OTHER INSURANCE COVERAGE. (a) A contract entered to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this Act is void unless the contract also covers liability for payment of compensation under this Act.

(b) This section does not prohibit an employer who has elected not to obtain workers' compensation insurance coverage from obtaining any insurance coverage for the employer's employees if the insurance is not represented to any person as providing workers' compensation coverage under this Act.

SECTION 3.43. ALL STATES COVERAGE. The State Board of Insurance shall coordinate with the applicable agencies of other states to:

(1) share information on an employer that obtains all states coverage; and

(2) ensure that the State Board of Insurance has knowledge of an employer that obtains all states coverage in another state but fails to file notice with the State Board of Insurance.

[Sections 3.44-3.50 reserved for expansion]

CHAPTER D. SELF-INSURANCE REGULATION

SECTION 3.51. DEFINITIONS. In this chapter:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) "Director" means the director of the division of self-insurance regulation.

(3) "Impaired employer" means a certified self-insurer:

(A) that has suspended payment of compensation as determined by the commission;

(B) that has filed for relief under bankruptcy laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

(4) "Incurred liabilities for compensation" means the sum of the estimate of liabilities for outstanding workers' compensation claims, including claims incurred but not yet reported, plus the estimated amount necessary to provide for the

administration of those claims, including legal costs.

(5) "Qualified claims servicing contractor" means:

(A) an insurance company authorized by the State Board of Insurance to write workers' compensation insurance;

(B) a subsidiary of an insurance company that provides claims service under contract;

(C) an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code); or

(D) a third-party administrator that has on its staff an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

SECTION 3.52. DIRECTOR. The director shall exercise all rights, powers, and duties imposed or conferred on the commission by this chapter, except as otherwise provided.

SECTION 3.53. APPLICATION FOR CERTIFICATION. (a) An employer that desires to self-insure under this article must submit an application to the commission for a certificate of authority to self-insure. The application must be submitted on a form adopted by the commission and be accompanied by a nonrefundable application fee of $1,000. The application fee shall be deposited in the workers' compensation self-insurance fund created under Section 3.60(b) of this Act.

(b) Not later than the 60th day after the day on which the form is received, the director shall recommend approval or denial to the commission. The commission, by majority vote, shall issue a

certificate of authority to self-insure to an applicant who meets the requirements for certification under this article. The certificate of authority is valid for one year after the date of issuance and may be renewed under procedures prescribed by the commission. The director may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division.

SECTION 3.54. REQUIREMENTS FOR CERTIFICATION TO SELF-INSURE; ISSUANCE OF CERTIFICATION. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the commission and the guaranty association created under Section 3.69 of this Act of sufficient financial strength and liquidity under standards adopted by the commission to assure that all workers' compensation obligations incurred by the applicant under this article are promptly met. In assessing financial strength and liquidity, the commission shall consider:

(1) the applicant's organizational structure and management background;

(2) the applicant's profit and loss history;

(3) the applicant's compensation loss history;

(4) the source and reliability of the financial information submitted by the applicant;

(5) the number of employees affected by self-insurance;

(6) the applicant's access to excess insurance markets;

(7) financial ratios, indexes, or other financial measures that the commission finds appropriate; and

(8) any other information considered appropriate by the commission.

(b) The applicant must present a plan for claims administration that is acceptable to the commission and designates a qualified claims servicing contractor.

(c) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(d) If the provider of services is not an employee of the applicant, the applicant must provide to the commission a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services. If the commission has adopted a standard form for such a contract, the contract must be submitted in that form. The contract must be acceptable to the commission.

(e) The applicant must provide security for incurred liabilities for compensation through a deposit with the director, in a combination and from institutions approved by the director, of the following security:

(1) cash or negotiable securities of the United States or of this state;

(2) a surety bond that names the director as payee; or

(3) a letter of credit that:

(A) is irrevocable; and

(B) names the director as payee.

(f) If an applicant who has provided a letter of credit as all or part of the security required under this subsection desires to cancel the existing letter of credit and substitute a different letter of credit or another form of security, the applicant must notify the commission in writing not later than the 60th day before the date on which the original letter of credit is to be canceled.

(g) The estimate of incurred liabilities must be signed and sworn to by an accredited casualty actuary.

(h) The sum of the deposited securities must be at least equal to the greater of $300,000 or 125 percent of the applicant's incurred liabilities for compensation.

(i) The applicant shall provide for excess insurance or reinsurance to cover any liability for losses not paid by the self-insurer in an amount not less than the amount required by the director. The director shall require excess insurance or reinsurance in at least the amount of $10 million per occurrence.

(j) If the applicant is a subsidiary, the parent organization must guarantee the obligations imposed by this article.

(k) If an applicant is granted a certificate of authority to self-insure, any interest or other income that accrues from cash or negotiable securities deposited by the applicant as security under Subsection (e) of this section while the case or securities are on deposit with the director shall be paid to the applicant on a quarterly basis.

(l) The commission, with approval of the guaranty association created under Section 3.69 of this Act, shall issue a

certificate of authority to self-insure to an applicant who meets the requirements of this article and pays the required fee.

SECTION 3.55. PREMIUM REQUIREMENTS TO SELF-INSURE. (a) In addition to meeting the other eligibility requirements imposed under this article, an applicant for an initial certificate of authority to self-insure must present evidence satisfactory to the commission of a total unmodified premium in this state for workers' compensation insurance coverage of $750,000. This amount shall be adjusted annually to reflect increases in the Consumer Price Index.

(b) In lieu of the state premium required under Subsection (a) of this section, the applicant may present evidence of a total unmodified national workers' compensation insurance premium of at least $10 million.

SECTION 3.56. SPECIFIC SECURITY REQUIREMENTS. (a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or terminated excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or a document indicating issuance of an irrevocable letter of credit must be in a form approved by the director and must be issued by an institution acceptable to the director. Such an instrument may be released only according to its terms but may not be released by the depositing of additional security.

(c) The certified self-insurer shall deposit the security with the state treasurer on behalf of the director. The state treasurer may accept securities for deposit or withdrawal only on the written order of the director.

(d) On receipt by the director of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified self-insurer's assets in favor of the director to the extent of any then unsecured portion of the self-insured's incurred liabilities for compensation. That perfected security interest transfers to any cash or securities deposited by the self-insured with the director after the date of the request and may be released only on:

(1) the acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the director.

(e) The certified self-insurer loses all right, title, interest in, and control of the assets or obligations submitted or deposited as security. The director may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) The director, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, any liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) the issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) the issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.

(g) A decision of the director may be appealed to a district court as provided by Article 6 of this Act. Venue for an appeal is in Travis County.

(h) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the court issues a determination staying the payment of claims.

(i) If the director determines that a security deposit has not been made immediately available for the payment of compensation, the director shall determine the appropriate method of payment and claims administration, which may include payment by a surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the director.

SECTION 3.57. PROCEDURES ON DENIAL OF APPLICATION. (a) If the commission determines that an applicant for a certificate of authority to self-insure does not meet the requirements for eligibility to self-insure provided by this chapter, the commission shall notify the applicant in writing, stating the specific reasons for the denial and the conditions to be met before approval can be granted.

(b) The applicant is entitled to a reasonable period of

time, as determined by the commission, to meet the conditions for approval before the application is considered rejected for purposes of appeal. An appeal is subject to the substantial evidence rule and must be filed in a district court of Travis County.

(c) During the pendency of approval or denial of the application for certification to self-insure, the applicant may not operate as a self-insurer under this chapter.

SECTION 3.58. ANNUAL REPORT. (a) Each certified self-insurer shall file an annual report with the commission. The commission shall prescribe the form of the report and shall furnish blank forms for preparation of the report to each certified self-insurer. The report must include payroll data in the form prescribed by this article and the commission. The commission may require that the report include other financial and statistical data.

(b) The annual report must present evidence of sufficient financial ability of the certified self-insurer to meet all obligations under this article.

(c) The report must state the number of injuries sustained in the three preceding calendar years, and must report separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries. The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the commission.

(d) If the commission considers it necessary, it may order a

certified self-insurer whose financial condition or claims record warrants closer supervision to report as provided by this section more often than annually.

SECTION 3.59. EXAMINATION OF RECORDS. (a) The certified self-insurer shall maintain the books, records, and payroll data necessary to compile the annual report and any other information reasonably required by the commission. The material shall be open to inspection and examination by an authorized agent or representative of the commission at reasonable times for the purpose of ascertaining the correctness of the information.

(b) The examination may be made at any location, including the offices of the commission in Austin, or, at the certified self-insurer's option, in offices of the certified self-insurer. The certified self-insurer must pay the reasonable expenses, including travel expenses, of an inspector who makes an inspection at its offices.

(c) The certified self-insurer may maintain the books, records, and payroll data in locations outside this state.

(d) An unreasonable refusal on the part of a certified self-insurer to make available for inspection books, records, payroll data, and other required information is grounds for revocation of the certificate of authority to self-insure or for other penalties or sanctions the commission, after an opportunity for hearing, may impose.

SECTION 3.60. SELF-INSURANCE REGULATORY FEE. (a) Certified self-insurers shall pay annual fees to cover the administrative costs incurred by the commission in implementing this chapter. The

fees shall be based on the total amount of income benefit payments made in the preceding calendar year. The commission shall assess each certified self-insurer a pro rata share based on the ratio the total amount of income benefit payments made by that self-insurer bears to the total amount of income benefit payments made by all certified self-insurers.

(b) The fees shall be deposited in the state treasury to the credit of a fund to be known as the workers' compensation self-insurance fund and to be used only for the regulation of certified self-insurers. Any amount not used in a budget year shall be used to reduce the regulatory fees assessed in the succeeding budget year.

SECTION 3.61. SELF-INSURER PREMIUM TAX. (a) Each certified self-insurer shall pay a self-insurer premium tax.

(b) To determine the tax base of a certified self-insurer for purposes of this chapter, each certified self-insurer shall report its payroll by individual workers' compensation risk code classifications in its application for certification and in its annual reports to the commission. The commission shall compute the estimated manual premium for the certified self-insurer using the workers' compensation insurance rates established by the State Board of Insurance. The estimated manual premium shall be multiplied by 0.75, and the product is the certified self-insurer's tax base.

(c) The tax liability of a certified self-insurer under this section shall be the tax base computed under Subsection (b) of this section multiplied by the aggregate average effective rate of gross

premium taxes paid by workers' compensation insurance companies under Article 4.10, Insurance Code, for the preceding fiscal year.

(d) For the period from January 1, 1990, through December 31, 1990, only, the aggregate average effective tax rate is 1.8 percent.

(e) The State Board of Insurance shall compute the aggregate effective gross premium tax rate for each fiscal year and certify that rate to the commission by October 31 of each year.

SECTION 3.62. SELF-INSURER MAINTENANCE TAX. (a) Each certified self-insurer shall pay a self-insurer maintenance tax for the administration of the commission equal to the tax paid by workers' compensation insurance companies under Section 2.23 of this Act.

(b) The tax liability of a certified self-insurer under this section shall be the tax base computed under Section 3.61(b) of this Act multiplied by the rate assessed workers' compensation insurance companies under Section 2.23 of this Act.

SECTION 3.63. COLLECTION OF SELF-INSURER TAXES AND FEES; PENALTIES. (a) The taxes imposed by Sections 3.61 and 3.62 of this Act and the fee imposed by Section 3.60 of this Act are due and payable on the 60th day after the issuance of a certificate to self-insure and on the 60th day after each annual renewal date. The commission shall compute the taxes and fee of the certified self-insurer and notify the certified self-insurer of the amounts due. The taxes and fee shall be remitted to the commission.

(b) The self-insurer premium tax shall be deposited in the state treasury and allocated in the same manner as the tax provided

under Article 4.10, Insurance Code.

(c) The self-insurer maintenance tax shall be deposited in the state treasury to the credit of the commission.

(d) Failure to timely pay the taxes and fee imposed by Sections 3.60 through 3.62 of this Act constitutes a Class B administrative violation. Each day of noncompliance constitutes a separate violation.

SECTION 3.64. WITHDRAWAL FROM SELF-INSURANCE. A certified self-insurer may withdraw from self-insurance at any time with the approval of the commission. The commission shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the commission that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer. A certified self-insurer who withdraws from self-insurance shall surrender its certificate of authority to self-insure to the commission.

SECTION 3.65. CLAIMS. A claim or suit brought by a claimant shall be brought against and in the name of the self-insurer's qualified servicing contractor. The director shall be the agent for service of process for a claim or suit brought by a workers' compensation claimant against the certified self-insurer's qualified servicing contractor.

SECTION 3.66. AGENT'S COMMISSION. This chapter does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

SECTION 3.67. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The commission, by majority vote, may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with any of the requirements or conditions provided by this article or the rules adopted by the commission under this article.

(b) If the commission believes that grounds exist to revoke a certificate of authority to self-insure, the commission shall hold a hearing to determine if the certificate should be revoked. The commission shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date. Hearings and appeals under this section shall be conducted under the procedures established under Article 6 of this Act. If the certified self-insurer fails to show cause, the commission shall immediately revoke the certificate.

(c) A certified self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations for compensation to its employees for accidental injuries or occupational diseases that occur during the period of self-insurance. The required security shall be maintained with the commission or under the commission's control until each claim for workers' compensation benefits has been paid, settled, or lapsed under Section 4.17 of this Act.

SECTION 3.68. TERMINATION OF EXCESS INSURANCE OR REINSURANCE COVERAGE; ADMINISTRATIVE VIOLATION. (a) A certified self-insurer shall notify the director not later than 10 days after the certified self-insurer has notice of the cancellation or termination of any excess insurance or reinsurance coverage

required under Section 3.54(i) of this Act.

(b) A violation of this section is a Class B administrative violation. Each day of noncompliance constitutes a separate violation.

SECTION 3.69. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty Association is established to provide for payment of workers' compensation benefits for the injured employees of an impaired employer. To be entitled to self-insure, each employer who desires to become a certified self-insurer must be a member of the association. The members shall provide by rule for the election of a board of directors including four certified self-insurer members. The board of directors shall also include, as voting members, the chair of the Texas Workers' Compensation Commission, the executive director of the Texas Workers' Compensation Commission, and the public counsel of the division of consumer protection of the State Board of Insurance. The director of the division of self-insurance regulation shall serve as a nonvoting member. The board of directors may adopt rules for the operation of the association. Rules adopted by the board of directors are subject to the approval of the Texas Workers' Compensation Commission. Meetings of the association and its board of directors are subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and records of the association and its board of directors are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil

Statutes).

(b) Members of the association shall be assessed a fee, based on total amount of income benefits payments made in this state for the preceding reported calendar year, to create, over a period of five years, a Texas certified self-insurer guaranty trust fund of at least $1 million for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed $2 million. The board of directors of the association shall administer the trust fund in accordance with rules adopted by the commission. The assessment for the first year after an employer is issued a certificate to self-insure shall be based on the indemnity losses paid by the employer's carrier in the year before the certificate was issued.

(c) If the commission determines that the payment of benefits and claims administration shall be made through the association, the association shall assume the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director. The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association. On the assumption of obligations by the association under the director's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of any irrevocable letter of credit shall deliver the security to the association together with any interest that has accrued.

(d) On determination by the commission that a certified

self-insurer has become an impaired employer, the director shall secure release of the security deposit required by this article and shall promptly estimate the amount of any additional funds needed to supplement the security deposit, the available assets of the impaired employer for the purpose of making payment of all incurred liabilities for compensation, and the funds maintained by the association for the emergency payment of compensation liabilities. The director shall advise the board of directors of the association of the estimate of any necessary additional funds, and the board of directors shall promptly assess each certified self-insurer, except impaired employers, to collect the required funds. The assessments shall be made against all certified self-insurers in proportion to the ratio that the total paid indemnity losses for the preceding reported calendar year bear to the total paid indemnity losses by all certified self-insurers, except impaired employers, in this state in that calendar year.

(e) A certified self-insurer designated as an impaired employer is exempt from assessment beginning on the date of that designation until the commission determines that the employer is no longer impaired.

(f) Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through a suit brought for that purpose. Venue for the suit is in Travis County.

(g) Funds advanced by the association under this article do

not become assets of the impaired employer but are considered a special fund advanced to the director, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the cost of claims administration and legal costs.

(h) The association or the surety making compensation payments under this chapter is entitled to the same preference over the other debts of the impaired employer or the impaired employer's estate as provided by law to the person directly entitled to the compensation.

(i) The commission, after notice and hearing and by majority vote, may suspend or revoke the certificate of authority to self-insure of any certified self-insurer that fails to pay an assessment. The association promptly shall report such a failure to the director. A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(j) Notwithstanding Subsection (c) of this section, the association is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the association.

(k) The association is a party in interest in any proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association. The association has the same rights and

defenses as the impaired employer, including the right to:

(1) appear, defend, and appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, and pay a claim; and

(3) investigate, handle, and deny a claim.

SECTION 3.70. TRANSITION. Approved applications for certification of authority to self-insure are activated when the director determines that the aggregate of approved self-insurers provides sufficient financial strength and liquidity to establish the Texas Certified Self-Insurer Guaranty Association.

ARTICLE 4. BENEFITS

CHAPTER A. GENERAL PROVISIONS

SECTION 4.01. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b) of this section, a recovery of workers' compensation benefits under this Act is the exclusive remedy of an employee or legal beneficiary against the employer or an agent, servant, or employee of the employer for the death of or a work-related injury sustained by a covered employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence. For the purposes of this section, "gross negligence" has the meaning assigned to it by Section 41.001, Civil Practice and Remedies Code.

SECTION 4.02. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death.

SECTION 4.03. EMPLOYER LIABILITY TO THIRD PARTY. If an action for damages is brought by an injured employee, the legal beneficiary of a deceased employee, or an insurance carrier, against a third party liable to pay damages for the injury as provided by Section 4.04 of this Act, and the action results in a judgment against the third party or a settlement by the third party, the employer is not liable to the third party for any reimbursement or damages based on the judgment or settlement unless the employer executed, before the injury occurred, a written agreement with the third party to assume the liability.

SECTION 4.04. THIRD PARTY LIABILITY. (a) If the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages, the employee may proceed either at law against that person to recover damages or against the insurance carrier for compensation under this Act, or both. If the employee proceeds at law against the person other than the employer, the employee may not be held to have waived the right to compensation under this Act.

(b) If the claimant is a beneficiary under the death benefits provisions of Chapter C of this article, a judgment does not constitute an election, but the amount of the recovery shall first pay costs and attorney's fees and then reimburse the insurance carrier, and if there is any excess it shall be paid to the beneficiaries in the same ratio as they receive death benefits. The insurance carrier shall suspend further payments of benefits until the suspended benefits equal the amount of the excess, at

which time benefit payments shall be resumed.

(c) If compensation is claimed under this Act by the injured employee or the employee's legal beneficiaries, the insurance carrier is subrogated to the rights of the injured employee, and may enforce in the name of the injured employee or the legal beneficiaries the liability of that other person. If the recovery is for a sum greater than that paid or assumed by the insurance carrier to the employee or the legal beneficiaries, then, out of the amount recovered, the insurance carrier shall reimburse itself and pay the costs, and the excess recovered shall be paid to the injured employee or the beneficiaries.

(d) If a claimant receives compensation from the subsequent injury fund, the commission is considered to be the insurance carrier under this section for purposes of those benefits, is subrogated to the rights of the injured employee, and is entitled to reimbursement in the same manner as the insurance carrier. The commission shall remit money recovered under this subsection to the state treasurer for deposit to the credit of the subsequent injury fund.

(e) If the claimant is represented by an attorney, the insurance carrier shall pay a fee to the claimant's attorney equal to one-third of the subrogation recovery and a proportionate share of expenses, payable out of the insurance carrier's part of the recovery. If the claimant's attorney is also representing the subrogated insurance carrier, a full written disclosure must be made by the attorney to the claimant before actual employment by the insurance carrier as an attorney. The disclosure must be

1 acknowledged by the claimant, and a signed copy of the disclosure
2 shall be furnished to all concerned parties and made a part of the
3 commission file. A copy of the disclosure with the authorization
4 and consent shall also be filed with the claimant's pleadings
5 before any judgment entered and approved by the court.
6 (f) If the insurance carrier obtains an attorney to actively
7 represent its interest and if the attorney actively participates in
8 obtaining a recovery, the court shall award and apportion an
9 attorney's fee allowable out of the insurance carrier's subrogation
10 recovery between those attorneys, considering the benefit accruing
11 to the insurance carrier as a result of each attorney's service.
12 The aggregate of those fees may not exceed 33-1/3 percent of the
13 subrogated interest.
14 (g) If at the conclusion of a third party action, a workers'
15 compensation claimant is entitled to compensation, the net amount
16 recovered by the claimant from the third party action shall be
17 applied to reimburse the insurance carrier for past benefits and
18 medical expenses paid. Any amount in excess of past benefits and
19 medical expenses shall be treated as an advance against future
20 benefit payments of compensation that the claimant is entitled to
21 receive under this Act. If the advance is adequate to cover all
22 future compensation and medical benefit payments as provided by
23 this Act, the insurance carrier is not required to make further
24 payments. If the advance is insufficient, the insurance carrier
25 shall resume the payments when the advance is exhausted. The
26 reasonable and necessary medical expenses incurred by the claimant
27 because of the injury shall be deducted from the advance in the

same manner as benefit payments.

(h) If the insurance carrier reasonably believes that third party liability exists with regard to a workers' compensation claim, it shall inform the claimant or the claimant's attorney promptly. If the claimant is unrepresented, the carrier shall advise the claimant to seek legal counsel, but may not recommend or otherwise suggest any particular attorney or group of attorneys.

(i) Unless liability for workers' compensation benefits is the subject of an active dispute between the claimant and the insurance carrier, the carrier shall immediately furnish to an attorney representing the claimant in a third party action copies of all investigation performed by the insurance carrier that relates to the third party action, and shall cooperate fully with the claimant's attorney in disclosing facts and information in the possession of the insurance carrier. Failure to comply with this subsection constitutes a waiver of the insurance carrier's right of subrogation.

SECTION 4.05. OFFSETS. (a) To ensure that the amount received by an employee in benefits under multiple employer-sponsored disability benefit programs or public disability benefit programs does not exceed the employee's net average weekly wage before the injury, adjusted for inflation, the commission may order, on a written request from the insurance carrier, that impairment income benefits or extended disability income benefits be reduced to the extent that the employee receives:

(1) commission-approved disability benefits for the injury from a source other than workers' compensation or social

security; or

(2) social security retirement benefits.

(b) A reduction under this section is calculated on the after-tax value of the workers' compensation benefits and the offsetting benefits.

(c) An offset under this section does not reduce or eliminate an insurance carrier's liability for continuing medical benefits.

(d) The commission may not order a reduction under this section based on a disability program to which the employee has contributed or on a disability program which is part of a collectively bargained agreement.

SECTION 4.06. CONTINUATION OF WAGES. (a) After an injury and during the time that the insurance carrier is not paying benefits, the employer may continue to pay the employee's wages or may initiate weekly payments to the employee.

(b) If the injury is found compensable and the insurance carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of compensation to which the employee was entitled under this Act during the period that the insurance carrier was not making payments and the employer continued to pay the employee's wages or made weekly payments to the employee.

(c) The employer shall notify the commission and the insurance carrier of the initiation of and the amount of payments made under this section. The notice must be given on forms prescribed by the commission.

(d) Employer payments made under this section may not be construed as an admission of compensability and do not affect the payment of benefits from any other source.

SECTION 4.07. EXEMPT FROM LEGAL PROCESS; ASSIGNABILITY. (a) Benefits received under this Act are exempt from garnishment, attachment, judgment, and other actions or claims.

(b) Except as provided by Subsection (c) of this section, benefits are not assignable.

(c) A legal beneficiary may, with commission approval, assign the right to death benefits.

SECTION 4.08. ALLOWABLE LIENS. Income or death benefits are subject only to the following liens or claims in the following order of priority:

(1) an attorney's fee for representing an employee or legal beneficiary in any matter arising under this Act;

(2) court-ordered child support; or

(3) a subrogation interest established under this Act.

SECTION 4.09. ATTORNEY'S FEES REGULATED. (a) All fees of attorneys for representing claimants before the commission under this Act are subject to the approval of the commission.

(b) Attorney's fees for representing claimants before the commission may not be allowed or approved against any party or parties not represented by an attorney, nor may attorney's fees be allowed or approved exceeding an amount equal to 25 percent of the total recovery, in addition to the reasonable expenses that are incurred by the attorney in the preparation and presentation of the claim before the commission and that are allowed by the commission.

(c) If an attorney represents only part of those interested in the allowance of a claim before the commission and the attorney's services in prosecuting the claim and obtaining an award inures to the benefit of others jointly interested in the claim, the commission may take these facts into consideration and allow the attorney a reasonable charge to be assessed against the interest of those receiving benefits from the service of the attorney.

(d) The attorney's fees provided for by this section may be redeemed by the insurance carrier by the payment of a lump sum or may be commuted by the agreement of the parties, subject to the approval of the commission, but not until the claim represented by the attorney has been finally determined by the commission and recognized and accepted by the carrier. After the approval, if the carrier is notified in writing of the claim or agreement for legal services, the claim is a lien against any amount thereafter to be paid as compensation.

(e) If the employee's compensation is payable by the carrier in periodical installments, the commission shall fix at the time of approval the proportion of each installment to be paid on account of the legal services.

SECTION 4.10. AVERAGE WEEKLY WAGE. (a) The average weekly wage of the injured employee at the time of the injury is determined as provided by this section.

(b) If the injured employee worked in the employment in which the employee was working at the time of the injury, whether or not for the same employer, for at least 210 days of the year

1 immediately preceding the injury, the average weekly wage consists
2 of 300 times, if a six-day worker or 260 times, if a five-day
3 worker, the average daily wage or salary that the employee earned
4 during the days that the employee actually worked in that year,
5 divided by 52.
6 (c) If the injured employee did not work in the employment
7 in which the employee was working at the time of the injury, for at
8 least 210 days of the year immediately preceding the injury, the
9 average weekly wage consists of 300 times, if a six-day worker or
10 260 times, if a five-day worker, the average daily wage or salary
11 that an employee of the same class, with at least 210 days of the
12 immediately preceding year in the same or similar employment in the
13 same or a neighboring place, earned during the days that that
14 employee actually worked in that year, divided by 52.
15 (d) If the injured employee is a minor or an apprentice at
16 the time of injury, and, under normal conditions, the employee's
17 wages would be expected to increase during the period of
18 disability, the average weekly wage shall be adjusted accordingly.
19 (e) If, because of the shortness of the period of employment
20 of the employee, or of another employee engaged in the same class
21 of work in the manner and for the length of time specified in
22 Subsections (a)-(d) of this section, or if for other good and
23 sufficient reasons, it is impracticable to compute the average
24 weekly wage as provided by those subsections, it may be computed in
25 any manner, just and fair to both parties, as of the date of
26 injury.
27 (f) The wage shall include the market value of board,

lodging, laundry, fuel, and any other advantage or benefit that can be estimated in money that the employee receives from the employer as part of the remuneration, including fringe benefits.

(g) For the purposes of this section:

(1) "Five-day worker" means an individual who, at the time of injury, normally works a five-day work week.

(2) "Six-day worker" means an individual who, at the time of injury, normally works a six-day work week.

SECTION 4.11. MAXIMUM WEEKLY BENEFITS. (a) Effective September 1, 1989, the maximum weekly income benefit is:

(1) for the first 26 weeks following the beginning date of incapacity of all injuries, for injuries for which lifetime income benefits are payable, and for death cases, an amount equal to 100 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission, rounded to the nearest whole dollar amount divisible by seven; and

(2) for all other weeks of incapacity, an amount equal to 60 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission, rounded to the nearest whole dollar amount divisible by seven.

(b) In the manner prescribed by Subsection (a) and using the averages determined by the Texas Employment Commission, the commission shall establish the maximum weekly income benefit for each state fiscal year not later than September 1 of each year. The commission shall round the maximum to the nearest whole dollar

amount divisible by seven.

(c) The maximum weekly income benefit in effect on the date of the first payment of weekly income benefits is applicable for the entire period during which the income benefits are payable.

SECTION 4.12. MINIMUM WEEKLY BENEFITS. (a) Effective September 1, 1989, the minimum weekly income benefit is 10 percent of the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission, rounded to the nearest whole dollar amount divisible by seven.

(b) The commission shall establish the minimum weekly income benefit for each state fiscal year not later than September 1 of each year.

SECTION 4.13. INTEREST ON ACCRUED INCOME BENEFITS. (a) In any order to pay income or death benefits accrued but not paid, the order shall include interest on the amount of compensation due at the rate provided by Section 1.04 of this Act.

(b) Accrued compensation and interest shall be paid in a lump sum.

[Sections 4.14-4.20 reserved for expansion]

CHAPTER B. INCOME BENEFITS

SECTION 4.21. INCOME BENEFITS; DETERMINATION BY COMMISSION. (a) An employee is entitled to income benefits to compensate the employee for incapacity caused by the compensable injury.

(b) Except as otherwise provided by this Act, income benefits shall be paid without order from the commission on a weekly basis as and when they accrue. Entitlement to income

benefits under this chapter terminates on the death of the employee, and no interest in future income benefits survives after the employee's death, except benefits for specific injury cases under Section 4.25 of this Act.

SECTION 4.22. ACCRUAL OF RIGHT TO INCOME BENEFITS. (a) Weekly income benefits may not be paid under this Act for an injury that does not incapacitate the employee from earning full wages for a period of at least one week. If incapacity extends beyond one week, weekly income benefits begin to accrue on the eighth day after injury. This section does not preclude recovery of benefits under any other section of this Act.

(b) If incapacity does not follow at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits begin to accrue on the eighth day after the date the incapacity began.

(c) If the incapacity continues for four weeks or longer after the beginning date of the incapacity, the compensation shall be computed from the beginning date of the incapacity.

