admin

By: _____ S.B. No. 979

A BILL TO BE ENTITLED

AN ACT

relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 78th Legislature to other Acts of that legislature.

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

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.001. This Act is enacted as part of the state's continuing statutory revision program under Chapter 323, Government Code. This Act is a revision for purposes of Section 43, Article III, Texas Constitution, and has the purposes of:

(1) codifying without substantive change or providing for other appropriate disposition of various statutes that were omitted from enacted codes;

(2) conforming codifications enacted by the 78th Legislature to other Acts of that legislature that amended the laws codified or added new law to subject matter codified;

(3) making necessary corrections to enacted codifications; and

(4) renumbering titles, chapters, and sections of codes that duplicate title, chapter, or section numbers.

SECTION 1.002. (a) The repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 79th Legislature, Regular Session, 2005. The amendment,

revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(b) If any provision of this Act conflicts with a statute enacted by the 79th Legislature, Regular Session, 2005, the statute controls.

SECTION 1.003. (a) A transition or saving provision of a law codified by this Act applies to the codified law to the same extent as it applied to the original law.

(b) The repeal of a transition or saving provision by this Act does not affect the application of the provision to the codified law.

(c) In this section, "transition provision" includes any temporary provision providing for a special situation in the transition period between the existing law and the establishment or implementation of the new law.

ARTICLE 2. CHANGES RELATING TO BUSINESS & COMMERCE CODE

SECTION 2.001. Section 35.53(a), Business & Commerce Code, is amended to correct a reference to read as follows:

(a) This section applies to a contract only if:

(1) the contract is for the sale, lease, exchange, or other disposition for value of goods for the price, rental, or other consideration of $50,000 or less;

(2) any element of the execution of the contract occurred in this state and a party to the contract is:

(A) an individual resident of this state; or

(B) an association or corporation created under

the laws of this state or having its principal place of business in this state; and

(3) Section 1.301 [~~1.105~~] of this code does not apply to the contract.

SECTION 2.002. Section 35.531(e), Business & Commerce Code, is amended to correct a reference to read as follows:

(e) Sections 1.301 [~~1.105~~] and 35.53 do not apply to a contract to which this section applies. This section does not apply to a contract to which Section 35.51 applies.

SECTION 2.003. (a) Chapter 35, Business & Commerce Code, is amended to codify Chapter 405, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter K to read as follows:

SUBCHAPTER K. INTERNATIONAL MATCHMAKING ORGANIZATIONS

Sec. 35.121. DEFINITIONS. In this subchapter:

(1) "Basic rights information" means information applicable to a noncitizen, including information about human rights, immigration, and emergency assistance and resources.

(2) "Client" means a person who is a resident of the United States and who contracts with an international matchmaking organization to meet recruits.

(3) "Criminal history record information" means criminal history record information obtained from the Department of Public Safety under Subchapter F, Chapter 411, Government Code, and from the Federal Bureau of Investigation under Section 411.087, Government Code.

(4) "International matchmaking organization" means a corporation, partnership, sole proprietorship, or other legal

entity that does business in the United States and offers to Texas residents dating, matrimonial, or social referral services involving recruits by:

(A) exchanging names, telephone numbers, addresses, or statistics;

(B) selecting photographs; or

(C) providing a social environment for introducing clients to recruits in a country other than the United States.

(5) "Marital history information" means a declaration of a person's current marital status, the number of times the person has been married, and whether any marriage occurred as a result of receiving services from an international matchmaking organization.

(6) "Recruit" means a person who is not a citizen or resident of the United States and who is recruited by an international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services.

Sec. 35.122. NOTICE OF AVAILABILITY OF CRIMINAL HISTORY, MARITAL HISTORY, AND BASIC RIGHTS INFORMATION. (a) An international matchmaking organization shall provide each recruit with the criminal history record information and marital history information of its clients and with basic rights information.

(b) The information under Subsection (a) must be:

(1) in the recruit's native language; and

(2) displayed in a manner that:

(A) separates the criminal history record information, the marital history information, and the basic rights

information from any other information; and

(B) is highly noticeable.

Sec. 35.123. PROVIDING CRIMINAL HISTORY, MARITAL HISTORY, AND BASIC RIGHTS INFORMATION. (a) An international matchmaking organization shall disseminate to a recruit the criminal history record information and marital history information of a client and the basic rights information not later than the 30th day after the date the international matchmaking organization receives the criminal history record information and the marital history information from the client.

(b) The international matchmaking organization shall provide the information to the recruit in the recruit's native language. The international matchmaking organization shall pay the costs incurred to translate the information.

Sec. 35.124. OBTAINING CRIMINAL HISTORY RECORD INFORMATION AND MARITAL HISTORY INFORMATION. (a) The client shall:

(1) obtain a copy of the person's own criminal history record information;

(2) provide the criminal history record information to the international matchmaking organization; and

(3) provide to the international matchmaking organization the person's own marital history information.

(b) The international matchmaking organization shall require the client to affirm that the marital history information is complete and accurate and includes information regarding marriages, annulments, and dissolutions that occurred in another state or a foreign country.

(c) The international matchmaking organization may not provide any further services to the client or the recruit until the organization has:

(1) obtained the requested criminal history record information and marital history information; and

(2) provided the information to the recruit.

Sec. 35.125. CIVIL PENALTY. (a) An international matchmaking organization that violates this subchapter is subject to a civil penalty not to exceed $20,000 for each violation.

(b) In determining the amount of the civil penalty, the court shall consider:

(1) any previous violations of this subchapter by the international matchmaking organization;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) the demonstrated good faith of the international matchmaking organization; and

(4) the amount necessary to deter future violations.

(c) The attorney general or the appropriate district or county attorney may bring an action under this section in the name of the state in a district court of Travis County or of a county in which any part of the violation occurs.

(d) A penalty collected under this section by the attorney general or a district or county attorney shall be deposited in the state treasury to the credit of the compensation to victims of crime fund under Article 56.34, Code of Criminal Procedure.

(b) Chapter 405, Acts of the 78th Legislature, Regular

Session, 2003, is repealed.

ARTICLE 3. CHANGES RELATING TO CIVIL PRACTICE AND REMEDIES CODE

SECTION 3.001. Section 107.001, Civil Practice and Remedies Code, is amended to correct a redundant reference to read as follows:

Sec. 107.001. GRANTS OF PERMISSION COVERED. This chapter applies to resolutions granting permission to sue the state or any of the agencies of government that collectively constitute the government of this state, including agencies, departments, bureaus, boards, commissions, offices, [~~agencies,~~] councils, courts, and institutions of higher education as defined by Section 61.003, Education Code.

ARTICLE 4. CHANGES RELATED TO CODE OF CRIMINAL PROCEDURE

SECTION 4.001. Article 2.12, Code of Criminal Procedure, as amended by Chapters 235, 474, and 930, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(3) marshals or police officers of an incorporated

city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than 1.18 million that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code;

(17) investigators commissioned by the Texas State Board of Medical Examiners;

(18) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned under Chapter 554, Occupations Code;

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

(23) investigators commissioned by the attorney general under Section 402.009, Government Code;

(24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;

(25) an officer employed by the Texas Department of

Health under Section 431.2471, Health and Safety Code;

(26) officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

(27) officers commissioned by the state fire marshal under Chapter 417, Government Code;

(28) an investigator commissioned by the commissioner of insurance under Article 1.10D, Insurance Code;

(29) apprehension specialists commissioned by the Texas Youth Commission as officers under Section 61.0931, Human Resources Code;

(30) officers appointed by the executive director of the Texas Department of Criminal Justice under Section 493.019, Government Code;

(31) investigators commissioned by the Commission on Law Enforcement Officer Standards and Education under Section 1701.160, Occupations Code;

(32) commission investigators commissioned by the Texas Commission on Private Security under Section 1702.061(f), Occupations Code;

(33) the fire marshal[~~,~~] and any officers, inspectors, or investigators commissioned by an emergency services district [~~to assist that fire marshal,~~] under [~~Subchapter F,~~] Chapter 775, Health and Safety Code; and

(34) officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section.

SECTION 4.002. Article 14.03(a), Code of Criminal

Procedure, as amended by Chapters 460, 836, 989, and 1164, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) Any peace officer may arrest, without warrant:

(1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code, breach of the peace, or offense under Section 49.02, Penal Code, or threaten, or are about to commit some offense against the laws;

(2) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person;

(3) persons who the peace officer has probable cause to believe have committed an offense defined by Section 25.07, Penal Code (violation of Protective Order), or by Section 38.112, Penal Code (violation of Protective Order issued on basis of sexual assault), if the offense is not committed in the presence of the peace officer; [~~or~~]

(4) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to a member of the person's family or household; [~~or~~]

(5) persons who the peace officer has probable cause to believe have prevented or interfered with an individual's ability to place a telephone call in an emergency, as defined by Section 42.062(d), Penal Code, if the offense is not committed in the presence of the peace officer; or [~~.~~]

(6) [~~(5)~~] a person who makes a statement to the peace officer that would be admissible against the person under Article 38.21 and establishes probable cause to believe that the person has committed a felony.

SECTION 4.003. Section 3(g), Article 37.07, Code of Criminal Procedure, is amended to correct a reference to read as follows:

(g) On timely request of the defendant, notice of intent to introduce evidence under this article shall be given in the same manner required by Rule 404(b), Texas Rules of [~~Criminal~~] Evidence. If the attorney representing the state intends to introduce an extraneous crime or bad act that has not resulted in a final conviction in a court of record or a probated or suspended sentence, notice of that intent is reasonable only if the notice includes the date on which and the county in which the alleged crime or bad act occurred and the name of the alleged victim of the crime or bad act. The requirement under this subsection that the attorney representing the state give notice applies only if the defendant makes a timely request to the attorney representing the state for the notice.

SECTION 4.004. Sections 2 and 3, Article 38.37, Code of Criminal Procedure, are amended to correct a reference to read as follows:

Sec. 2. Notwithstanding Rules 404 and 405, Texas Rules of [~~Criminal~~] Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense shall be admitted for its bearing on relevant

matters, including:

(1) the state of mind of the defendant and the child; and

(2) the previous and subsequent relationship between the defendant and the child.

Sec. 3. On timely request by the defendant, the state shall give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 2 in the same manner as the state is required to give notice under Rule 404(b), Texas Rules of [~~Criminal~~] Evidence.

SECTION 4.005. Section 8(b), Article 42.09, Code of Criminal Procedure, is amended to correct a reference to read as follows:

(b) The Texas Department of Criminal Justice shall not take a defendant into custody under this article until the designated officer receives the documents required by Subsections (a) and (c) of this section. The designated officer shall certify under the seal of the department the documents received under Subsections (a) and (c) of this section. A document certified under this subsection is self-authenticated for the purposes of Rules 901 and 902, Texas Rules of [~~Criminal~~] Evidence.

SECTION 4.006. Section 2(a), Article 55.02, Code of Criminal Procedure, as amended by Chapters 339 and 1236, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(a) A person who is entitled to expunction of records and files under Article 55.01(a) or a person who is eligible for

expunction of records and files under Article 55.01(b) may file an ex parte petition for expunction in a district court for the county in which:

(1) the petitioner was arrested; or

(2) the offense was alleged to have occurred.

SECTION 4.007. Article 56.32(a)(9), Code of Criminal Procedure, as amended by Chapters 1286 and 1303, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(9) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred as a result of personal injury or death for:

(A) medical, hospital, nursing, or psychiatric care or counseling, or physical therapy;

(B) actual loss of past earnings and anticipated loss of future earnings and necessary travel expenses because of:

(i) a disability resulting from the personal injury;

(ii) the receipt of medically indicated services related to the disability resulting from the personal injury; or

(iii) participation in or attendance at investigative, prosecutorial, or judicial processes related to the criminally injurious conduct and participation in or attendance at any postconviction or postadjudication proceeding relating to criminally injurious conduct;

(C) care of a child or dependent;

(D) funeral and burial expenses, including, for an immediate family member or household member of the victim, the necessary expenses of traveling to and attending the funeral;

(E) loss of support to a dependent, consistent with Article 56.41(b)(5);

(F) reasonable and necessary costs of cleaning the crime scene;

(G) reasonable replacement costs for clothing, bedding, or property of the victim seized as evidence or rendered unusable as a result of the criminal investigation;

(H) reasonable and necessary costs, as provided by Article 56.42(d), incurred by a victim of family violence or a victim of sexual assault who is assaulted in the victim's place of residence for relocation and housing rental assistance payments; [~~and~~]

(I) for an immediate family member or household member of a deceased victim, bereavement leave of not more than 10 work days; and[~~.~~]

(J) [~~(I)~~] reasonable and necessary costs of traveling to and from a place of execution for the purpose of witnessing the execution, including one night's lodging near the place at which the execution is conducted.

SECTION 4.008. Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 198, 257, and 649, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(2) "Contraband" means property of any nature,

including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code; or

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance Code; [~~or~~]

(vii) any felony under Chapter 31, 32, or 37, Penal Code, that involves the state Medicaid program, or any felony under Chapter 36, Human Resources Code; <u>or</u>

(viii) [~~(vii)~~] a Class B misdemeanor under Section 35.60 [~~35.58~~], Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) [~~(B)(vii)~~] of this subdivision, or a crime of violence; or

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) [~~(B)(vii)~~] of this subdivision, or a crime of violence.

ARTICLE 5. CHANGES RELATING TO EDUCATION CODE

SECTION 5.001. Section 12.104(b), Education Code, as amended by Chapters 374 and 1212, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) satisfactory performance on assessment instruments and to accelerated instruction under Section 28.0211;

(E) high school graduation under Section 28.025;

(F) special education programs under Subchapter A, Chapter 29;

(G) bilingual education under Subchapter B, Chapter 29;

(H) prekindergarten programs under Subchapter E, Chapter 29;

(I) extracurricular activities under Section 33.081;

(J) discipline management practices or behavior management techniques under Section 37.0021;

(K) health and safety under Chapter 38;

(L) public school accountability under Subchapters B, C, D, and G, Chapter 39; [~~and~~]

(M) the requirement under Section 21.006 to report an educator's misconduct; and

(N) intensive programs of instruction under Section 28.0213.

SECTION 5.002. Section 21.102(a), Education Code, as amended by Chapters 440 and 1232, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(a) Except as provided by Section 21.202(b), a person who is employed as a teacher by a school district for the first time, or who has not been employed by the district for two consecutive school years subsequent to August 28, 1967, shall be employed under a

probationary contract. A person who previously was employed as a teacher by a district and, after at least a two-year lapse in district employment returns to district employment, may be employed under a probationary contract.

SECTION 5.003. Section 21.256(d), Education Code, is amended to correct a reference to read as follows:

(d) The Texas Rules of [~~Civil~~] Evidence apply at the hearing. A certified shorthand reporter shall record the hearing.

SECTION 5.004. Section 37.007(b), Education Code, as amended by Chapters 443 and 1055, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(b) A student may be expelled if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code;

(2) while on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) sells, gives, or delivers to another person or possesses, uses, or is under the influence of any amount of:

(i) marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(ii) a dangerous drug, as defined by Chapter 483, Health and Safety Code; or

(iii) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) engages in conduct that contains the elements of an offense relating to an abusable volatile chemical under Sections 485.031 through 485.034, Health and Safety Code;

(C) engages in conduct that contains the elements of an offense under Section 22.01(a)(1), Penal Code, against a school district employee or a volunteer as defined by Section 22.053; or

(D) engages in conduct that contains the elements of the offense of deadly conduct under Section 22.05, Penal Code; [~~or~~]

(3) subject to Subsection (d), while within 300 feet of school property, as measured from any point on the school's real property boundary line:

(A) engages in conduct specified by Subsection (a); or

(B) possesses a firearm, as defined by 18 U.S.C. Section 921; or

(4) [~~(3)~~] engages in conduct that contains the elements of any offense listed in Subsection (a)(2)(A) or (C) or the offense of aggravated robbery under Section 29.03, Penal Code, against another student, without regard to whether the conduct occurs on or off of school property or while attending a school-sponsored or school-related activity on or off of school property.