SECTION 4.23. TEMPORARY INCAPACITY INCOME BENEFITS. (a) An employee who has total or partial incapacity from a compensable injury is entitled to temporary incapacity income benefits. These benefits accrue beginning on the eighth day of incapacity and shall be paid weekly. On the initiation of compensation as provided under Section 5.21 of this Act, the insurance carrier shall pay temporary incapacity income benefits as provided by this section.

(b) Temporary incapacity income benefits continue until the earlier of:

(1) the employee reaching maximum medical improvement; or

(2) the expiration of 401 weeks.

(c) Except as provided by Subsection (d) of this section, temporary incapacity income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit.

(d) An employee who returns to work or is offered a bona fide position of employment by the employer, or any other employer, that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, but who has not reached maximum medical improvement, has partial incapacity and is entitled to temporary incapacity income benefits at the rate of 66-2/3 percent of the difference between the employee's average weekly wage and the average weekly earnings in the position that the employee is performing or has been offered.

(e) The commission may adopt rules establishing a presumption that maximum medical improvement has been reached based on a lack of medical improvement in the employee's condition.

SECTION 4.24. TOTAL INCAPACITY. While the incapacity for work resulting from the injury is total, the insurance carrier shall pay the injured employee a weekly income benefit equal to 66-2/3 percent of the employee's average weekly wage, but not more than the maximum weekly income benefit nor less than the minimum weekly income benefit.

SECTION 4.25. PARTIAL INCAPACITY. (a) After the employee

has attained maximum medical improvement and while the incapacity for work resulting from the injury is partial, the insurance carrier shall pay the injured employee a weekly income benefit equal to 66-2/3 percent of the difference between the employee's average weekly wages before the injury and the employee's average weekly wage-earning capacity during the existence of the partial incapacity, but not more than the maximum weekly benefit.

(b) The period covered by the compensation for partial incapacity may not exceed 300 weeks. In no case may the period of compensation for total and partial incapacity exceed 401 weeks from the date of injury.

(c) Compensation for all partial incapacity shall be computed in the manner provided by this section and may not be computed on a basis of a percentage of disability.

SECTION 4.26. SPECIFIC INJURIES. (a) For the injuries enumerated in the following schedule the employee shall receive, in lieu of all other compensation except medical benefits, a weekly compensation equal to 66-2/3 percent of the average weekly wages of the employee, but not less than the minimum weekly benefit nor more than the maximum weekly benefit for the respective periods:

For the loss of a thumb, 60 weeks.

For the loss of a first finger, commonly called the index finger, 45 weeks.

For the loss of a second finger, 30 weeks.

For the loss of a third finger, 21 weeks.

For the loss of a fourth finger, commonly known as the little finger, 15 weeks.

The loss of the second or distal phalange of the thumb is considered equal to the loss of one-half of the thumb. The loss of more than one-half of the thumb is considered equal to the loss of the whole thumb.

The loss of the third or distal phalange of any finger is considered equal to the loss of one-third of the finger.

The loss of more than the middle and distal phalange of any finger is considered equal to the loss of the whole finger, except that in no case may the amount received for the loss of a thumb and more than one finger on the same hand exceed the amount provided by this schedule for the loss of a hand.

For the loss of the metacarpal bone (bone or palm) for the corresponding thumb, finger, or fingers above, add 10 weeks to the number of weeks provided above, subject to the limitation that in no case may the amount received for the loss or injury to one hand be more than for the loss of the hand.

For ankylosis (total stiffness of) or contracture (due to scars or injuries) which make the fingers useless, the same number of weeks shall apply to the finger or fingers or parts of fingers (not thumb) as given above.

For the loss of a hand, 150 weeks.

For the loss of an arm at or above the elbow, 200 weeks.

For the loss of one of the toes other than the great toe, 10 weeks.

For the loss of the great toe, 30 weeks.

The loss of more than two-thirds of any toe is considered equal to the loss of the whole toe. The loss of less than two-thirds of any toe is considered equal to the loss of one-half of the toe.

For the loss of a foot, 125 weeks.

For the loss of a leg, at or above the knee, 200 weeks.

For the total and permanent loss of the sight of one eye, 100 weeks.

For the complete and permanent loss of the hearing in both ears, 150 weeks.

For the loss of an eye and leg above the knee, 350 weeks.

For the loss of an eye and an arm above the elbow, 350 weeks.

For the loss of an eye and a hand, 325 weeks.

For the loss of an eye and a foot, 300 weeks.

(b) If the employee sustains concurrent injuries resulting in concurrent incapacities, the employee shall receive compensation only for the injury which produces the longest period of incapacity. However, this subsection does not affect liability for the concurrent loss or the loss of the use of more than one member for which compensation is provided by this schedule, and compensation for specific injuries under this section is cumulative as to time and not concurrent.

(c) In all injuries described in this section, the permanent loss of the use of the member is considered equal to the loss of that member.

(d) In all other cases of partial incapacity, including any

disfigurement that will impair the future usefulness or occupational opportunities of the injured employee, compensation shall be determined according to the percentage of incapacity, taking into account among other things any previous incapacity, the nature of the physical injury or disfigurement, the occupation of the injured employee, and the age at the time of the injury. The benefits shall be calculated by first determining a basic figure equal to 66-2/3 percent of the average weekly wages of the employee, but not to exceed the maximum weekly benefit. The basic figure is then multiplied by the percentage of incapacity caused by the injury, and the result is the weekly income benefit for a period not exceeding 300 weeks, as the commisson may determine. If the weekly payments under this subsection would be less than $3 a week, the period may be shortened, and the payments correspondingly increased by the commission.

SECTION 4.27. ELIGIBILITY FOR RECOVERY AFTER MAXIMUM MEDICAL IMPROVEMENT. A claimant is not entitled to benefits for permanent incapacity for any period for which there is not evidence of permanent impairment supported by an "objective clinical or laboratory finding," as that term is defined by this Act.

SECTION 4.28. WAGE EARNING CAPACITY. (a) A determination of wage earning capacity under this chapter shall be made after the claimant has reached maximum medical improvement and shall be based on the following factors:

(1) age;

(2) education;

(3) training;

(4) previous work experience;

(5) previous earnings;

(6) present occupation and earnings;

(7) likelihood of future suitable occupational change;

(8) efforts to obtain and retain suitable employment; and

(9) success of and willingness to participate in reasonable physical and vocational rehabilitation programs.

(b) Actual post-injury earnings create a presumption of wage-earning capacity commensurate with the post-injury earnings. The presumption may be rebutted by a showing, on a preponderance of the evidence, of one of the following:

(1) permanent physical impairment;

(2) increased training and education;

(3) increased number of hours worked;

(4) employer sympathy;

(5) assistance from coworkers;

(6) economic necessity; or

(7) irregular earnings or earnings that are temporary.

SECTION 4.29. LIFETIME INCOME BENEFITS. (a) Income benefits for total incapacity shall be paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss of both feet at or above the ankle;

(3) loss of both hands at or above the wrist;

(4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

(6) an injury to the skull resulting in incurable insanity or imbecility.

(b) Total loss of use of a member under Subsection (a) is considered equal to the loss of the member.

(c) Lifetime income benefits are payable at the rate of 66-2/3 percent of the employee's average weekly wage. Lifetime benefits may not exceed the maximum weekly benefit, except that benefits being paid shall be increased at least three percent a year notwithstanding the maximum weekly benefit.

SECTION 4.30. ADVANCE OF BENEFITS BASED ON HARDSHIP. (a) The commission may grant an employee who is suffering financial hardship advances as provided by this Act against the amount of income benefits to which the employee may be entitled, if there is a likelihood that income benefits will be paid in the future. Advances may be ordered before or after the claimant attains maximum medical improvement. An insurance carrier shall pay any advance ordered.

(b) An employee who desires an advance shall apply to the commission on a form prescribed by the commission describing the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the maximum weekly benefit. The commission may not grant more than three advances to a particular employee based on the same injury.

SECTION 4.31. SETTLEMENTS. (a) A settlement of income benefits may not be paid in a lump sum unless:

(1) the insurance carrier has denied liability; or

(2) the employee has reached maximum medical improvement and has either returned to work or demonstrated hardship to the satisfaction of the commission.

(b) A settlement takes effect on the date it is approved by the director of the division of hearings.

(c) The director of the division of hearings shall approve a settlement if the director is satisfied that:

(1) the settlement accurately reflects the terms of the agreement between the parties;

(2) the settlement reflects adherence to all appropriate provisions of law and the policies of the commission; and

(3) under the law and facts, the settlement is in the best interest of the claimant.

(d) A settlement must be signed by all parties to the dispute.

(e) A party to a settlement may withdraw acceptance of the settlement at any time before its effective date.

[Sections 4.32-4.40 reserved for expansion]

CHAPTER C. DEATH AND BURIAL BENEFITS

SECTION 4.41. DEATH BENEFITS. If the compensable injury results in death, the insurance carrier shall pay death benefits to the legal beneficiary of the employee equal to 66-2/3 percent of the deceased employee's average weekly wage.

SECTION 4.42. DISTRIBUTION OF DEATH BENEFITS. (a) Death benefits shall be paid to the legal beneficiaries according to the priority established by this section.

(b) If there is no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is no eligible spouse, the death benefits shall be paid to the eligible children or grandchildren.

(d) If there is an eligible child or grandchild and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. If a child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(e) If the employee is not survived by an eligible spouse, child, or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, stepparent, sibling, or grandparent of the deceased. If more than one of those dependents survives the deceased, the death benefits shall be divided among them in equal shares.

(f) If the employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 2.26 of this Act.

(g) For the purposes of this section:

(1) "Eligible spouse" means the surviving spouse of the deceased employee unless the spouse abandoned the employee for more than one year immediately preceding the death without good cause, as determined by the commission.

(2) "Eligible child" means a child of the deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age;

(C) because of a physical or mental handicap, a dependent of the deceased employee at the time of death; or

(D) a child who is otherwise a dependent of the deceased employee at the time of death.

(3) "Eligible grandchild" means a grandchild whose parent is not an eligible child and who is a dependent of the deceased employee.

SECTION 4.43. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commission rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive the benefits until the child attains the age of 18 years. If at age 18 the child is enrolled as a full-time student in an accredited educational institution, the child is entitled to continue to receive the benefits until the earliest of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(d) A child who is eligible for death benefits because the child on the date of the employee's death is enrolled as a full-time student in an accredited educational institution is entitled to receive the benefits until the earlier of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(e) A child who is eligible for death benefits because the child on the date of the employee's death is dependent because of a physical or mental handicap is entitled to receive the benefits until the earlier of:

(1) the date on which the child is no longer handicapped; or

(2) the date on which the child dies.

(f) A child who is otherwise eligible for death benefits as a dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the death of the child; or

(2) the expiration of 360 weeks of death benefit payments.

(g) An eligible grandchild who is a minor at the time of death is entitled to receive death benefits until the grandchild

dies or ceases to be a minor.

(h) An eligible grandchild who is not a minor at the time of death is entitled to receive death benefits until the earlier of:

(1) the death of the grandchild; or

(2) the expiration of 360 weeks of death benefit payments.

(i) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

(1) the death of the beneficiary; or

(2) the expiration of 360 weeks of death benefit payments.

SECTION 4.44. REDISTRIBUTION OF DEATH BENEFITS. (a) If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with Sections 4.42 and 4.43 of this Act.

(b) If a spouse ceases to be eligible because of remarriage, the benefits payable to the remaining legal beneficiaries shall be reduced by 104 weeks.

(c) If all legal beneficiaries, other than the subsequent injury fund, cease to be eligible and the insurance carrier has not made 360 weeks of full death benefit payments, including the remarriage payment, the insurance carrier shall pay the difference between the weeks paid and 360 weeks to the subsequent injury fund.

SECTION 4.45. BURIAL BENEFITS. (a) If death results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $2,500.

(b) The carrier shall also pay the reasonable cost of transporting the body if the employee died away from the usual place of employment, not to exceed the cost equivalent to transporting the body to the employee's usual place of employment.

SECTION 4.46. SUBSEQUENT INJURY FUND BENEFITS. If a subsequent compensable injury, together with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund shall compensate the employee for the remainder of the lifetime income benefits to which the employee is entitled.

SECTION 4.47. COMPENSABILITY OF HEART ATTACKS. A heart attack is a compensable injury under this Act only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a pre-existing heart condition or disease was a contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

[Sections 4.48-4.60 reserved for expansion]

CHAPTER D. MEDICAL BENEFITS

SECTION 4.61. ENTITLEMENT TO MEDICAL BENEFITS. (a) An injured employee is entitled to all health care reasonably required by the nature of the compensable injury as and when needed. Medical benefits are payable from the date of injury arising out of and in the course and scope of employment. The employee is specifically entitled to health care that:

(1) cures or relieves the effects naturally resulting from the compensable injury;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

(b) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

SECTION 4.62. RIGHT TO SELECT DOCTOR. (a) The employee is entitled to the employee's initial choice of a doctor. An initial choice of a doctor made by the employer or the insurance carrier, or medical treatment provided to an injured employee in an emergency situation, does not constitute the employee's choice for purposes of this section. The employee may select one alternate doctor.

(b) A third or subsequent doctor selected by the employee is subject to the approval of the insurance carrier or the commission.

SECTION 4.63. REFERRALS. A referral made by a doctor selected by the employee that is medically reasonable and necessary or that is made necessary by a change of residence does not constitute a change of doctors.

SECTION 4.64. EXCEPTIONS. The limitations imposed by this chapter do not apply:

(1) if surgical or other procedures require ancillary medical services; or

(2) when the employee desires a second opinion only on the appropriateness of the diagnosis or treatment, but not for the purpose of obtaining an impairment rating.

SECTION 4.65. EFFECT OF EMPLOYEE NONCOMPLIANCE. Except as otherwise provided by this chapter, and after notice and an opportunity for hearing, the commission may relieve the insurance carrier of liability for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this chapter.

SECTION 4.66. REPORTS BY HEALTH CARE PROVIDER. The commission by rule shall adopt requirements for reports required to be filed with the commission by health care providers.

SECTION 4.67. CONTINUING MEDICAL BENEFITS. After two years without health care for a compensable injury, whether paid by the insurance carrier or not, the employee has the burden of proof to establish that the care is necessary and related to the compensable injury.

SECTION 4.68. DEMAND FOR SURGERY. (a) If liability for compensation exists for an injury sustained by an employee in the

course of employment, and a surgical operation for the injury will either effect a cure or will materially and beneficially improve the employee's condition, the employee or the insurance carrier may demand that a surgical operation be provided to the injured employee. The demand must be in writing and must be filed with the commission.

(b) If the insurance carrier makes a written demand for a surgical operation, the carrier shall file with the commission at the same time an affidavit, sworn to by an authorized officer of the carrier, stating that the carrier:

(1) fully and unconditionally accepts liability for the provision of benefits under this Act for the injury;

(2) has provided all reasonable and necessary medical care required by the injured employee to date and has paid all weekly compensation benefits due; and

(3) will provide and pay for all necessary surgical treatment, medicines, and hospital services incident to the performance of the surgery.

(c) If either party files with the commission a demand for surgery, the commission immediately shall order a medical examination of the employee to determine the advisability and beneficial effects of the proposed surgery. The examination shall be performed by a doctor of the commission's choice. The employee or the carrier are each entitled to have a doctor of choice present at the examination at the expense of the carrier.

(d) On recommendation of the executive director and the concurrence of one wage-earner commission member and one employer

commission member, an employee may be ordered to undergo a surgical operation if, based on a reasonable medical probability:

(1) the surgery is advisable and will relieve or materially benefit the condition of the injured employee;

(2) the employee does not have a chronic disease or other condition that would render the operation more than ordinarily unsafe; and

(3) the carrier has complied with the requirements of Subsection (b) of this section.

(e) If the commission finds that surgery is not advisable, the employee shall continue to receive compensation for incapacity under this Act.

(f) If the employee refuses to submit to surgery ordered under this section, the commission may order or direct the insurance carrier to suspend the compensation in whole or in part during the period of the refusal. If the refusal continues, the commission may elect to limit the injured employee to 52 weeks of compensation.

(g) The beneficial effects of surgery may not be considered in determining the amount of compensation due to an employee in any proceeding under this Act unless the employee has refused surgery ordered by the commission under this section.

SECTION 4.681. AUTOPSY. If in a claim for death benefits based on an occupational disease an autopsy is necessary to determine the cause of death, the commission may, after opportunity for hearing, order the legal beneficiaries of a deceased employee to permit an autopsy. A legal beneficiary is entitled to have a

representative present at an autopsy ordered under this section. The commission shall require the insurance carrier to pay the costs of a procedure ordered under this section.

SECTION 4.69. REQUIRED MEDICAL EXAMINATIONS. (a) The commission may require the employee to submit to medical examinations to resolve any question about the appropriateness of the health care received by the employee, the disability of the employee, the incapacity caused by the compensable injury, or analogous issues.

(b) The insurance carrier may require the employee to submit to a medical examination conducted by a doctor chosen by the insurance carrier. An insurance carrier may require an employee to submit to additional medical examinations only with the prior written approval of the commission. A referral for diagnostic purposes only made by the insurance carrier's choice of doctor that is reasonable or necessary does not constitute a change in the insurance carrier's choice for the purposes of this subsection and does not require the prior approval of the commission.

(c) The commission shall adopt rules regulating the actions of the insurance carrier under this section and establishing reasonable compliance requirements for employees.

(d) The employee is entitled to have a doctor of the employee's choice present at the insurance carrier's expense at an examination required by the insurance carrier.

SECTION 4.70. SURGERY TO CORRECT A BACK INJURY: SUBSEQUENT MEDICAL OPINIONS. (a) A treating physician shall notify the appropriate insurance carrier and the executive director if the

1 treating physician recommends surgery to correct or cure an injury
2 to a claimant's back. The notice must be in writing and must be
3 mailed not later than the fifth day after the day of the
4 physician's recommendation.
5 (b) On receipt of notice from a treating physician under
6 Subsection (a) of this section, an insurance carrier shall, not
7 later than the fifth day after the day of receipt:
8 (1) concur in the recommendation; or
9 (2) require that the claimant be examined within 14
10 days by a second physician chosen by the insurance carrier to
11 ascertain whether or not the procedure recommended by the treating
12 physician is necessary and not ordinarily unsafe.
13 (c) A second physician who examines a claimant at the
14 request of an insurance carrier as provided by Subsection (b)(2) of
15 this section shall, not later than the fifth day after the day of
16 his examination of the claimant, either concur in or dissent from
17 the opinion of the treating physician. The second physician shall
18 immediately file a copy of his opinion with the claimant, the
19 executive director, the insurance carrier, and the treating
20 physician.
21 SECTION 4.71. PAYMENT OF HEALTH CARE PROVIDER. Unless the
22 amount of the payment or the entitlement to payment is disputed, an
23 insurance carrier shall pay a fee charged by a health care provider
24 not later than the 45th day after the date of receipt by the
25 insurance carrier of a charge for services rendered by the
26 provider. The commission may adopt rules to require payment in
27 less than 45 days.

SECTION 4.72. CUSTODIAL CARE. (a) This Act does not prevent an insurance carrier from reimbursing reasonable costs incurred by a family member who provides custodial care to an injured employee.

(b) For the purposes of this section, "custodial care" includes nursing services that do not require professional training.

[Sections 4.73-4.80 reserved for expansion]

CHAPTER E. VOCATIONAL REHABILITATION PILOT PROGRAM

SECTION 4.81. DEFINITIONS. In this chapter:

(1) "Qualified rehabilitation provider" means an individual who:

(A) is a licensed professional counselor and holds the speciality designation of rehabilitation counselor, as recognized by the Texas State Board of Examiners of Professional Counselors;

(B) is a certified rehabilitation counselor, certified rehabilitation registered nurse, or certified insurance rehabilitation specialist licensed by the Commission on Certification of Rehabilitation Counselors; or

(C) is employed by the Texas Rehabilitation Commission as a vocational rehabilitation counselor.

(2) "Qualified worker" means an individual who:

(A) because of a compensable injury or occupational disease, has incurred such a reduction in pre-injury physical capacity that it appears unlikely the worker will be able to return to the pre-injury job;

(B) reasonably can be expected to return to suitable gainful employment through the provision of vocational rehabilitation services; and

(C) meets the criteria established by the commission for eligibility to participate in the pilot program established under this chapter.

(3) "Suitable gainful employment" means any employment that restores the injured worker, to the greatest extent possible, to the pre-injury level of income earned at the time of the injury, modified to consider:

(A) the worker's employment qualifications, interests, incentives, pre-injury earnings, and probable future earning capacity;

(B) the nature and extent of the worker's injury; and

(C) the current and probable future condition of the labor market in the state.

(4) "Vocational rehabilitation services" means the services reasonably necessary to provide a qualified injured worker with the opportunity to return to suitable gainful employment. The term includes vocational and medical evaluation, counseling, job analysis, assistance with job modification, alternative employment assistance, job placement assistance, and retraining, including on-the-job training.

SECTION 4.82. PILOT PROGRAM; PURPOSE; AUTHORITY TO CONTRACT; REQUIRED REPORTS. (a) The Vocational Rehabilitation Pilot Program is created under the direction of the commission and shall be

administered by the division of vocational rehabilitation of the commission.

(b) The general purposes of the pilot program are to evaluate and improve the commission's ability to identify qualified workers and to determine the cost-effectiveness of vocational rehabilitation services in restoring qualified workers to suitable gainful employment. The commission shall refer all qualified workers to qualified rehabilitation providers for vocational rehabilitation services and shall follow the progress of the group for the duration of the program in order to measure the following items:

(1) optimal time after injury for vocational rehabilitation intervention, if any;

(2) types of injuries requiring vocational rehabilitation, if any;

(3) cost benefit ratio of various vocational rehabilitation approaches;

(4) short-term recidivism rates; and

(5) characteristics of vocational rehabilitation successes and failures.

(c) The commission shall contract with private providers and enter into interagency contracts or adopt memoranda of understanding with the Texas Rehabilitation Commission as necessary to implement the pilot program.

(d) Funds may not be spent by the commission on the pilot program other than those appropriated for that purpose.

(e) As appropriate, the commission shall attempt to

1 administer the program with a reasonably equal division between
2 private providers and the Texas Rehabilitation Commission.
3 (f) Nothing in this pilot program shall replace or supersede
4 the Texas Rehabilitation Commission's provision of services to
5 other workers' compensation claimants under Section 5.08 of this
6 Act.
7 (g) The commission shall report to the governor and the
8 legislature on the following schedule:
9 (1) the first report shall be filed not later than
10 October 31, 1990;
11 (2) the second report shall be filed not later than
12 October 31, 1992; and
13 (3) the final report shall be filed not later than
14 August 31, 1993.
15 (h) The commission may release the worker's claim file to
16 the worker's qualified rehabilitation provider.
17 SECTION 4.83. ADVISORY COMMITTEE. (a) The advisory
18 committee on vocational rehabilitation is composed of five members
19 as follows:
20 (1) one member must be a qualified rehabilitation
21 provider employed in the public sector;
22 (2) one member must be a qualified rehabilitation
23 provider employed in the private sector;
24 (3) one member must be an employer;
25 (4) one member must be a wage earner; and
26 (5) one member must be an employee of the commission
27 within the vocational rehabilitation division.

(b) The members of the advisory committee serve for terms of two years. A member may not serve more than two consecutive terms.

(c) A member of the advisory committee is not entitled to compensation for service on the advisory committee. A member is entitled to reimbursement for reasonable and necessary expenses incurred in performing duties as a member of the advisory committee, subject to any limitation in the General Appropriations Act.

(d) The advisory committee shall advise the commission on vocational rehabilitation issues and may recommend to the commission the adoption of rules, policies, and procedures relating to the provision of vocational rehabilitation services.

SECTION 4.84. IDENTIFICATION OF QUALIFIED WORKERS. (a) The commission shall develop procedures for identifying, selecting, and referring potential qualified workers for vocational rehabilitation services.

(b) The providers participating in the program shall screen the referrals to identify and establish a rehabilitation plan for each qualified worker. The objective of the rehabilitation plan is to return the worker to suitable gainful employment, according to the following order of priorities:

(1) the pre-injury job with the pre-injury employer;

(2) a modification of the pre-injury job with the pre-injury employer, including transitional return to work;

(3) a new job with the pre-injury employer in keeping with any limitations or restrictions;

(4) a modification of the pre-injury job with a new

employer;

(5) a new job with a new employer based on transferable skills;

(6) a new job with a new employer involving on-the-job training; and

(7) short-term retraining and job placement.

(c) Participation in this pilot program is voluntary and does not affect the injured workers' entitlement to benefits otherwise provided by this Act. The commission may order the carrier to pay total disability income benefits to participants in this program.

SECTION 4.85. DURATION OF SERVICES. Vocational rehabilitation services provided to a qualified worker under this pilot program may not be provided for longer than 26 weeks. If the commission determines that the worker needs additional rehabilitation services, the commission is authorized to extend the services for not longer than an additional 13 weeks.

SECTION 4.86. PAYMENT OF JOB MODIFICATION COSTS. Modification of the injured worker's previous job is recognized as a desirable method of returning the injured worker to suitable gainful employment. In order to assist employers in meeting the costs of job modification and to encourage employers to modify jobs to accommodate retraining or hiring workers with disabilities resulting from work-related injuries, the commission may reimburse employers for job modification costs in an amount not to exceed $1,000 per worker per job modification. That reimbursement is payable from the subsequent injury fund.

SECTION 4.87. EXPIRATION DATE. This chapter expires August 31, 1993.

ARTICLE 5. COMPENSATION PROCEDURE

CHAPTER A. INJURY RECORDS, REPORTS, AND CLAIMS

SECTION 5.01. NOTICE OF INJURY TO EMPLOYER. (a) An employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs. If an injury is an occupational disease, the employee or person shall notify the employer of the injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment.

(b) An employee or a person acting on the employee's behalf shall file with the commission a claim for compensation. For an injury, the claim must be filed not later than one year after the date of the occurrence of the injury. For an occupational disease, the claim must be filed not later than one year after the date on which the employee knew or should have known that the disease was related to the employment.

(c) The notice required by this section may be given to the employer or any employee of the employer who holds a supervisory or management position.

(d) If the injury is an occupational disease, for purposes of this section the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease.

SECTION 5.02. EFFECT OF FAILURE TO NOTIFY. An employee's

failure to notify the employer as required under Section 5.01 of this Act relieves the employer and the employer's insurance carrier of liability under this Act unless:

(1) the employer or insurance carrier has actual knowledge of the injury;

(2) good cause exists for failure to give notice in a timely manner; or

(3) the employer or insurance carrier does not contest the claim.

SECTION 5.03. RECORD OF INJURY OR DEATH; ADMINISTRATIVE VIOLATION. (a) Each employer shall maintain a record of injuries to employees as reported by an employee or otherwise made known to the employer. These records shall be made available to the commission at reasonable times and under conditions as prescribed by the commission.

(b) The commission may adopt rules relating to the information that must be contained in an employer record.

(c) Maintaining a record of an injury may not be considered an admission by the employer that the injury did in fact occur or that any fact maintained in the record is true.

(d) A person who fails to comply with this section commits a Class C administrative violation.

SECTION 5.04. EMPLOYER REPORT OF INJURY; ADMINISTRATIVE VIOLATION. (a) If an injury results in the absence of the employee from work for more than one day, or if the employee notifies the employer of an occupational disease as provided by Section 5.01 of this Act, the employer shall file a written report

with the commission and the insurance carrier. The employer shall file the report required by this subsection not later than the eighth day after:

(1) the employee's absence from work for one day due to an injury; or

(2) the employer receives notice as provided by Section 5.01(a) that the employee has contracted an occupational disease.

(b) The report may not be considered an admission of any information it contains.

(c) The employer shall file subsequent reports as required by commission rule.

(d) The commission may adopt rules relating to the information that must be contained in an employer report.

(e) A person who fails to comply with this section commits a Class C administrative violation.

SECTION 5.05. CLAIMS FOR DEATH BENEFITS. (a) To claim death benefits, a person must file a claim with the commission not later than the first anniversary of the date of the employee's death.

(b) Noncompliance with the requirements of this section may bar the claim unless:

(1) the person is a minor or incompetent; or

(2) good cause exists for failure to give notice in a timely manner.

SECTION 5.06. SUBCLAIMS. A person may file a claim with the commission as a subclaimant if the person has:

(1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and

(2) sought and been refused reimbursement from the insurance carrier.

SECTION 5.07. INFORMATION TO EMPLOYEE OR LEGAL BENEFICIARY. Immediately on receiving notice of injury or death from any person, the commission shall mail to the employee or legal beneficiary a clear and concise description of the services provided by the commission, including the services of the public assistance program, the commission procedures, and the person's rights and responsibilities under this Act.

SECTION 5.08. VOCATIONAL REHABILITATION REFERRAL. (a) The commission shall analyze each employer report of injury received under this chapter to determine if the injured employee would be assisted by vocational rehabilitation. If the commission determines that the injured employee would be assisted, the commission shall notify the injured employee in writing of the services and facilities available through the Texas Rehabilitation Commission and private providers of vocational rehabilitation registered with the commission. The commission shall notify the Texas Rehabilitation Commission and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(b) The commission shall cooperate with the Texas Rehabilitation Commission and private providers of vocational rehabilitation in the provision of services and facilities to

employees by that commission.

(c) A private provider of vocational rehabilitation services may register with the commission.

[Sections 5.09-5.20 reserved for expansion]

CHAPTER B. PAYMENT OF COMPENSATION

SECTION 5.21. INITIATION OF COMPENSATION; CARRIER'S REFUSAL. (a) An insurance carrier shall initiate compensation under this Act promptly. If the carrier does not contest compensability of the injury on or before the 60th day after the date on which the carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of the injury during the 60-day period. If the insurance carrier does not initiate payment or file a notice of refusal in a timely manner as required by Subsection (b) of this section, the insurance carrier commits a Class B administrative violation. Each day of noncompliance constitutes a separate violation. The insurance carrier shall notify the commission in writing of the initiation of income or death benefit payments in the manner prescribed by commission rules. For good cause, an insurance carrier shall be allowed to reopen the issue of compensability.

(b) Not later than the 14th day after the date on which the insurance carrier receives written notice of the injury, the insurance carrier either shall begin the payment of benefits as required under this Act or shall notify the commission and the employee in writing of its refusal to pay and advising the employee

of the right to request a benefit review conference and the means to obtain additional information from the commission.

(c) The insurance carrier's notice must specify the grounds for the refusal. The grounds specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date. If the commission determines that the insurance carrier did not have reasonable grounds for the refusal, the insurance carrier is subject to a Class A administrative violation.

SECTION 5.22. COMPENSATION PAID; ADMINISTRATIVE VIOLATION. (a) The insurance carrier shall continue to pay compensation promptly as and when it accrues without final decision, order, or other action of the commission, except as otherwise provided by this Act.

(b) An insurance carrier that fails to comply with this section commits a Class B administrative violation. Each day of noncompliance is a separate violation.

(c) A carrier that commits multiple violations of this section commits a Class A administrative violation and, by a majority vote of the commission, may be certified by the commission to the State Board of Insurance with a recommendation that the carrier's license be suspended or revoked. If the insurance carrier is a certified self-insurer, the commission may revoke the certification of self-insurance under Section 3.67 of this Act.

SECTION 5.23. COMPENSATION TERMINATED OR REDUCED; FILING

REQUIRED. Not later than the 10th day after the date on which compensation is terminated or reduced, the insurance carrier shall file notice of that fact, including the reasons for the termination or reduction, with the commission.

[Sections 5.24-5.40 reserved for expansion]

CHAPTER C. PUBLIC ASSISTANCE PROGRAM

SECTION 5.41. PUBLIC ASSISTANCE PROGRAM. (a) The commission shall establish a public assistance program to assist injured workers, persons claiming death benefits, employees, and other interested parties in understanding their rights and responsibilities under this Act and in proceedings in the commission.

(b) Public assistance personnel shall meet with or otherwise provide information to interested parties, investigate complaints, and communicate with other parties to facilitate the processing of a claim. A public assistance worker shall otherwise assist unrepresented claimants, employers, and other parties to enable them to protect their rights in the workers' compensation system. At least one specially qualified employee in each regional office shall be designated a public assistance worker, and duties under this chapter shall be that person's primary responsibility.

SECTION 5.42. PUBLIC INFORMATION. The commission shall take the necessary steps to disseminate information about the public assistance program.

ARTICLE 6. DISPUTE RESOLUTION

CHAPTER A. BENEFIT REVIEW CONFERENCE

SECTION 6.01. BENEFIT REVIEW CONFERENCE. (a) On receipt of

a request from a party, or on its own motion, the commission may direct the parties to a dispute relating to a workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on the disputed issues.

(b) The commission by rule shall adopt guidelines relating to claims that do not require a benefit review conference and that may proceed directly to a contested case hearing or mediation conference. Except as otherwise provided by law or commission rule, unless a benefit review conference is conducted as provided by this section, the parties are not entitled to a contested case hearing or a mediation conference on the claim.

SECTION 6.02. PURPOSE OF BENEFIT REVIEW CONFERENCE. A benefit review conference is a nonadversarial, informal, dispute resolution proceeding designed to:

(1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues; and

(3) mediate and resolve the dispute by mutual agreement of the parties in accordance with the purposes of this Act and the policies of the commission.

SECTION 6.03. REQUEST FOR BENEFIT REVIEW CONFERENCE; PROCEDURES. (a) A claimant may request a benefit review conference at any time. An insurance carrier may request a benefit review conference to attempt to resolve any disputed issue related

to the payment of benefits. The benefit review conference shall be held not later than the 30th day after the date the commission receives the request. A claimant may be represented by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An insurance carrier may be represented by an attorney or adjuster.

(b) A party who desires a benefit review conference must file a written request for the conference with the commission in the form prescribed by the commission. Unless the benefit review officer determines that good cause exists for the selection of a different location, a benefit review conference may not be conducted at a site more than 75 miles from the claimant's residence.

(c) Not later than the 10th day before a benefit review conference, the commission shall send written notice of the benefit review conference to the parties to the claim. A party who does not attend a benefit review conference commits a Class D administrative violation unless the benefit review officer determines that the party had good cause not to attend.

SECTION 6.04. DUTIES OF THE BENEFIT REVIEW OFFICER. (a) The benefit review officer shall:

(1) mediate disputes between the parties and assist in the adjustment of the claim consistent with the purposes of this Act and the policies of the commission;

(2) thoroughly inform all parties of their rights and responsibilities under this Act, especially in cases in which the claimant is not represented by an attorney or other representative;

and

(3) ensure that all documents and information relating to the claimant's employment, wages, medical condition, and any other information pertinent to the resolution of disputed issues are provided to all parties not later than the seventh day before the benefit review conference and are contained in the claim file at the conference.

(b) A benefit review officer may reschedule a benefit review conference if the benefit review officer determines that any available information pertinent to the resolution of disputed issues is not produced at the benefit review conference.

(c) The benefit review officer may not take testimony or make a formal record.

SECTION 6.05. RESOLUTION AT A BENEFIT REVIEW CONFERENCE. (a) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement or in a settlement, the benefit review officer shall reduce the agreed issues or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement. Except as otherwise provided by commission rule, an agreement is binding as to the resolved issues and takes effect on the date signed. A settlement takes effect only on the approval of the director of the division of hearings.

(b) If the dispute is not entirely resolved at the benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not settled at the

conference. The report must also include:

(1) a statement of each resolved issue;

(2) a statement of each unresolved issue;

(3) a memorandum setting forth the positions of the parties on each unresolved issue;

(4) the officer's recommendations regarding the payment or denial of benefits;

(5) the officer's basis for those recommendations;

(6) a statement of the procedures required to request a contested case hearing or mediation conference; and

(7) a statement that was read and signed by the claimant explaining the claimant's right to a contested case hearing or a mediation conference and the procedures for requesting those proceedings.

(c) If a benefit review officer recommends payment of benefits, the benefit review officer may issue an interlocutory order to pay the benefits.

(d) The benefit review officer shall complete, sign, and deliver to the parties the officer's report at the conclusion of the benefit review conference.

(e) The benefit review officer shall file the signed agreement or the report with the director of the division of hearings not later than the seventh day after the date on which the benefit review conference is concluded. The division director shall furnish a copy of the file-stamped report to the employer not later than the seventh day after the director receives the report.

[Sections 6.06-6.20 reserved for expansion]

CHAPTER B. MEDIATION AND ARBITRATION

SECTION 6.21. ELECTION OF MEDIATION AND ARBITRATION. (a) If issues remain unresolved after the benefit review conference, the claimant may elect that the parties engage in mediation and arbitration in the manner provided by this chapter. Mediation and arbitration is an alternative to a contested case hearing.

(b) By the act of selling a policy of workers' compensation insurance in this state, an insurance carrier is deemed to have consented to mediation and arbitration at the election of the claimant in the manner provided by this chapter.

(c) By the act of engaging in self-insurance under this Act, an authorized self-insurer is deemed to have consented to mediation and arbitration at the election of the claimant in the manner provided by this chapter.

(d) To elect mediation and arbitration, the claimant must file the election with the commission not later than the 10th day after the last day of the benefit review conference. The commission shall prescribe a form for that purpose.

(e) Any election to engage in mediation and arbitration under this chapter is binding and irrevocable.

SECTION 6.22. PURPOSE OF MEDIATION CONFERENCE. (a) Mediation is a structured dispute resolution process for the purpose of encouraging voluntary resolution of disputed issues. The commission shall institute and maintain an education and training program for the benefit of mediation officers. The officers shall be trained in the principles and procedures of dispute mediation, and the commission is authorized and directed to

consult or enter into contracts with the Federal Mediation and Conciliation Service or other appropriate organization to accomplish this purpose.

(b) The purposes of the mediation conference are:

(1) to enter into formal, binding stipulation of issues that are not the subject of dispute;

(2) to attempt to amicably settle, resolve, and compromise issues about which there is a dispute;

(3) to attempt to achieve a settlement or agreement of the disputed issues; and

(4) to disclose all reasonably available evidence in order to promote the purposes of the mediation.

SECTION 6.23. MEDIATION PROCEDURES. (a) The mediation conference shall be scheduled to be held not later than the 30th day after the last day of the benefit review conference.

(b) The mediation conference shall be conducted by a mediator. The mediator may be the same individual who presided over the benefit review conference.

(c) The notification for the mediation conference must state that both parties are required to attend the mediation conference fully prepared to set forth their respective positions, and the basis for those positions, in detail. Not later than the third day before a mediation conference, the parties shall exchange and submit to the commission all medical reports and other available documentary information pertinent to the case, including statements of witnesses.

(d) A party who does not attend a mediation conference

without good cause, or who fails to comply with the other requirements of Subsection (c) of this section, commits a Class C administrative violation.

(e) A mediator shall review the benefit review conference file and the documents produced by the parties before the mediation conference.

(f) A mediation conference begins with oral presentations in the presence of the other parties and the mediator. The mediator shall determine the order of the oral presentations. The oral presentations must be brief, informal statements, and must include any additional information pertinent to the claim that is not contained in the preconference filings required by Subsection (c) of this section.

(g) After oral presentations, a mediator shall attempt to assist the parties in achieving resolution of issues. Cross-examination may not be allowed, but each party may present questions to the mediator and request that the mediator present the questions to the other party or parties. The mediator may:

(1) direct questions to the parties and require that the questions be answered in the presence of the other party or parties;

(2) require parties to meet separately with the mediator or to return from those meetings to the conference table;

(3) advise parties of the mediator's evaluation of any offers and of the probable outcome of adjudication of the case; and

(4) exercise other mediation techniques consistent with the purposes set forth in this section.

(h) If the parties achieve resolution of all of the issues, the mediator shall reduce the agreement to writing. For the purpose of correcting a clerical error, the mediator retains jurisdiction of the agreement for the 20 days after its delivery to the parties. The commission shall adopt the agreement of the parties as a final order of the commission.

(i) The mediator shall determine when a conference is closed and shall make a statement to that effect. A party who unilaterally and without good cause terminates the conference before that statement commits a Class D administrative violation.

(j) After the conference has closed, the mediator shall prepare a written list of stipulations according to the mediator's determination of uncontested issues based on the information presented by the parties and their answers to the mediator's inquiries. The mediator shall provide the list of stipulations to the parties not later than the seventh day after the conference closes and shall at the same time request their written agreement to the stipulations. A party objecting to the mediator's determination of an uncontested issue shall file a written statement of disagreement and list the reasons for disagreement. A party who is found in a subsequent proceeding to have refused to agree to a mediator's proposed stipulation without good cause is guilty of a Class C administrative violation.

(k) The mediator shall prepare a report of the mediation conference. The report is part of the claim file and must include:

(1) copies of all documents produced by the parties;

(2) a summary of additional pertinent factual

information disclosed during the oral presentations by the parties; and

(3) the written stipulations signed by the parties, excluding proposed stipulations to which a party refused to agree.

(l) A copy of the mediator's report shall be sent to the parties not later than the fifth day after the receipt of agreements or objections filed pursuant to Subsections (j) and (m) of this section.

(m) A party objecting to the mediator's summary of factual evidence that was orally presented, or any part of that evidence, shall file a written objection not later than the seventh day after the party receives the mediator's report and the reasons for the objection.

(n) The mediator's report may not include:

(1) references to offers of settlement or agreement;

(2) oral statements of a nonfactual nature except for a health care practitioner's medical opinions; or

(3) any statements made outside the presence of the other party.

(o) If issues go to arbitration, the commission shall forward the mediator's report to the arbitrator. The mediator's report is admissible at arbitration.

(p) Any material evidence that was available to a party at the time of the mediation conference but not disclosed or described at the conference may not be offered into evidence by that party at arbitration in the absence of good cause.

(q) With the exception of the material contained in the

mediator's report, no statement made by a party at the mediation conference may be offered against that party at arbitration or in any other forum.

(r) A party's objection to the mediator's report may be heard by the arbitrator prior to hearing the merits.

(s) The written stipulations contained in the mediator's report are binding at arbitration.

SECTION 6.24. UNRESOLVED ISSUES GO TO ARBITRATION. If issues remain unresolved after a mediation conference, as evidenced by the mediator's report, the issues shall go to arbitration. The commission shall appoint an arbitrator not later than the 10th day after the commission receives the mediator's report.

SECTION 6.25. PURPOSES OF ARBITRATION. The purposes of arbitration are:

(1) to enter into formal, binding stipulations on issues on which the parties agree;

(2) to resolve issues on which the parties disagree; and

(3) to render a final award with respect to all issues in dispute.

SECTION 6.26. ARBITRATORS. (a) The commission shall approve regional lists of consenting arbitrators.

(b) A person who is a resident of this state and who is either a member of the National Academy of Arbitrators or is on an approved list of the American Arbitration Association or Federal Mediation and Conciliation Service shall be considered qualified for the lists approved by the commission under Subsection (a) of

this section and, if the person consents, shall be included in the lists by the commission.

(c) A person who does not meet the qualifications set out in Subsection (b) of this section may be certified for inclusion as an approved arbitrator on the lists approved by the commission under Subsection (a) of this section if the person meets qualifications established by the commission for inclusion on the lists and is approved by an affirmative vote of at least two commission members representing employers of labor and at least two commission members representing wage earners. The commission by rule shall adopt qualifications for an arbitrator under this subsection.

(d) The commission shall review the lists of consenting arbitrators annually. An arbitrator shall be removed from the approved lists unless, on review, the arbitrator receives an affirmative vote as described in Subsection (c) of this section.

(e) Each regional list shall be initially prepared in a random name order and subsequent additions to each list shall be added in consecutive chronological order. The arbitrator for a particular case shall be assigned by the commission by selection of the next name after the previous case's selection in consecutive order. The commission may not change the order of names once the order is established under this subsection, except that once each arbitrator on the list has been assigned to a case, the names shall be randomly reordered.

(f) When an arbitrator has been assigned to a case under Subsection (e) of this section, the parties shall be notified immediately. A party is entitled, in its sole discretion, to

reject the arbitrator. If a party rejects an arbitrator, another arbitrator shall be assigned as provided by Subsection (e) of this section. Each party is entitled to only one rejection for each case, and when all parties have exercised their right of rejection or when no rejection is registered, the assignment is final.

(g) If an assigned arbitrator is unable to schedule a hearing to be held on or before the 30th day after the date of the arbitrator's appointment, the commission shall appoint the next arbitrator on the applicable list and this appointment is final.

(h) The commission's lists are strictly confidential and not subject to disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). The lists may not be revealed by any commission employee to any noncommission employee. The lists are exempt from discovery in civil litigation unless the party seeking the discovery establishes reasonable cause to believe that a violation of the requirements of this section occurred and that the violation is relevant to the issues in dispute.

SECTION 6.27. ARBITRATION PROCEDURE. (a) The arbitrator shall schedule an arbitration to be held not later than the 30th day after the date of the arbitrator's appointment and shall notify the parties and the commission of the scheduled date.

(b) A request by a party for a continuance of the hearing to another date must be directed to the commission. The commission may grant a continuance only if the commission determines, giving due regard to the availability of the arbitrator, that there is good cause for the continuance. If the commission grants a

continuance under this subsection, the date of the rescheduled hearing may not be later than the 30th day after the date of the original hearing. Notwithstanding the existence of good cause, the commission may not grant more than one continuance to each party.

(c) The commission shall adopt rules for arbitration consistent with generally recognized arbitration principles and procedures.

(d) The arbitration shall be conducted at a location within 75 miles of the claimant's residence at the time of injury, unless the arbitrator finds good cause for a different location.

(e) Each party shall attend the arbitration prepared to set forth in detail its position on unresolved issues and the issues with respect to which it is prepared to stipulate. A party who does not attend the conference commits a Class C administrative violation unless the arbitration officer determines that the party had good cause not to attend.

(f) Not later than the seventh day before an arbitration conference, the parties shall exchange and file with the arbitrator all medical reports and other documentary evidence pertinent to the resolution of the claim, with information as to their proposed resolution of the disputed issues.

(g) A claimant may be represented at arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An insurance carrier may be represented by an attorney or adjuster.

(h) An arbitrator shall protect the interests of all parties, ensure that all relevant evidence has been disclosed to

the arbitrator and to all parties, and shall render an award consistent with the terms of this Act.

(i) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by a party. An official stenographic record may not be made of the hearing, but any party wishing to record the hearing by stenographic or electronic means may do so and is responsible for the expenses of making the record.

(j) The parties may offer evidence as they desire and shall produce additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator is the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence is not necessary. The parties may present such closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

(k) Except in regard to procedural matters, a party and an arbitrator may not communicate outside the arbitration conference unless the communication is in writing with copies provided to all parties.

(l) The commission shall bear the expenses and fees of arbitration under this chapter.

SECTION 6.28. AWARD AT ARBITRATION. (a) Not later than the seventh day after the last day of arbitration, the arbitrator shall enter the final award. The arbitrator shall base the award on the facts established at arbitration, including stipulations of the parties, and the law as properly applied to those facts.

(b) The award must be:

(1) in writing;

(2) signed by the arbitrator; and

(3) a statement of the arbitrator's decision on the contested issues and the parties' stipulations on uncontested issues.

(c) The arbitrator shall file a copy of the award as part of the permanent claim file at the commission and shall notify the parties in writing of the decision.

(d) An award entered under this section is final and binding on all parties. Except as provided in Section 6.30 of this Act, there is no right of appeal.

(e) The commission shall adopt the arbitrator's award as a final order of the commission.

SECTION 6.29. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for the 20 days after its delivery to the parties.

SECTION 6.30. VACATING AN AWARD. (a) On application of an aggrieved party, a court of competent jurisdiction shall vacate an arbitrator's award on a finding that:

(1) the award was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary and capricious; or

(3) the arbitration award was outside the jurisdiction of the commission.

(b) If an award is vacated, the case shall be remanded to

the commission for another arbitration proceeding.

(c) A suit to vacate an award must be filed not later than the 30th day after the date of the award or not later than the 30th day after the date the appealing party obtained knowledge of a basis for suit under this section. Venue for suit is in the county in which the arbitration was conducted.

SECTION 6.31. JUDICIAL ENFORCEMENT. (a) If an insurance carrier refuses or fails to comply with an arbitrator's award, the claimant may bring suit in the county of the claimant's residence or the county in which the injury occurred, in any court of competent jurisdiction to enforce the award as a final and binding order of the commission.

(b) In addition to a judgment enforcing the order, the claimant is entitled to 18 percent penalties on the amount of benefits recovered in the judgment with reasonable attorney's fees for the prosecution and collection of the claim.

[Sections 6.32-6.40 reserved for expansion]

CHAPTER C. CONTESTED CASE HEARING

SECTION 6.41. CONTESTED CASE HEARING REQUEST. (a) A party to a claim for which a benefit review conference is held and for which the claimant does not elect mediation and arbitration, or a party eligible to proceed directly to a contested case hearing as otherwise provided by this Act, is entitled to a contested case hearing on the issues not resolved by agreement or stipulation at the benefit review conference. The report of the benefits review officer shall be incorporated into the contested case record by official notice.

(b) On request by an entitled party, the commission shall schedule a contested case hearing to be held not later than the 45th day after the date of the request. The commission shall notify the parties of the hearing not later than the 20th day before the date of the hearing.

(c) A claimant may be represented by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An insurance carrier may be represented by an attorney or adjuster.

SECTION 6.42. CONTESTED CASE HEARING PROCEDURE. (a) A contested case hearing shall be conducted by an administrative law judge who is a licensed attorney. Unless the administrative law judge determines that good cause exists for the selection of a different location, a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(b) The commission shall adopt rules governing procedures under which contested case hearings are conducted. The rules must provide for:

(1) the swearing of witnesses;

(2) the receipt of testimony;

(3) the examination and cross-examination of witnesses; and

(4) the production of documents.

(c) The proceedings of the contested case hearing shall be electronically recorded. A party may request a transcript of the proceeding and shall pay the reasonable cost of the transcription.

(d) A party may request that the proceedings of the contested case hearing be recorded by a court reporter. The party making the request shall bear the cost.

(e) The administrative law judge is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence, and conformity to legal rules of evidence is not necessary; however, any written stipulations and agreements filed in the record or oral stipulations and agreements preserved in the record made between the parties shall be final and binding. The administrative law judge may accept written statements signed by a witness.

(f) An issue that is material to a decision on the claim and is not raised or on which no evidence is introduced at the contested case hearing is waived and may not be raised at a trial on the claim, except as provided by Section 6.52(f) of this article.

(g) Not later than seven days before the date of the contested case hearing, the parties shall exchange:

(1) all medical reports;

(2) all medical records;

(3) any witness statements; and

(4) the names of any witnesses known to the parties to have knowledge of relevant facts.

(h) Any party may have discovery in preparation for the contested case hearing as provided under Section 14a, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) Not later than the 12th day after the request for a contested case hearing, any party may serve on the other party not more than 20 interrogatories. The interrogatories may not have subparts. The party receiving the interrogatories must serve answers to the interrogatories not later than the seventh day before the scheduled date of the contested case hearing.

SECTION 6.43. FORMAL STIPULATION OF NONDISPUTED ISSUES. (a) The parties shall enter into formal, binding stipulation of issues about which there is no reasonable basis for dispute. The stipulation must be in writing, signed by the insurance carrier, the claimant, and the claimant's attorney, if any, and made a matter of record.

(b) The stipulation is binding through the final conclusion of all matters relating to the claim, unless the commission or a court, upon a finding of fraud, newly discovered evidence that could not reasonably have been discovered at the time of the stipulation, or other good and sufficient cause, relieves the parties of the effect of the stipulation.

SECTION 6.44. AWARD. (a) Not later than the seventh day after the last day of the contested case hearing, the administrative law judge shall render a written decision that includes findings of fact and conclusions of law, file the decision with the division, and record the decision as the award.

(b) The division shall notify each party in writing of the decision not later than the seventh day after the date on which the decision of the administrative law judge is received and file-stamped by the division.

(c) If no party files suit in court on or before the 30th day after notification of the decision, the award becomes a final and binding order of the commission.

SECTION 6.45. EFFECT OF DECISION. The decision of the administrative law judge is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal.

SECTION 6.46. MULTIPLE INSURANCE CARRIERS. (a) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the administrative law judge may issue an order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. The proportionate share shall be determined by dividing the compensation due by the number of insurance carriers involved.

(b) On final determination of liability, any insurance carrier determined not to be liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier from any insurance carrier determined to be liable.

SECTION 6.47. MODIFICATION OF COMMISSION ORDERS. (a) The commission may not modify, suspend, or revoke its decision in a contested case hearing that has become final except on a showing of:

(1) newly discovered evidence;

(2) a substantial change of condition;

(3) misrepresentation;

(4) mistake of fact; or

(5) fraud.

(b) A modification made under Subsection (a) of this section must be made within 12 months of the date of an order denying compensation and within the compensation period for other orders of the commission.

(c) The commission may not modify, suspend, or revoke a decision in a contested case hearing if the decision is appealed to a district court as provided in this Act.

SECTION 6.48. MODIFICATION BASED ON CLERICAL ERROR. The executive director is authorized to modify a decision in a contested case hearing on a finding of clerical error.

SECTION 6.49. MODIFIED ORDERS APPEAL; JUDICIAL REVIEW. An order of modification entered under this chapter is subject to judicial review as provided by this chapter.

SECTION 6.50. RECOVERY OF PAYMENT OF COMPENSATION ORDERED. (a) In all cases in which the commission makes a final order directing payment of benefits and the insurance carrier fails and refuses without justifiable cause to obey or comply with the order, the employee may bring suit in any court of competent jurisdiction to enforce the final ruling and order of the commission. In addition to a judgment enforcing the order, the claimant is entitled to 18 percent of the amount of benefits recovered in the judgment as penalty, with reasonable attorney's fees for the prosecution and collection of the claim.

(b) If the commission has entered an order requiring the payment by the insurance carrier of periodic payments and the insurance carrier fails and refuses without justifiable cause to make income benefit payments promptly as they mature and accrue,

the employee has the right to mature the entire claim, excluding future medical benefits, and to institute suit to collect the full amount without discount for present payment, with 18 percent as penalty and with attorney's fees for the prosecution and collection of the claim.

(c) In a case in which the commission has approved a settlement, or in which the court has entered a judgment, and the insurance carrier fails and refuses without justifiable cause to pay income benefits when due, the claimant is entitled to institute suit in a court of competent jurisdiction to collect the full amount of income benefits provided for in the settlement or judgment, to an additional 18 percent as penalty, and to reasonable attorney's fees for the prosecution and collection of the claim.

(d) Venue for suits brought under this section is as provided by Section 6.51(d) of this Act.

SECTION 6.51. JUDICIAL ENFORCEMENT OF COMPENSATION RIGHTS. (a) Following a contested case hearing, a claimant or insurance carrier who is not willing to abide by the commission's award may, not later than the 30th day after the date of the award, file suit to enforce the rights and liabilities of the parties under this Act.

(b) The suit of the claimant shall be against the insurance carrier and not against the employer. Any suit against the claimant must be brought by the insurance carrier and not the employer.

(c) Suit may be filed in any court of competent jurisdiction.

(d) Venue for a suit under this section is in the county in which the injury occurred or in the county in which the claimant resided at the time the injury occurred or, if the employee is deceased, in the county where the employee resided at the time of death. For all cases of occupational diseases, venue shall be in the county in which the employee was last exposed to the alleged disease before the manifestation of the disease or death from the disease or in any county agreed to by the parties.

(e) If both the claimant and the insurance carrier bring suit, then the suit brought by the insurance carrier shall be consolidated into the suit brought by the claimant, and all matters and issues between the parties shall be decided in the suit brought by the claimant.

(f) At any time before the jury has retired in the trial of the suit, the plaintiff may take a nonsuit after notice to the other parties to the suit and a hearing held by which time all parties must perfect their cause of action, but the plaintiff does not thereby prejudice the right of an adverse party to be heard on the party's claim for affirmative relief. When the suit is tried by the judge of a district or county court, the nonsuit, after notice and hearing, may be taken at any time before the decision is announced.

SECTION 6.52. TRIAL OF WORKERS' COMPENSATION CLAIM. (a) Regardless of which party filed suit, the court shall determine the issues in the claim in a civil trial pursuant to the Texas Rules of Civil Procedure and the Texas Rules of Civil Evidence, and the burden of proof on the whole case shall be on the party claiming

compensation. Evidence shall be adduced as in other civil trials and either party shall be entitled to a jury for determination of disputed issues of fact.

(b) The commission shall furnish any interested party in the claim with a certified copy of the notice of the employer securing compensation with the insurance carrier, filed with the board. The certified copy of the notice shall be admissible in evidence on trial of the claim pending and shall be prima facie proof of the facts stated in the notice unless the facts are denied under oath by the opposing party.

(c) A formal stipulation made between the parties at the contested case hearing is final and binding during the trial of the claim as a judicial admission unless the court, for good cause, relieves a party from the binding effect of a stipulation.

(d) The commission, on payment of a reasonable fee, shall make available to the parties a certified copy of the commission's record, and all facts and evidence it contains are admissible to the extent allowed under the Texas Rules of Civil Evidence. The report of the benefit review officer, the findings of fact and conclusions of law contained in the decision of the administrative law judge, the award, and any witness statements are not admissible except that witness statements may be used for impeachment.

(e) Only an issue raised and on which evidence was introduced at the contested case hearing may be raised at trial.

(f) An issue not raised and on which no evidence was introduced at the contested case hearing may be raised only on the basis of newly discovered evidence and only if the party seeking to

raise the issue shows that:

(1) the evidence has come to the party's knowledge since the contested case hearing;

(2) the evidence could not have been discovered earlier with due diligence by the party;

(3) the evidence is not cumulative of other evidence; and

(4) the evidence is so material that it would probably produce a different result if it is admitted into evidence at the trial.

SECTION 6.53. ATTORNEY'S FEES REGULATED BY THE COURT. (a) For representing the interest of any claimant in any matter carried from the commission into the courts, an attorney representing the interest may contract with any claimant under this Act for an attorney's fee for the representation, not to exceed 25 percent of the amount recovered, the fee for services so rendered to be fixed and allowed by the trial court in which the matter may be heard and determined.

(b) In fixing and allowing the attorney's fee, the court must take into consideration the benefit accruing to the claimant as a result of the attorney's services. Attorney's fees, other than the amount which the commission may have approved, may not be allowed for representing a claimant in the trial court unless the court finds that benefits have accrued to the claimant because of the representation, and then the attorney's fees shall be allowed only on a basis of services performed and benefits accruing to the claimant.

(c) Notwithstanding Subsections (a) and (b) of this section, in all cases involving fatal injuries where the insurance carrier admits liability on all issues involved and tenders payments of maximum benefits in writing under this Act while the death benefits claim of the beneficiaries is pending before the benefits review conference, attorney's fees may not be allowed.

SECTION 6.54. COURT-APPROVED SETTLEMENTS. On the application of either party to a suit under this Act, a court may approve a settlement agreement if the claimant has reached maximum medical improvement. In approving the settlement agreement, the court may either conduct a hearing on the agreement or approve it without a hearing if the claimant submits a sworn affidavit acknowledging the agreement to settle a cause of action, evidencing the claimant's full understanding of the provisions of the agreement, and providing sufficient information for the court to arrive at a determination of the advisability of the agreement under this section.

ARTICLE 7. WORKERS' HEALTH AND SAFETY

SECTION 7.01. TEXAS DEPARTMENT OF HEALTH RESPONSIBILITY. (a) The Texas Department of Health shall adopt rules as provided by this section defining and prohibiting unsafe work practices and providing for enforcement of those rules through a system of administrative penalties.

(b) To the extent that any rules adopted under Subsection (a) assume responsibility for the development and enforcement of occupational health and safety standards relating to any occupational health or safety issue with respect to which a federal

standard has been adopted under 29 U.S.C. Sec. 655, the department shall submit a plan to the secretary of labor, designating the department as the responsible state agency under 29 U.S.C. Sec. 667(c), and meeting the federal requirements for such a plan.