SECTION 5.005. Section 51.306(r), Education Code, as

amended by Chapter 71, Acts of the 78th Legislature, Regular Session, 2003, is repealed to conform to the repeal of Section 51.306, Education Code, by Chapter 820, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 5.006. Section 53.02(14), Education Code, as added by Chapters 1266 and 1310, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(14) "Borrower" means any of the following entities that is the recipient of a loan made under Section 53.34:

(A) an institution of higher education;

(B) a nonprofit corporation:

(i) incorporated by and under the exclusive control of an institution of higher education; or

(ii) incorporated and operating for the exclusive benefit of an institution of higher education and authorized by the governing board of the institution to enter into a transaction as a borrower under this chapter;

(C) an accredited primary or secondary school; or

(D) an accredited or authorized charter school.

SECTION 5.007. Section 61.077, Education Code, as amended by Chapters 61, 818, and 820, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

Sec. 61.077. P-16 COUNCIL. (a) The P-16 Council shall advise the Texas Higher Education Coordinating Board and the State Board of Education in coordinating postsecondary career and technology activities, career and technology teacher education programs offered or proposed to be offered in the colleges and

universities of this state, and other relevant matters, including those listed in Section 61.076.

(b) The council is composed of the commissioner of education, the commissioner of higher education, the executive director of the Texas Workforce Commission, and the executive director of the State Board for Educator Certification. Existing members of the council may appoint additional members as the members consider necessary. The position of presiding officer rotates among the members of the council in the order the members are listed in this subsection, with each member serving as the presiding officer for one two-year term.

(c) The council shall meet at least once each calendar quarter and may hold other meetings as necessary at the call of the presiding officer. Each member of the council or the member's designee shall make a report of the council's activities at least twice annually to the governing body of the member's agency or, in the case of the commissioner of education, to the State Board of Education.

(d) The purposes of this council shall include the following:

(1) to advise the two boards on the coordination of postsecondary career and technology education and the articulation between postsecondary career and technology education and secondary career and technology education;

(2) to facilitate the transfer of responsibilities for the administration of postsecondary career and technology education from the State Board of Education to the board in

accordance with Section 111(a)(I) of the Carl D. Perkins Vocational Education Act, Public Law 98-524;

(3) to cooperate with the commissioner of higher education and the State Board of Education, when it acts as the State Board for Career and Technology Education, on the following:

(A) the transfer of federal funds to the board for allotment to eligible public postsecondary institutions of higher education;

(B) the career and technology education funding for projects and institutions as determined by the board when the State Board for Career and Technology Education is required by federal law to endorse such determinations;

(C) the development and updating of the state plan for career and technology education and the evaluation of programs, services, and activities of postsecondary career and technology education and such amendments to the state plan for career and technology education as may relate to postsecondary education;

(D) other matters related to postsecondary career and technology education; and

(E) the coordination of curricula, instructional programs, research, and other functions as appropriate, including areas listed in Section 61.076, school-to-work and school-to-college transition programs, and professional development activities;

(4) to advise the Texas Workforce Investment Council on educational policy issues related to workforce preparation; and

(5) to examine and make recommendations regarding the alignment of secondary and postsecondary education:

(A) curricula; and

(B) testing and assessment.

(e) Subsection (d)(5) does not require the council to establish curriculum or testing or assessment standards.

ARTICLE 5A. CHANGES RELATING TO ELECTION CODE

SECTION 5A.001. Section 84.032(d), Election Code, is amended to correct a reference to read as follows:

(d) An applicant may also submit a request by appearing in person and returning the ballot to be voted by mail or presenting a notice received under Section 86.006(h) [~~86.006(e)~~] to:

(1) the early voting clerk or deputy early voting clerk at any polling place that is open for early voting by personal appearance; or

(2) the presiding election judge on election day at the applicant's precinct polling place.

ARTICLE 6. CHANGES RELATING TO FAMILY CODE

SECTION 6.001. Section 45.102(a), Family Code, as amended by Chapters 1003 and 1300, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(a) A petition to change the name of an adult must be verified and include:

(1) the present name and place of residence of the petitioner;

(2) the full name requested for the petitioner;

(3) the reason the change in name is requested;

(4) whether the petitioner has been the subject of a final felony conviction;

(5) whether the petitioner is subject to the registration requirements of Chapter 62, Code of Criminal Procedure; and

(6) a legible and complete set of the petitioner's fingerprints on a fingerprint card format acceptable to the Department of Public Safety and the Federal Bureau of Investigation.

SECTION 6.002. Section 104.001, Family Code, is amended to correct a reference to read as follows:

Sec. 104.001. RULES OF EVIDENCE. Except as otherwise provided, the Texas Rules of [~~Civil~~] Evidence apply as in other civil cases.

SECTION 6.003. Section 157.167, Family Code, as amended by Chapters 477 and 1262, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

Sec. 157.167. RESPONDENT TO PAY ATTORNEY'S FEES AND COSTS. (a) If the court finds that the respondent has failed to make child support payments, the court shall order the respondent to pay the movant's reasonable attorney's fees and all court costs in addition to the arrearages.

(b) If the court finds that the respondent has failed to comply with the terms of an order providing for the possession of or access to a child, the court shall order the respondent to pay the movant's reasonable attorney's fees and all court costs in addition to any other remedy.

(c) Except as provided by Subsection (d), for good cause shown, the court may waive the requirement that the respondent pay attorney's fees and costs if the court states the reasons supporting that finding.

(d) If the court finds that the respondent is in contempt of court for failure or refusal to pay child support and that the respondent owes $20,000 or more in child support arrearages, the court may not waive the requirement that the respondent pay attorney's fees and costs unless the court also finds that the respondent:

(1) is involuntarily unemployed or is disabled; and

(2) lacks the financial resources to pay the attorney's fees and costs.

(e) Fees and costs ordered under Subsection (a) may be enforced by any means available for the enforcement of child support, including contempt.

ARTICLE 7. CHANGES RELATING TO FINANCE CODE

SECTION 7.001. Sections 156.204(a) and (c), Finance Code, as amended by Chapters 170 and 171, Acts of the 78th Legislature, Regular Session, 2003, are reenacted and amended to read as follows:

(a) To be eligible to be licensed as a mortgage broker a person must:

(1) be an individual who is at least 18 years of age;

(2) be a citizen of the United States or a lawfully admitted alien;

(3) maintain a physical office in this state and

designate that office in the application;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) the person has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university and has 18 months of experience in the mortgage or lending field as evidenced by documentary proof of full-time employment as a mortgage broker or loan officer with a mortgage broker or a person exempt under Section 156.202;

(B) the person is licensed in this state as:

(i) an active real estate broker under Chapter 1101, Occupations Code;

(ii) an active attorney; or

(iii) a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or holds an equivalent license under Chapter 21, Insurance Code; or

(C) the person has three years of experience in the mortgage lending field as evidenced by documentary proof of full-time employment as a loan officer with a mortgage broker or a person exempt under Section 156.202;

(5) provide the commissioner with satisfactory evidence of:

(A) having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of:

(i) the mortgage industry; and

(ii) the role and responsibilities of a mortgage broker; and

(B) compliance with the financial requirements of this chapter; [~~and~~]

(6) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a mortgage broker as provided by Chapter 53, Occupations Code;

(7) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity; and

(8) not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner.

(c) To be eligible to be licensed as a loan officer a person must:

(1) be an individual who is at least 18 years of age;

(2) be a citizen of the United States or a lawfully admitted alien;

(3) designate in the application the name of the mortgage broker sponsoring the loan officer;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) the person meets one of the requirements described by Subsection (a)(4);

(B) the person has successfully completed 15 hours of education courses approved by the commissioner under this

section;

(C) the person has 18 months of experience as a loan officer as evidenced by documentary proof of full-time employment as a loan officer with a mortgage broker or a person exempt under Section 156.202; or

(D) for applications received prior to January 1, 2000, the mortgage broker that will sponsor the applicant provides a certification under oath that the applicant has been provided necessary and appropriate education and training regarding all applicable state and federal law and regulations relating to mortgage loans;

(5) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a loan officer as provided by Chapter 53, Occupations Code;

(6) satisfy the commissioner as to the individual's good moral character, including the individual's honesty, trustworthiness, and integrity; [~~and~~]

(7) [~~(6)~~] provide the commissioner with satisfactory evidence of having passed an examination, offered by a testing service or company approved by the finance commission, that demonstrates knowledge of:

(A) the mortgage industry; and

(B) the role and responsibilities of a loan officer; and[~~.~~]

(8) [~~(7)~~] not be in violation of this chapter, a rule adopted under this chapter, or any order previously issued to the individual by the commissioner.

ARTICLE 8. CHANGES RELATED TO

GOVERNMENT CODE

SECTION 8.001. Section 74.024(c), Government Code, as amended by Chapters 204 and 747, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(c) The supreme court may consider the adoption of rules relating to:

(1) nonbinding time standards for pleading, discovery, motions, and dispositions;

(2) nonbinding dismissal of inactive cases from dockets, if the dismissal is warranted;

(3) attorney's accountability for and incentives to avoid delay and to meet time standards;

(4) penalties for filing frivolous motions;

(5) firm trial dates;

(6) restrictive devices on discovery;

(7) a uniform dockets policy;

(8) formalization of settlement conferences or settlement programs;

(9) standards for selection and management of nonjudicial personnel; [~~and~~]

(10) transfer of related cases for consolidated or coordinated pretrial proceedings; and

(11) [~~(10)~~] the conducting of proceedings under Rule 11, Rules of Judicial Administration, by a district court outside the county in which the case is pending.

SECTION 8.002. Section 411.114(a)(3), Government Code, as

amended by Chapters 144 and 185, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(3) The Department of Protective and Regulatory Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers/Big Sisters of America;

(B) a volunteer or applicant volunteer with the "I Have a Dream/Houston" program;

(C) a volunteer or applicant volunteer with an organization that provides court-appointed special advocates for abused or neglected children;

(D) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(E) a volunteer or applicant volunteer with a Texas chapter of the Make-a-Wish Foundation of America;

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

(G) a child who is related to the caretaker, as determined under Section 42.002, Human Resources Code, and who resides in or is present in a child-care facility, family home, or maternity home, other than a child described by Subdivision (2)(C), or any other person who has unsupervised access to a child in the

1 care of a child-care facility, family home, or maternity home;
2 (H) an applicant for a position with the
3 Department of Protective and Regulatory Services, other than a
4 position described by Subdivision (2)(D), regardless of the duties
5 of the position;
6 (I) a volunteer or applicant volunteer with the
7 Department of Protective and Regulatory Services, other than a
8 registered volunteer, regardless of the duties to be performed;
9 (J) a person providing or applying to provide
10 in-home, adoptive, or foster care for children to the extent
11 necessary to comply with Subchapter B, Chapter 162, Family Code;
12 (K) a Department of Protective and Regulatory
13 Services employee, other than an employee described by Subdivision
14 (2)(H), regardless of the duties of the employee's position;
15 (L) a relative of a child in the care of the
16 Department of Protective and Regulatory Services, to the extent
17 necessary to comply with Section 162.007, Family Code;
18 (M) a person, other than the subject of a report
19 described in Subdivision (2)(I), living in the residence in which
20 the alleged victim of the report resides;
21 (N) a contractor or an employee of a contractor
22 who delivers services to a ward of the Department of Protective and
23 Regulatory Services under a contract with the estate of the ward;
24 (O) a person who seeks unsupervised visits with a
25 ward of the Department of Protective and Regulatory Services,
26 including a relative of the ward; or
27 (P) an employee, volunteer, or applicant

volunteer of a children's advocacy center under Subchapter E, Chapter 264, Family Code, including a member of the governing board of a center.

SECTION 8.003. Section 431.005(a), Government Code, as amended by Chapters 175 and 971, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(a) Except as provided by Subsection (b), a person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state and who is a member of the state military forces or a reserve component of the armed forces is entitled to a paid leave of absence from the person's duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a federal fiscal year. During a leave of absence the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time.

SECTION 8.0035. Section 445.011(h), Government Code, is amended to correct a reference to read as follows:

(h) Notwithstanding other law, for purposes of Subchapter I [~~H~~], Chapter 659[~~, as added by Chapter 76, Acts of the 74th Legislature, Regular Session, 1995~~]:

(1) the museum is considered an eligible charitable organization entitled to participate in a state employee charitable campaign under Subchapter I [~~H~~], Chapter 659; and

(2) a state employee is entitled to authorize a deduction for contributions to the museum, including contributions for museum membership, as a charitable contribution under Section

659.132, and the museum may use the contributions for museum purposes.

SECTION 8.004. Section 469.003, Government Code, as added by Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Subsection (d) to conform to Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(d) If any portion of a building described by Subsection (a)(1) is occupied solely for residential use and the remaining occupied portion of the building is occupied for nonresidential use, the executive director shall consider only the nonresidential portion of the building in determining whether the building complies with the standards and specifications adopted under this chapter.

SECTION 8.005. Subchapter A, Chapter 469, Government Code, as added by Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Section 469.004 to conform to Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 469.004. APPLICABILITY OF OTHER LAW. Section 51.404, Occupations Code, does not apply to this chapter.

SECTION 8.006. Sections 469.053(a), (b), (d), (e), and (f), Government Code, as added by Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, are amended to conform to Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) The presiding officer of the commission, with the

commission's approval, shall appoint an advisory committee for the architectural barriers program. The committee shall consist of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. The committee shall consist of at least eight members. A majority of the members of the committee must be persons with disabilities.

(b) A committee member serves at the will of the presiding officer of the commission.

(d) The presiding officer of the commission, with the commission's approval, [~~committee~~] shall appoint [~~elect~~] a committee member as presiding officer for two years.

(e) The committee shall meet at least twice each calendar year at the call of the presiding officer or the commission [~~commissioner~~].

(f) The committee periodically shall review the rules relating to the architectural barriers program and recommend changes in the rules to the commission [~~and commissioner~~].

SECTION 8.007. Subchapter B, Chapter 469, Government Code, as added by Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Section 469.059 to conform to Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 469.059. COMPLAINTS. (a) The department shall continue to monitor a complaint made under Section 51.252, Occupations Code, that alleges that a building or facility is not in compliance with the standards and specifications adopted by the commission under this chapter until the department determines that:

(1) the building or facility has been brought into compliance; or

(2) the building or facility is not required to be brought into compliance because of a rule or statute, including Section 469.151.

(b) If the building or facility is not required to be brought into compliance, the department shall, on final disposition of the complaint, notify in writing the person filing the complaint that the building or facility is not required to be brought into compliance because of a rule or statute and provide a reference to the rule or statute.

(c) The department, at least quarterly and for as long as the department continues to monitor the complaint under Subsection (a), shall notify the person filing the complaint of the status of the monitoring.

SECTION 8.008. Section 469.203(b), Government Code, as added by Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) To be eligible for a certificate of registration, an applicant must satisfy any requirements adopted by the commission [~~executive director~~] by rule, including education and examination requirements.

SECTION 8.009. Section 469.206, Government Code, as added by Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 469.206. CERTIFICATE TERM. The commission [~~executive director~~] by rule shall specify the term of a certificate of registration.

SECTION 8.010. Section 469.208(a), Government Code, as added by Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) A certificate holder shall perform a review or inspection function of the commission in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the commission [~~executive director~~] under this chapter.

SECTION 8.011. Section 469.204(b), Government Code, as added by Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is repealed to conform to Chapter 816, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 8.012. Section 469.207, Government Code, as added by Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is repealed to conform to Section 3.007(2), Chapter 816, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 8.013. Article 3, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 8.014. Section 552.107, Government Code, is amended to correct a reference to read as follows:

Sec. 552.107. EXCEPTION: CERTAIN LEGAL MATTERS.

Information is excepted from the requirements of Section 552.021 if:

(1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of [~~Civil~~] Evidence[~~, the Texas Rules of Criminal Evidence,~~] or the Texas Disciplinary Rules of Professional Conduct; or

(2) a court by order has prohibited disclosure of the information.

SECTION 8.015. Section 772.0031, Government Code, as amended by Chapter 817, Acts of the 78th Legislature, Regular Session, 2003, is repealed to conform to Section 75(1), Chapter 785, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 8.016. Section 2054.268, Government Code, as added by Chapter 70, Acts of the 78th Legislature, Regular Session, 2003, is repealed as duplicative of Section 2054.270, Government Code.