(c) The commission may propose rules and make recommendations to the department relating to worker health and safety issues, which shall be considered by the department. The department may not go outside the scope of the commission's recommendations in adopting the rules.

(d) The department shall collect and serve as a repository for statistical information on workers' health and safety. The department shall analyze and use the information to identify and assign priorities to safety needs and to better coordinate the safety services provided by public or private organizations, including insurance carriers. The department shall promote workers' health and safety through educational programs and other innovative programs developed by the division.

(e) The department shall coordinate or supervise the collection of information relating to job safety by state or federal entities, including information collected for the supplementary data system and the annual survey of the bureau of labor statistics of the United States Department of Labor.

(f) The department shall:

(1) consult with employers regarding compliance with state and federal occupational safety laws and rules, and with good safety work practices; and

(2) collect information relating to occupational

safety as required by state or federal laws, rules, or agreements.

(g) The department shall create and issue educational books, pamphlets, brochures, films, videotapes, and other informational and educational material. Specific educational material shall be directed to high risk industries and employments and shall specifically address methods of avoiding high frequency, but preventable, worker injuries. Other educational material shall be directed to business and industry generally and shall specifically address methods of avoiding common injuries. The department shall make specific decisions as to what issues and problems should be addressed by the information after assigning appropriate priorities, based on frequency of injuries, degree of hazard, severity of injuries, and similar considerations. The educational materials must include specific references to:

(1) the requirements of state and federal laws and regulations;

(2) recommendations and practices of business, industry, and trade associations; and

(3) as needed, recommended work practices based on recommendations made by the department for the prevention of injury.

(h) The department shall cooperate with business and industry trade associations, labor organizations, and other entities to develop means and methods of educating employees and employers with regard to workplace safety.

(i) The department shall advise insurance carrier loss control service organizations of:

(1) hazard classifications;

(2) specific employers, industries, occupations, or geographic regions to which loss control services should be directed;

(3) the identity and types of injuries or occupational diseases and means and methods for prevention of those injuries or diseases to which loss control services should be directed; and

(4) the safety needs and priorities developed by the department.

(j) From the appropriate insurance carriers, the involved employer, and other reasonable sources, the department shall obtain information and investigation reports relating to compensable fatal injuries and injuries for which lifetime income benefits are payable, with special regard to repetitive conditions or incidents giving rise to those injuries, and shall publish and disseminate educational material setting forth specific types of safety practices and programs to be implemented or observed by employers and employees for the prevention of those incidents.

SECTION 7.02. JOB SAFETY INFORMATION SYSTEM. (a) The Texas Department of Health shall establish and maintain a job safety information system. The department may obtain from any state agency, including the commission, the State Board of Insurance, the Texas Department of Labor and Standards, and the Texas Employment Commission, necessary information and statistics, including those compiled for the purpose of rate-making. The department shall consult with the State Board of Insurance and the Texas Employment Commission in the design of data information and retrieval systems

that will accomplish the mutual purposes of those agencies and of the department.

(b) The job safety information system shall include a comprehensive data base that incorporates all pertinent information relating to each workers' compensation claim, except the identity of the employee, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the employee;

(2) the nature, source, and severity of the injury;

(3) the reported cause of the injury and whether the cause was an unsafe practice or condition;

(4) the part of the body affected;

(5) any equipment involved in the injury;

(6) the number of prior worker compensation claims by that employee;

(7) the prior loss history of the employer;

(8) the industry code of the employer; and

(9) any other information considered useful for the purpose of statistical analysis.

(c) The statistical data base must specifically identify each fatal injury and each injury for which lifetime income benefits are paid under this Act.

SECTION 7.03. EXTRA-HAZARDOUS EMPLOYER PROGRAM. (a) The Texas Department of Health shall develop a program including claim or loss guidelines to identify "extra-hazardous employers." For the purpose of this section, "extra-hazardous employer" means an employer whose injury frequencies or loss levels substantially

exceed those that may reasonably be expected in that employer's business or industry. The department shall notify each identified extra-hazardous employer and the insurance carrier for that employer that the employer has been identified as an extra-hazardous employer.

(b) An employer that is identified as an extra-hazardous employer under Subsection (a) of this section must obtain a safety consultation from the Texas Department of Health, the employer's insurance carrier, or another professional source approved by the department for that purpose not later than the 30th day after the date of the notification. The safety consultant shall file with the department, the commission, and the affected employer an initial written report not later than the 30th day after the date on which the consultation is completed, and a final written report not later than the 60th day after the date the consultation is completed. Those reports shall set out any hazardous conditions or practices identified by the safety consultation.

(c) The employer and the consultant shall formulate a specific accident prevention plan for the affected employer that addresses the hazards identified by the consultant. The accident prevention plan shall clearly and specifically state the nature and frequency of the claims and losses incurred in the employer's business and specific actions that should be taken by the employer to reduce and control those claims and losses. The accident prevention plan shall be finalized by an agreement between the employer and the consultant not later than the 60th day after the date that the employer receives notification of its extra-hazardous

status. A copy of the accident prevention plan and a final report, if necessary, shall be filed with the department, the commission, and the loss prevention service organization of the employer's insurance carrier. The employer shall comply with the accident prevention plan.

(d) The Texas Department of Health may investigate accidents occurring at the work sites of an employer for whom a plan has been formulated under Subsection (c) of this section. The department may enter and inspect any workplace subject to this section without advance notice to monitor the implementation of the accident prevention plan.

(e) The safety consultant shall monitor the implementation of the plan for a period of at least one year from the date of implementation of the plan and shall conduct a follow-up inspection of the employer's work site at six-month intervals for as long as the employer continues to be identified as an extra-hazardous employer. At the end of each year that the employer remains in the extra-hazardous employer program, the safety consultant, in consultation with the Texas Department of Health, shall calculate the employer's applicable claim frequencies and loss levels, determine whether or not those levels substantially exceed the levels that may reasonably be expected in that employer's business or industry, and notify the employer as to whether the employer remains identified as an extra-hazardous employer.

(f) If, at the time of an inspection required under Subsection (e) of this section, the employer continues to exceed the claim or loss guidelines, the Texas Department of Health shall

continue to monitor the safety conditions at the work site and may formulate additional safety plans reasonably calculated to abate hazards. The employer shall comply with those plans and is subject to additional penalties for failure to implement the plans.

(g) In addition to any other penalties imposed under this Act, an employer that remains identified as an extra-hazardous employer under Subsection (e) of this section may be assessed a penalty in an amount not less than the amount of the income benefits paid on any injury sustained by an employee of the employer because the employer is not in compliance with an accident prevention plan prescribed under this section. The penalty shall be paid at the same time the income benefits are paid. The penalty shall be deposited in the state treasury to the credit of the Texas Department of Health and shall be used to defray the costs of administering this article.

(h) The Texas Department of Health shall bill the employer for the reasonable cost of the services provided under this section. The costs of services shall be set at a cost-reimbursement level, including a reasonable allocation of the department's administrative costs.

(i) An employer who, one year after the initial accident prevention plan has been implemented, continues to exceed the claim and loss guidelines established under this article without substantial improvement shall be so notified by the Texas Department of Health. On issuance of the notification, the department shall investigate to determine the reasons for the failure to show improvement and may take action as it considers

necessary.

(j) An employer may request a hearing to contest findings made by the Texas Department of Health under this section.

(k) For the purposes of this section, "employer" means any person who employs one or more employees in this state.

SECTION 7.04. ACCIDENT PREVENTION SERVICES. (a) Any insurance company that desires to write workers' compensation insurance in this state must maintain or provide accident prevention facilities as a prerequisite for a license to write the insurance. The facilities must be adequate to furnish accident prevention services required by the nature of the policyholder's operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services. Each field safety representative of an insurance company must be a college graduate with a bachelor's degree in science or engineering, a registered professional engineer, a certified safety professional, or a certified industrial hygienist. An insurer may provide accident prevention facilities through a certified safety consultant certified by the Texas Department of Health.

(b) The Texas Department of Health shall certify safety consultants as qualified to render safety consultations under this article. A qualified safety consultant must be a college graduate with at least a bachelor's degree in science or engineering with special training in the area of safety, a registered professional engineer with special training in the area of safety, a certified safety professional, or a certified industrial hygienist. Before

the certification, the department shall investigate the background and training of the consultant, determine the nature of the surveys, recommendations, training programs, consultations, analyses, and industrial hygiene and industrial health services that the consultant is qualified to render, and certify the consultant as qualified in the appropriate specialties.

(c) At least biennially, the Texas Department of Health shall conduct inspections to determine the adequacy of the accident prevention services required by Subsection (a) of this section offered by each insurance company writing workers' compensation insurance in Texas.

(d) The insurer shall render accident prevention services reasonably commensurate with the risks and exposures and experience of the employer's business. An employer that has an experience rating must receive a safety consultation from a field safety representative at least annually. The consultation shall specifically recommend accident prevention measures to be implemented by the employer based on the employer's business and accident record. Each fatal injury and each injury for which lifetime income benefits are payable must be investigated by a field safety representative of the employer's insurer to identify the causes of the incident and measures that should be taken to prevent similar incidents in the future. The preventive measures must be set forth in a written report that the field service representative shall deliver to the employer, and must be explained to the employer in a personal conference. Notice that accident prevention services are available to the policyholder from the

insurer must appear in at least 10-point bold-faced type on the front of each workers' compensation insurance policy delivered or issued for delivery in this state. The insurer shall deliver requested accident prevention services to any employer not later than the 30th day after the date on which a request for those services is received.

(e) At least annually each insurer writing workers' compensation insurance in this state must submit to the Texas Department of Health detailed information on the type of accident prevention facilities offered to that insurer's policyholders. The information must include:

(1) the amount of money spent by the insurer on accident prevention services;

(2) the number of field safety representatives employed by the insurer;

(3) the number of site inspections performed;

(4) any accident prevention services for which the insurer contracts; and

(5) any additional information required by the department.

(f) The administration of this article is an expense of regulating workers' compensation insurance under Subchapter D, Chapter 5, Insurance Code.

SECTION 7.05. BACK INJURY PREVENTION TRAINING PROGRAM. (a) The Texas Department of Health shall prepare and administer a back injury prevention training program designed to instruct workers in methods of performing job-related movements and tasks that minimize

strain and safeguard against injury or reinjury to the back.

(b) The department shall:

(1) set minimum standards by rule for instruction, qualifications for instructors, program content, and supplementary materials and equipment;

(2) contract with other state agencies, political subdivisions of the state, or other suitable public and private agencies to provide approved back injury prevention training programs;

(3) compile information to evaluate the programs; and

(4) establish a maximum cost for the training, not to exceed $35 per participant, to be paid by the insurance carrier.

(c) An employee who suffers a back injury and receives income benefits for four or more weeks shall participate in this program.

(d) The program created under this section is a pilot program, to be administered in one metropolitan area and in one rural area determined by the commission, for a period of two years.

SECTION 7.06. LABOR/MANAGEMENT SAFETY GRANTS. (a) An employer, labor organization, trade organization, nonprofit organization, or educational institution is eligible to apply for a grant under the program established under this section.

(b) The Texas Department of Health shall fund these grants through the maintenance tax established under Chapter B, Article 2, of this Act.

(c) Any project conducted by an eligible applicant that provides occupational safety and health, education, or training

services to employees or employers relating to the prevention of occupational disease and injuries, and any other services considered by the department to be effective in promoting the prevention of occupational accidents and illnesses, is eligible for funding under this section.

(d) A grant application must be submitted in triplicate to the department in a format and in accordance with instructions prescribed by the department.

(e) The information provided by the application must include the following:

(1) the nature, duration, and purpose of the project for which the application is filed;

(2) the names and qualifications of the personnel, including the project director, if any, responsible for the proposed project;

(3) a description of the facilities, staff, support services, and other organizational resources available to carry out the project;

(4) the intended number of participants in the project and the process by which they were identified and selected;

(5) a description of the plan for evaluating the proposed project;

(6) a budget for the proposed project and a justification of the amount of grant funds requested; and

(7) an analysis of the impact of the project, including its significance for occupational safety and health.

(f) All applications shall be reviewed and evaluated by the

department. The evaluation of the application must consider:

(1) the program impact, including the seriousness of the safety and health hazards to which the project will be directed and the number of persons who will benefit from the project;

(2) the program design, including the proven effectiveness of the methods to be utilized, the extent to which the technical and scientific approaches to be utilized are accepted in the health and safety professions, the qualifications and competency of the project director and proposed staff, and the past experience of the training group or the project sponsor in offering programs related to occupational safety and health;

(3) the lack of duplication and the uniqueness of the project;

(4) the administrative capacity of the grant recipient; and

(5) the extent to which the grant applicant is currently receiving funds from grant programs and other sources for safety and health programs.

(g) Grants awarded under this section are subject to the following conditions:

(1) the grantee may not materially change the quality, nature or duration of the project unless the written approval of the department is obtained before the change;

(2) the grantee shall submit project progress reports to the department as prescribed by the department; and

(3) the grantee must submit proof, in the form requested by the department, for expenditures made under a grant

funded under this section.

(h) A grantee may spend funds received under this section only in accordance with the approved application and budget, the requirements of this section, and the terms and conditions of the grant award.

(i) The department may impose additional conditions before the award of a grant under this section if it is determined by the department that the conditions are necessary to implement the purposes of the grant.

SECTION 7.07. SAFETY TRAINING. The Texas Department of Health shall establish safety training programs for hazardous occupations. Each worker shall complete a minimum of 10 hours in a safety training course conducted through an educational institution, organized labor, or a trade association representing contractors.

SECTION 7.08. PROJECT SAFETY MANAGEMENT. (a) The general contractor for the construction of a building, industrial facility, or other structure that has a total contract cost of $10 million or more, or for the construction of any other project that has a total contract cost of $25 million or more, shall appoint a project safety manager for the construction site. If the total contract cost exceeds $100 million, the owner of the project shall contract to have project safety management performed by a person wholly independent of the general contractor and subcontractors for the project. A project safety manager for a project subject to this subsection must be a qualified safety engineer who is:

(1) a college graduate with a conferred baccalaureate

degree in science or engineering;

(2) a registered professional engineer;

(3) a safety professional certified by the Texas Department of Health; or

(4) an industrial hygienist certified by the department.

(b) The general contractor for a construction project that is not subject to Subsection (a) of this section but that has a total contract cost of $500,000 or more shall appoint a project safety manager as provided by this subsection. The project safety manager must meet the requirements of Subsection (a) of this section, or must have at least 10 years' experience in the construction industry and have completed a training course developed or approved by the department. A training course may not exceed 40 hours in length.

(c) The contractor shall furnish the project safety manager with a staff appropriate to the size and nature of the project.

(d) The project safety manager shall develop and implement appropriate safety plans and programs for the prevention of accidental injuries at the construction site. The project safety manager and staff shall inspect the construction site and identify any unsafe conditions or practices affecting the project. On behalf of the general contractor, the project safety manager and staff may order an immediate cessation of work as necessary for the health or safety of persons at the construction site.

(e) The project safety manager shall review the safety practices of persons involved in the public works project, and

shall conduct safety meetings relating to the project at least weekly. The project safety manager may perform other duties. If 10 or more employees are performing work at the construction site, the project safety manager must be physically present at the site.

(f) For the purposes of this section, the total contract cost of a construction project does not include land costs.

SECTION 7.09. PROJECT SAFETY MANAGEMENT FOR PUBLIC WORKS. (a) Each public entity that awards a construction contract shall consider the safety record of the bidders in awarding the contract. The Texas Department of Health by rule shall adopt requirements relating to project safety management for public entities and the factors to be considered in evaluating a safety record.

(b) In the bid, a bidder shall include:

(1) a statement of the bidder's accident frequencies, claim frequencies, and loss levels;

(2) the bidder's workers' compensation insurance experience rating;

(3) documentation relating to the bidder's safety record for the 10 years immediately preceding the bid; and

(4) other information as required by the rules adopted by the department.

(c) Each construction contract entered into by a public entity must contain a provision requiring safe practices and a pay item to cover the cost of implementing safe practices. The pay items shall be in the form of a specific bid item as part of the proposal prepared by the public entity that awards the contract. The contract must also include a provision that provides a penalty

for a contractor with a below-average safety record and a bonus payment for each day that a contractor works on the project without a lost-time injury. The penalty and bonus schedules may be determined by the public entity that awards the contract, and must specify amounts. A bonus may be increased for each additional day without lost-time injuries. The department shall develop recommended contract clauses relating to project safety management and recommended penalty and bonus schedules.

(d) The general contractor on a public works construction project shall require that all workers on the project be covered by workers' compensation insurance.

(e) Each contractor that performs work on a public works contract must have a project safety manager for the project who meets the requirements imposed under Section 7.08(a) of this article.

(f) The project safety manager shall report all unsafe conditions to an officer of the general contractor. If the conditions are not corrected, the project safety manager shall report the conditions to the general contractor. If the conditions remain uncorrected, the project safety manager shall report the unsafe conditions to the governing body of the public entity that awarded the contract.

(g) If in the opinion of the department specific training is necessary for specific job skills, such as crane operation, the department shall develop the necessary training program and make it available through educational institutions, organized labor, and trade associations representing contractors. Training in specific

job skills may be required only if required by the public entity awarding the contract.

(h) This section does not apply to the construction of habitable buildings. It does apply to the construction of roads, dams, airports, water and sewer lines, treatment plants, highways, bridges, and similar projects normally designed by registered professional engineers.

ARTICLE 8. MEDICAL SERVICES

CHAPTER A. DIVISION OF MEDICAL REVIEW

SECTION 8.01. DIVISION OF MEDICAL REVIEW. (a) The commission by rule shall establish medical policies and fee guidelines governing the provision and payment of medical services that are designed to assure the quality of medical care and achieve effective medical cost control. Medical policies adopted by the commission must be consistent with Section 8.21 of this Act. The commission shall establish a division of medical review to ensure compliance with the rules and implement this article under the policies adopted by the commission.

(b) Insurance carriers are responsible for receiving, reviewing, auditing, and making appropriate payment of charges for medical services provided under this Act. After charges for medical services have been processed by insurance carriers, the division shall periodically review the medical charges submitted and payments made to ensure compliance of providers and carriers with the medical policies and fee guidelines adopted by the commission. The division shall maintain a statewide data base of medical charges, actual payments, and treatment protocols that may

be used by the commission in adopting the medical policies and fee guidelines and by the division in administering the medical policies, fee guidelines, or rules of the commission.

(c) The division shall ensure that:

(1) the data base contains data necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols;

(2) the data base can be utilized in a meaningful way to allow the commission to control medical costs as provided by this Act; and

(3) the data base shall be available for public access for a reasonable fee to be established by the commission, except that the identities of injured workers and beneficiaries may not be disclosed.

(d) The division shall monitor health care providers, insurance carriers, and workers' compensation claimants who receive medical services to assure the compliance of those persons with the medical policies and fee guidelines, as well as with other rules adopted by the commission relating to health care.

(e) If the division determines that a health care provider has violated this Act, the division shall order a refund of all charges received in excess of those allowed by the medical policies or fee guidelines. The division shall also refer the health care provider alleged to have violated this Act to the division of compliance and practices.

(f) If the division determines that an insurance carrier has paid medical charges that are inconsistent with the medical

policies or fee guidelines adopted by the commission, the division shall refer the insurance carrier alleged to have violated this Act to the division of compliance and practices. If the insurance carrier has reduced a charge of a health care provider when the charge was within the guidelines, the carrier shall be directed to submit the difference to the provider unless the reduction is in accordance with an agreement between the health care provider and the insurance carrier.

(g) The commission by rule shall provide for the periodic review of medical care provided in claims in which lost-time guidelines or other appropriate guidelines are exceeded. The division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to assure that necessary and reasonable care is provided.

(h) The division shall take appropriate action to be aware of and maintain the most current information on developments in the treatment and cure of injuries and diseases common in workers' compensation cases.

SECTION 8.02. AUTHORITY TO CONTRACT FOR FUNCTIONS. (a) The commission may contract with other private or public entities to perform any of the duties or functions of the division.

(b) The commission may contract with health care providers for independent medical examinations, medical case reviews, establishment of medical policies and fee guidelines, or other medical consultant services.

SECTION 8.03. COORDINATION WITH PROVIDERS. (a) The medical review division shall coordinate its activities with health care

providers as necessary to perform its duties under this article.

(b) The coordination may include:

(1) conducting educational seminars on commission rules and procedures; and

(2) providing information to and requesting assistance from professional peer review organizations.

[Sections 8.04-8.20 reserved for expansion]

CHAPTER B. MEDICAL POLICIES AND FEE GUIDELINES

SECTION 8.21. REGULATION OF MEDICAL SERVICES. (a) The commission shall adopt rules relating to the use of medical services by employees who suffer compensable injuries and the fees charged or paid for those services.

(b) All fees for medical services provided under this Act must be fair and reasonable and may not exceed the fees charged for the similar treatment of an injured individual with an equivalent standard of living when the fees for the treatment are paid by the injured individual or by someone acting on the injured individual's behalf. In evaluating the fees, the commission shall consider the increased security of payment afforded by this Act. The rules adopted by the commission shall include:

(1) guidelines relating to reasonable fees for specific medical treatments or services;

(2) medical policies relating to necessary treatments for specific injuries;

(3) a program for the systematic monitoring of the necessity of treatments administered and fees actually charged and paid for medical treatments or services, including the

1 authorization of prospective, concurrent, or retrospective review
2 as provided by the medical policies of the commission to ensure
3 that the medical policies or guidelines are not exceeded;
4 (4) a program to detect practices and patterns by
5 insurance carriers in unreasonably denying authorization of payment
6 for medical services requested or performed if authorization is
7 required by the medical policies of the commission;
8 (5) a program to increase the intensity of review for
9 compliance with the medical policies or fee guidelines for any
10 health care provider who has established practices and patterns in
11 medical charges and treatments inconsistent with the medical
12 policies and fee guidelines established by the commission;
13 (6) rules necessary to enable the commission to compel
14 the production of documents, establish standards of reporting
15 governing both form and content, and charge an insurance carrier a
16 reasonable fee for access to or evaluation of health care
17 treatment, fees, or charges under this Act;
18 (7) rules necessary to enable the commission to charge
19 a health care provider who exceeds a fee or utilization guideline
20 instituted under this Act a reasonable fee for evaluation of health
21 care treatment, fees, or charges pursuant to this Act; and
22 (8) rules necessary to enable the commission to charge
23 an insurance carrier who unreasonably disputes charges set in
24 accordance with a fee or guidelines instituted under this Act a
25 reasonable fee for evaluation of health care treatment, fees, or
26 charges under this Act.
27 SECTION 8.22. CONTRACTS WITH REVIEW ORGANIZATIONS. The

commission may contract with a health care provider professional organization or other entity to develop, maintain, or review medical policies or fee guidelines or to review compliance with the medical policies or fee guidelines. For the purposes of review or resolution of a dispute as to compliance with the medical policies or fee guidelines, the commission may contract only with a health care provider professional organization that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review.

SECTION 8.23. SPECIAL ADVISORY COMMITTEES. (a) The following special advisory committees are created to assist the medical review division in administering the medical policies and fee guidelines established under Section 8.21 of this Act:

(1) the health care facility advisory committee;

(2) the medical care advisory committee;

(3) the osteopathic care advisory committee;

(4) the chiropractic care advisory committee;

(5) the podiatric care advisory committee;

(6) the physical therapy advisory committee;

(7) the pharmaceutical advisory committee; and

(8) the occupational therapy advisory committee.

(b) Each advisory committee is composed of nine members appointed by the commission as provided by this section. A member of an advisory committee is not entitled to remuneration but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee, not

to exceed any limit established in the General Appropriations Act.

(c) The commission shall appoint five health care practitioners to each advisory committee. Each health care practitioner member of a committee must be a health care provider of that particular provider group who is knowledgeable and qualified regarding work-related injuries and diseases. The commission shall consider the advice of the appropriate professional associations in making the committee appointments.

(d) The commission shall appoint four additional members to each advisory committee, one to represent employers, one to represent employees, and two to represent the general public.

(e) The health care advisory committee is created to assist the division. The committee is composed of eight members appointed by the commission and one member elected from each of the committees created under Subsection (a) of this section. The commission shall designate the chair of the committee, which shall meet at the call of its chair. A member of this committee is not entitled to remuneration but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee, not to exceed any limit established in the General Appropriations Act.

SECTION 8.24. MEDICAL POLICY AND GUIDELINE UPDATES REQUIRED. The medical policies and fee guidelines shall be reviewed and revised every two years to reflect fair and reasonable charges and amended to reflect current reasonable or necessary medical treatment or ranges of treatment. The health care advisory committee and the appropriate special advisory committee

established under Section 8.23 of this Act shall assist the commission or professional organization in the review and revision.

SECTION 8.25. PRESUMPTIONS. Medical services consistent with the medical policies and fee guidelines adopted by the commission and medical services that are provided subject to prospective, concurrent, or retrospective review as required by the medical policies of the commission and that are authorized by an insurance carrier are presumed reasonable.

SECTION 8.26. MEDICAL DISPUTE RESOLUTION. (a) A health care provider is entitled to a review of medical services that are provided or for which authorization of payment is sought if the health care provider has:

(1) been denied payment for medical services rendered;

(2) been denied authorization for the payment of services requested or performed when authorization is required by the medical policies of the commission; or

(3) been ordered by the division to refund payments received for the provision of medical services.

(b) A health care provider who submits charges in excess of the commission fee guidelines or treatment policies is entitled to a review of medical services to determine if reasonable medical justification exists for the deviation.

(c) A health care provider who is a party to a medical dispute that remains unresolved after a review of medical services as provided by this section is eligible to proceed directly to a hearing as provided by this Act.

(d) A review of medical services under this section shall be

provided by a health care provider professional organization.

SECTION 8.27. INTEREST EARNED FOR DELAYED PAYMENT. A fee or charge consistent with the guidelines for fees and charges earns interest at the rate provided in Section 1.04 of this Act from the 60th day after the date the health care provider submits the bill to an insurance carrier to the date the bill is paid.

[Sections 8.28-8.40 reserved for expansion]

CHAPTER C. OTHER MEDICAL ISSUES

SECTION 8.41. PROVIDERS' DISCLOSURE. A health care provider that refers a workers' compensation claimant to another health care provider in which the referring provider has more than a five percent financial interest shall file an annual disclosure statement with the commission as provided by rules adopted by the commission and shall disclose the interest to the insurance carrier at the time of the referral. The referring provider shall specify the degree of the financial interest and shall provide other information as required by the rules of the commission.

SECTION 8.42. PRIVATE CLAIMS. (a) A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless the injury is finally adjudicated not to be compensable under this Act.

(b) A health care provider who violates Subsection (a) of this section commits a Class B administrative violation.

ARTICLE 9. COMPLIANCE AND PRACTICES

SECTION 9.01. DIVISION OF COMPLIANCE AND PRACTICES. (a) The compliance and practices division of the commission shall

monitor the conduct of all persons subject to this Act other than persons monitored by the medical review division including:

(1) persons claiming benefits under this Act;

(2) employers;

(3) insurance carriers; and

(4) attorneys and other representatives of parties.

(b) The division shall monitor those persons for compliance with commission rules, this Act, and other laws relating to workers' compensation.

SECTION 9.02. PERFORMANCE REVIEW OF INSURANCE CARRIERS. The division shall review the workers' compensation records of insurance carriers on a regular basis as required to ensure compliance with this Act. Each insurance carrier shall cooperate with the division and shall make available to the division any records or other necessary information. The insurance carrier shall allow the division access to the information at reasonable times at the offices of the insurance carrier. The insurance carrier shall pay the reasonable expenses, including travel expenses, of an auditor who audits the workers' compensation records at the offices of the insurance carrier.

SECTION 9.03. MONITORING OF TIMELY PAYMENTS. The division shall also monitor payments to health care providers on behalf of workers' compensation claimants who receive medical services to assure that the payments are made on a timely basis as provided in Section 4.71 of this Act.

SECTION 9.04. COMPILATION OF INFORMATION. The division shall compile and maintain statistical and other information as

necessary to detect practices or patterns of conduct by persons subject to monitoring under this article that violate this Act or commission rules, or that otherwise adversely affect the workers' compensation system of this state. The commission shall use the information to assess appropriate penalties and other sanctions under Article 10 of this Act.

SECTION 9.05. PENALTIES AND SANCTIONS FOR HEALTH CARE PROVIDERS. The division shall review information and referrals from the division of medical review concerning alleged violations of this Act and shall assess appropriate penalties or sanctions.

SECTION 9.06. INVESTIGATIONS. (a) The division shall conduct investigations relating to alleged violations of this Act or commission rules.

(b) The division may refer the persons involved in a case subject to an investigation to the hearings division or to other appropriate authorities, including licensing agencies, district and county attorneys, or the attorney general of the State of Texas, for further investigation or institution of appropriate proceedings.

ARTICLE 10. PENALTIES AND SANCTIONS

CHAPTER A. PROHIBITED ACTS

SECTION 10.01. DISCRIMINATION PROHIBITED. (a) A person may not discharge or otherwise discriminate against an employee because the employee, in good faith:

(1) initiated a workers' compensation claim;

(2) retained a representative or an attorney to represent the employee regarding a claim;

(3) instituted or caused to be instituted a proceeding under this Act;

(4) testified or is about to testify at a proceeding under this Act;

(5) refuses to perform a task that is unreasonably dangerous; or

(6) reported a hazardous working condition or hazardous practice.

(b) A person who violates this section is liable for reasonable damages suffered by the employee as a result of the violation. An employee who is discharged in violation of this section is entitled to reinstatement in the same or an equivalent position of employment with commensurate pay. The burden of proof is on the employee.

(c) The district courts of this state have jurisdiction, for cause shown, to restrain a violation of this section.

(d) Liability incurred by an employer because of a violation of this section is not a benefit payable under this Act.