SECTION 8.017. Section 2054.352(a), Government Code, is reenacted and amended to conform to Chapters 553, 1216, and 1275, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) The following licensing entities shall participate in the system established under Section 2054.353[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~]:

(1) State Board of Barber Examiners;

(2) Texas Board of Chiropractic Examiners;

(3) Texas Cosmetology Commission;

(4) Court Reporters Certification Board;

(5) State Board of Dental Examiners;

(6) Texas Funeral Service Commission;

(7) Texas Board of Professional Land Surveying;

(8) Texas State Board of Medical Examiners;

(9) Board of Nurse Examiners;

(10) Texas Optometry Board;

(11) Texas Structural Pest Control Board;

(12) Texas State Board of Pharmacy;

(13) Executive Council of Physical Therapy and Occupational Therapy Examiners;

(14) Texas State Board of Plumbing Examiners;

(15) Texas State Board of Podiatric Medical Examiners;

(16) Board of Tax Professional Examiners;

(17) Polygraph Examiners Board;

(18) Texas State Board of Examiners of Psychologists;

(19) State Board of Veterinary Medical Examiners;

(20) Texas Real Estate Commission;

(21) Texas Appraiser Licensing and Certification Board;

(22) Texas Department of Licensing and Regulation;

(23) [~~(24)~~] Texas State Board of Public Accountancy;

(24) [~~(25)~~] State Board for Educator Certification;

(25) [~~(26)~~] Texas Board of Professional Engineers;

(26) [~~(27)~~] Texas Department of Health;

(27) [~~(28)~~] Texas Board of Architectural Examiners;

(28) [~~(29)~~] Texas Racing Commission;

(29) [~~(30)~~] Commission on Law Enforcement Officer

Standards and Education; and

(30) [~~(31)~~] Texas Commission on Private Security.

SECTION 8.018. Section 2054.352(c), Government Code, is reenacted and amended to conform to Chapter 1275, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(c) A licensing entity other than an entity listed by Subsection (a) may participate in the system established under Section 2054.353 [~~2054.253, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~], subject to the approval of the authority.

SECTION 8.019. Sections 2054.354(a) and (b), Government Code, are reenacted and amended to conform to Chapter 1275, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) The steering committee for electronic occupational licensing transactions consists of a representative of each of the following, appointed by its governing body:

(1) each licensing entity listed by Section 2054.352(a)[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001~~]; and

(2) the department.

(b) The governing body of a licensing entity described by Section 2054.352(c)[~~, as added by Chapter 353, Acts of the 77th Legislature, Regular Session, 2001,~~] may appoint a representative to the committee.

SECTION 8.0195. Sections 2177.0001 and 2177.001, Government Code, are reenacted as Section 2177.001, Government Code, to read as follows:

Sec. 2177.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Information Resources.

(2) "Electronic procurement system" means the electronic system for procuring goods and services consisting of the electronic procurement marketplace created under Subchapter B and the electronic commerce network created under Subchapter C.

(3) [~~(1)~~] "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(4) [~~(2)~~] "Political subdivision" includes a school district.

(5) [~~(3)~~] "State agency" has the meaning assigned by Section 2054.003, except that the term does not include a university system or institution of higher education or an agency identified in Section 531.001(4).

SECTION 8.020. Section 2252.902(b), Government Code, is amended to correct misspellings to read as follows:

(b) Except as provided [~~proved~~] by Subsection (c), a covenant, promise, or agreement contained in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable to the extent that it indemnifies a person against all or any portion of loss or liability for damage that:

(1) is caused by or results from the sole, joint, or concurrent negligence of the indemnitee, its agent, employee, or another independent contractor directly responsible to the indemnitee; and

(2) arises from:

(A) personal injury or death;

(B) property damage;

(C) a fine, penalty, administrative action, or other action assessed by a governmental entity directly against the indemnitee, its agent or employee, or an independent contractor directly responsible to the indemnitee; or

(D) any other loss, damage, or expense that arises from an occurrence described by Paragraph [~~Paragraphs~~] (A), (B), or (C).

SECTION 8.021. Section 2306.6703, Government Code, as amended by Chapters 330 and 1106, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 2306.6703. INELIGIBILITY FOR CONSIDERATION. (a) An application is ineligible for consideration under the low income housing tax credit program if:

(1) at the time of application or at any time during the two-year period preceding the date the application round begins, the applicant or a related party is or has been:

(A) a member of the board; or

(B) the director, a deputy director, the director of housing programs, the director of compliance, the director of underwriting, or the low income housing tax credit program manager employed by the department;

(2) the applicant proposes to replace in less than 15 years any private activity bond financing of the development described by the application, unless:

(A) the applicant proposes to maintain for a period of 30 years or more 100 percent of the development units supported by housing tax credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the area median income, adjusted for family size; and

(B) at least one-third of all the units in the development are public housing units or Section 8 project-based units; [~~or~~]

(3) the applicant proposes to construct a new development that is located one linear mile or less from a development that:

(A) serves the same type of household as the new development, regardless of whether the developments serve families, elderly individuals, or another type of household;

(B) has received an allocation of housing tax credits for new construction at any time during the three-year period preceding the date the application round begins; and

(C) has not been withdrawn or terminated from the low income housing tax credit program; or

(4) the development is located in a municipality or, if located outside a municipality, a county that has more than twice the state average of units per capita supported by housing tax credits or private activity bonds, unless the applicant:

(A) has obtained prior approval of the development from the governing body of the appropriate municipality or county containing the development; and

(B) has included in the application a written

statement of support from that governing body referencing this section and authorizing an allocation of housing tax credits for the development.

(b) Subsection (a)(3) does not apply to a development:

(1) that is using:

(A) federal HOPE VI funds received through the United States Department of Housing and Urban Development;

(B) locally approved funds received from a public improvement district or a tax increment financing district;

(C) funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.); or

(D) funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.); [~~or~~]

(2) that is located in a county with a population of less than one million;

(3) [~~(2)~~] that is located outside of a metropolitan statistical area; or

(4) [~~(3)~~] that a local government where the project is to be located has by vote specifically allowed the construction of a new development located within one linear mile or less from a development under Subsection (a).

SECTION 8.022. Section 9, Chapter 685, Acts of the 69th Legislature, Regular Session, 1985 (Article 1811f, Vernon's Texas Civil Statutes), is repealed as executed.

SECTION 8.023. The following retirement system laws are

repealed as executed:

(1) Chapter 831, Acts of the 66th Legislature, Regular Session, 1979 (Article 6228a.1, Vernon's Texas Civil Statutes);

(2) Chapter 3, Acts of the 67th Legislature, Regular Session, 1981 (Article 6228a.2, Vernon's Texas Civil Statutes);

(3) Chapter 125, Acts of the 67th Legislature, Regular Session, 1981 (Article 6228b-1, Vernon's Texas Civil Statutes); and

(4) Chapter 192, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-2, Vernon's Texas Civil Statutes).

ARTICLE 9. CHANGES RELATING TO HEALTH AND SAFETY CODE

SECTION 9.001. Section 33.034(c), Health and Safety Code, is amended to correct a misspelling to read as follows:

(c) Chapter 2001, Government Code, <u>does</u> [~~do~~] not apply to the notice and hearing required by this section.

SECTION 9.002. Section 106.026, Health and Safety Code, is repealed to conform to the repeal of Chapter 106, Health and Safety Code, by Chapter 1424, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 9.0025. The heading to Subchapter D, Chapter 241, Health and Safety Code, is repealed to conform to the repeal of that subchapter by Chapter 623, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 9.003. Section 252.207(c), Health and Safety Code, as amended by Chapters 198 and 1251, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(c) If money in the quality assurance fund is used to

increase a reimbursement rate in the Medicaid program, the Health and Human Services Commission shall ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care staffing and direct care wages and benefits.

SECTION 9.0035. (a) Section 382.0215(g), Health and Safety Code, is amended to correct a reference to read as follows:

(g) The commission annually shall assess the information received under this section, including actions taken by the commission in response to the emissions events, and shall include the assessment in the report required by Section 5.126 [~~5.123~~], Water Code[~~, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997~~].

(b) Section 382.05184(a), Health and Safety Code, is amended to correct a reference to read as follows:

(a) Facilities affected by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 5.135, Water Code [~~382.0365(h)~~], and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2004.

(c) Section 382.05191(b), Health and Safety Code, is amended to correct a reference to read as follows:

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, [~~382.0365(h)~~] to provide notice using an alternative means if the commission finds that the proposed method will result in equal or

better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(d) Section 382.05197(b), Health and Safety Code, is amended to correct a reference to read as follows:

(b) The commission may authorize an applicant for a permit for an existing facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, [~~382.0365(h)(2)~~] to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, the cost, and the consistency with federal requirements.

(e) Section 382.056(a), Health and Safety Code, is amended to correct a reference to read as follows:

(a) Except as provided by Section 382.0518(h), an applicant for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055 shall publish notice of intent to obtain the permit, permit amendment, or permit review not later than the 30th day after the date the commission determines the application to be administratively complete. The commission by rule shall require an applicant for a federal operating permit under Section 382.054 to publish notice of intent to obtain a permit, permit amendment, or permit review consistent with federal requirements and with the requirements of Subsection (b). The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or

federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe the form and content of the notice and when notice must be published. The commission may require publication of additional notice. The commission by rule shall prescribe alternative procedures for publication of the notice in a newspaper if the applicant is a small business stationary source as defined by Section 5.135, Water Code, [~~382.0365~~] and will not have a significant effect on air quality. The alternative procedures must be cost-effective while ensuring adequate notice. Notice required to be published under this section shall only be required to be published in the United States.

SECTION 9.004. Section 481.135(d), Health and Safety Code, is amended to correct a reference to read as follows:

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 481.134; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of [~~Criminal~~] Evidence.

SECTION 9.005. Sections 614.002(a) and (b), Health and Safety Code, as amended by Chapters 856 and 1170, Acts of the 78th Legislature, Regular Session, 2003, are reenacted to read as follows:

(a) The Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments is composed of 31 members.

(b) The governor shall appoint, with the advice and consent of the senate:

(1) four at-large members who have expertise in mental health, mental retardation, or developmental disabilities, three of whom must be forensic psychiatrists or forensic psychologists;

(2) one at-large member who is the judge of a district court with criminal jurisdiction;

(3) one at-large member who is a prosecuting attorney;

(4) one at-large member who is a criminal defense attorney;

(5) two at-large members who have expertise in the juvenile justice or criminal justice system; and

(6) one at-large member whose expertise can further the mission of the committee.

SECTION 9.006. Section 776.052(c), Health and Safety Code, as amended by Chapters 235, 907, and 930, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(c) If a municipality that is not in the district completes all other procedures necessary to annex territory that is included in a district and if the municipality intends to provide emergency services to the territory by the use of municipal personnel or by some method other than by use of the district, the governing body of the municipality shall send written notice of that fact to the board. The municipality must send the notice to the secretary of the board by certified mail, return receipt requested. The territory remains part of the district and does not become part of the municipality until the secretary of the board receives the notice. On receipt of the notice, the board shall immediately change its records to show that the territory has been removed from the district and shall cease to provide further services to the residents of that territory.

ARTICLE 10. CHANGES RELATING TO

HUMAN RESOURCES CODE

SECTION 10.001. Section 32.060, Human Resources Code, as added by Chapter 257, Acts of the 78th Legislature, Regular Session, 2003, is repealed as duplicative of Section 32.063, Human Resources Code.

ARTICLE 11. CHANGES RELATING TO

INSURANCE CODE

PART 1. INSURANCE CODE UPDATE

SECTION 11.001. (a) Section 221.006(a), Insurance Code, is amended to conform to Section 4, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) An [~~Except as provided by Section 803.007, an~~] insurer

is entitled to a credit on the amount of tax due under this chapter for all examination and evaluation fees paid to [~~or for the use of~~] this state during the calendar year for which the tax is due. The limitations provided by Sections 803.007(1) and (2)(B) for a domestic insurance company apply to a foreign insurance company.

(b) Section 4, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.002. (a) Section 222.001, Insurance Code, is amended to conform to Section 2.119(a), Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) This chapter applies to any[~~:~~

[~~(1) an~~] insurer, including a group hospital service corporation, any health maintenance organization, and any managed care organization that receives gross premiums or revenues subject to taxation under Section 222.002, including companies [~~:~~

[~~(A) a life, health, or accident insurance company~~] operating under Chapter 841, [~~or 982;~~

[~~(B) a group hospital service corporation operating under Chapter~~] 842, 843, [~~;~~

[~~(C) a general casualty company operating under Chapter~~] 861, [~~;~~

[~~(D) a statewide mutual assessment company operating under Chapter~~] 881, [~~;~~

[~~(E) a mutual life insurance company operating under Chapter~~] 882, [~~;~~

[~~(F) a mutual insurance company operating under~~

~~Chapter~~] 883, [~~;~~

[~~(G) a stipulated premium company operating under Chapter~~] 884, [~~;~~

[~~(H) a Lloyd's plan operating under Chapter~~] 941, [~~;~~

[~~(I) a reciprocal or interinsurance exchange operating under Chapter~~] 942, 982, or [~~; and~~

[~~(J) a Mexican casualty insurance company operating under Chapter~~] 984, Insurance Code, Chapter 533, Government Code, or Title XIX of the federal Social Security Act [~~; and~~

[~~(2) a health maintenance organization operating under Chapter 843 that receives gross revenues subject to taxation under Section 222.002~~].

(c) For purposes of computing the tax imposed by this chapter, a managed care organization is treated in the same manner as a health maintenance organization.

(b) Section 222.002(c), Insurance Code, is amended to conform to Section 2.119(a), Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(c) The following are not included in determining an insurer's taxable gross premiums or a health maintenance organization's taxable gross revenues:

(1) returned premiums or revenues;

(2) dividends applied to purchase paid-up additions to insurance or to shorten the endowment or premium payment period;

(3) premiums received from an insurer for reinsurance;

(4) premiums or revenues received from the treasury of [~~this state or~~] the United States for insurance or benefits contracted for by [~~this state or~~] the federal government[~~:~~

[~~(A)~~] in accordance with or in furtherance of Title XVIII of [~~2, Human Resources Code, or~~] the Social Security Act (42 U.S.C. Section 1395c [~~301~~] et seq.) and its subsequent amendments[~~, or~~

[~~(B) to provide welfare benefits to designated welfare recipients~~];

(5) premiums or revenues paid on group health, accident, and life policies or contracts in which the group covered by the policy or contract consists of a single nonprofit trust established to provide coverage primarily for employees of:

(A) a municipality, county, or hospital district in this state; or

(B) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality; or

(6) premiums or revenues excluded by another law of this state.

(c) Section 2.119(a), Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.003. (a) Section 222.007(a), Insurance Code, is amended to conform to Section 5, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) An [~~Except as provided by Section 803.007, an~~] insurer

or health maintenance organization is entitled to a credit on the amount of tax due under this chapter for all examination and evaluation [~~valuation~~] fees paid to [~~or for the use of~~] this state during the calendar year for which the tax is due. The limitations provided by Sections 803.007(1) and (2)(B) for a domestic insurance company apply to a foreign insurance company.

(b) Section 5, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.004. (a) Section 223.009(a), Insurance Code, is amended to conform to Section 7, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) A [~~Except as provided by Section 803.007, a~~] title insurance company is entitled to a credit on the amount of tax due under this chapter for all examination and evaluation fees paid to [~~or for the use of~~] the state during the calendar year for which the tax is due. The limitations provided by Sections 803.007(1) and (2)(B) for a domestic insurance company apply to a foreign insurance company.

(b) Section 7, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.005. (a) Section 226.001, Insurance Code, is amended to conform to Section 76, Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 226.001. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

(1) "Insurer" has the meaning assigned by Section 101.002 and includes:

(A) an insurer that does not hold a certificate of authority in this state;

(B) an eligible surplus lines insurer; and

(C) an insurer that holds a certificate of authority in this state.

(2) "Premium"[~~, "premium"~~] includes any consideration for insurance, including:

(A) [~~(1)~~] a premium;

(B) [~~(2)~~] a membership fee;

(C) [~~(3)~~] an assessment; or

(D) [~~(4)~~] dues.

(b) Section 226.002, Insurance Code, is amended to conform to Section 76, Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 226.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an [~~unauthorized~~] insurer who charges gross premiums for insurance on a subject resident, located, or to be performed in this state.

(c) Sections 226.003(a), (b), and (g), Insurance Code, are amended to conform to Section 76, Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) A tax is imposed on each [~~unauthorized~~] insurer that charges gross premiums subject to taxation under this section. The rate of the tax is 4.85 percent of the gross premiums charged by the [~~unauthorized~~] insurer.

(b) Except as otherwise provided by this section, in determining an [~~unauthorized~~] insurer's taxable gross premiums,

the insurer shall include any premium for insurance on a subject resident, located, or to be performed in this state.

(g) The following premiums are not subject to the tax imposed by this subchapter:

(1) premiums on insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined by Chapter 981 on which premium tax is paid in accordance with Chapter 225; [~~and~~]

(2) premiums on an independently procured contract of insurance on which premium tax is paid in accordance with Subchapter B; and

(3) premiums on a contract of insurance written by an insurer that holds a certificate of authority in this state and that is authorized to write the contract.

(d) Sections 226.005(b) and (c), Insurance Code, are amended to conform to Section 76, Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) An [~~unauthorized~~] insurer shall pay the tax imposed by this subchapter using a form prescribed by the comptroller.

(c) The [~~If an unauthorized insurer defaults in payment of the~~] tax imposed by this subchapter, if not paid when due, is a liability of the insurer, the insurer agent, and the insured [~~is responsible for paying the tax~~].

(e) Section 76, Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.006. (a) Section 257.003(b), Insurance Code, is amended to conform to Section 6, Chapter 209, Acts of the 78th

Legislature, Regular Session, 2003, and Section 2.120, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) The gross premiums on which an assessment is based under this chapter may not include:

(1) premiums received from [~~this state or~~] the United States for insurance contracted for by [~~this state or~~] the United States[~~:~~

[~~(1)~~] in accordance with or in furtherance of Title XVIII of [~~2, Human Resources Code, or~~] the Social Security Act (42 U.S.C. Section 1395c [~~301~~] et seq.) and its subsequent amendments; or

(2) premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of:

(A) a municipality, county, or hospital district in this state; or

(B) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality [~~to provide welfare benefits to designated welfare recipients~~].

(b) Section 6, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, and Section 2.120, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.007. (a) Section 258.004(b), Insurance Code,

is amended to conform to Section 8, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, and Section 2.121, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) The amount of maintenance tax assessed may not be computed based on:

(1) enrollees who as individual certificate holders or their dependents are covered by a master group policy paid for by revenues received from [~~this state or~~] the United States for insurance contracted for by [~~this state or~~] the United States[~~:~~

[~~(1)~~] in accordance with or in furtherance of Title XVIII of [~~2, Human Resources Code, or~~] the Social Security Act (42 U.S.C. Section 1395c [~~301~~] et seq.) and its subsequent amendments; or

(2) revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of:

(A) a municipality, county, or hospital district in this state; or

(B) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality [~~to provide welfare benefits to designated welfare recipients~~].

(b) Section 8, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, and Section 2.121, Chapter 198, Acts of the

78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.008. (a) Section 501.003, Insurance Code, is amended to conform to Section 2.03, Chapter 1112, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 501.003. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2007 [~~2005~~].

(b) Section 2.03, Chapter 1112, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.009. (a) Section 542.053(a), Insurance Code, is amended to conform to Section 21.35, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) This subchapter does not apply to:

(1) workers' compensation insurance;

(2) mortgage guaranty insurance;

(3) title insurance;

(4) fidelity, surety, or guaranty bonds;

(5) marine insurance as defined [~~other than inland marine insurance governed~~] by Article 5.53; or

(6) a guaranty association created and operating under Chapter 2602.

(b) Section 21.35, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.010. (a) Section 542.152, Insurance Code, is amended to conform to Section 21.36, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 542.152. EXCEPTION. This subchapter does not apply to:

(1) a casualty insurance policy that requires the insured's consent to settle a claim against the insured;

(2) fidelity, surety, or guaranty bonds; or

(3) marine insurance as defined [~~other than inland marine insurance governed~~] by Article 5.53.

(b) Section 21.36, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.011. (a) Chapter 542, Insurance Code, is amended to conform to the enactment of Article 21.55A, Insurance Code, by Section 2.01, Chapter 207, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter F to read as follows:

SUBCHAPTER F. WATER DAMAGE CLAIMS

Sec. 542.251. PURPOSES. The purposes of this subchapter are to:

(1) provide for the prompt, efficient, and effective handling and processing of water damage claims filed under residential property insurance policies, including claims involving losses due to mold;

(2) reduce the confusion and inconvenience policyholders experience in filing and resolving water damage claims filed under residential property insurance policies, including claims involving losses due to mold; and

(3) reduce claim costs and premiums for residential property insurance issued in this state.

Sec. 542.252. APPLICABILITY OF SUBCHAPTER. This subchapter

applies to any insurer that handles or processes water damage claims filed under residential property insurance policies.

Sec. 542.253. RULES. (a) The commissioner may adopt rules that identify the types of water damage claims that require more prompt, efficient, and effective processing and handling than the processing and handling required under Subchapter B.

(b) The commissioner by rule may regulate the following aspects of water damage claims:

(1) required notice;

(2) acceptance and rejection of a claim;

(3) claim handling and processing procedures and time frames;

(4) claim investigation requirements, procedures, and time frames;

(5) settlement of claims; and

(6) any other area of claim processing, handling, and response determined to be relevant and necessary by the commissioner.

(c) A rule adopted under this section supersedes the minimum standards described by Subchapter B.

(b) Article 21.55A, Insurance Code, as added by Section 2.01, Chapter 207, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.012. (a) Section 544.004, Insurance Code, is amended to conform to Section 12.01, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A health maintenance organization or legal entity engaged in the business of insurance [~~or a health maintenance organization,~~] that is found to be in violation of or to have failed to comply with this subchapter[~~,~~] is subject to the sanctions provided by Chapter 82 or[~~, including~~] administrative penalties authorized under Chapter 84.

(c) It is not a defense to an action of the commissioner under this section that the contract giving rise to the alleged violation was entered into before August 28, 1995.

(b) Section 12.01, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.013. (a) Section 544.054(b), Insurance Code, is amended to conform to Section 12.03, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) An action under this section must be commenced on or before the second [~~first~~] anniversary of:

(1) the date on which the plaintiff was denied insurance or the unfair act occurred; or

(2) the date the plaintiff, in the exercise of reasonable diligence, should have discovered the occurrence of the unfair act.

(b) Section 12.03, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.014. (a) Chapter 544, Insurance Code, is amended to conform to the enactment of Article 21.21-11, Insurance Code, by Section 2, Chapter 205, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter G to read as follows:

SUBCHAPTER G. MOLD CLAIM OR DAMAGE

Sec. 544.301. DEFINITIONS. In this subchapter:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, farm mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by Section 823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include:

(A) an eligible surplus lines insurer regulated under Chapter 981;

(B) the Texas Windstorm Insurance Association under Article 21.49; or

(C) the FAIR Plan Association under Article 21.49A.

(2) "Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(3) "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location.

(4) "Residential property insurance" means insurance against damage to or loss of real or tangible personal property at a fixed location provided in a homeowners insurance policy or residential fire and allied lines insurance policy.

Sec. 544.302. APPLICABILITY OF SUBCHAPTER. This subchapter

applies to each insurer that writes residential property insurance in this state.

Sec. 544.303. PROHIBITION OF CERTAIN UNDERWRITING DECISIONS BASED ON PREVIOUS MOLD CLAIM OR DAMAGE. An insurer may not make an underwriting decision regarding a residential property insurance policy based on previous mold damage or a claim for mold damage if:

(1) the applicant for insurance coverage has property eligible for coverage under a residential property policy;

(2) the property has had mold damage;

(3) mold remediation has been performed on the property; and

(4) the property was:

(A) remediated, as evidenced by a certificate of mold remediation issued to the property owner under Section 1958.154, Occupations Code, that establishes that the underlying cause of the mold at the property has been remediated; or

(B) inspected by an independent assessor or adjustor who determined, based on the inspection, that the property does not contain evidence of mold damage.

Sec. 544.304. RULES. The commissioner shall adopt rules as necessary to implement this subchapter.

Sec. 544.305. PENALTY. An insurer that violates this subchapter is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82, 83, and 84.

(b) Article 21.21-11, Insurance Code, as added by Section 2, Chapter 205, Acts of the 78th Legislature, Regular Session, 2003,

is repealed.

SECTION 11.015. (a) Chapter 544, Insurance Code, is amended to conform to the enactment of Article 5.35-4, Insurance Code, by Section 1.01, Chapter 207, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter H to read as follows:

SUBCHAPTER H. WATER DAMAGE CLAIMS

Sec. 544.351. PURPOSE. The purpose of this subchapter is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance by the filing of a water damage claim or claims under a residential property insurance policy.

Sec. 544.352. DEFINITIONS. In this subchapter:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan, or other entity writing residential property insurance in this state. The term includes an affiliate, as described by Section 823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include:

(A) the Texas Windstorm Insurance Association created and operated under Article 21.49; or

(B) the FAIR Plan created and operated under Article 21.49A.

(2) "Residential property insurance" means insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, which

includes a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(3) "Underwriting guideline" means a rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or an agent of an insurer to:

(A) decide whether to accept or reject an application for a residential property insurance policy; or

(B) determine how to classify the risks that are accepted for the purpose of determining a rate.

Sec. 544.353. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER DAMAGE. (a) Underwriting guidelines relating to a water damage claim or claims used by an insurer shall be governed by rules adopted by the commissioner in accordance with the purpose of this subchapter. An insurer may not use an underwriting guideline relating to a water damage claim or claims that is not in accordance with the rules adopted by the commissioner under this subchapter.

(b) An insurer shall file with the department its underwriting guidelines relating to a water damage claim or claims in accordance with the rules adopted by the commissioner.

(c) Except as provided by Subsection (e), an insurer may not use a prior appliance-related claim filed by a person as a basis for determining the rate to be paid by the person for insurance coverage or for determining whether to issue, renew, or cancel an insurance policy to or for the person if the person:

(1) properly remediated the prior appliance-related claim; and

(2) had the remediation inspected and certified by a

person or entity knowledgeable and experienced in the remediation of water damage.

(d) Except as provided by Subsection (e), an insurer may not use a prior appliance-related claim filed regarding specific property as a basis for determining the rate to be paid by a person for insurance coverage for that property or for determining whether to issue, renew, or cancel an insurance policy to or for a person seeking insurance coverage for that property if the prior appliance-related claim was properly remediated and was inspected and certified by a person knowledgeable and experienced in remediation of water damage.

(e) Subsections (c) and (d) do not apply to:

(1) a person who has made and has received payment for three or more appliance-related claims within a three-year period; or

(2) specific property that has been the subject of three or more appliance-related claims within a three-year period.

Sec. 544.354. RULES. The commissioner shall adopt rules to accomplish the purposes of this subchapter, including rules with regard to the definition of a water damage claim.

(b) Article 5.35-4, Insurance Code, as added by Section 1.01, Chapter 207, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.016. (a) Chapter 544, Insurance Code, is amended to conform to the enactment of Article 21.21-6A, Insurance Code, by Section 12.02, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter I to read as follows:

SUBCHAPTER I. CRIMINAL OFFENSES

Sec. 544.401. OFFENSE: CERTAIN DISCRIMINATION. (a) In this section, "person" means a legal entity listed below and engaged in the business of life insurance or an officer or director of one of those entities:

(1) a capital stock insurance company;

(2) a mutual insurance company;

(3) a local mutual aid association;

(4) a statewide mutual assessment company; or

(5) a stipulated premium company.

(b) A person commits an offense if the person recklessly:

(1) offers insurance coverage at a premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin; or

(2) collects an insurance premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin.

(c) An offense under this section is a state jail felony.

(b) Article 21.21-6A, Insurance Code, as added by Section 12.02, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.017. (a) Subchapter B, Chapter 549, Insurance Code, is amended to conform to Section 1, Chapter 538, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 549.0551 to read as follows:

Sec. 549.0551. REQUIRING CERTAIN AMOUNTS OF COVERAGE. (a) A lender may not require as a condition of financing a residential mortgage or providing other financing arrangements for residential property, including a mobile or manufactured home, that a borrower purchase homeowners insurance coverage, mobile or manufactured home insurance coverage, or other residential property insurance coverage in an amount that exceeds the replacement value of the dwelling and its contents, regardless of the amount of the mortgage or other financing arrangement entered into by the borrower.

(b) For purposes of this section, a lender may not include the fair market value of the land on which a dwelling is located in the replacement value of the dwelling and its contents.

(b) Section 1, Chapter 538, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.018. (a) The heading to Chapter 551, Insurance Code, is amended to conform to the enactment of Article 21.49-2V, Insurance Code, by Section 8.02, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

CHAPTER 551. [~~PROHIBITED~~] PRACTICES RELATING TO DECLINATION, CANCELLATION, AND NONRENEWAL OF INSURANCE POLICIES

(b) The heading to Subchapter A, Chapter 551, Insurance Code, is amended to conform to the enactment of Article 21.49-2V, Insurance Code, by Section 8.02, Chapter 206, Acts of the 78th

Legislature, Regular Session, 2003, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS [~~REQUIREMENTS~~]

(c) Subchapter A, Chapter 551, Insurance Code, is amended to conform to the enactment of Article 21.49-2V, Insurance Code, by Section 8.02, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 551.004 to read as follows:

Sec. 551.004. MEMBERSHIP DUES. (a) In this section, "insurer" includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(b) Except as otherwise provided by law, an insurer may require that membership dues in its sponsoring organization be paid as a condition for issuance or renewal of a policy.

(d) Article 21.49-2V, Insurance Code, as added by Section 8.02, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.019. (a) Section 551.104, Insurance Code, is amended to conform to Section 16.01, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, by amending Subsection (g) and adding Subsection (h) to read as follows:

(g) An insurer may cancel any insurance policy other than a personal automobile or homeowners insurance policy if the policy has been in effect less than 90 days. An insurer may cancel a personal automobile insurance policy if the policy has been in effect less than 60 days. An insurer may cancel a homeowners [~~any other~~] insurance policy if the policy has been in effect less than 60 [~~90~~] days and:

(1) the insurer identifies a condition that:

(A) creates an increased risk of hazard;

(B) was not disclosed in the application for insurance coverage; and

(C) is not the subject of a prior claim; or

(2) before the effective date of the policy, the insurer does not accept a copy of a required inspection report that:

(A) was completed by an inspector who is licensed by the Texas Real Estate Commission or who is otherwise authorized to perform inspections; and

(B) is dated not earlier than the 90th day before the effective date of the policy.

(h) For purposes of Subsection (g), an inspection report is considered accepted if an insurer does not reject the inspection report given to the insurer under Subsection (g)(2) before the 11th day after the date the inspection report is received by the insurer.

(b) Section 16.01, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.020. (a) Subtitle C, Title 5, Insurance Code, is amended to conform to the enactment of Article 21.49-2U, Insurance Code, by Section 3.01, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, by adding Chapter 559 to read as follows:

CHAPTER 559. CREDIT SCORING AND CREDIT INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 559.001. DEFINITIONS. In this chapter:

(1) "Adverse effect" means an action taken by an insurer in connection with the underwriting of insurance for a consumer that results in the denial of coverage, the cancellation

or nonrenewal of coverage, or the offer to and acceptance by a consumer of a policy form, premium rate, or deductible other than the policy form, premium rate, or deductible for which the consumer specifically applied.

(2) "Agent" means a person licensed or required to be licensed as a general property and casualty insurance agent under Chapter 4051.

(3) "Applicant for insurance coverage" means an individual who has applied to an insurer for coverage under a personal insurance policy.