SECTION 10.02. LIABILITY FOR FAILURE TO REHIRE. (a) Unless reasonable cause exists, an employer may not refuse to rehire an employee who suffered a compensable injury while working for that employer if:

(1) the employer employs at least 25 employees at the time the injured workers applied for reemployment; and

(2) employment suited to the injured employee's physical and mental limitations is available.

(b) An employee who is not rehired in violation of this

section may file suit in district court. The burden of proof is on the employee.

(c) In determining the availability of suitable employment, the court shall consider any written rules adopted by the employer, the provisions of any collective bargaining agreement relating to seniority, and whether the employee meets the basic qualifications and experience typically required by the employer for the available employment.

(d) An employer found to be in violation of this section is liable to the employee for the wages lost during the period of the refusal, not to exceed 52 weeks. This liability is exclusive to the employer and may not be transferred to an insurance carrier.

SECTION 10.03. EMPLOYER CHARGEBACKS PROHIBITED. (a) Except as provided in Section 3.05 of this Act, an employer may not collect from an employee, directly or indirectly, any premium or other fee paid by the employer to obtain workers' compensation insurance coverage.

(b) An employee or legal beneficiary of an employee has a right of action to recover damages against an employer who violates Subsection (a) of this section.

(c) A violation of Subsection (a) of this section is a Class B administrative violation.

SECTION 10.04. FRAUDULENTLY OBTAINING OR DENYING BENEFITS. A person commits an administrative violation if the person, to obtain or deny payments of workers' compensation benefits or the provision of those benefits for himself or another, knowingly and intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a document; or

(4) conspires to commit an act listed in Subdivision (1), (2), or (3) of this section.

SECTION 10.05. ADMINISTRATIVE VIOLATIONS FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS. (a) In this section, "benefits" means all rights and privileges arising under this Act, including compensation.

(b) A person who, for the purpose of obtaining or denying payments or benefits under this code, knowingly commits any of the acts described by Section 10.04 of this article commits a Class B administrative violation.

(c) A person who has obtained excess payments in violation of this section or Section 10.04 of this article is liable for full repayment plus interest calculated as prescribed by Section 1.04 of this Act. If the person is an employee or person claiming death benefits, the repayment may be subtracted from future income or death benefits to which the person is otherwise entitled.

(d) An employer who has committed an act described by Section 10.04 of this Act that results in denial of payments is also liable for past compensation payments and the interest due on those payments, calculated as prescribed by Section 1.04 of this Act.

(e) If an administrative violation proceeding is pending under this section against an employee or person claiming death

benefits, the commission may not take final action on the person's compensation.

SECTION 10.06. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION. A person who knowingly brings, prosecutes, or defends an action for compensation under this Act that has no basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law commits a Class B administrative violation.

SECTION 10.07. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION. A party to an agreement approved by the commission who knowingly breaches a provision of the agreement commits a Class B administrative violation.

SECTION 10.08. WRONGFUL ACTS. (a) The compliance and practices division shall monitor the conduct described in this section and refer persons engaging in that conduct to the hearings division. The following acts by the representative of an employee or legal beneficiary, if undertaken wilfully or intentionally, constitute administrative violations and are subject to Chapter B of this article:

(1) failing without good cause to attend a proceeding before the commission;

(2) committing an act of barratry as defined by the laws of this state;

(3) withholding amounts from the employee's or legal beneficiary's weekly compensation or from advances without authorization by the commission;

(4) entering into a settlement or agreement without

the knowledge, consent, and signature of the employee or legal beneficiary;

(5) taking a fee or withholding expenses in excess of the amounts authorized by the commission;

(6) refusing or failing to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order, or award;

(7) violating the Code of Professional Responsibility of the State Bar of Texas;

(8) misrepresenting a provision of this Act to an employee, an employer, a health care provider, or legal beneficiary;

(9) attending a benefit review conference or contested case hearing without complete authority or failing to exercise authority to effectuate an agreement or settlement; or

(10) violating any rule of the commission.

(b) The following acts by an insurance carrier or its representative, if undertaken wilfully or intentionally, constitute administrative violations and are subject to Chapter B of this article:

(1) misrepresenting a provision of this Act to an employee, an employer, a health care provider, or a legal beneficiary;

(2) failing to submit to the commission any settlement or agreement of the parties;

(3) failing to timely notify the commission of the

termination or reduction of compensation and the reason for that action;

(4) terminating or reducing compensation without substantiating evidence that that action is reasonable and authorized by law;

(5) instructing employers not to file required documents with the commission;

(6) instructing or encouraging employers to violate the claimant's right to medical benefits under this Act;

(7) failing to tender promptly full death benefits if a legitimate dispute does not exist as to the liability of the carrier;

(8) allowing an employer, other than a self-insured employer, to dictate the methods by which and the terms on which a claim is handled and settled; however, this subdivision does not prohibit the free discussion of a claim, prohibit the employer's assistance in the investigation and evaluation of a claim, or prohibit the employer's attendance at proceedings of the commission and participation at those proceedings as a witness or observer;

(9) failing to confirm medical benefits coverage to any person or facility providing medical treatment to a claimant if a legitimate dispute does not exist as to the liability of the carrier;

(10) failing, without good cause, to attend a benefit review conference or a contested case hearing;

(11) attending a benefit review conference or a contested case hearing without complete authority or failing to

exercise authority to effectuate agreement or settlement;

(12) adjusting workers' compensation claims in any manner contrary to the requirements for licensure as an insurance adjuster, including the requirements of Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code), or the rules of the State Board of Insurance;

(13) failing to process claims promptly in a reasonable and prudent manner;

(14) failing to initiate or reinstate compensation when due if a legitimate dispute does not exist as to the liability of the insurance carrier;

(15) misrepresenting the reason for not paying compensation or terminating or reducing the payment of compensation;

(16) misdating documents to misrepresent the true date of the initiation of compensation;

(17) making notations on drafts or other instruments to indicate that the draft or instrument represents a final settlement of a claim if the claim is still open and pending before the commission;

(18) failing or refusing to pay compensation from week to week as and when the compensation entitlement matures and accrues directly to the person entitled to the compensation;

(19) failing to pay an order awarding compensation if an appeal to the order is not perfected;

(20) controverting claims if the evidence clearly

1 indicates liability; or

2 (21) violating any rule of the commission.

3 (c) The following acts by a health care provider if
4 undertaken wilfully or intentionally constitute administrative
5 violations and are subject to Chapter B of this article:

6 (1) submitting charges for health care that was not
7 furnished;

8 (2) administering improper, unreasonable, or medically
9 unnecessary treatment or services;

10 (3) failing or refusing to timely file required
11 reports or records;

12 (4) violating Section 8.42 of this Act;

13 (5) making unnecessary referrals;

14 (6) failing to disclose an interest as required by
15 Section 8.41 of this Act;

16 (7) violating the commission's fee and treatment
17 guidelines; or

18 (8) violating any rule of the commission.

19 (d) In addition to penalties assessed for the violations, a
20 person who engages in acts prohibited under this section as a
21 matter of practice may be subject to:

22 (1) a reduction or denial of fees;

23 (2) public or private reprimand by the commission;

24 (3) suspension from practice before the commission; or

25 (4) restriction, suspension, or revocation of the
26 right to receive reimbursement under this Act.

27 [Sections 10.09-10.20 reserved for expansion]

CHAPTER B. PENALTY AND SANCTION PROCEDURES

SUBCHAPTER 1. ADMINISTRATIVE VIOLATIONS AND PENALTIES

SECTION 10.21. ADMINISTRATIVE VIOLATIONS AND PENALTIES. (a) The commission may assess an administrative penalty against a person who commits an administrative violation.

(b) The commission may assess an administrative penalty not to exceed $10,000 and may enter a cease and desist order against a person who:

(1) commits repeated administrative violations;

(2) allows, as a business practice, the commission of repeated administrative violations; or

(3) violates an order or decision of the commission.

(c) The commission shall consider the following factors in assessing an administrative penalty:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(2) the history and extent of previous administrative violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(4) any economic benefit resulting from the prohibited act;

(5) the penalty necessary to deter future violations; and

(6) any other matters that justice may require.

(d) A penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under Subchapter 2 of this chapter.

SECTION 10.22. CLASSIFICATIONS OF ADMINISTRATIVE VIOLATIONS AND PENALTIES. Administrative violations are classified as follows:

(1) a Class A administrative violation, punishable by an administrative penalty not to exceed $10,000;

(2) a Class B administrative violation, punishable by an administrative penalty not to exceed $1,000;

(3) a Class C administrative violation, punishable by an administrative penalty not to exceed $500; and

(4) a Class D administrative violation, punishable by an administrative penalty not to exceed $100.

[Sections 10.23-10.30 reserved for expansion]

SUBCHAPTER 2. ADMINISTRATIVE VIOLATION PROCEEDINGS

SECTION 10.31. INITIATION OF ADMINISTRATIVE VIOLATION PROCEEDINGS. Any person may request the initiation of administrative violation proceedings by filing written allegations with the director of the division of compliance and practices.

SECTION 10.32. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE. (a) If investigation by the division of compliance and practices indicates that an administrative violation has occurred, the division shall notify the person in writing of:

(1) the charge;

(2) the proposed penalty;

(3) the right to consent to the charge and the

1 penalty; and

2 (4) the right to request a hearing.

3 (b) Not later than the 20th day after the date on which
4 notice is received, the charged party shall:

5 (1) remit the amount of the penalty to the commission;
6 or

7 (2) submit to the commission a written request for a
8 hearing.

9 SECTION 10.33. HEARING PROCEDURES. (a) On request of the
10 charged party, or at the discretion of the director of the division
11 of hearings, the division of hearings shall set an administrative
12 violation hearing. An administrative violation hearing under this
13 article shall be conducted by the hearings division and is subject
14 to the procedures established in Article 6.

15 (b) At the close of the hearing, the hearing examiner
16 conducting the hearing shall make findings of fact and conclusions
17 of law and shall issue a written decision. If the examiner
18 determines that an administrative violation has occurred, the
19 decision shall set forth the amount of the penalty assessed and
20 shall order payment of the penalty.

21 (c) The findings of fact, the decision, and the order shall
22 be sent immediately to the charged party.

23 SECTION 10.34. FAILURE TO RESPOND. If, without good cause,
24 a charged party fails to respond as required under Section 10.32 of
25 this Act, the penalty is due and the commission shall initiate
26 enforcement proceedings.

27 SECTION 10.35. JUDICIAL REVIEW. (a) A decision in an

administrative hearing conducted under Section 10.33 of this Act is subject to judicial review under Chapter C of Article 6 of this Act.

(b) If an administrative penalty is assessed, the person charged must either:

(1) forward the amount of the penalty to the executive director for deposit in an escrow account; or

(2) post with the executive director a bond for the amount of the penalty, to be effective until all judicial review of the violation determination is final.

(c) Failure to comply with Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) If the court determines that the penalty should not have been assessed or should be reduced, the executive director shall:

(1) remit the appropriate amount, plus accrued interest, if the administrative penalty was paid; or

(2) release the bond.

[Sections 10.36-10.40 reserved for expansion]

CHAPTER C. ACTIONS AGAINST INSURANCE CARRIER FOR BREACH OF DUTY

SECTION 10.41. CERTAIN CAUSES OF ACTION PRECLUDED. An action taken by an insurance carrier pursuant to an order of the commission may not be the basis of a cause of action against the insurance carrier for a breach of duty of good faith and fair dealing.

SECTION 10.42. EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b) of this section, in an action against an

insurance carrier for a breach of the duty of good faith and fair dealing, recovery of exemplary damages is limited to four times the amount of actual damages.

(b) If the action that gives rise to the exemplary damages recovery was intentional or malicious, the limitation on damages under Subsection (a) of this section does not apply.

ARTICLE 13. INSURANCE ISSUES

CHAPTER A. INSURANCE RATE REGULATION

SECTION 13.01. Section 1, Article 1.24A, Insurance Code, is amended to read as follows:

Sec. 1. DEFINITIONS. In this article:

(1) "Casualty [~~Liability~~] insurance" means the following types of insurance:

(A) general liability;

(B) medical professional liability;

(C) professional liability other than medical professional liability;

(D) commercial automobile liability;

(E) the liability portion of commercial multiperil coverage; [~~and~~]

(F) workers' compensation insurance; and

(G) any other types or lines of liability insurance designated by the State Board of Insurance under Section 3 of this article.

(2) "Insurer" means:

(A) each insurance company or other entity admitted to do business and authorized to write casualty

[~~liability~~] insurance in this state, including county mutual insurance companies, Lloyd's plan companies, and reciprocal or interinsurance exchanges but excluding farm mutual insurance companies and county mutual fire insurance companies writing exclusively industrial fire insurance as defined by Article 17.02 of this code; and

(B) each pool, joint underwriting association, or self-insurance mechanism or trust authorized by law to insure its participants, subscribers, or members against liability, or for workers' compensation coverage.

SECTION 13.02. Subsection (a), Section 2, Article 1.24A, Insurance Code, is amended to read as follows:

(a) On or before May 1 of each year, each insurer shall file with the State Board of Insurance a report covering its direct writings of casualty [~~liability~~] insurance in this state.

SECTION 13.03. Subsection (a), Section 3, Article 1.24A, Insurance Code, is amended to read as follows:

(a) The State Board of Insurance may adopt necessary rules and forms to carry out this article and to add other types and lines of casualty insurance [~~against liability~~] to the types and lines for which reports must be made under this article.

SECTION 13.04. Article 5.55, Insurance Code, is amended to read as follows:

Art. 5.55. WORKERS' [~~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

Texas Workers' Compensation Act, or [~~Workmen's--Compensation--Law and/or~~] by the "Longshoremen's and Harbor Workers' Compensation Act" as enacted by the Congress of the United States. The [~~Said~~] Board shall publish all rates and rating plans promulgated by it as affecting compensation insurance [~~Compensation-Insurance~~] in this State, which [~~and-said--rates--and--rating--plans,--or--any--change therein,~~] shall be published fifteen (15) days before they become effective [~~and-in-force~~].

SECTION 13.05. Article 5.58, Insurance Code, is amended to read as follows:

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 annually [~~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) Content of Data Reports. The following information

shall be reported on each workers' compensation claim:

(1) the hazard classification of the affected employee;

(2) the date of injury;

(3) the social security number of the claimant;

(4) the severity classification of the claim, including separate classifications for death claims, claims paid for injuries for which lifetime income benefits are payable under the Texas Workers' Compensation Act, claims paid for incapacity, claims in which income benefits are paid only for temporary disability, and claims in which only medical benefits are paid;

(5) the amount paid in periodic payments;

(6) the amount paid in lump-sum payments;

(7) the amount paid for temporary disability;

(8) the amount paid for incapacity;

(9) the amount paid for death and burial benefits;

(10) the total amount paid for income, death, or burial benefits;

(11) the total amount of incurred losses for income, death, or burial benefits;

(12) the amount paid to doctors and other medical practitioners;

(13) the amount paid to hospitals and other health care facilities;

(14) the amount paid to pharmacies;

(15) the total amount paid for medical benefits;

(16) the total amount of incurred losses for medical

benefits; and

(17) other information required by the Board.

(c) Information Confidential. A person may not distribute or otherwise disclose a social security number or any other information collected under Subsection (b) of this article which would disclose the identity of any claimant.

(d) Payments Excluded From Rates. In any statistical plan promulgated by the Board, direct expenditures by an insurer to influence public policy and any amounts paid by an insurer as damages in a suit against the insurer for malice or bad faith or as fines or penalties shall be reported separately, and the expenditures and payments shall not be considered as a loss or expense for rate-making purposes under this subchapter or for the calculation of any premium rate modifier or surcharge of an insured.

(e) Transmission of Statistical Reports. The statistical reports filed under Subsection (b) of this article shall be updated by each insurer and transmitted to the Board in accordance with the filing requirements of the Board's promulgated statistical plan. Each insurer writing at least one-half of one percent of the workers' compensation insurance in this state shall report its data in a compatible electronic format prescribed by the Board. The Board shall take necessary measures to ensure the accuracy of the data and the adequacy of the format for data reported in an electronic format.

(f) Reports of Aggregate Data. The Board by rule may permit the information required by Subsection (b) of this article to be

reported in the aggregate for each risk for claims in which benefit payments are less than $2,000. The Board may by rule adjust the dollar threshold for aggregate reporting to account for inflationary changes.

(g) 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 promulgated by the Board under this subchapter.

(h) [~~(e)~~] Consultation with Other States. In order to further uniform administration of rating laws, the Board and every insurer and advisory [~~rating~~] organization may exchange information and experience data with the National Association of Insurance Commissioners, insurance supervisory officials, insurers, and advisory [~~rating~~] organizations in other states and may consult and cooperate with them with respect to rate-making and the application of rating systems.

(i) [~~(d)~~] Rules and Regulations. The Board may make reasonable rules and regulations necessary to effect the purposes of this subchapter.

SECTION 13.06. Article 5.60, Insurance Code, is amended to read as follows:

Art. 5.60. RATING. (a) 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.

Those rates[~~,-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 workers' compensation insurance [~~workmen's--Compensation--Insurance~~] in this State. To ensure [~~insure~~] the adequacy and reasonableness of rates, the Board shall take into consideration the premium, loss, claim, and payroll 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 ensure [~~insure~~] that the rates determined [~~therefrom~~] shall be just, reasonable, [~~and~~] adequate, and not excessive [~~rates~~].

(b) In making its rate determination under this subchapter, the Board shall consider the probable investment income to be earned by insurers from writing workers' compensation insurance in this state at the rates prescribed by the Board for that insurance.

(c) Under Subsection (a) of this article, the Board shall establish for each hazard classification a manual rate, based on the average expected experience of risks in the classification, and subject to the actuarial credibility of the class. In addition to any other modifications, the Board shall adopt rules to modify the manual rate to provide for equity among employers of high and low

wage earners. The rules may include a limited payroll as a basis for rates, adjustments to the experience rating plan, or other appropriate methods. If a limited payroll basis is provided, the limit must be at least 150 percent of the maximum weekly income benefit provided by Article 4, Texas Workers' Compensation Act.

(d) The Board shall adopt rating plans designed to encourage the prevention of accidents. The rating plans shall consider the peculiar hazard and experience of individual risks, past and prospective, within and outside this state, and all other relevant factors.

(e) This subchapter may not be construed to prohibit any stock company, mutual company, reciprocal or interinsurance exchange, or Lloyd's association from issuing participating policies; however, a dividend to policyholders under the Texas Workers' Compensation Act may not take effect until approved by the Board. Such a dividend may not be approved until an adequate reserve has been provided, that reserve to be computed on the same basis for all classes of companies operating under this subchapter as prescribed under this article.

(f) The Board shall conduct a study to determine the feasibility of establishing a system of rate deviations to account for differences in the hazard levels of different geographical regions of this state. The Board shall report the findings of the study to the 72nd Legislature not later than January 1, 1991.

(g) An insurer that desires to write workers' compensation insurance at a rate lower than the rate promulgated by the Board shall file a written application with the Board for permission to

write workers' compensation insurance using a uniform percentage deviation for a lesser rate, but not less than 25 percent of the promulgated statewide rate. The application must specify the basis of the deviation and must be accompanied by the supporting information on which the applicant relies. An application filed under this subsection is considered approved by the Board unless the Board finds that the filing does not meet the requirements of this subchapter. The application is considered approved unless disapproved on or before the 60th day after the date it is received by the Board. On and after the date on which an application is approved or considered approved under this article, the insurer may write workers' compensation insurance in accordance with the approval. The right to write insurance at the approved lesser rate may be suspended or revoked by the Board after notice and hearing if, on examination or at any other time, it appears to the Board that the rate no longer meets the requirements of this subchapter. The Board may promulgate rules specifying the forms and requirements of an application for deviation.

SECTION 13.07. Article 5.61, Insurance Code, is amended to read as follows:

Art. 5.61. ADEQUATE RESERVES. (a) Each workers' compensation insurer transacting business in this state shall maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses and claims incurred, whether reported or unreported, but not in an amount greater than reasonably required for those purposes. The reserves shall be computed in accordance with any rules approved by the Board for the

purpose of adequately protecting the insureds, securing the solvency of the insurer, and preventing unreasonably large reserves.

(b) Each workers' compensation insurer shall provide a separate report to the Board showing its year-end loss, expense, and unearned premium reserves for workers' compensation insurance results in this state. The report must be filed not later than June 30 of each year, and must show the reserve development over a period of years sufficiently long to allow the Board to determine whether the reserves are adequate, inadequate, or unreasonably large. The report shall be audited by an independent accountant in accordance with generally accepted auditing standards and the rules of the Board. The reserve amounts reported may be taken from an audited financial report prepared by an independent auditor as prescribed by law.

(c) If the reserves are determined to be inadequate, the Board shall notify the insurer and require the insurer to establish and maintain reasonable additional reserves. If the reserves are determined to be unreasonably large, the Board shall notify the insurer and require the insurer to reduce its reserves to a reasonable amount.

(d) Not later than the 60th day after the date of the notification by the Board that its reserves have been determined not to be in compliance with the requirements of this article, the insurer shall restore compliance and file a statement of restored compliance, together with such documentation as the Board may require. [~~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.~~]

SECTION 13.08. Subchapter D, Chapter 5, Insurance Code, is amended by adding Articles 5.55B, 5.55C, 5.57A, 5.58A, 5.60A, and 5.65A to read as follows:

Art. 5.55B. OPTIONAL DEDUCTIBLE PLANS. (a) The Board shall require each company or association that writes workers' compensation insurance in this state to offer optional deductible plans for purposes of allowing policyholders to self-insure for the deductible amount.

(b) Not later than January 1, 1991, the Board shall promulgate at least three plans with varying deductible options. In addition, it shall by rule permit an employer to enter into an agreement with an insurer for a negotiated deductible in excess of the largest promulgated deductible.

(c) The Board shall perform an actuarial analysis for purposes of determining the amount of rate reduction applicable to policies under this article as opposed to standard policies without

a deductible. In subsequent years, the Board shall determine the amount of rate reduction according to rating procedures to be adopted by the Board.

(d) The Board shall adopt rules to ensure the security of payments of benefits up to the deductible amount if the policyholder cannot or does not pay the benefits because of insolvency, bankruptcy, or any other reason. In those instances the company or association writing workers' compensation insurance is entitled to indemnity from the policyholder or its estate up to the deductible limit, including collection costs.

(e) The Board shall adopt rules as necessary allocating responsibility between the policyholder and the company or association for servicing of claims up to the deductible amount. The rules shall provide that on the written consent of the company or association for any separate claim until the deductible is exceeded, the policyholder may service any such claim if serviced by an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

Art. 5.55C. PREMIUM INCENTIVES FOR SMALL EMPLOYERS. (a) In this article:

(1) "Small employer" means an employer who is not experience-rated by the State Board of Insurance for workers' compensation insurance purposes and whose annual workers' compensation premium is less than $5,000.

(2) "Board" means the State Board of Insurance.

(b) The Board shall promulgate a plan by which all insurance

companies writing workers' compensation insurance in this state shall grant a premium discount to small employers who qualify for the discount under this article and by which surcharges are assessed against small employers who experience two or more compensable lost-time injuries during a one-year period.

(c) A small employer who has not experienced a compensable lost-time injury during the most recent one-year period for which statistics are available shall receive a discount of 10 percent on the amount of the employer's workers' compensation insurance premium.

(d) A small employer who has not experienced a compensable employee lost-time injury during the most recent two-year period for which statistics are available shall receive a discount of 15 percent on the amount of the employer's workers' compensation insurance premium.

(e) A small employer who has experienced one compensable employee lost-time injury during the most recent one-year period for which statistics are available is not eligible for a discount on the amount of the employer's workers' compensation insurance premium.

(f) A small employer who has experienced two or more compensable employee lost-time injuries during the most recent one-year period for which statistics are available shall be assessed a surcharge of 10 percent on the amount of the employer's workers' compensation premium.

(g) The discounts and surcharges established under this article are not cumulative; however, a small employer is entitled

to receive the discount provided by this article in addition to any lesser deviation in the rate at which a policy is written under Article 5.60 of this code. For any annual workers' compensation premium, an employer may not receive a discount of more than 15 percent, and a small employer may not be required to pay a surcharge of more than 10 percent.

Art. 5.57A. GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE. (a) In this article:

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

(2) "Business entity" means a business enterprise owned by a single person or a corporation, organization, business trust, trust, partnership, joint venture, association, or other business entity.

(3) "Group" means two or more business entities that join together with the approval of the board to purchase a single workers' compensation insurance policy covering all the business entities that are a part of the group.

(b) On receiving approval of the board as provided by this article, two or more business entities may join together to form a group to purchase a single workers' compensation insurance policy covering all members of the group.

(c) To be eligible to join a group, a business entity:

(1) must have gross annual revenues of less than $500,000; and

(2) must be engaged in a business pursuit that is the same as or similar to the other business entities participating in the group as determined by the board.

(d) The board shall establish a certification program for groups organized under this article and shall issue certificates of approval to eligible business entities authorizing formation and maintenance of a group.

(e) The board by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this article.

(f) A group certified under this article may purchase a single workers' compensation insurance policy covering all members of the group from any insurer authorized to write workers' compensation insurance in this state. Under such a policy, the group is entitled to any premium or volume discount provided to large business entities that are experience rated for the purchase of workers' compensation insurance.

(g) A group shall apportion any discount received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

(h) Manual rates shall be used in computing the rate for a group policy under this article, and the board shall determine any experience rating factor that shall be applied to the group as provided by the board's rules.

(i) A group shall adopt a plan of operation that shall include the composition and selection of a governing board, the methods for administering the group, and guidelines for the workers' compensation insurance coverage obtained by the group including the payment of premiums, the distribution of discounts,

and the methods for providing risk management. A group shall file a copy of its plan of operation with the board.

(j) The board may not regulate the risk management practices of a group.

Art. 5.58A. REPORTING OF STATISTICAL DATA. (a) Each insurer transacting workers' compensation insurance business in or through a licensed agent in this state shall file annually with the State Board of Insurance, on or before April 1 of each year, the statistical information required under this subsection for all workers' compensation insurance coverage for the preceding calendar-accident year and policy years. The required statistical information shall include:

(1) premiums written;

(2) premiums earned;

(3) payroll;

(4) number and total amount of claims paid;

(5) number and total amount of claims unpaid;

(6) number and total amount of claims incurred;

(7) loss reserves for all known claims at the beginning and at the end of the year;

(8) reserves for losses incurred but not reported at the beginning and at the end of the year;

(9) adjustments to loss reserves;

(10) itemized direct incurred allocated loss adjustment expenses, including:

(A) attorney's fees for claims; and

(B) other allocated loss adjustment expenses;

(11) itemized direct incurred unallocated loss adjustment expenses;

(12) underwriting income or loss;

(13) commissions and brokerage fees;

(14) taxes, licenses, and fees;

(15) other acquisition costs;

(16) itemized general expenses;

(17) policyholder dividends;

(18) net surplus allocated to workers' compensation business in this state; and

(19) net investment gain on surplus and reserves for losses, loss expenses, and unearned premiums arising from writing workers' compensation insurance in this state.

(b) Information filed under this article shall include actual experience only, without application of loss trends, loss development factors, or other adjustments.

(c) The board shall adopt procedures for the verification of the information filed by insurers under this article. The board may be assisted by a licensed advisory organization and the Office of Public Insurance Counsel in adopting those procedures.

(d) A summary of the information provided under this section shall be included in the board's annual report.

(e) The board may require any additional information it considers necessary to be filed in the annual statistical report required by this article.

(f) The board shall aggregate all of the information filed under this article, to be used for rate-making purposes by the

board. The board shall provide the information on request to all parties to rate hearings free of charge.

(g) The board shall promulgate rules and forms necessary to implement this article.

(h) This section does not prohibit an advisory organization from receiving copies of the statistical reports filed with the board, or any additional data it may seek from its members.

Art. 5.60A. RATE HEARINGS. (a) The board shall conduct an annual hearing to review rates to be charged for workers' compensation insurance written in this state under this subchapter. The hearing shall be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) To assist the board in making rates and to provide additional information on certain trends that may affect the costs of workers' compensation insurance, the executive director of the Texas Workers' Compensation Commission or a person designated by that officer shall testify at any rate hearing conducted under this article. The testimony shall relate to trends in:

(1) claims resolution of workers' compensation cases; and

(2) cost components in workers' compensation cases.

(c) The testimony of the executive director or designee is subject to cross-examination by the board and any party to the hearing.

Art. 5.65A. NOTIFICATION TO POLICYHOLDER. (a) A company or association that writes workers' compensation insurance in this

state shall notify each policyholder of any claim that is filed against the policy. Thereafter a company shall notify the policyholder, on receiving a written request therefrom, of any proposal to settle a claim or any administrative or judicial proceeding relating to the resolution of a claim, including a benefit review conference or contested case hearing conducted by the Texas Workers' Compensation Commission.

(b) Each company or association that writes workers' compensation insurance in this state, on written request of the policyholder, shall provide the policyholder with a list of claims charged against the policy, payments made and reserves established on each claim, and a statement explaining the effect of claims on premium rates. The information required by this subsection shall be provided to the policyholder not later than the 60th day before the date on which the term of the policy expires, and at other times when requested in writing by the policyholder.

[Sections 13.09-13.10 reserved for expansion]

CHAPTER B. INSURANCE FACILITY

SECTION 13.11. Chapter 5, Insurance Code, is amended by adding Article 5.76A to read as follows:

Art. 5.76A. TEXAS WORKERS' COMPENSATION INSURANCE FACILITY

PART 1. GENERAL PROVISIONS

Sec. 1.01. DEFINITIONS. In this article:

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

(2) "Designated insurer" means any insurer authorized by the facility to issue small premium policies through the plan.

(3) "Facility" means the Texas workers' compensation

insurance facility established under this article.

(4) "Fund" means the employers' accident prevention fund for providing workers' compensation insurance coverages for rejected risks.

(5) "Good faith" for the purposes of this article only means honesty in fact in any conduct or transaction.

(6) "Insurance" means those types of insurance described in Section 2.05 of this article.