(4) "Consumer" means an individual whose credit information is used or whose credit score is computed in the underwriting or rating of a personal insurance policy. The term includes an applicant for insurance coverage.

(5) "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(6) "Credit information" means any credit-related information derived from a credit report, found in a credit report itself, or provided in an application for personal insurance. The term does not include information that is not credit-related, regardless of whether that information is contained in a credit report or in an application for insurance coverage or is used to compute a credit score.

(7) "Credit report" means any written, oral, or other

communication of information by a consumer reporting agency that:

(A) bears on a consumer's creditworthiness, credit standing, or credit capacity; and

(B) is used or expected to be used or collected in whole or in part to serve as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) "Credit score" or "insurance score" means a number or rating derived from an algorithm, computer application, model, or other process that is:

(A) based on credit information; and

(B) used to predict the future insurance loss exposure of a consumer.

(9) "Insured" means a consumer who has purchased an insurance policy from an insurer.

(10) "Insurer" means an insurer authorized to write property and casualty insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, association, Lloyd's plan, or other entity writing personal insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write personal insurance in this state. The term does not include a farm mutual insurance company or an eligible surplus lines insurer under this code.

(11) "Personal insurance" means:

(A) a personal automobile insurance policy;

(B) a residential property insurance policy;

(C) a residential fire and allied lines insurance policy; or

(D) a noncommercial insurance policy covering a boat, personal watercraft, snowmobile, or recreational vehicle.

Sec. 559.002. APPLICABILITY OF CHAPTER. This chapter applies to an insurer that writes personal insurance coverage and uses credit information or credit reports for the underwriting or rating of that coverage.

Sec. 559.003. INFORMATION PROVIDED TO PUBLIC. The department shall:

(1) update insurer profiles maintained on the department's Internet website to provide information to consumers stating whether or not an insurer uses credit scoring; and

(2) post the report required under former Section 15, Article 21.49-2U, on the department's Internet website.

Sec. 559.004. RULES. (a) The commissioner may adopt rules necessary to implement this chapter.

(b) The commissioner shall adopt rules that prescribe the allowable differences in rates charged by insurers due solely to the difference in credit scores.

[Sections 559.005-559.050 reserved for expansion]

SUBCHAPTER B. USE OF CREDIT SCORING AND CREDIT INFORMATION

Sec. 559.051. PERMISSIBLE USE OF CREDIT SCORING. An insurer may use credit scoring, except for factors that constitute unfair discrimination, to develop rates, rating classifications, or underwriting criteria regarding lines of insurance subject to this chapter.

Sec. 559.052. PROHIBITED USE OF CREDIT INFORMATION. (a) An insurer may not:

(1) use a credit score that is computed using factors that constitute unfair discrimination;

(2) deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information without considering any other applicable underwriting factor independent of credit information; or

(3) take an action that results in an adverse effect against a consumer because the consumer does not have a credit card account without considering any other applicable factor independent of credit information.

(b) An insurer may not consider an absence of credit information or an inability to determine credit information for an applicant for insurance coverage or for an insured as a factor in underwriting or rating an insurance policy unless the insurer:

(1) has statistical, actuarial, or reasonable underwriting information that:

(A) is reasonably related to actual or anticipated loss experience; and

(B) shows that the absence of credit information could result in actual or anticipated loss differences;

(2) treats the consumer as if the applicant for insurance coverage or insured had neutral credit information, as defined by the insurer; or

(3) excludes the use of credit information as a factor in underwriting and uses only other underwriting criteria.

Sec. 559.053. DISCLOSURE TO CONSUMER REGARDING USE OF CREDIT SCORING. (a) An insurer that uses credit scoring in the underwriting or rating of insurance subject to this chapter shall disclose to each applicant for insurance coverage that the applicant's credit report may be used in the underwriting or rating of the applicant's policy. The disclosure must be provided at the time of application by the insurer or agent and may be given orally, in writing, or electronically.

(b) If a policy is issued to the applicant for insurance coverage, an insurer or agent is not required to make the disclosure required under Subsection (a) on any subsequent renewal of the coverage.

(c) An insurer or its agent shall disclose to its customers, on a form adopted by the commissioner, whether credit information will be obtained on an applicant for insurance coverage or insured or on any other member or members of the applicant's or insured's household and used as part of the insurance credit scoring process.

(d) If credit information is obtained or used on an applicant for insurance coverage or insured, or on any member of the applicant's or insured's household, the insurer shall disclose to the applicant or insured the name of each person on whom credit information was obtained or used and how each person's credit information was used to underwrite or rate the policy.

Sec. 559.054. NOTICE OF ACTION RESULTING IN ADVERSE EFFECT. (a) If, based in whole or in part on information contained in a credit report, an insurer takes an action resulting in an adverse effect with respect to an applicant for insurance coverage or

insured, the insurer shall provide to the applicant or insured within 30 days:

(1) written or electronic notice of the action resulting in an adverse effect and the reasons for that action;

(2) the name, address, and telephone number of the consumer reporting agency, including a toll-free number established by the agency and the agency's Internet website, if applicable;

(3) written or electronic notice that the consumer reporting agency did not make the decision to take the action resulting in an adverse effect and will be unable to provide the applicant or insured the specific reasons why the action was taken; and

(4) written or electronic notice of the applicant's or insured's right to:

(A) obtain a free copy of the consumer's credit report from the consumer reporting agency during the 60-day period after the date of the notice; and

(B) dispute with the consumer reporting agency the accuracy or completeness of any information in the consumer's credit report furnished by the agency.

(b) In the notice described by Subsection (a)(1), an insurer shall include a description of not more than four factors that were the primary influences of the action resulting in the adverse effect.

(c) The use by an insurer of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does

not constitute sufficient notice under this section of the action resulting in the adverse effect.

(d) Standardized credit explanations provided by a consumer reporting agency or other third-party vendor are also sufficient to comply with this section.

Sec. 559.055. DISPUTE RESOLUTION; ERROR CORRECTION. (a) If it is determined through the dispute resolution process established under Section 611(a)(5), Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended, that the credit information of a current insured was inaccurate or incomplete or could not be verified and the insurer receives notice of that determination from the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the insured not later than the 30th day after the date the insurer receives the notice.

(b) After re-underwriting or re-rating an insured under Subsection (a), an insurer shall make any adjustments necessary within 30 days, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall credit the insured the amount of overpayment. The insurer shall compute the overpayment back to the shorter of:

(1) the last 12 months of coverage; or

(2) the actual policy period.

Sec. 559.056. INDEMNIFICATION OF AGENT. (a) An insurer shall indemnify, defend, and hold its agent harmless from and against all liability, fees, and costs that arise out of or relate to the actions, errors, or omissions of an agent who obtains or uses

credit information or credit scores for the insurer if the agent:

(1) follows the instructions of or procedures established by the insurer; and

(2) complies with any applicable law or rule.

(b) This section may not be construed to establish a cause of action that does not exist in the absence of this section.

Sec. 559.057. SALE OF POLICY TERM INFORMATION BY CONSUMER REPORTING AGENCY PROHIBITED. (a) A consumer reporting agency may not provide or sell data or lists that include any information that, in whole or in part, was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or credit score, including:

(1) the expiration dates of an insurance policy or any other information that may identify periods during which a consumer's insurance may expire; and

(2) the terms and conditions of the consumer's insurance coverage.

(b) The restriction under Subsection (a) does not apply to data or lists that the consumer reporting agency provides to:

(1) the agent from whom information was received;

(2) the insurer on whose behalf the agent acted; or

(3) that insurer's affiliates.

(c) This section may not be construed to restrict the ability of an insurer to obtain a claims history report or a report regarding a motor vehicle.

[Sections 559.058-559.100 reserved for expansion]

SUBCHAPTER C. COMPUTING CREDIT SCORE; EVALUATING CREDIT INFORMATION

Sec. 559.101. NEGATIVE FACTORS. An insurer may not use any of the following as a negative factor in any credit scoring methodology or in reviewing credit information to underwrite or rate a policy of personal insurance:

(1) a credit inquiry that is not initiated by the consumer;

(2) an inquiry relating to insurance coverage, if so identified on a consumer's credit report; or

(3) a collection account with a medical industry code, if so identified on the consumer's credit report.

Sec. 559.102. MULTIPLE LENDER INQUIRIES. (a) An insurer shall consider multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the home mortgage industry, as only one inquiry.

(b) An insurer shall consider multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the motor vehicle lending industry, as only one inquiry.

Sec. 559.103. EXTRAORDINARY EVENTS. (a) Notwithstanding any other law, an insurer shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, or underwriting rules for a consumer whose credit information has been directly influenced by:

(1) a catastrophic illness or injury;

(2) the death of a spouse, child, or parent;

(3) temporary loss of employment;

(4) divorce; or

(5) identity theft.

(b) In a situation described by Subsection (a), an insurer:

(1) may consider only credit information not affected by the event; or

(2) shall assign a neutral credit score.

(c) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the person's credit before granting an exception. An insurer is not required to consider repeated events or events the insurer reconsidered previously as an extraordinary event.

(d) An insurer may also consider granting an exception to an applicant for insurance coverage or an insured for an extraordinary event not listed in Subsection (a).

(e) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this section.

[Sections 559.104-559.150 reserved for expansion]

SUBCHAPTER D. FILING OF CREDIT SCORING MODELS

Sec. 559.151. FILING REQUIRED. (a) An insurer that uses credit scores to underwrite and rate risks shall file the insurer's credit scoring models or other credit scoring processes with the department.

(b) Another entity may file credit scoring models on behalf

of an insurer.

(c) A filing that includes credit scoring may include loss experience justifying the use of credit information.

Sec. 559.152. PUBLIC INFORMATION. A credit scoring model filed to comply with this chapter, as of the date the filing is received by the department:

(1) is public information;

(2) is not subject to any exceptions to disclosure under Chapter 552, Government Code; and

(3) cannot be withheld from disclosure under any other law.

[Sections 559.153-559.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 559.201. VIOLATION. An insurer that violates this chapter or a rule adopted under this chapter commits an unfair practice in violation of Chapter 541 and is subject to sanctions under Chapter 82.

(b) Article 21.49-2U, Insurance Code, as added by Section 3.01, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.021. Section 841.206(a), Insurance Code, is amended to more accurately reflect the law from which it is derived to read as follows:

(a) An [~~A domestic~~] insurance company incorporated or authorized to do the lines of business authorized in this chapter may not have:

(1) the company's required capital impaired;

(2) more than 90 percent of the company's required minimum surplus impaired; or

(3) the surplus required under Section 841.205 impaired.

SECTION 11.022. Sections 841.257, 841.258, and 841.702, Insurance Code, are amended to more accurately reflect the law from which they are derived to read as follows:

Sec. 841.257. KINDS OF BUSINESS LIMITED. An insurance company authorized to engage in the business of insurance under this chapter <u>or in accordance with Section 982.051</u> may not accept a risk or write an insurance policy in this state or any other state or country other than:

(1) a life, accident, or health insurance policy;

(2) reinsurance under Article 5.75-1 by a life insurance company authorized to engage in the business of insurance in this state; or

(3) reinsurance under Article 5.75-3 by a domestic insurance company.

Sec. 841.258. AGENTS FOR COMPANY THAT CEASES WRITING NEW BUSINESS. <u>An</u> [~~A domestic~~] insurance company that ceases to write new business in this state may maintain in this state agents to collect renewal premiums on outstanding policies the company has written under its certificate of authority.

Sec. 841.702. APPEAL OF DETERMINATION TO REVOKE CERTIFICATE. <u>An</u> [~~A domestic~~] insurance company aggrieved by an order of the commissioner to revoke the company's certificate of authority under Section 841.701 may file suit in a court in Travis

County to vacate the order.

SECTION 11.0225. Section 1103.053(a), Insurance Code, is amended to conform more closely to the source law from which the section was derived to read as follows:

(a) Except as provided by Subsection (b), a beneficiary or owner of a life insurance policy who is designated in accordance with this subchapter or an entity to which a life insurance policy or an interest, benefit, right, or title in a life insurance policy is transferred or assigned in accordance with this subchapter has, at all times after the designation, an insurable interest in the life of the individual who is insured under the policy.

SECTION 11.023. (a) Section 1201.065(a), Insurance Code, is amended to conform to Section 1, Chapter 546, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) An individual or group accident and health insurance policy may contain criteria relating to a maximum age or enrollment in school to establish continued eligibility for coverage of a child [~~younger than~~] 25 years of age or older.

(b) Section 1, Chapter 546, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.024. Section 1201.154(a), Insurance Code, is amended to more closely conform to the law from which it was derived to read as follows:

(a) In this section, "creditable coverage" has the meaning assigned by Section 1205.004(a) [~~1205.004~~].

SECTION 11.025. (a) Section 1207.001, Insurance Code, is amended to conform to Section 3A.01, Chapter 817, Acts of the 78th

Legislature, Regular Session, 2003, to read as follows:

Sec. 1207.001. APPLICABILITY OF CHAPTER. This chapter applies only to a group health benefit plan, including a small employer health benefit plan written under Chapter 1501, [~~or~~] a plan provided under Chapter 1551, 1575, or 1601, or a successor to a plan provided under one of those chapters, or a medical savings account plan or other health reimbursement arrangement authorized by law, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including a group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a group evidence of coverage or similar group coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) Section 3A.01, Chapter 817, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.026. (a) Sections 1207.002-1207.004, Insurance Code, are amended to conform to Section 2, Chapter 11, Acts of the 78th Legislature, Regular Session, 2003, and Section 2.122, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1207.002. ENROLLMENT REQUIRED. (a) A group health benefit plan issuer shall permit an individual who is otherwise eligible for enrollment in the plan to enroll in the plan, without regard to any enrollment period restriction, on receipt of written notice from the [~~Texas Department of~~] Health and Human Services Commission or a designee of the commission [~~that department~~] stating that the individual is:

(1) a recipient of medical assistance under the state Medicaid program and is a participant in the health insurance premium payment reimbursement program under Section 32.0422, Human Resources Code; or

(2) a child enrolled in the state child health plan under Chapter 62, Health and Safety Code, and is a participant in the health insurance premium assistance [~~payment reimbursement~~] program under Section 62.059, Health and Safety Code.

(b) A group health benefit plan issuer shall permit an individual who is otherwise eligible for enrollment in the plan to enroll in the plan, without regard to any enrollment period restriction, if the individual:

(1) becomes ineligible for medical assistance under

the state Medicaid program or enrollment in the state child health plan under Chapter 62, Health and Safety Code, after initially establishing eligibility; and

(2) provides a written request for enrollment in the group health benefit plan not later than the 30th day after the date the individual's eligibility for the state Medicaid program or the state child health plan terminated.

(c) If an individual described by Subsection (a)(1) or (2) or Subsection (b) is not eligible to enroll in the group health benefit plan unless a family member of the individual is also enrolled in the plan, the plan issuer, on receipt of written notice under Subsection (a) or a written request under Subsection (b), shall enroll both the individual and the family member in the plan.

Sec. 1207.003. EFFECTIVE DATE OF ENROLLMENT. Unless enrollment occurs during an established enrollment period, enrollment in a group health benefit plan under Section 1207.002 takes effect on the first day of the calendar month that begins at least 30 days after the date written notice or a written request is received by the plan issuer under Section 1207.002(a) or (b), as applicable.

Sec. 1207.004. TERMINATION OF ENROLLMENT. (a) Notwithstanding any other requirement of a group health benefit plan, the plan issuer shall permit an individual who is enrolled in the plan under Section 1207.002(a)(1), and any family member of the individual enrolled under Section 1207.002(c) [~~1207.002(b)~~], to terminate enrollment in the plan not later than the 60th day after the date on which the individual provides satisfactory proof to the

issuer that the individual is no longer:

(1) a recipient of medical assistance under the state Medicaid program; or

(2) a participant in the health insurance premium payment reimbursement program under Section 32.0422, Human Resources Code.

(b) Notwithstanding any other requirement of a group health benefit plan, the plan issuer shall permit an individual who is enrolled in the plan under Section 1207.002(a)(2), and any family member of the individual enrolled under Section 1207.002(c) [~~1207.002(b)~~], to terminate enrollment in the plan not later than the 60th day after the date on which the individual provides satisfactory proof to the issuer that the child is no longer a participant in the health insurance premium assistance [~~payment reimbursement~~] program under Section 62.059, Health and Safety Code.

(b) Section 2, Chapter 11, Acts of the 78th Legislature, Regular Session, 2003, and Section 2.122, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.027. (a) Subtitle A, Title 8, Insurance Code, is amended to conform to the enactment of Article 21.30, Insurance Code, by Section 20, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, by adding Chapter 1211 to read as follows:

CHAPTER 1211. WAIVERS REGARDING CERTAIN FEDERAL HEALTH PLANS

Sec. 1211.001. WAIVER OF CERTAIN PROVISIONS FOR CERTAIN FEDERAL PLANS. If the commissioner of insurance, in consultation with the commissioner of health and human services, determines that

a provision of Section 843.209 or 843.321, Subchapter J, Chapter 843, Chapter 1213, Subchapter C or C-1, Chapter 1301, or Section 1301.008, 1301.069, or 1301.162 will cause a negative fiscal impact on the state with respect to providing benefits or services under Subchapter XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), as amended, or Subchapter XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, the commissioner of insurance by rule shall waive the application of that provision to the providing of those benefits or services.

(b) Article 21.30, Insurance Code, as added by Section 20, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.028. (a) Subtitle A, Title 8, Insurance Code, is amended to conform to the enactment of Article 21.52Y, Insurance Code, by Section 21, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, by adding Chapter 1212 to read as follows:

CHAPTER 1212. TECHNICAL ADVISORY COMMITTEE ON CLAIMS PROCESSING

Sec. 1212.001. APPOINTMENT OF COMMITTEE. The commissioner shall appoint a technical advisory committee on processing by insurers and health maintenance organizations of claims by physicians and other health care providers for medical care and health care services provided to patients.

Sec. 1212.002. COMMITTEE POWERS AND DUTIES. (a) The technical advisory committee shall advise the commissioner on technical aspects of coding of health care services and claims development, submission, processing, adjudication, and payment, as

well as the impact on those processes of contractual requirements and relationships, including relationships among employers, health benefit plans, insurers, health maintenance organizations, preferred provider organizations, electronic clearinghouses, physicians and other health care providers, third-party administrators, independent physician associations, and medical groups. The committee shall also advise the commissioner with respect to the implementation of the standardized coding and bundling edits and logic.

(b) The commissioner shall consult the technical advisory committee before adopting any rule related to the subjects described by Subsection (a).

Sec. 1212.003. COMMITTEE REPORT. On or before September 1 of each even-numbered year, the technical advisory committee shall issue a report to the legislature on the committee's activities.

Sec. 1212.004. COMMITTEE MEMBER COMPENSATION. Members of the technical advisory committee serve without compensation.

Sec. 1212.005. APPLICABILITY OF CERTAIN LAWS. Section 39.003(a) and Chapter 2110, Government Code, do not apply to the technical advisory committee established under this chapter.

(b) Article 21.52Y, Insurance Code, as added by Section 21, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.029. (a) Subtitle A, Title 8, Insurance Code, is amended to conform to the enactment of Article 21.52Z, Insurance Code, by Section 21, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, by adding Chapter 1213 to read as follows:

CHAPTER 1213. ELECTRONIC HEALTH CARE TRANSACTIONS

Sec. 1213.001. DEFINITION OF HEALTH BENEFIT PLAN. (a) In this chapter, "health benefit plan" means a plan that provides benefits for medical, surgical, or other treatment expenses incurred as a result of a health condition, a mental health condition, an accident, sickness, or substance abuse, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium insurance company operating under Chapter 884;

(5) a Lloyd's plan operating under Chapter 941;

(6) an exchange operating under Chapter 942;

(7) a health maintenance organization operating under Chapter 843;

(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) The term includes:

(1) a small employer health benefit plan written under

Chapter 1501; and

(2) a health benefit plan offered under Chapter 1551, 1575, 1579, or 1601.

Sec. 1213.002. ELECTRONIC SUBMISSION OF CLAIMS. (a) The issuer of a health benefit plan by contract may require that a health care professional licensed or registered under the Occupations Code or a health care facility licensed under the Health and Safety Code electronically submit a health care claim or equivalent encounter information, a referral certification, or an authorization or eligibility transaction. The health benefit plan issuer shall comply with the standards for electronic transactions required by this section and established by the commissioner by rule.

(b) The issuer of a health benefit plan by contract shall establish a default method to submit claims in a nonelectronic format if there is a system failure or failures or a catastrophic event substantially interferes with the normal business operations of the physician, provider, or health benefit plan or its agents. The health benefit plan issuer shall comply with the standards for nonelectronic transactions established by the commissioner by rule.

Sec. 1213.003. ELECTRONIC SUBMISSION OF CLAIMS: WAIVER. (a) A contract between the issuer of a health benefit plan and a health care professional or health care facility must provide for a waiver of any requirement for electronic submission established under this chapter.

(b) The commissioner shall establish circumstances under

which a waiver is required, including:

(1) circumstances in which no method is available for the submission of claims in electronic form;

(2) the operation of small physician practices;

(3) the operation of other small health care provider practices;

(4) undue hardship, including fiscal or operational hardship; or

(5) any other special circumstance that would justify a waiver.

(c) Any health care professional or health care facility that is denied a waiver by the issuer of a health benefit plan may appeal the denial to the commissioner. The commissioner shall determine whether a waiver must be granted.

(d) The issuer of a health benefit plan may not refuse to contract or renew a contract with a health care professional or health care facility based in whole or in part on the professional or facility requesting or receiving a waiver or appealing a waiver determination.

Sec. 1213.004. MODE OF TRANSMISSION. The issuer of a health benefit plan may not by contract limit the mode of electronic transmission that a health care professional or health care facility may use to submit information under this chapter.

Sec. 1213.005. CERTAIN CHARGES PROHIBITED. A health benefit plan may not directly or indirectly charge or hold a health care professional, health care facility, or person enrolled in a health benefit plan responsible for a fee for the adjudication of a

claim.

Sec. 1213.006. RULES. The commissioner may adopt rules as necessary to implement this chapter. The commissioner may not require any data element for electronically filed claims that is not required to comply with federal law.

(b) Article 21.52Z, Insurance Code, as added by Section 21, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.030. (a) Section 1251.201, Insurance Code, is amended to conform to Section 1, Chapter 259, Acts of the 78th Legislature, Regular Session, 2003, by adding Subsection (c) to read as follows:

(c) By agreement between the insurer and the policyholder, a certificate may be delivered electronically.

(b) Section 1, Chapter 259, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.031. (a) Section 1254.001, Insurance Code, is amended to conform to Section 1, Chapter 222, Acts of the 78th Legislature, Regular Session, 2003, by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) Not less [~~later~~] than 60 days [~~the 31st day~~] before the date on which a premium rate increase takes effect on a group policy of health insurance, accident and health insurance, or life, health, and accident insurance delivered or issued for delivery in this state by an insurer, the insurer shall give written notice to the policyholder of:

(1) the amount of the increase; and

(2) the date on which the increase is to take effect.

(g) An insurer may not require a policyholder or trustee entitled to notice under this section to respond to the insurer to renew the policy or take other action relating to the renewal or extension of the policy before the 45th day after the date the notice described by Subsection (b) is given.

(b) Section 1, Chapter 222, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.032. (a) Section 1271.002, Insurance Code, is amended to conform to Section 1, Chapter 260, Acts of the 78th Legislature, Regular Session, 2003, and Section 1, Chapter 261, Acts of the 78th Legislature, Regular Session, 2003, by adding Subsection (d) to read as follows:

(d) By agreement between the health maintenance organization, insurer, or group hospital service corporation and the subscriber or person entitled to receive the evidence of coverage, policy, or contract, the evidence of coverage required by this section may be delivered electronically.

(b) Section 1, Chapter 260, Acts of the 78th Legislature, Regular Session, 2003, and Section 1, Chapter 261, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.033. (a) Section 1301.001, Insurance Code, is amended to conform to Section 1, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, by adding Subdivisions (7-a) and (11) to read as follows:

(7-a) "Preauthorization" means a determination by an insurer that medical care or health care services proposed to be

provided to a patient are medically necessary and appropriate.

(11) "Verification" means a reliable representation by an insurer to a physician or health care provider that the insurer will pay the physician or provider for proposed medical care or health care services if the physician or provider renders those services to the patient for whom the services are proposed. The term includes precertification, certification, recertification, and any other term that would be a reliable representation by an insurer to a physician or provider.

(b) Section 1, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.034. (a) Section 1301.051, Insurance Code, is amended to conform to Section 1, Chapter 237, Acts of the 78th Legislature, Regular Session, 2003, by adding Subsection (e) to read as follows:

(e) An insurer may not withhold a designation to a podiatrist described by Section 1301.0521.

(b) Section 1, Chapter 237, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.035. (a) Subchapter B, Chapter 1301, Insurance Code, is amended to conform to Section 2, Chapter 237, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1301.0521 to read as follows:

Sec. 1301.0521. DESIGNATION OF CERTAIN PODIATRISTS AS PREFERRED PROVIDERS. (a) Notwithstanding Section 1301.051, an insurer may not withhold the designation of preferred provider to a podiatrist licensed by the Texas State Board of Podiatric Medical

Examiners who:

(1) joins the professional practice of a contracted preferred provider;

(2) applies to the insurer for designation as a preferred provider; and

(3) complies with the terms and conditions of eligibility to be a preferred provider.

(b) A podiatrist designated as a preferred provider under this section must comply with the terms of the preferred provider contract used by the insurer or the insurer's network provider.

(b) Section 2, Chapter 237, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.036. (a) Subchapter D, Chapter 1301, Insurance Code, is amended to conform to Section 1, Chapter 1177, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1301.1591 to read as follows:

Sec. 1301.1591. PREFERRED PROVIDER INFORMATION ON INTERNET. (a) An insurer subject to this chapter that maintains an Internet site shall list on the Internet site the preferred providers, including, if appropriate, mental health providers and substance abuse treatment providers, that insureds may use in accordance with the terms of the insured's preferred provider benefit plan. The listing must identify those preferred providers who continue to be available to provide services to new patients or clients.

(b) The insurer shall update at least quarterly an Internet site subject to this section.

(c) The commissioner may adopt rules as necessary to implement this section. The rules may govern the form and content of the information required to be provided under Subsection (a).

(d) Notwithstanding any other provision of this chapter, this section applies to an entity subject to Chapter 941 or 942 and to a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846.

(b) Section 1, Chapter 1177, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.037. (a) Subchapter C, Chapter 1301, Insurance Code, is amended to conform to Sections 2 and 3, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

SUBCHAPTER C. PROMPT PAYMENT OF CLAIMS [~~TO PROVIDERS~~]

Sec. 1301.101. DEFINITION. In this subchapter, "clean claim" means a [~~completed~~] claim that complies with Section 1301.131 [~~, as determined under department rules, submitted by a preferred provider for medical care or health care services under a health insurance policy~~].

Sec. 1301.102. SUBMISSION [~~ACKNOWLEDGMENT OF RECEIPT~~] OF CLAIM. (a) A physician or health care [~~preferred~~] provider must submit a claim to an insurer not later than the 95th day after the date the physician or provider provides the medical care or health care services for which the claim is made.

(b) Except as provided by Chapter 1213, a physician or health care provider may, as appropriate:

(1) mail a claim by United States mail, first class, or by overnight delivery service;

(2) submit the claim electronically;

(3) fax the claim; or

(4) hand deliver the claim.

(c) An insurer shall accept as proof of timely filing a claim filed in compliance with Subsection (b) or information from another insurer or health maintenance organization showing that the physician or health care provider submitted the claim to the insurer or health maintenance organization in compliance with Subsection (b).

(d) If a physician or health care provider fails to submit a claim in compliance with this section, the physician or provider forfeits the right to payment unless the failure to submit the claim in compliance with this section is a result of a catastrophic event that substantially interferes with the normal business operations of the physician or provider.

(e) The period for submitting a claim under this section may be extended by contract.

(f) A physician or health care provider may not submit a duplicate claim for payment before the 46th day after the date the original claim was submitted. The commissioner shall adopt rules under which an insurer may determine whether a claim is a duplicate claim [~~may obtain acknowledgment of receipt of a claim for medical care or health care services under a health insurance policy by submitting the claim by United States mail, return receipt requested.~~

[~~(b) An insurer or the contracted clearinghouse of an insurer that receives a claim electronically shall acknowledge~~

~~receipt of the claim by an electronic transmission to the preferred provider and is not required to acknowledge receipt of the claim in writing~~].

Sec. 1301.1021. RECEIPT OF CLAIM. (a) If a claim for medical care or health care services provided to a patient is mailed, the claim is presumed to have been received by the insurer on the fifth day after the date the claim is mailed or, if the claim is mailed using overnight service or return receipt requested, on the date the delivery receipt is signed.

(b) If the claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the insurer or the insurer's clearinghouse. If the insurer or the insurer's clearinghouse does not provide a confirmation within 24 hours of submission by the physician or health care provider, the physician's or provider's clearinghouse shall provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the filing contained the correct payor identification of the entity to receive the filing.

(c) If the claim is faxed, the claim is presumed to have been received on the date of the transmission acknowledgment.

(d) If the claim is hand delivered, the claim is presumed to have been received on the date the delivery receipt is signed.

Sec. 1301.103. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except as provided by Section 1301.1054, not [~~Not~~] later than the 45th day after the date [~~on which~~] an insurer receives a clean claim from a preferred provider in a nonelectronic format or the 30th day after

the date an insurer receives a clean claim from a preferred provider that is electronically submitted, the insurer shall make a determination of whether the claim is payable and:

(1) if the insurer determines the entire claim is payable, pay the total amount of the claim in accordance with the contract between the preferred provider and the insurer;

(2) if the insurer determines a portion of the claim is payable, pay the portion of the claim that is not in dispute and notify the preferred provider in writing why the remaining portion of the claim will not be paid; or

(3) if the insurer determines that the claim is not payable, notify the preferred provider in writing why the claim will not be paid.

Sec. 1301.104. DEADLINE FOR ACTION ON CERTAIN PHARMACY [~~PRESCRIPTION BENEFIT~~] CLAIMS. Not later than the 21st day after the date an insurer affirmatively adjudicates a pharmacy claim that is electronically submitted, the insurer shall pay the total amount of the claim [~~If a preferred provider or its designated agent authorizes treatment, a prescription benefit claim that is electronically adjudicated and electronically paid shall be paid not later than the 21st day after the date on which the treatment is authorized~~].

Sec. 1301.105. AUDITED CLAIMS. (a) Except as provided by Section 1301.1054, an [~~An~~] insurer that [~~acknowledges coverage of an insured under a health insurance policy but~~] intends to audit a claim submitted by a preferred provider shall pay the charges submitted at 100 [~~85~~] percent of the contracted rate on the claim

not later than:

(1) the 30th day after the date the insurer receives the clean claim from the preferred provider if the claim is submitted electronically; or

(2) the 45th day after the date [~~on which~~] the insurer receives the clean claim from the preferred provider if the claim is submitted nonelectronically.

(b) The insurer shall clearly indicate on the explanation of payment statement in the manner prescribed by the commissioner by rule that the clean claim is being paid at 100 percent of the contracted rate, subject to completion of the audit.

(c) If the insurer requests additional information to complete the audit, the request must describe with specificity the clinical information requested and relate only to information the insurer in good faith can demonstrate is specific to the claim or episode of care. The insurer may not request as a part of the audit information that is not contained in, or is not in the process of being incorporated into, the patient's medical or billing record maintained by a preferred provider.

(d) If the preferred provider does not supply information reasonably requested by the insurer in connection with the audit, the insurer may:

(1) notify the provider in writing that the provider must provide the information not later than the 45th day after the date of the notice or forfeit the amount of the claim; and

(2) if the provider does not provide the information required by this section, recover the amount of the claim.