(7) "Insurer" means a stock company, mutual company, reciprocal, interinsurance exchange, or Lloyd's association authorized to write workers' compensation insurance in this State.

(8) "Member" means an insurer that is a member of the facility.

(9) "Plan" means the employers' safety plan for providing workers' compensation insurance coverages for a small premium policy.

(10) "Rejected risk" means an employer, other than one eligible for a small premium policy through the plan, that is in good faith entitled to insurance but is unable to procure or retain insurance through ordinary methods in the voluntary market. The term includes any and all legal entities that may be combined for experience rating purposes according to the rules of the Board.

(11) "Servicing company" means a member of the facility that is designated by the Board to issue a policy that evidences the insurance coverages provided by the fund to a rejected risk and to service the risk as provided by this Act.

(12) "Small premium policy" means a Texas standard

workers' compensation insurance policy issued to an employer in this State for which the annual premium is less than $5,000 and which is not expected to develop more than $5,000 in premiums during the next 12 months. A policy's governing classification must be in hazard group I, II, or III as determined in retrospective rating plans approved in the State of Texas to be considered a small premium policy. An employer with a loss ratio in excess of .70 during two of the most recent three years or in excess of 1.00 in any one year during the most recent three years for which data are available shall not be eligible for a small premium policy.

PART 2. TEXAS WORKERS' COMPENSATION INSURANCE FACILITY

Sec. 2.01. ORGANIZATION. For the purpose of carrying into effect the provisions of this article, and with the approval of the Board, the Texas workers' compensation assigned risk pool is revised, amended, and continued as the Texas workers' compensation insurance facility, a nonprofit unincorporated association of insurers, and every such insurer shall be a member of the facility and shall remain a member as a condition of its authority to write or provide or to continue writing or providing in this state any of the insurance coverages provided for in this article. As a prerequisite to the writing of such insurance in this state every member of the facility shall file with the Board written authority permitting the facility to act in its behalf, as provided by this article.

Sec. 2.02. PURPOSE. The facility shall provide workers'

compensation coverages for employers in this state, as follows:

(1) for small premium policy employers, the insurance shall be provided under the employers' safety plan; and

(2) for rejected risks, the insurance shall be provided through the employers' accident prevention fund.

A member company which is not a designated insurer is not prohibited from voluntarily writing any workers' compensation insurance policies for which it is authorized.

Sec. 2.03. GOVERNING COMMITTEE. The facility shall be governed by a governing committee of 15 members appointed by the Board as follows:

(1) Nine members shall be workers' compensation insurance companies which are not servicing carriers, initially appointed by the Board as follows: three members for a two-year term; three members for a four-year term; and three members for a six-year term. At the expiration of the appointed terms, three members shall be appointed every two years by the Board for six-year terms. No member shall serve more than two consecutive terms.

(2) Three members shall be insurance companies which are servicing carriers. These members shall be appointed for two-year terms.

(3) The remainder of the governing committee shall be composed of one representative appointed by the State Board of Insurance, one representative appointed by the Texas Workers' Compensation Commission, and one representative appointed by the public counsel of the State Board of Insurance.

(4) The governing committee members provided for in Subdivisions (2) and (3) of this section are full participating members in the deliberations of the committee but shall have no vote. Their attendance shall not count in determining a quorum for the conduct of business.

(5) The duties and responsibilities of the members shall be provided in the bylaws, rules, and regulations of the facility adopted by the membership of the facility and approved by the Board as provided by Section 2.04 of this article.

Sec. 2.04. FACILITY BYLAWS, RULES, AND REGULATIONS. (a) Subject to the approval of the Board, the facility may adopt, amend, and repeal bylaws, rules, and regulations necessary to implement this article. All bylaws, rules, regulations, practices, policies, and procedures of the facility shall provide for the economic, fair, efficient, and nondiscriminatory administration of this article.

(b) The facility may adopt, amend, or repeal bylaws, rules, and regulations at any regular meeting of the members of the facility or at any special meeting called for that purpose by a majority 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 meeting at which adoption, amendment, or repeal is to be considered. The adoption, amendment, or repeal shall become effective on approval of the Board.

(c) All bylaws, rules, and regulations of the facility shall be subject to the continuing jurisdiction of the Board. If the

Board at any time believes that any bylaw, rule, or regulation is not in keeping with the purposes of this article, it shall notify the governing committee of the facility in writing so that corrective action may be taken.

Sec. 2.05. DUTIES, FUNCTIONS OF THE FACILITY. (a) The facility shall provide insurance, in the manner herein provided, for any risk, under the Texas Workers' Compensation Law, the Longshore and Harbor Workers' Compensation Act, or the Federal Coal Mine Health and Safety Act of 1969, as amended, 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 this state, heretofore or hereafter enacted. After the rules adopted under Section 2.04 of this article have been approved by the Board, the procedures and remedies established under this article shall be the exclusive procedure for any applicant to the facility to secure or maintain the insurance available under this article.

Sec. 2.06. FINANCING. The facility shall pay all costs and expenses of operating and maintaining the facility, including any allowances for servicing policies issued through or reinsured by the facility. 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 facility.

Sec. 2.07. INVESTMENTS. The facility shall invest its funds only in interest-bearing time deposits or certificates of deposit in 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 any other investments as may be proposed by the governing committee and approved by the Board.

Sec. 2.08. LIABILITY. There shall be no liability on the part of and no cause of action shall arise against the governing committee, the facility, its executive director, or any of its staff, agents, servants, or employees, or against any member of the facility or any of its officers, directors, agents, servants, or employees, arising out of or in connection with any activities in carrying out the purposes of this Act or for any inspections, safety engineering investigations performed, or recommendations made in good faith by them in any such reports or in communications concerning employers due to their applying for or being provided insurance coverages by the facility, or at any administrative hearing or inquiry conducted in connection therewith pursuant to the purposes and objectives of this article.

Sec. 2.09. APPEALS. (a) An applicant for insurance, an insured, or an insurer aggrieved by an act or decision of the facility may appeal to the Board not later than the 30th day after the affected party discovered that the act occurred or the decision was made. If the fund is aggrieved by an act or decision of the Board, it may make a written request to the Board for a hearing not later than the 30th day after the act or decision.

(b) The Board shall hear the appeal by the facility or the appeal from an act or decision of the facility not later than the 30th day after the day the request for hearing is made. If the facility is aggrieved by an act of the Board, it may make a written

request to the Board not later than the 30th day after the receipt of the request or appeal. The Board shall notify the facility 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 on the act appealed to the Board.

(c) A hearing does not suspend the operation of any classification, rate, policy, policy form, rule, regulation, order, or other action by the Board under this article or the operation of any act, ruling, decision, or order of the facility, unless the Board specifically so orders.

(d) The facility or the aggrieved party may appeal as provided by Article 1.04(f) of this code.

Sec. 2.10. FACILITY REPORTS. The facility shall file annually with the Board a report containing information with respect to its transactions, conditions, operations, and investments during the preceding year. The report shall contain such information as prescribed by and in such form as approved by the Board. The Board may at any time require the facility 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 article.

Sec. 2.11. OPEN MEETINGS AND OPEN RECORDS REQUIREMENTS. Except as otherwise provided in this section, the facility is a governmental body only for purposes of the open meetings law,

Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). Workers' compensation claims files in possession of the facility or servicing companies are not subject to disclosure under this section.

PART 3. EMPLOYERS' SAFETY PLAN FOR SMALL EMPLOYERS

Sec. 3.01. PROVISION FOR COVERAGES. There is hereby established within the facility an employers' safety plan through which a designated insurer shall provide insurance coverages for any employer eligible therefor under a small premium policy. No eligible employer applying for coverage may be rejected by a designated insurer when application is made through the company's appointed agent. The insurer may retain such risk for its own account or may reinsure the risk through the plan. In either case, the designated insurer must provide such employer with the services required by law.

Sec. 3.02. APPOINTMENT OF DESIGNATED INSURERS. (a) The Board shall establish standards, practices, and procedures for member companies to act as designated insurers. Any member company eligible to act as a designated insurer shall be a designated insurer unless the Board allows an exemption from services as such. To be exempt, a carrier must show good cause for such exemption.

(b) To be eligible to act as a designated insurer, an insurer must be a member of the facility, must have written in Texas at least $7 million in premiums for workers' compensation

insurance policies in each of the past three calendar years, and meet such other requirements as may be established by the Board. A designated insurer shall be subject to the service requirements of the facility and comply with other reasonable requirements applicable to designated insurers.

(c) The Board may order a limit on the writings of a designated insurer if there is good cause shown for such limitation. Whenever in any year a designated insurer shall accept small premium policies which approximately equal that designated insurer's proportionate share of the total market of small premium policies, it shall constitute good cause hereunder, and the Board shall authorize and may require the cessation of acceptance of such small premium policies as a designated insurer for the balance of that year.

(d) An insurer which has not met the premium eligibility test set forth in Subsection (b) may apply to the Board for appointment as a designated insurer. If it be shown that such insurer meets the qualifications established by the Board, it may be appointed.

(e) A designated insurer may contract with other appropriately licensed entities to provide all services necessary for small premium policies.

Sec. 3.03. CREATION OF REINSURANCE ACCOUNT: ACCEPTANCE OF CEDED REINSURANCE ON SMALL PREMIUM POLICIES. (a) There shall be established within the facility a separate account to be known as the reinsurance account. Through this reinsurance account, the facility shall accept ceded reinsurance of small premium policies

from designated insurers. The reinsurance account shall be available to and shall accept reinsurance of any small premium policy.

(b) Upon accepting such reinsurance the facility shall pay, as ceding commission, a portion of the premium applicable to such policy in a uniform amount determined from time to time by the Board. The amount of the ceding commission shall be sufficient to reimburse the designated insurer for premium tax, maintenance taxes, general overhead expenses, loss adjustment expenses, agent's commissions, and other acquisition expenses.

(c) The facility must be notified that the small premium policy is to be ceded within 30 days from the date coverage under the policy becomes effective.

(d) Services on a reinsured policy will be provided by the designated insurer on the same basis as other policies written by the insurer and retained for its own account. Settlements on reinsured transactions shall be made quarterly between the designated insurer and the facility.

Sec. 3.04. EMPLOYERS' SAFETY PLAN COSTS: RESERVES. (a) The facility shall pay all costs and expenses of operating and maintaining the plan, and funds of this state shall not be appropriated or expended for payment of any costs or expenses incurred in its operation.

(b) From funds received through the plan from reinsurance transactions, the facility shall set up and maintain reserves in accordance with rules approved by the Board.

Sec. 3.05. EMPLOYERS' SAFETY PLAN REINSURANCE DEFICIT.

Premiums and losses of small premium policies reinsured through the plan shall be consolidated with premiums and losses from other policies issued through the employers' accident prevention fund and shall thereafter be accounted for in accordance with the procedures applicable to the facility as approved by the Board. Deficits accruing from small premium policies reinsured through the plan shall be transferred to the fund and not charged to any designated insurer as such.

Sec. 3.06. REINSURANCE. Insurance companies are hereby authorized to establish a voluntary pool for purposes of reinsuring among themselves small premium policies written pursuant to this section.

PART 4. TEXAS WORKERS' COMPENSATION EMPLOYERS' ACCIDENT PREVENTION FUND

Sec. 4.01. PURPOSE. The employers' accident prevention fund shall provide insurance coverages for employers in this state who are unable to secure insurance in the voluntary market or are ineligible for coverage through the employers' safety plan as provided for in this article.

Sec. 4.02. DUTIES, FUNCTIONS OF THE FUND. (a) The fund shall provide insurance, in the manner herein provided, for any risk, other than an employer eligible for coverage as a small premium policy, which risk shall have been tendered to and rejected in writing by any two members of the facility, not of the same insurance group. Any applicant for insurance through the fund which has refused to accept a retrospective rating plan promulgated by the Board as a fair, reasonable, and nondiscriminatory plan

shall not be considered a rejected risk for purposes of this article. After the rules adopted under Section 2.04 of this article have been approved by the Board, the procedures established under this article shall be the exclusive procedure of any applicant for such insurance whose insurance has been rejected or canceled by any member.

(b) When any rejected risk applies for coverage from the facility and it appears that said risk is in good faith entitled to insurance through the fund, the facility shall calculate the deposit premium therefor in accordance with the classifications and rates promulgated by the Board and, upon payment thereof, the facility shall designate a servicing company 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 but the undertaking of said policy shall be entirely reinsured by all members of the facility, and the liability of the servicing company issuing said policy shall be limited to its liability as a reinsurer. On all such policies all members of the facility shall be reinsurers as among themselves in proportion to the amount which the premiums of such insurance written in this state during the preceding calendar year by such member bear to the total of such premiums written in this state during the preceding calendar year by all members of the facility, and each said policy may be endorsed to reflect the plan of reinsurance hereinabove provided.

Sec. 4.03. FUND COSTS. The facility shall pay all costs and expenses of operating and maintaining the fund, including all allowances 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 fund.

Sec. 4.04. FACILITY DEFICITS. (a) The facility shall annually report its operating results to the Board. In the event there is a deficit from operations, the amount of such deficit shall be assessed upon the members based upon the proportion to the amount that a member company's voluntary workers' compensation insurance writings bears to the total voluntary workers' compensation insurance writings in this state for the preceding calendar year.

(b) If at the end of any calendar year there is a deficit in the operation of the facility and the governing committee makes an assessment on the members for each member's proportionate share thereof, the maximum annual assessment of a member company may not exceed five percent of such member company's voluntary workers' compensation insurance writings for the preceding calendar year. Any portion of the assessment which is not met because the annual limit herein established becomes an obligation of the member on the basis of the assessment formula, but the payment of the obligation is deferred from year to year as herein provided. The total of the deferred balance and the current year assessment shall be subject to the limit herein provided. Any deferred balance shall be carried forward from year to year until fully paid.

(c) When an assessment is made and the limit under Subsection (b) of this section is applicable, the total amount assessed is to be applied first to the current year's deficit, if

any, with any remainder to be applied to any deferred balance from prior years in the order in which it arose.

(d) If in any year the accumulated deficit, after the maximum assessment is levied, is in excess of seven percent of total Texas voluntary workers' compensation premiums then the fund shall levy a secondary assessment to decrease the accumulated deficit to an amount no greater than seven percent of the total voluntary workers' compensation insurance writings in Texas. A secondary assessment shall be made so that any deficit from prior years' deferral shall be allocated among the member companies in accordance with their share of any accumulated deferral.

(e) The fact that a member insurer or, if applicable, a group of insurers discontinues or substantially reduces its workers' compensation writings shall in no way diminish or otherwise affect the legal responsibility of the insurer for the accrued amount of its pro rata share of pool deficits at the time of such discontinuation or reduction. Provided that such insurer may pay the accrued amount in increments of not less than 20 percent per year over a period not to exceed five years.

(f) Funds shall always be maintained so that the facility can meet all cash flow obligations. Estimates shall be made to be sure adequate funds are available to meet obligations and, if necessary, interim assessments in addition to those provided in Subsections (b) and (d) of this section may be levied as deemed necessary by the facility. An interim assessment shall be made so that any deficit from prior years' deferral shall be allocated among the member companies in accordance with their share of any

accumulated deferral.

(g) Each insurance company shall reflect in its books and records the amount of any assessment paid to the facility. Any deferred amount shall be disclosed in the annual statement section entitled "Notes to the Financials."

(h) A designated insurer may cede any risk eligible for a small premium policy. One-half of that portion of written premiums from risks eligible for small premium policies which is not ceded to the reinsurance account shall be removed from a member company's voluntary writings when calculating the assessment ratio of that member company as set out in Subsection (a) of this section.

(i) The foregoing deficit deferment and payment limitation provisions of this section shall be applicable to any fund deficits arising out of calendar years 1989, 1990, and 1991. Commencing with calendar year 1992, a member company's deficit shall (1) be assessed to each member company ratably on the basis of its total share of the voluntary insurance market in the preceding calendar year and (2) be fully paid by such member upon the levying of such assessment. Any remaining deferred deficit owed by a member company from years prior to 1992 shall be paid by that member company in no more than four equal annual installments which do not extend beyond 1995.

Sec. 4.05. FUND RATES. (a) The Board, in addition to the provisions prescribed by Subchapter D, Chapter 5, of the Insurance Code, is authorized and directed to determine, fix, prescribe, promulgate, change, or amend endorsements, rates, rating plans, or minimum premiums normally applicable to a risk so as to apply to

any and every rejected risk assigned by the facility such endorsements, rates, rating plans, and minimum premiums as are commensurate with the greater hazard of the rejected risk, considering in connection therewith the experience and physical, financial, and other conditions of such risk.

(b) In promulgating a rate or rates for rejected risks assigned by the facility, the Board shall give due consideration to an appropriate allowance for the greater hazard of the risks' losses, claims expense, audit expenses, premium taxes, maintenance taxes, general administration expense, agent's commissions, other acquisition expense, inspection expense, an allowance for profit or contingencies, and any other relevant facts in connection with insuring and servicing such rejected risks.

(c) The Board shall establish a surcharge program for risks insured by the fund for the purposes of encouraging safety and funding any deficit caused by excessive losses. The surcharge program shall include provisions that if an individual insured's actual losses are equal to or less than the insured's modified expected losses, as determined under the Texas workers' compensation experience rating plan, then there is to be no surcharge. The maximum surcharge shall be 100 percent of standard premiums and shall be related to the difference between each insured's actual losses and its modified expected losses.

(d) The Board shall adopt a retrospective rating plan to be applicable to a risk insured by the fund which has no prior loss experience by which its rate should be modified.

(e) The Board shall promulgate a special form of all states

endorsement, in keeping with the purposes of this Act, which may be used in connection with any risk insured by the fund, and shall establish premiums for the use of such endorsement.

Sec. 4.06. INJURY PREVENTION REQUIREMENTS. (a) The facility 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 facility, any of its members, or representatives of the Board shall be granted free access to the premises of each such policyholder or applicant during regular working hours.

(b) Failure or refusal by any such policyholder or applicant to comply with any reasonable rule prescribed by the facility for the prevention of injuries, or failure or refusal to make full disclosure of all information pertinent to the insuring or servicing of the policyholder or applicant, shall be sufficient grounds for the facility to cancel a policy or deny an application for insurance.

Sec. 4.07. DISCLOSURES BY REJECTED RISKS. 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 Texas Workers' Compensation Commission, 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.

Sec. 4.08. REPORTING. (a) Failure or refusal by any rejected risk to make full disclosure to the facility of

information concerning its true ownership, change of ownership, operations, or payroll or in maintaining and fully disclosing any of its records pertaining to workers' compensation insurance shall be sufficient ground for the facility to terminate the insurance of such employer as one not in good faith entitled thereto. To the end that no employer shall evade the burdens imposed by an unfavorable or high cost experience, incurred experience shall be used in future ratings regardless of any change in ownership, control, management, or operations.

(b) The Board, upon application of an affected party, may modify the foregoing rating rule if it be shown that a change in management of operations is clearly probable to reduce loss experience of the insured.

Sec. 4.09. SERVICING COMPANIES. (a) The Board shall establish standards, qualifications, requirements, and all other particulars regarding servicing companies necessary to service adequately the fund, the method of selecting servicing companies, and the terms and conditions of such service.

(b) Any member company desiring to be a servicing company shall make application to the Board providing satisfactory evidence that such applicant possesses the demonstrated records of competence, financial stability, and resources sufficient to assure the Board that it is able to provide all services required by the Board, including the following:

(1) investigating, reporting and paying claims;

(2) compliance with requirements of the Texas Workers' Compensation Commission;

(3) conducting safety inspections and presenting loss prevention programs or courses of instruction at the insured's office or work location;

(4) inspecting risks for classification purposes;

(5) promptly issuing policies, endorsements, and certificates of insurance;

(6) making and preparing final payroll audits;

(7) preparing for litigation, litigating, and conducting legal support required under the policy contract;

(8) preparation and timely submission of all appropriate financial and statistical reports; and

(9) all other services required for servicing workers' compensation policies in all particulars throughout this state. When such standards, qualifications, requirements, and other particulars regarding servicing companies necessary to serve the residual market have been determined, such information shall be published as rules and regulations of the Board and distributed to all member companies of the facility.

(c) The Board shall establish practices, policies, and procedures for the selection of member companies to be servicing companies and shall set the amount of the servicing allowance to such companies for the performance of such services at the same level as that granted to voluntary market writings in the most recent workers' compensation rate decision, made pursuant to Articles 5.55 and 5.60A, of this code for general expense, taxes, company acquisition expense, and unallocated loss adjustment expense.

(d) The performance of servicing companies and the amount of servicing allowances shall be subject to the continuing jurisdiction of the Board.

(e) No servicing company shall be allowed to write insurance in the fund during any calendar year in excess of twice the amount of such insurance such servicing company and the group of which the company is a member write in the voluntary market for the preceding calendar year.

(f) A company may not be a servicing carrier unless the group of which the company is a member writes at least one-half percent of the total voluntary market for workers' compensation insurance in this state.

(g) The Board shall develop a fair and nondiscriminatory plan for assignments to servicing companies. Such plan shall assign risks on a random basis and equitably distribute the number and size of risks among member companies based on their proportionate voluntary insurance writings for the preceding calendar year.

PART 5. MARKET ASSISTANCE PROGRAM

Sec. 5.01. MARKET ASSISTANCE PROGRAM. The Board shall establish a voluntary market assistance program to monitor the operation of the fund with the object of reducing the number of risks insured by the fund. Pursuant to such program each rejected risk making a request shall be reviewed before its assignment under Section 4.02 of this article. The market assistance program shall attempt to find an insurer to voluntarily insure the risk before its initial assignment to the fund, assignment to a specific

company under Section 4.02 of this article, or renewal of the risk's assignment to the fund. The Board shall adopt rules as necessary to implement this section. A licensed local recording agent need not be appointed by an insurer willing to accept business offered by the agent for review by the market assistance program. The market assistance program may establish reasonable fees for market assistance review.

PART 6. TRANSITION

Sec. 6.01. After the effective date of this article:

(1) All obligations, liabilities, assets, investments, properties, equipment, accounts payable and receivable, and all other burdens and benefits under the ownership, jurisdiction, custody, and control of the Texas workers' compensation assigned risk pool are hereby transferred to or assumed by the Texas workers' compensation facility created by this Act.

(2) All members of the pool shall continue as members of the facility.

(3) All members of the governing committee of the pool shall continue in office until the initial appointment of members of the governing committee of the facility as provided for in this article.

(4) The State Board of Insurance shall implement Section 4.09 of this article by January 1, 1990. All servicing companies of the pool shall continue as servicing companies of the facility until the Board has promulgated rules and regulations pertaining to the selection of servicing carriers as provided for in this article and carriers have been selected.

(5) All rules, regulations, policy forms, endorsements, rates, rating plans, premiums, surcharges, and premium discounts applicable to the pool shall continue in effect until the Board has altered them to conform to the provisions of this article.

(6) All insurance companies heretofore exempt from membership in the Texas workers' compensation assigned risk pool by order of the State Board of Insurance shall continue to be exempt from membership in the facility so long as they remain in compliance with such order of the Board.

(7) The provisions of Sections 3.05 and 4.04 of this article shall apply to operations of the fund beginning with calendar year 1989. Deferred deficit balances from the years 1986, 1987, and 1988, occurring pursuant to the then existing plan of operation and Board order, shall be levied upon the member companies owing such deferred deficits and separately from assessments levied under Section 4.04 of this article. Member companies shall be required to pay their unpaid deferred deficit balances in four equal annual installments commencing in the year 1989.

(8) Article 5.76, Insurance Code, is repealed.

(9) Statutes, rules, regulations, and bylaws in effect at the time of issuance of Texas workers' compensation assigned risk pool insurance policies in force prior to the effective date hereof shall continue to govern all aspects of such policies.

(10) It is the intention of the legislature that the implementation of this article be accomplished with a minimum of

disruption of policyholders, insureds, member companies, servicing carriers, employee retirement benefits, management of the assigned risk procedures reformed by this article, and the organization's tax exempt status under the Internal Revenue Code.

ARTICLE 14. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING WORKERS' COMPENSATION BENEFITS

SECTION 14.01. Subchapter D, Chapter 32, Penal Code, is amended by adding Section 32.51 to read as follows:

Sec. 32.51. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING WORKERS' COMPENSATION BENEFITS. (a) A person commits an offense if the person, to obtain or deny payments of workers' compensation benefits under the workers' compensation laws of this state for himself or another, knowingly and intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact; or

(3) fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) A person commits an offense if the person receives workers' compensation benefits that the person knows he is not legally entitled to receive.

(c) An offense under Subsection (a) of this section is a Class A misdemeanor. An offense under Subsection (b) of this section is:

(1) a Class A misdemeanor if the value of the benefits received is less than $750;

(2) a felony of the third degree if the value of the benefits received is $750 or more but less than $10,000; and

(3) a felony of the second degree if the value of the benefits received is $10,000 or more.

ARTICLE 15. CONFORMING AMENDMENTS

SECTION 15.01. Section 23.101(a), Government Code, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with criminal actions against defendants who are detained in jail pending trial given preference over other criminal actions;

(3) election contests and suits under the Texas Election Code; and

(4) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] and claims under the Federal Employers' Liability Act and the Jones Act.

SECTION 15.02. Section 25.0032(a), Government Code, as amended by Section 8.04(a), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Anderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court

in:

(A) probate matters and proceedings, including will contests;

(B) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(C) family law cases and proceedings; and

(D) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) concurrent jurisdiction with the county and district courts over all suits arising under the Family Code.

SECTION 15.03. Section 25.0222(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) family law cases and proceedings.

SECTION 15.04. Section 25.0312(a), Government Code, as amended by Section 8.07, Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section

25.0003 and other law, a county court at law in Calhoun County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings; and

(D) suits on behalf of the state to recover penalties, forfeitures, or escheats, regardless of the amount in controversy;

(E) suits to recover damages for slander or defamation of character, regardless of the amount in controversy;

(F) suits for the trial of title to land and for the enforcement of liens on land, regardless of the amount in controversy;

(G) suits for the trial of right to property levied on by virtue of a writ of execution, sequestration, or attachment if the property levied on is valued at $500 or more; and

(H) contested elections; and

(3) concurrent jurisdiction with the justice courts in criminal matters prescribed by law for justice courts.

SECTION 15.05. Section 25.0592(a), Government Code, is

amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Dallas County has original and concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500, excluding interest, but does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs; and

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.06. Section 25.0702(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Ector County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.07. Section 25.0862(b), Government Code, is

amended to read as follows:

(b) A statutory county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(2) family law cases and proceedings; and

(3) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.08. Section 25.1032(b), Government Code, as amended by Section 8.10(a), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) In addition to other jurisdiction provided by law, a county civil court at law has:

(1) concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500, excluding interest, and does not exceed $50,000, excluding interest, statutory or punitive damages and penalties, attorney's fees, and costs; and

(2) original and concurrent jurisdiction with the district court in appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.09. Section 25.1072(a), Government Code, as amended by Section 8.12(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section

25.0003 and other law, a county court at law in Hays County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy.

SECTION 15.10. Section 25.1092(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Henderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees in cases in which attorney's fees are taxed as costs of court;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident~~

Board], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.11. Section 25.1182(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hunt County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~].

SECTION 15.12. Section 25.1482(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Liberty County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~]; and

(C) family law cases and proceedings.

SECTION 15.13. Section 25.1542(a), Government Code, as amended by Section 8.14(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Lubbock County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy.

SECTION 15.14. Section 25.1672(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Midland County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court

in:

(A) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.15. Section 25.1732(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Moore County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial-Accident Board~~]; and

(C) family law cases and proceedings.

SECTION 15.16. Section 25.1792(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Nolan County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial-Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.17. Section 25.1852(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Panola County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500, but does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.18. Section 25.1862(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Parker County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) family law cases and proceedings.

SECTION 15.19. Section 25.1892(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Polk County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy;

(C) cases and proceedings involving the collection of delinquent taxes, penalties, interest, and costs and the foreclosure of tax liens; and

(D) family law cases and proceedings.

SECTION 15.20. Section 25.1902(b), Government Code, as amended by Section 8.18(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County also has, concurrent with the county court, the probate jurisdiction provided by general law for county courts. A county court at law also has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) family law cases and proceedings.

SECTION 15.21. Section 25.1932(a-2), Government Code, as added by Section 8.19(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a-2) The County Court at Law No. 2 of Randall County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest and attorney's fees;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~]; and

(3) cases under the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code).

SECTION 15.22. Section 25.2142(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Smith County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.23. Section 25.2162(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Starr County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~]; and

(C) family law cases and proceedings.

SECTION 15.24. Section 25.2222(b), Government Code, as amended by Section 8.20(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs;

(2) nonjury family law cases and proceedings; and

(3) final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~], regardless of the amounts in controversy.

SECTION 15.25. Section 25.2292(a), Government Code, as amended by Section 8.21(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Travis County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district courts in civil cases and proceedings in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(3) appeals of final rulings and decisions of the

Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.26. Section 25.2412(a), Government Code, as added by Section 8.23(a), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Washington County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.27. Section 25.2422(a), Government Code, as amended by Section 8.11(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Webb County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court

in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings;

(C) cases and proceedings involving justiciable controversies and differences between spouses, or between parents, or between parent and child, or between any of these and third persons; and

(D) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~], regardless of the amount in controversy.

SECTION 15.28. Section 25.2452(d), Government Code, as amended by Section 8.24(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(d) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) family law cases and proceedings;

(3) suits brought under the authority of the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code) or the Uniform Interstate Compact on Juveniles (Section 25.01 et seq., Family Code);

(4) other juvenile and child welfare cases in which the district and county courts have jurisdiction; and

(5) appeals of final rulings and decisions of the

Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~], regardless of the amount in controversy.

SECTION 15.29. Section 25.2482(a), Government Code, as amended by Section 8.25(b), Chapter 2, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Williamson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(3) family law cases and proceedings; and

(4) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~], regardless of the amount in controversy.