Sec. 1301.1051. COMPLETION OF AUDIT. The insurer must complete an [~~Following completion of the~~] audit under Section 1301.105 on or before the 180th day after the date the clean claim is received by the insurer, and any additional payment due a preferred provider or any refund due the insurer shall be made not later than the 30th day after the completion of the audit.

Sec. 1301.1052. PREFERRED PROVIDER APPEAL AFTER AUDIT. If a preferred provider disagrees with a refund request made by an insurer based on an audit under Section 1301.105, the insurer shall provide the provider with an opportunity to appeal, and the insurer may not attempt to recover the payment until all appeal rights are exhausted [~~later of the date that:~~

[~~(1) the preferred provider receives notice of the audit results; or~~

[~~(2) any appeal rights of the insured are exhausted~~].

Sec. 1301.1053. DEADLINES NOT EXTENDED. The investigation and determination of payment, including any coordination of other payments, does not extend the period for determining whether a claim is payable under Section 1301.103 or 1301.104 or for auditing a claim under Section 1301.105.

Sec. 1301.1054. REQUESTS FOR ADDITIONAL INFORMATION. (a) If an insurer needs additional information from a treating preferred provider to determine payment, the insurer, not later than the 30th calendar day after the date the insurer receives a clean claim, shall request in writing that the preferred provider provide an attachment to the claim that is relevant and necessary for clarification of the claim. The request must describe with

specificity the clinical information requested and relate only to information the insurer can demonstrate is specific to the claim or the claim's related episode of care. The preferred provider is not required to provide an attachment that is not contained in, or is not in the process of being incorporated into, the patient's medical or billing record maintained by a preferred provider.

(b) An insurer that requests an attachment under Subsection (a) shall determine whether the claim is payable on or before the later of the 15th day after the date the insurer receives the requested attachment or the latest date for determining whether the claim is payable under Section 1301.103 or 1301.104.

(c) An insurer may not make more than one request under Subsection (a) in connection with a claim. Sections 1301.102(b) and 1301.1021 apply to a request for and submission of an attachment under Subsection (a).

(d) If an insurer requests an attachment or other information from a person other than the preferred provider who submitted the claim, the insurer shall provide notice containing the name of the physician or health care provider from whom the insurer is requesting information to the preferred provider who submitted the claim. The insurer may not withhold payment pending receipt of an attachment or information requested under this subsection. If on receiving an attachment or information requested under this subsection the insurer determines that there was an error in payment of the claim, the insurer may recover any overpayment under Section 1301.132.

(e) The commissioner shall adopt rules under which an

insurer can easily identify attachments or other information submitted by a physician or health care provider under this section.

Sec. 1301.106. CLAIMS PROCESSING PROCEDURES AND CLAIMS PAYMENT PROCESSES. (a) An insurer shall provide a preferred provider with copies of all applicable utilization review policies and claim processing policies or procedures[~~, including required data elements and claim formats~~].

(b) An insurer's claims payment processes shall:

(1) use nationally recognized, generally accepted Current Procedural Terminology codes, notes, and guidelines, including all relevant modifiers; and

(2) be consistent with nationally recognized, generally accepted bundling edits and logic [~~An insurer may, by contract with a preferred provider, add or change the data elements that must be submitted with a claim~~].

[~~(c) Not later than the 60th day before the date of an addition or change in the data elements that must be submitted with a claim or any other change in an insurer's claim processing and payment procedures, the insurer shall provide written notice of the addition or change to each preferred provider.~~]

Sec. 1301.107. CONTRACTUAL WAIVER AND OTHER ACTIONS PROHIBITED. Except as provided by Section 1301.102(e), the provisions of this subchapter may not be waived, voided, or nullified by contract [~~VIOLATION OF CLAIMS PAYMENT PROVISIONS; ADMINISTRATIVE PENALTY. (a) An insurer that violates Section 1301.103 or 1301.105 is liable to a preferred provider for the full~~

~~amount of billed charges submitted on the claim or the amount payable under the contracted penalty rate, less any amount previously paid or any charge for a service that is not covered by the health insurance policy.~~

[~~(b) In addition to any other penalty or remedy authorized by this code or another insurance law of this state, an insurer that violates Section 1301.103 or 1301.105 is subject to an administrative penalty under Chapter 84. The administrative penalty imposed under that chapter may not exceed $1,000 for each day the claim remains unpaid in violation of Section 1301.103 or 1301.105~~].

Sec. 1301.108. ATTORNEY'S FEES. A preferred provider may recover reasonable attorney's fees and court costs in an action to recover payment under this subchapter.

Sec. 1301.109. APPLICABILITY TO ENTITIES CONTRACTING WITH INSURER. This subchapter applies to a person with whom an insurer contracts to:

(1) process or pay claims; [~~or~~]

(2) obtain the services of physicians and health care providers [~~a preferred provider~~] to provide health care services [~~medical care or health care~~] to insureds; or

(3) issue verifications or preauthorizations [~~an insured under a health insurance policy~~].

[~~Sec. 1301.110. EXCEPTION. This subchapter does not apply to a claim submitted by a preferred provider who is a member of the legislature.~~]

(b) Chapter 1301, Insurance Code, is amended to conform to

Section 3, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter C-1 to read as follows:

SUBCHAPTER C-1. OTHER PROVISIONS RELATING TO PAYMENT OF CLAIMS

Sec. 1301.131. ELEMENTS OF CLEAN CLAIM. (a) A nonelectronic claim by a physician or health care provider, other than an institutional provider, is a "clean claim" if the claim is submitted using the Centers for Medicare and Medicaid Services Form 1500 or, if adopted by the commissioner by rule, a successor to that form developed by the National Uniform Claim Committee or the committee's successor. An electronic claim by a physician or provider, other than an institutional provider, is a "clean claim" if the claim is submitted using the Professional 837 (ASC X12N 837) format or, if adopted by the commissioner by rule, a successor to that format adopted by the Centers for Medicare and Medicaid Services or the center's successor.

(b) A nonelectronic claim by an institutional provider is a "clean claim" if the claim is submitted using the Centers for Medicare and Medicaid Services Form UB-92 or, if adopted by the commissioner by rule, a successor to that form developed by the National Uniform Billing Committee or the committee's successor. An electronic claim by an institutional provider is a "clean claim" if the claim is submitted using the Institutional 837 (ASC X12N 837) format or, if adopted by the commissioner by rule, a successor to that format adopted by the Centers for Medicare and Medicaid Services or the centers' successor.

(c) The commissioner may adopt rules that specify the information that must be entered into the appropriate fields on the

applicable claim form for a claim to be a clean claim.

(d) The commissioner may not require any data element for an electronic claim that is not required in an electronic transaction set needed to comply with federal law.

(e) An insurer and a preferred provider may agree by contract to use fewer data elements than are required in an electronic transaction set needed to comply with federal law.

(f) An otherwise clean claim submitted by a physician or health care provider that includes additional fields, data elements, attachments, or other information not required under this section is considered to be a clean claim for the purposes of this chapter.

(g) Except as provided by Subsection (e), the provisions of this section may not be waived, voided, or nullified by contract.

Sec. 1301.132. OVERPAYMENT. (a) An insurer may recover an overpayment to a physician or health care provider if:

(1) not later than the 180th day after the date the physician or provider receives the payment, the insurer provides written notice of the overpayment to the physician or provider that includes the basis and specific reasons for the request for recovery of funds; and

(2) the physician or provider does not make arrangements for repayment of the requested funds on or before the 45th day after the date the physician or provider receives the notice.

(b) If a physician or health care provider disagrees with a request for recovery of an overpayment, the insurer shall provide

the physician or provider with an opportunity to appeal, and the insurer may not attempt to recover the overpayment until all appeal rights are exhausted.

Sec. 1301.133. VERIFICATION. (a) In this section, "verification" includes preauthorization only when preauthorization is a condition for the verification.

(b) On the request of a preferred provider for verification of a particular medical care or health care service the preferred provider proposes to provide to a particular patient, the insurer shall inform the preferred provider without delay whether the service, if provided to that patient, will be paid by the insurer and shall specify any deductibles, copayments, or coinsurance for which the insured is responsible.

(c) An insurer shall have appropriate personnel reasonably available at a toll-free telephone number to provide a verification under this section between 6 a.m. and 6 p.m. central time Monday through Friday on each day that is not a legal holiday and between 9 a.m. and noon central time on Saturday, Sunday, and legal holidays. An insurer must have a telephone system capable of accepting or recording incoming phone calls for verifications after 6 p.m. central time Monday through Friday and after noon central time on Saturday, Sunday, and legal holidays and responding to each of those calls on or before the second calendar day after the date the call is received.

(d) An insurer may decline to determine eligibility for payment if the insurer notifies the physician or preferred provider who requested the verification of the specific reason the

determination was not made.

(e) An insurer may establish a specific period during which the verification is valid of not less than 30 days.

(f) An insurer that declines to provide a verification shall notify the physician or provider who requested the verification of the specific reason the verification was not provided.

(g) If an insurer has provided a verification for proposed medical care or health care services, the insurer may not deny or reduce payment to the physician or provider for those medical care or health care services if provided to the insured on or before the 30th day after the date the verification was provided unless the physician or provider has materially misrepresented the proposed medical care or health care services or has substantially failed to perform the proposed medical care or health care services.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 1301.134. COORDINATION OF PAYMENT. (a) An insurer may require a physician or health care provider to retain in the physician's or provider's records updated information concerning other health benefit plan coverage and to provide the information to the insurer on the applicable form described by Section 1301.131. Except as provided by this subsection, an insurer may not require a physician or provider to investigate coordination of other health benefit plan coverage.

(b) Coordination of payment under this section does not extend the period for determining whether a service is eligible for payment under Section 1301.103 or 1301.104 or for auditing a claim

under Section 1301.105.

(c) A physician or health care provider who submits a claim for particular medical care or health care services to more than one health maintenance organization or insurer shall provide written notice on the claim submitted to each health maintenance organization or insurer of the identity of each other health maintenance organization or insurer with which the same claim is being filed.

(d) On receipt of notice under Subsection (c), an insurer shall coordinate and determine the appropriate payment for each health maintenance organization or insurer to make to the physician or health care provider.

(e) Except as provided by Subsection (f), if an insurer is a secondary payor and pays a portion of a claim that should have been paid by the insurer or health maintenance organization that is the primary payor, the overpayment may only be recovered from the health maintenance organization or insurer that is primarily responsible for that amount.

(f) If the portion of the claim overpaid by the secondary insurer was also paid by the primary health maintenance organization or insurer, the secondary insurer may recover the amount of overpayment under Section 1301.132 from the physician or health care provider who received the payment. An insurer processing an electronic claim as a secondary payor shall rely on the primary payor information submitted on the claim by the physician or provider. Primary payor information may be submitted electronically by the primary payor to the secondary payor.

(g) An insurer may share information with a health maintenance organization or another insurer to the extent necessary to coordinate appropriate payment obligations on a specific claim.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 1301.135. PREAUTHORIZATION OF MEDICAL AND HEALTH CARE SERVICES. (a) An insurer that uses a preauthorization process for medical care and health care services shall provide to each preferred provider, not later than the 10th business day after the date a request is made, a list of medical care and health care services that require preauthorization and information concerning the preauthorization process.

(b) If proposed medical care or health care services require preauthorization as a condition of the insurer's payment to a preferred provider under a health insurance policy, the insurer shall determine whether the medical care or health care services proposed to be provided to the insured are medically necessary and appropriate.

(c) On receipt of a request from a preferred provider for preauthorization, the insurer shall review and issue a determination indicating whether the proposed medical care or health care services are preauthorized. The determination must be issued and transmitted not later than the third calendar day after the date the request is received by the insurer.

(d) If the proposed medical care or health care services involve inpatient care and the insurer requires preauthorization as a condition of payment, the insurer shall review the request and

issue a length of stay for the admission into a health care facility based on the recommendation of the patient's physician or health care provider and the insurer's written medically accepted screening criteria and review procedures. If the proposed medical or health care services are to be provided to a patient who is an inpatient in a health care facility at the time the services are proposed, the insurer shall review the request and issue a determination indicating whether proposed services are preauthorized within 24 hours of the request by the physician or provider.

(e) An insurer shall have appropriate personnel reasonably available at a toll-free telephone number to respond to requests for a preauthorization between 6 a.m. and 6 p.m. central time Monday through Friday on each day that is not a legal holiday and between 9 a.m. and noon central time on Saturday, Sunday, and legal holidays. An insurer must have a telephone system capable of accepting or recording incoming phone calls for preauthorizations after 6 p.m. central time Monday through Friday and after noon central time on Saturday, Sunday, and legal holidays and responding to each of those calls not later than 24 hours after the call is received.

(f) If an insurer has preauthorized medical care or health care services, the insurer may not deny or reduce payment to the physician or health care provider for those services based on medical necessity or appropriateness of care unless the physician or provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the proposed medical or health care services.

(g) This section applies to an agent or other person with whom an insurer contracts to perform, or to whom the insurer delegates the performance of, preauthorization of proposed medical or health care services.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 1301.136. AVAILABILITY OF CODING GUIDELINES. (a) A contract between an insurer and a preferred provider must provide that:

(1) the preferred provider may request a description and copy of the coding guidelines, including any underlying bundling, recoding, or other payment process and fee schedules applicable to specific procedures that the preferred provider will receive under the contract;

(2) the insurer or the insurer's agent will provide the coding guidelines and fee schedules not later than the 30th day after the date the insurer receives the request;

(3) the insurer or the insurer's agent will provide notice of changes to the coding guidelines and fee schedules that will result in a change of payment to the preferred provider not later than the 90th day before the date the changes take effect and will not make retroactive revisions to the coding guidelines and fee schedules; and

(4) the contract may be terminated by the preferred provider on or before the 30th day after the date the preferred provider receives information requested under this subsection without penalty or discrimination in participation in other health

care products or plans.

(b) A preferred provider who receives information under Subsection (a) may only:

(1) use or disclose the information for the purpose of practice management, billing activities, and other business operations; and

(2) disclose the information to a governmental agency involved in the regulation of health care or insurance.

(c) The insurer shall, on request of the preferred provider, provide the name, edition, and model version of the software that the insurer uses to determine bundling and unbundling of claims.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 1301.137. VIOLATION OF CLAIMS PAYMENT REQUIREMENTS; PENALTY. (a) Except as provided by this section, if a clean claim submitted to an insurer is payable and the insurer does not determine under Subchapter C that the claim is payable and pay the claim on or before the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay the preferred provider making the claim the contracted rate owed on the claim plus a penalty in the amount of the lesser of:

(1) 50 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate; or

(2) $100,000.

(b) If the claim is paid on or after the 46th day and before the 91st day after the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay a

penalty in the amount of the lesser of:

(1) 100 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate; or

(2) $200,000.

(c) If the claim is paid on or after the 91st day after the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay a penalty computed under Subsection (b) plus 18 percent annual interest on that amount. Interest under this subsection accrues beginning on the date the insurer was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(d) Except as provided by this section, an insurer that determines under Subchapter C that a claim is payable, pays only a portion of the amount of the claim on or before the date the insurer is required to make a determination or adjudication of the claim, and pays the balance of the contracted rate owed for the claim after that date shall pay to the preferred provider, in addition to the contracted amount owed, a penalty on the amount not timely paid in the amount of the lesser of:

(1) 50 percent of the underpaid amount; or

(2) $100,000.

(e) If the balance of the claim is paid on or after the 46th day and before the 91st day after the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay a penalty on the balance of the claim in the amount of the lesser of:

(1) 100 percent of the underpaid amount; or

(2) $200,000.

(f) If the balance of the claim is paid on or after the 91st day after the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay a penalty on the balance of the claim computed under Subsection (e) plus 18 percent annual interest on that amount. Interest under this subsection accrues beginning on the date the insurer was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(g) For the purposes of Subsections (d) and (e), the underpaid amount is computed on the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to the billed charges as submitted on the claim.

(h) An insurer is not liable for a penalty under this section:

(1) if the failure to pay the claim in accordance with Subchapter C is a result of a catastrophic event that substantially interferes with the normal business operations of the insurer; or

(2) if the claim was paid in accordance with Subchapter C, but for less than the contracted rate, and:

(A) the preferred provider notifies the insurer of the underpayment after the 180th day after the date the underpayment was received; and

(B) the insurer pays the balance of the claim on or before the 45th day after the date the insurer receives the notice.