SECTION 15.30. Article 1.07, Insurance Code, is amended to read as follows:

Art. 1.07. TEXAS WORKERS' COMPENSATION COMMISSION [~~INDUSTRIAL--ACCIDENT--BOARD~~]. Nothing in this Code shall be construed to in any manner affect the duties [~~new~~] imposed by law on the Texas Workers' Compensation Commission [~~Industrial-Accident Board~~] or to take from said commission [~~board~~] the performance of the duties [~~new~~] imposed on said commission [~~board~~] by law.

SECTION 15.31. Section 3A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION OF TEXAS WORKERS' COMPENSATION COMMISSION [~~INDUSTRIAL ACCIDENT BOARD~~]. (a) The liquidator shall notify the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~] immediately upon a finding of insolvency or impairment upon any insurance company which has in force any workers' compensation coverage in Texas.

(b) The Texas Workers' Compensation Commission [~~Industrial Accident Board~~] shall, upon said notice, submit to the liquidator a list of active cases pending before the Texas Workers' Compensation Commission [~~Industrial--Accident Board~~] in which there has been an acceptance of liability by the carrier, where it appears that no bona fide dispute exists and where payments were commenced prior to the finding of insolvency or impairment and where future or past indemnity or medical payments are due.

(c) Notwithstanding the provisions of Section 3 of this Article, the liquidator is authorized to commence or continue the payment of claims based upon the list submitted in Subsection (b) above.

(d) In order to avoid undue delay in the payment of covered workers' compensation claims, the liquidator shall contract with the Texas Workers' Compensation [~~Assigned Risk~~] Pool or any other qualified organization for claims adjusting. Files and information delivered by the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] to the liquidator may be delivered to the Texas Workers' Compensation [~~Assigned Risk~~] Pool or any organization with which the liquidator has contracted for claims adjusting services.

(e) The Texas Workers' Compensation Commission [~~Industrial~~

~~Accident--Board~~] shall report to the State Board of Insurance any occasion when a workers' compensation insurer has committed acts that may indicate insurer financial impairment, delinquency or insolvency.

SECTION 15.32. Section 2(5)(A), Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Department of Commerce;

(iii) a member of the Texas Aeronautics Commission;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Purchasing and General Services Commission;

(viii) a member of the Texas Board of Corrections;

(ix) a member of the Board of Trustees of the Employees Retirement System of Texas;

(x) a member of the State Highway and Public

Transportation Commission;

(xi) a member of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~];

(xii) a member of the State Board of Insurance;

(xiii) a member of the Board of Pardons and Paroles;

(xiv) a member of the Parks and Wildlife Commission;

(xv) a member of the Public Safety Commission;

(xvi) the Secretary of State;

(xvii) a member of the State Securities Board;

(xviii) a member of the Texas Amusement Machine Commission;

(xix) a member of the Texas Water Development Board;

(xx) a member of the Texas Water Commission;

(xxi) a member of the governing board of a state senior college or university as defined by Section 61.003, Education Code;

(xxii) a member of the Texas Higher Education Coordinating Board[~~, Texas College and University System~~];

(xxiii) a member of the Texas Employment Commission;

(xxiv) a member of the State Banking Board;

(xxv) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvi) a member of the Credit Union Commission;

or

(xxvii) a member of the School Land Board.

SECTION 15.33. Section 3(1), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], and institutions of higher education, that makes rules or determines contested cases.

SECTION 15.34. Section 2(1), Texas Administrative Code Act (Article 6252-13b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], and institutions of higher education, that makes rules or determines contested cases.

SECTION 15.35. Section 3A(h), Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer

having statewide jurisdiction, other than the Texas Workers' Compensation Commission [~~Industrial--Accident---Board~~] or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be clearly identified in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Any public official or person who is designated or authorized to post notices of meetings by a governmental body in accordance with Section 3A of this Act shall post the notice taking at face value the reason for the emergency as stated by the governmental body. Cases of emergency and urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the governmental body. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all

pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

SECTION 15.36. Section 2, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Department" whenever used in this law shall be held to mean the State [~~Highway~~] Department of Highways and Public Transportation [~~Texas~~].

(2) [~~2.~~] "Employee" shall mean every person in the service of the [~~State-Highway~~] Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the [~~State-Highway~~] Department.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall-mean-Workmen's-Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Commission [~~shall-mean-the-Industrial-Accident-Board-of--the--State of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall--mean--the--relatives--named--in-Section-8a-of-Article-8306,~~

~~Revised-Civil-Statutes-of-Texas-of-1925,-adopted-in--Section--7--of this-law~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall--be--as defined-in-Section-1,-Article-8309,-Revised-Civil-Statutes-of-Texas of-1925~~].

(b) [~~8.~~] Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

SECTION 15.37. Section 7, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. (a) The following provisions of the Texas Workers' Compensation Act [~~laws-as-amended--or--as--they--may--hereafter--be amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Article 1, except Section 1.03(19);

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.05, 3.06, 3.13 through 3.16, and 3.18;

(4) Article 4, except Sections 4.02(b), 4.11, 4.12, 4.68, 4.681, and 4.69;

(5) Article 5, except Sections 5.03 and 5.04;

(6) Article 6 through Article 9; and

(7) Section 10.01

[~~(1)--Article-8306,--except--Sections--5--and--28,--and Articles--8307,--8307b,--and-8309,-Revised-Civil-Statutes-of-Texas, 1925,-as-amended,~~

[~~(2)--Chapter-248,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8306a, Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter-77,-Acts-of-the-65th-Legislature,-Regular Session,-1977-(Article-8306b,-Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter-208,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8307a, Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts--of--the--62nd---Legislature, Regular---Session,---1971--(Article--8307c,--Vernon's--Texas--Civil Statutes),~~

[~~(6)--Chapter-358,-Acts-of-the-64th--Legislature,--1975 (Article-8307d,-Vernon's-Texas-Civil-Statutes),-and~~

[~~(7)--Chapter--179,--General--Laws,--Acts--of--the-42nd Legislature,-Regular-Session,--1931,--as--amended--(Article--8309a, Vernon's-Texas-Civil-Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words-"association,"-"subscriber,"-or~~] "employer" appears [~~or-their-equivalents-appear~~], it [~~they~~] shall be construed to and shall mean "the department."

SECTION 15.38. Section 14, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas

Civil Statutes), is amended to read as follows:

Sec. 14. The [~~State--Highway~~] Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the [~~State--Highway~~] Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the [~~State-Highway~~] Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the [~~State Highway~~] Department to determine who may be physically fit to be classified as "employees" as that term is defined in Subsection 2 of Section 2 of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the [~~State-Highway~~] Department a complete transcript of said examination in writing upon a form to be furnished by the [~~State Highway~~] Department. It shall be the duty of the [~~State-Highway~~] Department to preserve as a part of the permanent records of the [~~State--Highway~~] Department all reports of such examinations so filed. Such reports shall be admissible in evidence before the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~], and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Texas Workers' Compensation Commission [~~Industrial--Accident-Board~~] in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such

reports so admitted shall be prima facie evidence as to the facts set out therein.

SECTION 15.39. Sections 2, 7, 9, and 13, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The Texas A&M University System [~~Board--of--Directors--of--the--Agricultural--and Mechanical-College-of-Texas-including-the-following:~~

[~~Agricultural-and-Mechanical-College-of-Texas~~

[~~Texas-Agricultural-Experiment-Station~~

[~~Extension-Service,-A.-and-M.-College-of-Texas~~

[~~Texas-Forest-Service~~

[~~Rodent-Control-Service~~

[~~Firemen's-Training-School~~

[~~John-Tarleton-Agricultural-College~~

[~~North-Texas-Agricultural-College~~

[~~Prairie-View-State-Normal-and-Industrial-College~~

[~~Any--other--agencies--now-or-hereafter-under-the direction-and-control-of-said-Board-of-Directors~~].

(2) [~~2.~~] "Workman" shall mean every person employed in the service of any institution as defined above, whose name appears on the payroll thereof.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall-mean-Workmen's-Compensation-Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Commission [~~shall--mean-the-Industrial-Accident-Board-of-the-State of-Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean-the-relatives-named-in--Section--8a--of--Article--8306, Revised--Civil--Statutes--of-Texas-of-1925,-adopted-in-Section-7-of this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall-be-as defined-in-Section-1,-Article-8309,-Revised-Civil-Statutes-of-Texas of-1925~~].

(b) [~~8.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. (a) Unless otherwise provided in this Act, the following provisions of the Texas Workers' Compensation Act [~~herein,-Sections-1,-6,-7,-7b,-7c,-7d,-7e,-8,-8a,-8b,--9,--10,--11, 11a,--12,--12a,--12b,-12c,-12d,-12e,-12f,-12i,-13,-15,-15a,-16,-17, 19,-20,-21,-22,-23,-24,-25,-26,-and-27--of--Article--8306,--Revised Civil--Statutes-of-Texas,-1925,-as-amended,-and-Article-8306a,-Acts 1931,-42nd-Legislature,-as-amended,-and-Sections-4a,--6a,--11,--12,~~

~~13,-and-14-of-Article-8307,-of-the-Revised-Civil-Statutes-of-Texas, 1925,--as--amended,--and-Sections-4,-and-5,-of-Article-8309,-of-the Revised-Civil-Statutes-of-Texas,--1925,--as--amended,~~] are hereby adopted and shall govern insofar as applicable under the provisions of this law:

(1) Article 1, except Section 1.03(19);

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.05 through 3.09;

(4) Article 4, except Sections 4.02, 4.04, 4.11, 4.12, 4.15, 4.68, 4.681, and 4.69;

(5) Article 5, except Sections 5.03 and 5.04;

(6) Articles 6 through 9; and

(7) Section 10.03.

(b) Provided that whenever [~~in-the-above-adopted-Sections-of Articles-8306,-8307,-and-8309-of--the--Revised--Civil--Statutes--of Texas,--1925,--as--amended,-or-herein-amended,~~] the word "employer" appears in this Act, it means [~~"association,"--"subscriber,"--or "employer,"--or--their--equivalents--appear--in-such-Articles,-they shall-be-construed-to-and-shall-mean~~] "the institution."

Sec. 9. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~provided-in~~

~~Section-7,-Article-8306,-as-amended,~~] will remain available to the workman but no workmen's compensation payment will accrue or become due and payable to the injured workman.

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection-2-of~~] Section 2(2) of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

SECTION 15.40. Sections 2, 7, 9, 13, and 18, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d,

Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act shall be held to mean each of the institutions and agencies under the direction or government of the Board of Regents of The University of Texas System [~~including the following:~~

[~~Main University, Austin~~

[~~Medical Branch, Galveston~~

[~~Dental Branch, Houston~~

[~~M. D. Anderson Hospital for Cancer Research, Houston~~

[~~Southwestern Medical School, Dallas~~

[~~Texas Western College, El Paso~~

[~~Postgraduate School of Medicine, Houston~~

[~~Any other agencies now or hereafter under the direction and control of said Board of Regents~~].

(2) [~~2.~~] "Workman" shall mean every person in the service of The University of Texas System under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of The University of Texas System.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall mean Workmen's Compensation Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Commission [~~shall mean the Industrial Accident Board of the State of Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act [~~shall-mean-the-relatives-named-in--Section--8a--of--Article--8306, Revised--Civil--Statutes--of-Texas-of-1925,-adopted-in-Section-7-of this-Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act [~~shall-be-as defined-in-Section-1,-Article-8309,-Revised-Civil-Statutes-of-Texas of-1925~~].

(b) [~~7.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. (a) The following provisions of the Texas Workers' Compensation Act [~~sections~~] are adopted and shall govern as applicable under the provisions of this Act:

(1) Article 1, except Section 1.03(19);

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.05 through 3.09;

(4) Article 4, except Sections 4.02, 4.04, 4.11, 4.12, 4.15, 4.68, 4.681, and 4.69;

(5) Article 5, except Sections 5.03 and 5.04;

(6) Articles 6 through 9; and

(7) Section 10.03 [~~Sections-1,-6,-7,-7b,-7c,-7d,-7e,~~

~~8,-8a,-8b,-9,-10,-11,-11a,-12,-12a,-12b,-12c,-12d,-12e,--12f,--12i,~~
~~13,--15,--15a,--16,--17,--19,-20,-21,-22,-23,-24,-25,-26,-and-27-of~~
~~Article-8306,-Revised-Civil-Statutes-of-Texas,--1925,--as--amended,~~
~~and--as--may--be-hereafter-amended,-Section-1,-Chapter-248,-Acts-of~~
~~the--42nd--Legislature,--Regular--Session,--1931--(Article---8306a,~~
~~Vernon's--Texas--Civil--Statutes),--as--last--amended-by-Section-2,~~
~~Chapter-26,-Acts-of-the-54th-Legislature,--Regular--Session,--1955,~~
~~and--as--may-be-hereafter-amended,-Sections-4a,-6a,-10,-11,-12,-13,~~
~~and-14-of-Article-8307,-Revised-Civil-Statutes-of-Texas,--1925,--as~~
~~amended,-and-as-may-be-hereafter-amended,-Sections-4-and-5,-Article~~
~~8309,-Revised-Civil-Statutes-of-Texas,-1925,-as-amended,-and-as-may~~
~~be--hereafter--amended,--Section--1,--Chapter-179,-Acts-of-the-42nd~~
~~Legislature,-Regular-Session,-1931-(Article-8309a,--Vernon's--Texas~~
~~Civil--Statutes),-as-amended-by-Section-7,-Chapter-178,-Acts-of-the~~
~~53rd-Legislature,-Regular-Session,-1953,-and-as--may--be--hereafter~~
~~amended~~].

(b) Wherever the word "employer" appears in the Texas Workers' Compensation Act [~~words--"association,"--"subscriber,"--or~~ ~~"employer,"--or--the--equivalent-of-any-of-these-words,-are-used-in~~ ~~Article-8306,-8307,-or-8309,-Revised-Civil-Statutes--of--Texas,--as~~ ~~amended,--or-as-may-be-hereafter-amended,-and-in-Section-1,-Chapter~~ ~~179,-Acts-of-the-42nd-Legislature,-Regular-Session,--1931--(Article~~ ~~8309a,--Vernon's--Texas--Civil--Statutes),-as-amended-by-Section-7,~~ ~~Chapter-178,-Acts-of-the-53rd-Legislature,-Regular--Session,--1953,~~ ~~and--as--may--be-hereafter-amended~~], for the purpose of this Act it means [~~they-mean~~] "the institution."

Sec. 9. It is the purpose of this Act that compensation

herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~in-Section-7, Article-8306,-Revised-Civil-Statutes-of-Texas,--1925,--as--amended, and--as--may--be--hereafter--amended,~~] will remain available to the workman, but no workmen's compensation payment will accrue or become due and payable to the injured employee.

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection-2-of~~] Section 2(2) of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the institution all

reports of such examinations so filed with it.

Sec. 18. When an injured workman has sustained an injury in the course of employment and [~~filed--claim--for--compensation--and~~] given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

SECTION 15.41. Section 3(1), Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Board" means the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~].

SECTION 15.42. The Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) is amended by adding Section 3a to read as follows:

Sec. 3a. Any powers, duties, and responsibilities given to the board in this Act are delegated to the executive director of the Texas Workers' Compensation Commission.

SECTION 15.43. Subsection (b), Article 1269t, Revised Statutes, is amended to read as follows:

(b) An employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

(1) the disease is not an "ordinary disease of life" as that term is used in the context of a workers' compensation claim [~~by the Industrial Accident Board~~];

(2) the exposure to the disease occurs during the course of the employment; and

(3) the employee requires preventative medical treatment because of exposure to the disease.

SECTION 15.44. Section 1A, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 1A. In this article:

(1) "Association" means the Texas Employers' Insurance Association.

(2) "Board" means the Texas Workers' Compensation Commission.

(3) "Chiropractic service" means [~~The term "chiropractic service" shall include, but shall be limited to,~~] chiropractic as defined by the laws [~~Laws~~] of this State.

(4) "Chiropractor" means a person [~~and the term "chiropractor" shall include, but be limited to chiropractors~~] licensed by the Texas Board of Chiropractic Examiners [~~whose licenses are properly registered and in good standing as required by the Laws of this State~~].

SECTION 15.45. Section 7, Article 8308, Revised Statutes, is amended to read as follows:

Sec. 7. Any employer of labor in this State who may be subject to the terms of the Texas Workers' Compensation Act [~~this Law~~] or to the terms of the "Longshoremen's and Harbor Worker's

Compensation Act" of the United States may become a subscriber to the Association.

SECTION 15.46. Section 20a(c), Article 8308, Revised Statutes, is amended to read as follows:

(c) Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Texas Workers' Compensation Commission [~~Industrial--Accident--Board~~], or until a subsequent notice is filed under the provisions of Section 18a of this article, at which time the subsequent insurance company shall be deemed to be the only insurance company liable under the provisions of the Texas Workers' Compensation [~~this~~] Act from and after the effective date of such subsequent policy of insurance.

SECTION 15.47. Sections 1(3) and (4), Article 8309g, Revised Statutes, are amended to read as follows:

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meanings applied to those terms in the context of a workers' compensation claim brought under the Texas Workers' Compensation Act [~~meaning assigned-to-them-in-Section-1,-Article-8309,-Revised-Civil-Statutes of-Texas,-1925,-as-amended~~].

(4) "Board" means the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~].

SECTION 15.48. Sections 15(a) and (b), Article 8309g, Revised Statutes, are amended to read as follows:

(a) The following provisions of the Texas Workers' Compensation Act [~~laws-as-amended--or--as--they--may--hereafter--be~~

~~amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Article 1, except Section 1.03(19);

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.13 through 3.16, and 3.18;

(4) Article 4, except Section 4.02(b);

(5) Articles 5 through 9; and

(6) Sections 10.01 and 10.03

[~~(1)--Article--8306,--except--Sections--5--and--28,-and Articles-8307,-8307b,-and-8309,-Revised-Civil--Statutes--of--Texas, 1925,-as-amended,~~

[~~(2)--Chapter--248,--General--Laws,--Acts--of--the-42nd Legislature,-Regular-Session,--1931,--as--amended--(Article--8306a, Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter-77,-Acts-of-the-65th-Legislature,-Regular Session,-1977-(Article-8306b,-Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter--208,--General--Laws,--Acts--of--the-42nd Legislature,-Regular-Session,--1931,--as--amended--(Article--8307a, Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter---115,--Acts--of--the--62nd--Legislature, Regular--Session,--1971--(Article--8307c,--Vernon's---Texas---Civil Statutes),~~

[~~(6)--Chapter--358,--Acts-of-the-64th-Legislature,-1975 (Article-8307d,-Vernon's-Texas-Civil-Statutes),-and~~

[~~(7)--Chapter-179,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8309a,~~

~~Vernon's Texas Civil Statutes)~~].

(b) Wherever the word [~~words--"association,"~~] "insurer[~~,~~]" [~~"subscriber,"~~] or "employer" is [~~are~~] used in the adopted law [~~laws~~], the word "state," "division" or "director," whichever is applicable, is substituted for the purposes of this article.

SECTION 15.49. Section 17, Article 8309g, Revised Statutes, is amended to read as follows:

Sec. 17. COVERAGE FOR OUT-OF-STATE EMPLOYEES. An [~~Notwithstanding--Section--19, Article 8306, Revised Civil Statutes of Texas, 1925, as amended, --an~~] employee who performs services outside this state is entitled to benefits under this article even if the person is hired or not hired in this state, does not work in this state, works both in this state and out of state, is injured outside this state, or has been outside this state for more than one year. An employee who elects to pursue remedies provided by the state or the District of Columbia in which an injury occurs is not entitled to benefits under this article.

SECTION 15.50. Section 1, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 1. DEFINITIONS. The following words and phrases as used in this article shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) "Political subdivision" means a county, home-rule city, a city, town, or village organized under the general laws of this state, a special district, a school district, a junior college district, a housing authority, a community center for mental health and mental retardation services established under Chapter 67, Acts

of the 59th Legislature, Regular Session, 1965 (Article 5547-203, Vernon's Texas Civil Statutes), or any other legally constituted political subdivision of the state.

(2) "Employee" means every person in the service of a political subdivision who has been appointed in accordance with the provisions of the article. A [~~No~~] person in the service of a political subdivision who is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year, who is a patient or client of a political subdivision involved in vocational training, or who is a prisoner incarcerated by a political subdivision is not [~~shall--be-considered~~] an employee and is not entitled to compensation under [~~the-terms--of--the--provisions--of~~] this article. Provided, however, a political subdivision may cover volunteer firefighters, policemen, emergency medical personnel, and other volunteers that are specifically named who shall be entitled to full medical benefits and the minimum compensation payments under the law. A political subdivision may cover an elected official as an employee by a majority vote of the members of the governing body of the political subdivision. A political subdivision may cover children who are in a program established by the political subdivision to assist children in rendering personal services to a charitable or educational institution as authorized by Subsection (b), Section 54.041, Family Code. Members of the board of trustees of a self-insurance fund created hereunder may provide coverage for themselves as well as their staff, including persons with whom it has contracted to perform staff functions, or for any other self-insurance fund created under The Interlocal

Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) by a majority vote of such members of the fund. No class of persons who are paid as a result of jury service or an appointment to serve in the conduct of elections may be considered employees under this article unless declared to be employees by a majority vote of the members of the governing body of a political subdivision.

(3) "Board" means the Texas Workers' Compensation Commission [~~Industrial-Accident-Board~~].

SECTION 15.51. Section 3, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 3. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act [~~laws--as--amended-or-as-they-may-hereafter-be-amended~~] are adopted except to the extent that they are inconsistent with this article:

(1) Article 1, except the sections defining "employer" and "employee";

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.03, 3.04, 3.07, 3.08, 3.09, 3.10, 3.11, 3.13 through 3.16, and 3.18;

(4) Article 4, except Section 4.02(b);

(5) Article 5;

(6) Articles 6 through 8;

(7) Article 9, except Section 9.02; and

(8) Section 10.03. [~~(1)--Article----8306,----except Sections--5--and--28,--and--Articles-8307,-8307b,-and-8309,-Revised Civil-Statutes-of-Texas,-1925,-as-amended,~~

[~~(2)--Chapter-248,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8306a, Vernon's-Texas-Civil-Statutes),~~

[~~(3)--Chapter-77,-Acts-of-the-65th-Legislature,-Regular Session,-1977-(Article-8306b,-Vernon's-Texas-Civil-Statutes),~~

[~~(4)--Chapter-208,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8307a, Vernon's-Texas-Civil-Statutes),~~

[~~(5)--Chapter--115,--Acts--of--the--62nd---Legislature, Regular---Session,---1971--(Article--8307e,--Vernon's--Texas--Civil Statutes),-except-that-if-the-city-provides-by-Charter-or-ordinance for-ultimate-access-to-the-district-court-for--wrongful--discharge, Chapter--115,--Acts--of-the-62nd-Legislature,-Regular-Session,-1971 (Article-8307e,-Vernon's-Texas-Civil-Statutes)-is--not--applicable,~~

[~~(6)--Chapter--358,--Acts-of-the-64th-Legislature,-1975 (Article-8307d,-Vernon's-Texas-Civil-Statutes),-and~~

[~~(7)--Chapter-179,--General--Laws,--Acts--of--the--42nd Legislature,--Regular--Session,--1931,--as--amended-(Article-8309a, Vernon's-Texas-Civil-Statutes).~~]

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words--"association,"--"subscriber,"--or~~] "employer[~~,~~]" appears [~~or-their-equivalents-appear~~], it [~~they~~] shall be construed to and shall mean "a political subdivision."

(c) For purposes of determining the compensation benefits of an employee of a school district, the average weekly wage as of the time of injury shall be computed in a manner that is fair and just to both parties.

(d) A person may not bring an action for wrongful discharge under both Section 10.01, Texas Workers' Compensation Act and Chapter 832, Acts of the 68th Legislature, Regular Session, 1983 (Article 6252-16a, Vernon's Texas Civil Statutes).

SECTION 15.52. Section 9, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 9. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES [~~CETA--EMPLOYEES~~]. An entity that provides transportation subsidized in whole or in part by, and provided to clients of, the Texas Department on Aging, Texas Commission on Alcoholism, Texas Commission for the Blind, Texas Cancer Council, Texas Department of Community Affairs, Texas Commission for the Deaf, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Rehabilitation Commission, or Texas Youth Commission may contract with political subdivisions' joint funds for workers' compensation coverage as provided under Section 4 of this article. [~~Notwithstanding any other provision of this law or any applicable workers' compensation law, an employee hired in accordance with the federal Comprehensive Employment and Training Act of 1973 shall be considered an employee of the federal Comprehensive Employment and Training Act prime sponsor, or its contractor or subcontractor, whichever assumes responsibility for disbursement of wages directly to the employee, and the "borrowed servant doctrine" shall not apply.~~]

ARTICLE 16. REPEALER

SECTION 16.01. The following laws are repealed:

(1) Article 4413a.2, Revised Statutes;

(2) Section 1, Chapter 29, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145a, Vernon's Texas Civil Statutes);

(3) Section 2, Chapter 29, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145b, Vernon's Texas Civil Statutes);

(4) Section 3, Chapter 29, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145c, Vernon's Texas Civil Statutes);

(5) Section 11, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(6) Section 16, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(7) Article 8306, Revised Statutes;

(8) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes);

(9) Sections 1 and 2, Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(10) Article 8307, Revised Statutes;

(11) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8307a, Vernon's Texas Civil Statutes);

(12) Article 8307b, Revised Statutes;

(13) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);

(14) Chapter 358, Acts of the 64th Legislature, Regular Session, 1975 (Article 8307d, Vernon's Texas Civil Statutes);

(15) Sections 18, 18a, 19, 20, and 20a, Article 8308, Revised Statutes;

(16) Article 8309, Revised Statutes;

(17) Section 11, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(18) Section 17, Chapter 229, Acts of the 50th Legislature, Regular Session, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(19) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes);

(20) Section 11, Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951 (Article 8309d, Vernon's Texas Civil Statutes);

(21) Article 5.55A, Insurance Code; and

(22) Article 5.76-1, Insurance Code.

ARTICLE 17. TRANSITION; EFFECTIVE DATE; EMERGENCY

SECTION 17.01. NAME CHANGE. The name of the Industrial Accident Board is changed to the Texas Workers' Compensation Commission. Any reference in the law to the Industrial Accident

Board means the Texas Workers' Compensation Commission.

SECTION 17.02. TRANSFER OF CERTAIN PROGRAMS TO WORKERS' COMPENSATION COMMISSION. (a) The programs created under Article 5.76-1, Insurance Code, and administered by the State Board of Insurance are transferred to the Texas Department of Health on the effective date of this Act. The property and records in the custody of the State Board of Insurance that relate specifically to the implementation and enforcement of those programs shall be transferred to the Texas Department of Health not later than September 1, 1990.

(b) The Texas Department of Health shall adopt rules relating to the transfer of the programs assigned to that department not later than March 31, 1990. Notwithstanding amendments and repeals made by this Act, programs and rules in effect on the effective date of this Act remain in effect and shall be enforced by the appropriate agency until provided otherwise by the rules of the department, and the laws providing authority for those rules and programs are continued in effect for that time and purpose. Except as otherwise provided in this section, the department shall assume full control over those programs not later than September 1, 1990.

SECTION 17.03. INITIAL POLICY STATEMENT. The policy statement required under Section 2.10(k) of this Act must be filed not later than July 31, 1990.

SECTION 17.04. ADMINISTRATIVE PENALTIES. Article 10 of this Act, providing for the assessment of penalties and sanctions by the Texas Workers' Compensation Commission, applies only to a violation

that occurs on or after the effective date of this Act.

SECTION 17.05. SUBSEQUENT INJURY FUND. The subsequent injury fund is created on the effective date of this Act. All money in, and all liabilities of, the second injury fund created under Article 8306, Revised Statutes, as of that date, are transferred to the subsequent injury fund.

SECTION 17.06. SELF-INSURANCE. (a) The initial board of directors of the Texas Certified Self-Insurer Guaranty Association created under Section 3.69, Texas Workers' Compensation Act, shall be appointed by the Texas Workers' Compensation Commission.

(b) Notwithstanding the requirement imposed under Section 3.53(b), Texas Workers' Compensation Act, the Texas Workers' Compensation Commission is not required to process an application for a certificate of authority to self-insure within 60 days of the receipt of the application by that commission until September 1, 1990.

SECTION 17.07. TEXAS WORKERS' COMPENSATION POOL. The initial appointments to the governing board of the Texas Workers' Compensation Pool shall be made by January 1, 1990.

SECTION 17.08. (a) For all workers' compensation insurance policies issued on or after September 1, 1989, and through August 31, 1990, the premium rates charged shall be adjusted to reflect at least a four-percent reduction in the overall premium rate effective on January 1, 1989, distributed among rate classifications in accordance with sound actuarial principles.

(b) For all workers' compensation insurance policies issued on or after September 1, 1990, through August 31, 1991, the premium

rates charged shall be adjusted to reflect at least a 10-percent reduction in the overall premium rate effective January 1, 1989, distributed among rate classifications in accordance with sound actuarial principles.

(c) For all workers' compensation insurance policies issued on or after September 1, 1991, through August 31, 1992, the premium rates charged shall be adjusted to reflect at least a 15-percent reduction in the overall premium rate effective January 1, 1989, distributed among rate classifications in accordance with sound actuarial principles.

(d) The reductions in rates required by this section take effect only on a finding by the State Board of Insurance that the reductions would be consistent with the following factors:

(1) encourage the prevention of accidents;

(2) take into account 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;

(3) that such reductions would be fair, reasonable, and not confiscatory as to any class of insurer authorized by law to write workers' compensation insurance in this state; and

(4) the statistical data or other information provided to justify the reductions indicates that approval of the reductions are reasonable.

(e) Any rates, rating plans, rate reductions, or changes in those rates, plans or reductions, must be published at least 15 days before the changes become effective.

SECTION 17.09. TRANSITION OVERSIGHT COMMITTEE. (a) The Joint Transition Oversight Committee is created on the effective date of this Act. The committee is composed of six members as follows:

(1) three members must be members of the senate, appointed by the lieutenant governor; and

(2) three members must be members of the house of representatives, appointed by the speaker of the house of representatives.

(b) The committee may:

(1) meet with the Texas Workers' Compensation Commission as considered necessary by the committee or the commission;

(2) review rules adopted by the commission or proposed for adoption by the commission; and

(3) request reports and other information from the commission relating to the operation of the commission.

(c) The committee shall review the specific recommendations for legislation proposed by the commission.

(d) The committee shall prepare a written report relating to the transition of the workers' compensation system from the Industrial Accident Board to the Texas Workers' Compensation Commission that indicates the compliance of the transition process with this Act. This report shall include the committee's recommendations on items proposed by the commission for legislation. The committee shall file the report with the governor, lieutenant governor, and speaker of the house of

representatives not later than December 31, 1990, and December 31, 1992.

(e) This section expires and the committee is abolished January 1, 1993.

SECTION 17.10. COMMISSION AUTHORITY DURING TRANSITION. (a) The Texas Workers' Compensation Commission created under this Act shall begin immediately to adopt rules to implement this Act. The rules adopted under this section may not have an effective date before June 1, 1990.

(b) The commission shall delegate appropriate powers and duties to the executive director to administer the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) and the workers' compensation law in effect prior to the effective date of this Act.

(c) The State Board of Insurance and the commission shall develop a plan to provide for the orderly transfer to the State Board of Insurance by September 1, 1992, of coverage and cancellation notices required to be filed with the commission by Sections 3.22, 3.23, 3.24, 3.25, and 3.26 of this Act.

SECTION 17.11. SEVERABILITY. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that 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 17.12. EFFECTIVE DATE; EFFECT ON PENDING CLAIMS. (a) This Act takes effect June 1, 1990, except as provided in

Subsection (b) of this section.

(b) Sections 2.01 through 2.07, 17.01, 17.08, 17.09, and 17.10 take effect September 1, 1989; Chapter D of Article 3 takes effect January 1, 1990; and Articles 9 and 10 take effect January 1, 1991.

(c) The change in law made by this Act applies only to an injury for which the date of injury is on or after the effective date of this Act. The date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

(d) The Texas Workers' Compensation Commission created under this Act shall process claims for injuries occurring before June 1, 1990, in accordance with the law in effect on the date that the injury occurred, and the former law is continued in effect for this purpose.

SECTION 17.13. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

ADOPTED
25 yeas 5 nays
MAY 27 1989

Secretary of the Senate

AMENDMENT NO. 1 BY

Amend C.S.H.B. 1 as follows:

(1) On page 1, strike the preamble (lines 8-15) and substitute the following:

PREAMBLE; LEGISLATIVE INTENT

The Texas Workers' Compensation Act is remedial in nature. It is the intent of the legislature to carry forward determinations made under prior law except to the extent of any conflict with this Act.

(2) On page 1, line 17, strike "11" and substitute "10".

(3) On page 5, line 2, between "podiatry" and the period, insert ", who is licensed and authorized to practice".

(4) On page 5, strike lines 20-26 and substitute the following:

(20) "Employer" means, unless otherwise specified, a person that makes a contract of hire or that employs one or more employees. The term includes a governmental entity.

(5) On page 6, line 20, strike "physician" and substitute "doctor".

(6) On page 7, line 5, strike "accidental injuries and".

(7) On page 7, lines 2-3, strike "or mental".

(8) On page 8, line 21, between "further" and "recovery", insert "material".

(9) On page 9, strike lines 17-27 and substitute the following:

(35) "Occupational disease" means any disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, and such other diseases or infections as naturally result therefrom. The term includes damage or harm to the physical structure of the body that occurs as the result of repetitious physical traumatic activities extending over a period of time and arising in the course of employment; provided, that the date of the cumulative injury is the date incapacity was caused thereby. Ordinary diseases of life to which the general public is exposed outside of employment are not compensable, except where those diseases follow as an incident to an "occupational disease" or "injury" as those terms are defined by this Act.

(10) On page 11, lines 17-18, strike "doing the usual tasks of a worker".

(11) On page 18, line 3, strike "arbitration" and substitute "mediation".

(12) On page 21, strike lines 11-13 and substitute the following:

(3) division of hearings; and

(4) division of self-insurance regulation.

(13) On page 22, line 14, strike "Section 4.28" and substitute "Section 4.46".

(14) On page 24, strike lines 3-6 and substitute the following:

(1) the crime victims compensation fund; or

(2) the division of self-insurance regulation.

(15) On page 27, strike lines 20-25 and substitute the following:

(2) a legislative committee for legislative purposes; and

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 2.31(d) of this Act, if the request is provided to the commission.

(16) On page 30, lines 5 and 6, strike "commission, research center, or any other" and substitute "commission or any other".

(17) On page 33, lines 16 and 17, strike Subdivision (3) and substitute the following:

(3) "Motor carrier" means a person operating a motor vehicle over any public highway in this state for the purposes of providing transportation services or contracting to provide those services. An owner-operator is an independent contractor.

(18) On page 59, line 12, strike "provide for" and substitute "obtain".

(19) On page 68, line 22, strike "under Section 4.17 of this Act".

(20) On page 73, between lines 24 and 25, insert a new Section 4.011 to read as follows:

SECTION 4.011. POLICY STATEMENT ON MENTAL TRAUMA INJURIES. It is the express intent of the legislature that nothing in this Act shall be construed to limit or expand recovery in cases of mental trauma injuries.

(21) On page 81, strike line 2 and substitute the following: "of 300 times if a six-day worker, or 260 times if a five-day."

(22) On page 81, line 7, strike the comma.

(23) On page 81, strike lines 9-10 and substitute the following: "average weekly wage consists of 300 times if a six-day worker, or 260 times if a five-day worker, the average daily wage or salary".

(24) On page 82, strike lines 11-22 and substitute the following:

(1)(A) for the first 26 weeks following the beginning date of incapacity for any compensable injury, but not to exceed beyond the date of maximum medical improvement unless the employee is totally incapacitated, (B) for all injuries for which lifetime income benefits are payable, and (C) for injuries resulting in death benefits, an amount equal to 100 percent of the annual

average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission, rounded to the nearest whole dollar amount divisible by seven; provided, that if maximum medical improvement occurs before the expiration of 26 weeks following the beginning date of incapacity and the employee claims total incapacity, the carrier shall have the right to an independent medical examination by a doctor of the carrier's choice; if, based on such medical examination and all other evidence the employee is found to be totally incapacitated and to have attained maximum medical improvement, then the benefits payable under (A) of this Subdivision (1) shall continue for the full 26 weeks; and

(2) for all other incapacity after August 31, 1988, the maximum weekly income benefit is $238; provided, that if the annual average of the manufacturing production workers average weekly wage in this state exceeds by $10 the average weekly wage for those workers in 1988, as determined by the Texas Employment Commission and published by that commission in its report on the average weekly wage, the maximum weekly benefit shall be increased by $7 above the amounts specified in this section beginning with the commencement of the state fiscal year following the publication of the report; and provided that thereafter, each cumulative $10 increase in the average weekly wage for manufacturing production workers in this state as annually determined and reported by the Texas Employment Commission shall increase cumulatively the maximum weekly benefit by an additional $7 beginning with the commencement of the state fiscal year following the publication of the report.

(25) On page 83, strike lines 5-10 and substitute the following:

SECTION 4.12. MINIMUM WEEKLY BENEFITS. (a) Effective September 1, 1988, the minimum weekly benefit is $40. If the annual average of the manufacturing production workers average weekly wage in this state exceeds by $10 the average weekly wage for those workers in 1988, as determined by the Texas Employment Commission and published by that commission in its report on the average weekly wage, the minimum weekly benefit shall be increased by $1 above the amounts specified in this section beginning with the commencement of the state fiscal year following the publication of the report. Thereafter, each cumulative $10 increase in the average weekly wage for manufacturing production workers in this state as annually determined and reported by the Texas Employment Commission shall increase cumulatively the minimum weekly benefit by an additional $1 beginning with the commencement of the state fiscal year following the publication of the report.

(26) On page 84, line 4, strike "Section 4.25" and substitute "Section 4.26".

(27) On page 84, line 21, between "injury" and "is entitled", insert "and who has not attained maximum medical improvement".

(28) On page 85, line 21, strike "While" and substitute "If, after the employee has attained maximum medical improvement,".

(29) On page 85, line 27, strike "After" and substitute "If

1 after".

2 (30) On page 86, line 1, strike "and while the" and
3 substitute ", the".

4 (31) On page 91, line 11, strike "at least".

5 (32) On page 96, between lines 24 and 25, insert a new
6 Section 4.441 to read as follows:
7 SECTION 4.441. EFFECT OF DISPUTE AS TO BENEFICIARY. On
8 settlement of a case in which the insurance carrier admits
9 liability for death benefits but a dispute exists as to the proper
10 beneficiary or beneficiaries, the settlement shall be paid in
11 periodic payments as provided by law, with a reasonable attorney's
12 fee not to exceed 25 percent of the settlement. The attorney's fee
13 shall be paid periodically and not in a lump sum.

14 (33) On page 99, lines 10-11, strike ", but not for the
15 purpose of obtaining an impairment rating".

16 (34) On page 110, line 5, between "EMPLOYER" and the period,
17 insert "; CLAIM FOR COMPENSATION".

18 (35) On page 111, between lines 9 and 10, insert a new
19 Section 5.021 to read as follows:
20 SECTION 5.021. EFFECT OF FAILURE TO FILE CLAIM. An
21 employee's failure to file a claim for compensation with the
22 commission as required under Section 5.01(b) of this article
23 relieves the employer and the employer's insurance carrier of
24 liability under this Act unless:

1 (1) good cause exists for failure to give notice in a
2 timely manner; or
3 (2) the employer or insurance carrier does not contest
4 the claim.

5 (36) On page 112, between lines 16 and 17, insert a new
6 Section 5.041 to read as follows:
7 SECTION 5.041. LIMITATION TOLLED. If the employer or
8 insurance carrier has been given notice or has knowledge of an
9 injury or death of an employee, and the employer or carrier fails,
10 neglects, or refuses to file a report as required under Section
11 5.04 of this article, the limitation in Section 5.01 of this
12 article with respect to the filing of a claim for compensation does
13 not begin to run against the claim of the injured employee or the
14 employee's beneficiaries who are entitled to compensation, or in
15 favor of the employer or insurance carrier, until the report has
16 been furnished as required under Section 5.04 of this article.

17 (37) On page 115, line 8, strike "at an earlier date" and
18 substitute "before the date of filing of the notice".

19 (38) On page 116, between lines 4 and 5, insert a new
20 Section 5.24 to read as follows:
21 SECTION 5.24. MEDICAL DISPUTES AFTER JUDGMENT OR AWARD.
22 Notwithstanding any other provision of this Act, no award of the
23 commission and no judgment of a court having jurisdiction of a
24 claim against an insurance carrier for the cost or expense of
25 medical aid, hospital services, nursing, chiropractic services,

1 medicines, or prosthetic appliances furnished to an employee under
2 circumstances that create a liability for payment on the part of
3 the carrier under this Act shall include in the award or judgment
4 any cost of any such item that is not actually furnished to and
5 received by the employee before the date of the award or judgment.
6 The first such final award or judgment rendered on the claim is res
7 judicata of the liability of the carrier for the cost or expense
8 that could have been claimed up to the date of the award or
9 judgment and of the issue that the employee's injury is subject to
10 the provisions of this Act with respect to the items, but is not
11 res judicata of the obligation of the carrier to furnish or pay for
12 any such item after the date of the award or judgment. After the
13 first such final award or judgment, the commission shall have
14 continuing jurisdiction in the case to render successive awards to
15 determine the liability of the carrier for the cost or expense of
16 any such item actually furnished to and received by the employee
17 not more than six months before the date of each successive award,
18 until the carrier has fully discharged its obligation under this
19 Act to furnish the medical aid, hospital services, nursing,
20 chiropractic services, medicines, or prosthetic appliances to which
21 the employee may be entitled; provided, that a claim for
22 compensation must be filed with the commission in accordance with
23 Section 5.01 of this article to make a claim for such compensation
24 benefits, and the provisions of Article 6 of this Act apply to
25 those claims.

26 (39) On page 122, line 13, strike "The" and substitute

"Except as otherwise provided by this subsection, the".

(40) On page 122, line 15, after the period insert: "On the mutual written agreement of the parties, the period for the scheduling of a mediation conference may be extended for an additional 30 days."

(41) On page 127, line 11, after the period insert: "An arbitrator may not be an employee of the commission."

(42) On page 128, line 3, strike "only".

(43) On page 128, line 9, strike "and this appointment is final." and substitute ". Each party is entitled to reject the arbitrator in the manner provided under Subsection (f) of this section.".

(44) On page 132, line 4, strike "obtained knowledge" and substitute "knew or should have known".

(45) On page 132, line 8, strike "an arbitrator's" and substitute "the arbitration".

(46) On page 133, line 5, after the period insert: "On the mutual written agreement of the parties, the period for the scheduling of a contested case hearing may be extended for an additional 30 days.".

(47) On page 248, line 25, strike "4.02(b),".

(48) On page 262, line 7, strike ", except Section 4.02(b)".

(49) On page 265, line 21, strike "<u>, except Section 4.02(b)</u>".

(50) On page 271, line 17, strike "POOL" and substitute "FACILITY".

(51) On page 271, line 19, strike "Pool" and substitute "Facility".

(52) On page 272, line 24, strike "are" and substitute "is".

ADOPTED
by 22 yeas 9 nays
MAY 22 1989

AMENDMENT NO. 2 BY

Amend C.S.H.B. 1 as follows:

(1) On pages 193 and 194, amend Section 13.08 by striking the new Article 5.55B, Insurance Code.

(2) On page 272, after line 27, insert a new Section 17.081 to read as follows:

SECTION 17.081. SMALL BUSINESS STUDY OF OPTIONAL DEDUCTIBLE POLICIES. (a) The Texas Worker's Compensation Commission shall conduct a study relating to the offering of policies providing for deductibles to small employers and shall report the results of the study to the 72nd Legislature. On the request of the commission, the State Board of Insurance shall assist the commission.

(b) The study conducted under Subsection (a) of this section must include a plan containing specific recommendations for the protection of employees from intimidation and securing the payment of compensation benefits up to the deductible amount directly from the insurance carrier.

(c) This section expires August 31, 1991.

Floor

AMENDMENT NO. 8 BY: Martinez

Amend C.S.H.B. 1 as follows:

On page 29, line 18 after "distributes", strike "confidential information" and substitute "information which is confidential under this chapter".

On page 29, line 22 after "information" insert "which is confidential under this chapter".

ADOPTED

MAY 22 1989

Secretary of the Senate

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 23, 1989

TO: Honorable Chet Brooks, Chairman
Senate Committee as a Whole
Senate Chamber
Austin, Texas

In Re: Senate Committee Substitute for House Bill No. 1

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Committee Substitute for House Bill No. 1 (relating to the reform of the workers' compensation system; to the creation, powers, and duties of the Texas Workers' Compensation Commission; to work safety; authorizing an appropriation; providing criminal and administrative penalties; and providing for taxes and fees) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to the reform of the Workers' Compensation System. The bill creates the Texas Workers' Compensation Commission to replace the current Industrial Accident Board.

The commission would impose a rate not to exceed two percent of the gross workers' compensation insurance premiums to pay the expenses of the commission in regulating the workers' compensation insurance program.

The bill would establish a worker's compensation self-insurance program. Certified self-insurers shall pay an annual fee to cover the administrative costs of the program.

I. State Workers' Compensation Payments.

The probable fiscal implications of implementing the provisions of the bill concerning payments made by the state to state employees and the administrative cost of programs during each of the first five years following passage is estimated as follows:

Fiscal Year	Current and Projected Cost of State Workers' Compensation Payments Program	Probable Program Cost After the Enactment of H.B. No. 1	Probable Savings to the State From the General Revenue Fund
1990	$44,490,240	$44,490,240	-0-
1991	53,388,288	53,388,288	-0-
1992	64,069,945	58,727,117	$ 5,338,828
1993	76,879,134	64,599,828	12,279,306
1994	92,254,961	64,599,828	27,655,133

Fiscal Year	Increase in Administrative Cost to the Office of the Attorney General Out of the General Revenue Fund	Increase in Administrative Cost to the State Department of Highways and Public Transportation Out of the State Highway Fund No. 6	Change in Number of State Employees from FY 1989
1990	$476,440	$182,850	+ 21
1991	545,710	182,850	+ 23
1992	614,980	182,850	+ 25
1993	614,980	182,850	+ 25
1994	614,980	182,850	+ 25

Probable savings in State workers' compensation payments to the State Highways and Public Transportation Department, Texas A&M University System and The University of Texas System cannot be determined.

71FSCSHB1

II. The Texas Workers' Compensation Commission.

The amount currently set forth for the administration of the Workers' Compensation Program in the Industrial Accident Board in the General Appropriations Bill, as introduced, is $16,327,583 for fiscal year 1990 and $15,569,437 for fiscal year 1991. This is an approximate 52 percent increase in this program over the 1989 budgeted level. The appropriation would be financed from the Workers' Compensation Tax, Federal Funds and Other Funds and would provide for approximately 494 employees.

The bill requires a substantial reorganization from the Industrial Accident Board to the Texas Workers' Compensation Commission. In addition to the amounts appropriated in the General Appropriation Act, as introduced, for the 1990-91 biennium, the probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the General Revenue Fund	Probable Cost Out of Fees
1990	$25,581,148	$473,226
1991	38,035,516	643,761
1992	35,164,774	633,828
1993	33,620,414	633,828
1994	31,047,796	633,828

Fiscal Year	Probable Cost Out of Other Funds	Change in Number of State Employees from FY 1989
1990	$1,020,000	+ 584
1991	1,125,000	+ 789
1992	1,050,000	+ 768
1993	1,050,000	+ 731
1994	1,050,000	+ 725

III. State Board of Insurance.

The bill would create a new division to monitor the operation of the Workers' Compensation Assigned Risk Pool within the State Board of Insurance and would transfer to the Texas Workers' Compensation Commission the Loss Control Section of the Casualty Division of the State Board of Insurance.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the Insurance Board Operating Fund No. 36	Probable Savings to the Insurance Board Operating Fund No. 36	Change in Number of State Employees from FY 1989
1990	$6,056,143	$330,079	+ 99
1991	4,301,627	289,547	+ 99
1992	4,301,627	289,547	+ 99
1993	4,301,627	289,547	+ 99
1994	4,301,627	289,547	+ 99

Similar annual fiscal implications for Parts I, II, and III would continue as long as the provisions of the bill are in effect.

IV. Local Governments.

The fiscal implications to units of local government cannot be determined.

Source: Department of Highways and Public Transportation;
Texas A&M University System; State Board of Insurance;
Texas Employment Commission; Attorney General's Office;
Texas Rehabilitation Commission; Department of Health;
Industrial Accident Board;
LBB Staff: JO, JWH, AL, MM, BL

APR 10 REC'D

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 10, 1989

TO: Honorable Chet Brooks, Chairman
Senate Committee as a Whole
Senate Chamber
Austin, Texas

In Re: House Bill No. 1,
as engrossed
By: Richard Smith

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 1, as engrossed (relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill relates to the reform of the Workers' Compensation System. The bill creates the Texas Workers' Compensation Board to replace the current Industrial Accident Board.

The bill changes the case adjudication process, by providing a multi-level administrative appeals process with substantial evidence standard of review at the judicial level. The bill eliminates trial de novo. The bill establishes the maximum weekly benefit to be the annual average weekly wage of manufacturing production workers in Texas as determined by the Texas Employment Commission (TEC). The new Texas Workers' Compensation Board would include divisions on compliance, medical review, safety, and hearings and appeals. The board would appoint members to a Labor-Business Advisory Council on Workers' Compensation and to special advisory committees.

The board would impose a rate not to exceed two percent of the gross workers' compensation insurance premiums to pay the expenses of the board in regulating the workers' compensation insurance program.

The bill would establish a worker's compensation self-insurance program. Certified self-insurers shall pay an annual fee to cover the administrative costs of the program.

The bill would establish a state risk manager and require all state agencies to develop risk management programs for the purpose of reducing property and liability losses.

I. State Workers' Compensation Payments.

The probable fiscal implications of implementing the provisions of the bill concerning payments made by the state to state employees and the administrative cost of programs during each of the first five years following passage is estimated as follows:

Fiscal Year	Current and Projected Cost of State Workers' Compensation Payments Program	Probable Program Cost After the Enactment of H.B. No. 1	Probable Savings to the State From the General Revenue Fund
1990	$44,490,240	$44,490,240	-0-
1991	53,388,288	53,388,288	-0-
1992	64,069,945	58,727,117	$ 5,338,828
1993	76,879,134	64,599,828	12,279,306
1994	92,254,961	64,599,828	27,655,133

71FHB1ae

Fiscal Year	Increase in Administrative Cost to the Office of the Attorney General Out of the General Revenue Fund	Increase in Administrative Cost to the State Department of Highways and Public Transportation Out of the State Highway Fund No. 6	Change in Number of State Employees from FY 1989
1990	$476,440	$182,850	+ 21
1991	545,710	182,850	+ 23
1992	614,980	182,850	+ 25
1993	614,980	182,850	+ 25
1994	614,980	182,850	+ 25

Probable savings in State workers' compensation payments to the State Highways and Public Transportation Department, Texas A&M University System and The University of Texas System cannot be determined.

II. The Texas Workers' Compensation Board.

The amount currently set forth for the administration of the Workers' Compensation Program in the Industrial Accident Board in the General Appropriations Bill, as introduced, is $16,327,583 for fiscal year 1990 and $15,569,437 for fiscal year 1991. This is an approximate 52 percent increase in this program over the 1989 budgeted level. The appropriation would be financed from the Workers' Compensation Tax, Federal Funds and Other Funds and would provide for approximately 494 employees.

The bill requires a substantial reorganization from the Industrial Accident Board to the Texas Workers' Compensation Board. In addition to the amounts appropriated in the General Appropriation Act, as introduced, for the 1990-91 biennium, the probable fiscal implications of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the General Revenue Fund*	Probable Cost Out of Federal Funds	Probable Cost Out of Fees
1990	$28,228,608	$1,026,967	$473,226
1991	38,354,976	1,026,967	643,761
1992	36,528,234	1,026,967	633,828
1993	35,400,874	1,026,967	633,828
1994	35,288,256	1,026,967	633,828

Fiscal Year	Probable Cost Out of Interagency Contracts	Probable Cost Out of Other Funds	Change in Number of State Employees from FY 1989
1990	$ 589,844	$1,020,000	+ 647
1991	1,129,204	1,125,000	+ 873
1992	1,084,744	1,050,000	+ 869
1993	1,084,744	1,050,000	+ 840
1994	1,084,744	1,050,000	+ 834

*Note: The General Revenue Fund under this section of the fiscal note is reimbursed by the maintenance tax on gross workers' compensation premiums up to the cap of 2%. The board would set a rate of 1.50% to fund $44.6 million in FY1990 and a rate of 1.94% to fund $53.9 million in FY1991 from the workers' compensation maintenance tax. The amount to be funded from the tax rate would not exceed the 2.0% rate for fiscal years 1992 through 1995 and thereafter.

The tax rate set by the board, federal monies, and other funds would allow for an estimated agency budget for the workers' compensation program of approximately $47.7 million in fiscal year 1990 and $57.9 million in fiscal year 1991, or over six times the amount of the 1989 budget. It might be reasonable to assume that the Legislature accomplish such significant budget expansion over a period of time rather than in one biennium. This would also allow a phase-in

of the increase in the tax rate.

Note: The Texas Workers' Compensation Board would also be responsible for the administration and payment of claims under the Crime Victims Compensation Act.

III. State Board of Insurance.

The bill would create a new division to monitor the operation of the Workers' Compensation Assigned Risk Pool within the State Board of Insurance and would transfer to the Texas Workers' Compensation Board the Loss Control Section of the Casualty Division of the State Board of Insurance.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Probable Cost Out of the Insurance Board Operating Fund No. 36	Probable Savings to the Insurance Board Operating Fund No. 36	Change in Number of State Employees from FY 1989
1990	$2,160,995	$330,079	+ 22
1991	1,422,919	289,547	+ 22
1992	1,422,919	289,547	+ 22
1993	1,422,919	289,547	+ 22
1994	1,422,919	289,547	+ 22

Similar annual fiscal implications for Parts I, II, and III would continue as long as the provisions of the bill are in effect.

IV. Courts.

The fiscal implications to units of local government cannot be determined, however, county court dockets would be reduced as a result of not having to set hearings and trials on appeals of final rulings and decisions of the Workers' Compensation Board.

State district courts would have appellate jurisdiction under the substantial evidence standard. The probable number of appeals cannot be determined.

Source: Department of Highways and Public Transportation;
Texas A&M University System; State Board of Insurance;
Texas Employment Commission; Attorney General's Office;
Texas Rehabilitation Commission; Department of Health;
Industrial Accident Board;
LBB Staff: JO, JWH, AL, MM, BL

Counts, Connelly, Waterfield, Mowery, Pennington, Robnett, Kuempel, Goolsby, Park, Hammond, Shelly, S. Johnson, Perry, Craddick, Yost, Gavin, McWilliams, Taylor, Hilderbran, Jackson, Shine, Frasier, Crawford, Thomas, Clemons, Ovard, Carter, Blackwood, B. Hunter, Chisum, Campbell, Marchant, D. Smith, Vowell, A. Smith, Brimer, Haggerty, Holzheauser, G. Lewis, Schoolcraft, Willy, J. Johnson, Beauchamp, Harrison, Jones, Culberson, P. Hill, Kubiak, Tallas, Grusendorf, Lucio, Heflin, Repp, Patterson, Shea, A. Hill, Finnell, F. Hill, Robinson, Saunders, Earley, Horn

By Richard A. Smith H.B. No. 1

A BILL TO BE ENTITLED

AN ACT

relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. Articles 1-12 of this Act may be cited as the Texas Workers' Compensation Act.

SECTION 1.02. DEFINITIONS. In this Act:

(1) "Adjuster" means a person licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(2) "Advisory council" means the Labor-Business Advisory Council on Workers' Compensation.

(3) "Agreement" means the resolution by the parties to a dispute based on a workers' compensation claim of one or more issues regarding the claim. The term does not include a settlement.

(4) "Benefit" means a benefit received by a claimant based on a compensable injury. The term includes a medical benefit, an income benefit, and a death or burial benefit.

(5) "Board" means the Texas Workers' Compensation Board.

(6) "Child" means a son, daughter, stepson, or

1

By Richard G. Smith et al.

A BILL TO BE ENTITLED

AN ACT

Relating to the reform of the workers' compensation system and to the creation, powers, and duties of the Texas Workers' Compensation Board; providing penalties.

FEB 8 1989 — 1. Filed with the Chief Clerk.

FEB 8 1989 — 2. Read first time and Referred to Committee on Business & Commerce

MAR 1 1989 — 3. Reported ___ favorably ~~(as amended)~~ (as substituted) and sent to Printer at 3:45 pm MAR 3 1989

MAR 3 1989 — 4. Printed and distributed at 9:55 pm

MAR 6 1989 — 5. Sent to Committee on Calendars at 8:12 am

MAR 7 1989 — 6. Read second time (amended) as subs. passed to third reading ~~(failed)~~ by ~~(Non-Record Vote)~~ (Record Vote of 117 yeas, 27 nays, 1 present, not voting).

___ 7. Motion to reconsider and table the vote by which H.B. ___ was ordered engrossed prevailed (failed) by a ~~(Non-Record Vote)~~ (Record Vote of ___ yeas, ___ nays, and ___ present, not voting).

___ 8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of ___ yeas, ___ nays, and ___ present, not voting.

MAR 8 1989 — 9. Read third time (~~amended~~); finally passed ~~(failed) by~~ (Non-Record Vote) ~~(Record Vote of ___ yeas, ___ nays, ___ present, not voting)~~.

___ 10. Caption ordered amended to conform to body of bill.

___ 11. Motion to reconsider and table the vote by which H. B. ___ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of ___ yeas, ___ nays, and ___ present, not voting).

MAR 8 1989 — 12. Ordered Engrossed at 10:26 am

MAR 10 1989 — 13. Engrossed.

MAR 10 1989 — 14. Returned to Chief Clerk at 5:04 pm

MAR 13 1989 — 15. Sent to Senate.

Betty Murray
Chief Clerk of the House

MAR 13 1989 — 16. Received from the House

MAR 13 1989 — 17. Read, referred to Committee on STATE AFFAIRS

APR 6 1989 Referred to Committee of the Whole Senate

___ 18. Reported favorably

MAY 20 1989 — 19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

MAY 20 1989 — 20. Ordered not printed.

MAY 22 1989 — 21. Regular order of business suspended by ~~(a viva voce vote.)~~ (28 yeas, 1 nays.)

89 MAR -7 PM 9:50
HOUSE OF REPRESENTATIVES

89 MAR 10 PM 5:04
HOUSE OF REPRESENTATIVES

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

MAY 22 1989 23. Read second time amended passed to third reading by:
~~(a viva voce vote.)~~
(22 yeas, 9 nays.)

MAY 22 1989 24. Caption ordered amended to conform to body of bill.

MAY 22 1989 25. Senate and Constitutional 3-Day Rules suspended by vote of 25 yeas, 4 nays to place bill on third reading and final passage.

MAY 22 1989 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION: OTHER ACTION:

Betty King
Secretary of the Senate

May 23, 1989 27. Returned to the House.

MAY 23 1989 28. Received from the Senate (with amendments.) (as substituted.)

MAY 24 1989 Motion to table motion to concur in Senate sub. + amendments prevails by record vote 92 yeas 53 nays 1 pnv

MAY 24 1989 29. House (Concurred) (~~Refused to Concur~~) in Senate (Amendments) (Substitute) by a (Non-Record) Vote) (~~Record Vote of _____ yeas, _____ nays, _____ present, not voting~~).

MAY 24 1989 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____

89 MAY 23 PM 5:44
HOUSE OF REPRESENTATIVES

89 MAR -3 PM 9:55
HOUSE OF REPRESENTATIVES