(i) Subsection (h) does not relieve the insurer of the

obligation to pay the remaining unpaid contracted rate owed the preferred provider.

(j) An insurer that pays a penalty under this section shall clearly indicate on the explanation of payment statement in the manner prescribed by the commissioner by rule the amount of the contracted rate paid and the amount paid as a penalty.

(k) In addition to any other penalty or remedy authorized by this code, an insurer that violates Section 1301.103, 1301.104, or 1301.105 in processing more than two percent of clean claims submitted to the insurer is subject to an administrative penalty under Chapter 84. For each day an administrative penalty is imposed under this subsection, the penalty may not exceed $1,000 for each claim that remains unpaid in violation of Section 1301.103, 1301.104, or 1301.105. In determining whether an insurer has processed preferred provider claims in compliance with Section 1301.103, 1301.104, or 1301.105, the commissioner shall consider paid claims, other than claims that have been paid under Section 1301.105, and shall compute a compliance percentage for physician and provider claims, other than institutional provider claims, and a compliance percentage for institutional provider claims.

Sec. 1301.138. APPLICABILITY TO ENTITIES CONTRACTING WITH INSURER. This subchapter applies to a person described by Section 1301.109.

(c) Subchapter A, Chapter 1301, Insurance Code, is amended to conform to Section 3, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1301.008 to read as follows:

Sec. 1301.008. CONFLICT WITH OTHER LAW. To the extent of any conflict between this chapter and Subchapter C, Chapter 1204, this chapter controls.

(d) Subchapter B, Chapter 1301, Insurance Code, is amended to conform to Section 3, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1301.069 to read as follows:

Sec. 1301.069. SERVICES PROVIDED BY CERTAIN PHYSICIANS AND HEALTH CARE PROVIDERS. The provisions of this chapter relating to prompt payment by an insurer of a physician or health care provider and to verification of medical care or health care services apply to a physician or provider who:

(1) is not a preferred provider included in the preferred provider network; and

(2) provides to an insured:

(A) care related to an emergency or its attendant episode of care as required by state or federal law; or

(B) specialty or other medical care or health care services at the request of the insurer or a preferred provider because the services are not reasonably available from a preferred provider who is included in the preferred delivery network.

(e) Subchapter D, Chapter 1301, Insurance Code, is amended to conform to Section 3, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1301.162 to read as follows:

Sec. 1301.162. IDENTIFICATION CARD. An identification card or other similar document issued by an insurer regulated by this

code and subject to this chapter to an individual insured must display:

(1) the first date on which the individual became insured under the plan; or

(2) a toll-free number a physician or health care provider may use to obtain that date.

(f) Sections 2 and 3, Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.038. (a) Section 1358.051(1), Insurance Code, is amended to conform to Section 8, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(1) "Diabetes equipment" means:

(A) blood glucose monitors, including noninvasive glucose monitors and glucose monitors designed to be used by blind individuals;

(B) insulin pumps and associated appurtenances;

(C) insulin infusion devices; and

(D) podiatric appliances for the prevention of complications associated with diabetes.

(b) Section 8, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.039. Section 1367.055, Insurance Code, is amended to conform more closely to the source law from which the section was derived to read as follows:

Sec. 1367.055. RULES. The commissioner may adopt [~~reasonable~~] rules necessary to implement this subchapter.

SECTION 11.040. (a) Chapter 1367, Insurance Code, is

amended to conform to Section 2.123, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter E to read as follows:

SUBCHAPTER E. DEVELOPMENTAL DELAYS

Sec. 1367.201. DEFINITION. In this subchapter, rehabilitative and habilitative therapies include:

(1) occupational therapy evaluations and services;

(2) physical therapy evaluations and services;

(3) speech therapy evaluations and services; and

(4) dietary or nutritional evaluations.

Sec. 1367.202. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884;

(E) a health maintenance organization operating under Chapter 843; or

(F) a multiple employer welfare arrangement

subject to regulation under Chapter 846;

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(3) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

Sec. 1367.203. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or for another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care; or

(G) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1367.202.

Sec. 1367.204. OFFER OF COVERAGE REQUIRED. (a) A health benefit plan issuer must offer coverage that complies with this subchapter.

(b) The individual or group policy or contract holder may reject coverage required to be offered under this section.

Sec. 1367.205. COVERAGE OF CERTAIN THERAPIES. (a) A health benefit plan that provides coverage for rehabilitative and habilitative therapies under this subchapter may not prohibit or restrict payment for covered services provided to a child and determined to be necessary to and provided in accordance with an individualized family service plan issued by the Interagency Council on Early Childhood Intervention under Chapter 73, Human Resources Code.

(b) Rehabilitative and habilitative therapies described by Subsection (a) must be covered in the amount, duration, scope, and service setting established in the child's individualized family service plan.

(c) A child is entitled to benefits under this subchapter if the child, as a result of the child's relationship to an insured or enrollee in a health benefit plan, would be entitled to coverage

under an accident and health insurance policy under Section 1201.061, 1201.062, 1201.063, or 1201.064.

Sec. 1367.206. PROHIBITED ACTIONS. Under the coverage required to be offered under this subchapter, a health benefit plan issuer may not:

(1) apply the cost of rehabilitative and habilitative therapies described by Section 1367.205(a) to an annual or lifetime maximum plan benefit or similar provision under the plan; or

(2) use the cost of rehabilitative or habilitative therapies described by Section 1367.205(a) as the sole justification for:

(A) increasing plan premiums; or

(B) terminating the insured's or enrollee's participation in the plan.

Sec. 1367.207. RULES. The commissioner may adopt rules necessary to implement this subchapter.

(b) Section 2.123, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.041. (a) Section 1451.001(9), Insurance Code, is amended to conform to Sections 28 and 29, Chapter 892, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(9) "Licensed clinical [~~master~~] social worker [~~worker--advanced clinical practitioner~~]" means an individual licensed by the Texas State Board of Social Worker Examiners as a licensed clinical [~~master~~] social worker [~~with the order of recognition of advanced clinical practitioner~~].

(b) Sections 28 and 29, Chapter 892, Acts of the 78th

Legislature, Regular Session, 2003, are repealed.

SECTION 11.042. (a) Section 1451.113, Insurance Code, is amended to conform to Sections 30 and 31, Chapter 892, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1451.113. SELECTION OF LICENSED CLINICAL [~~MASTER~~] SOCIAL WORKER [~~WORKER--ADVANCED CLINICAL PRACTITIONER~~]. [~~(a)~~] An insured may select a licensed clinical [~~master~~] social worker [~~worker--advanced clinical practitioner~~] to provide the services or procedures scheduled in the health insurance policy that:

(1) are within the scope of the social worker's license, including the provision of direct, diagnostic, preventive, or clinical services to individuals, families, and groups whose functioning is threatened or affected by social or psychological stress or health impairment; and

(2) are specified as services under the terms of the health insurance policy.

[~~(b) The health insurance policy may require that services of a licensed master social worker--advanced clinical practitioner must be recommended by a physician.~~]

(b) Sections 30 and 31, Chapter 892, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.043. Section 1451.153(b), Insurance Code, is amended to conform more closely to the source law from which the section was derived to read as follows:

(b) A managed [~~health~~] care plan shall:

(1) include optometrists, therapeutic optometrists, and ophthalmologists as participating health care practitioners in

the plan; and

(2) include the name of a participating optometrist, therapeutic optometrist, or ophthalmologist in any list of participating health care practitioners and give equal prominence to each name.

SECTION 11.044. (a) Subchapter D, Chapter 1451, Insurance Code, is amended to conform to Section 1, Chapter 34, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1451.154 to read as follows:

Sec. 1451.154. PARTICIPATION OF THERAPEUTIC OPTOMETRIST. (a) In this section:

(1) "Medical panel" means the health care practitioners who are listed as participating providers in a managed care plan or who a patient seeking diagnosis or treatment of a medical disease, disorder, or condition is encouraged or required to use under a managed care plan.

(2) "Vision panel" means the optometrists, therapeutic optometrists, and ophthalmologists who are listed as participating providers for routine eye examinations under a managed care plan or who a patient seeking a routine eye examination is encouraged or required to use under a managed care plan.

(b) A managed care plan must allow a therapeutic optometrist who is on one or more of the plan's vision panels to be a fully participating provider on the plan's medical panels to the full extent of the therapeutic optometrist's license to practice therapeutic optometry.

(c) A therapeutic optometrist who is included in a managed

care plan's medical panels under Subsection (b) must:

(1) abide by the terms and conditions of the managed care plan;

(2) satisfy the managed care plan's credentialing standards for therapeutic optometrists;

(3) provide proof that the Texas Optometry Board considers the therapeutic optometrist's license to practice therapeutic optometry to be in good standing; and

(4) comply with the requirements of the Controlled Substances Registration Program operated by the Department of Public Safety.

(d) A managed care plan may charge a participating therapeutic optometrist:

(1) any reasonable credentialing costs associated with the therapeutic optometrist's being included in the managed care plan's medical panel; and

(2) a one-time administrative fee not to exceed $200 for expenses incurred in adding the therapeutic optometrist to the managed care plan's medical panel.

(b) Section 1, Chapter 34, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.045. (a) Sections 1452.051 and 1452.052, Insurance Code, are amended to conform to Section 11, Chapter 88, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1452.051. DEFINITIONS [~~DEFINITION~~]. In this subchapter:

(1) "Advanced practice nurse" has the meaning assigned by Section 301.152, Occupations Code.

(2) "Physician"[~~, "physician"~~] means an individual licensed to practice medicine in this state.

(3) "Physician assistant" means an individual who holds a license issued under Chapter 204, Occupations Code.

Sec. 1452.052. STANDARDIZED FORM FOR VERIFICATION OF [~~PHYSICIAN~~] CREDENTIALS. (a) The commissioner by rule shall:

(1) prescribe a standardized form for the verification of the [~~a physician's~~] credentials of a physician, advanced practice nurse, or physician assistant; and

(2) require a public or private hospital, a health maintenance organization operating under Chapter 843, or the issuer of a preferred provider benefit plan under Chapter 1301 to use the form for verification of [~~physician~~] credentials.

(b) In prescribing a form under this section, the commissioner shall consider any credentialing application form that is widely used in this state or any form currently used by the department.

(b) Section 11, Chapter 88, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.046. (a) Section 1501.002, Insurance Code, is amended to conform to Section 1, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, by adding Subdivision (16-a) to read as follows:

(16-a) "Small employer health coalition" means a private purchasing cooperative composed solely of small employers

that is formed under Subchapter B.

(b) Section 1, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.047. (a) The heading to Subchapter B, Chapter 1501, Insurance Code, is amended to conform to Section 2, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, and Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

SUBCHAPTER B. COALITIONS AND [~~PURCHASING~~] COOPERATIVES

(b) Section 2, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.048. (a) Section 1501.051, Insurance Code, is amended to conform to Section 1, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, by amending Subdivisions (1) and (3) and adding Subdivision (3-a) to read as follows:

(1) "Board of directors" means the board of directors elected by a private purchasing cooperative or a health group cooperative.

(3) "Cooperative" means a private purchasing cooperative or a health group cooperative established under this subchapter.

(3-a) "Expanded service area" means any area larger than one county in which a health group cooperative offers coverage.

(b) Section 1, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.049. (a) Sections 1501.052(b) and (c),

Insurance Code, are amended to conform to Section 17.01, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) The Texas cooperative is administered by a board of trustees of five [~~six~~] members appointed by the governor with the advice and consent of the senate. Two [~~Three~~] members must represent employers, two members must represent employees, and one member must represent the public.

(c) Members of the board of trustees serve staggered six-year terms, with the terms of one or two members expiring February 1 of each odd-numbered year.

(b) Section 17.01, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.050. (a) The heading to Section 1501.056, Insurance Code, is amended to conform to Section 2, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1501.056. PRIVATE PURCHASING COOPERATIVES AND HEALTH GROUP COOPERATIVES.

(b) Section 1501.056, Insurance Code, is amended to conform to Section 3, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) Two or more small or large employers may form a private purchasing cooperative to purchase small or large employer health benefit plans. Subject to Subsection (d), a person may form a health group cooperative to purchase employer health benefit plans.

A [~~The~~] cooperative must be organized as a nonprofit corporation and has the rights and duties provided by the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(d) A health benefit plan issuer may not form, or be a member of, a health group cooperative. A health benefit plan issuer may associate with a sponsoring entity, such as a business association, chamber of commerce, or other organization representing employers or serving an analogous function, to assist the sponsoring entity in forming a health group cooperative.

(c) Section 1501.057, Insurance Code, is amended to conform to Section 3, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A private purchasing cooperative, a health group cooperative, or a member of the board of directors, the executive director, or an employee or agent of the private purchasing or health group cooperative is not liable for:

(1) an act performed in good faith in the execution of duties in connection with the private purchasing or health group cooperative; or

(2) an independent action of a small or large employer health benefit plan issuer or a person who provides health care services under a health benefit plan.

(c) A health group cooperative or a member of the board of directors, the executive director, or an employee or agent of the health group cooperative is not liable for failure to arrange for

coverage of any particular illness, disease, or health condition.

(d) Sections 2 and 3, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.051. (a) Subchapter B, Chapter 1501, Insurance Code, is amended to conform to the enactment of Article 26.14A, Insurance Code, by Section 4, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1501.0581 to read as follows:

Sec. 1501.0581. SPECIAL PROVISIONS RELATING TO HEALTH GROUP COOPERATIVES. (a) The membership of a health group cooperative may consist only of small employers or may, at the option of the health group cooperative, consist of both small and large employers. To participate as a member of a health group cooperative, an employer must be a small or large employer as described by this chapter.

(b) Subject to the requirements imposed on small employer health benefit plan issuers under Section 1501.101, a health group cooperative:

(1) shall allow a small employer to join the health group cooperative and enroll in health benefit plan coverage; and

(2) may allow a large employer to join the health group cooperative and enroll in health benefit plan coverage.

(c) A health group cooperative shall allow any small employer to join the health group cooperative and enroll in the cooperative's health benefit plan coverage during the initial enrollment and annual open enrollment periods.

(d) A sponsoring entity of a health group cooperative may inform the members of the entity about the cooperative and the

health benefit plans offered by the cooperative. Coverage issued through the cooperative must be issued through a licensed agent marketing the coverage in accordance with Section 1501.058(b)(1).

(e) The commissioner shall adopt rules that govern the manner in which an employer may terminate, because of a financial hardship affecting the employer, participation in a health group cooperative.

(f) An employer's participation in a health group cooperative is voluntary, but an employer electing to participate in a health group cooperative must commit to purchasing coverage through the health group cooperative for two years, except as provided by Subsection (e).

(g) A health benefit plan issuer issuing coverage to a health group cooperative:

(1) shall use a standard presentation form, prescribed by the commissioner by rule, to market health benefit plan coverage through the health group cooperative;

(2) may contract to provide health benefit plan coverage with only one health group cooperative in any county, except that a health benefit plan issuer may contract with additional health group cooperatives if it is providing health benefit plan coverage in an expanded service area in accordance with Subsection (l);

(3) shall allow enrollment in health benefit plan coverage in compliance with Subsection (c) and with the health benefit plan issuer's agreement with the health group cooperative;

(4) is exempt from the premium tax or tax on revenues

imposed by Chapter 222, and the retaliatory tax under Chapter 281 for two years, with respect to the premiums or revenues received for coverage provided to each uninsured employee or dependent as defined by the commissioner in accordance with Subsection (h); and

(5) shall maintain documentation to be provided by health group cooperatives to ensure compliance with the rules adopted by the commissioner under Subsection (h) with respect to uninsured employees or dependents.

(h) The commissioner by rule shall determine who constitutes an uninsured employee or dependent for purposes of Subsection (g)(4).

(i) Notwithstanding any other law, and except as provided by Subsection (n), a health benefit plan issued by a health benefit plan issuer to provide coverage with a health group cooperative is not subject to a state law, including a rule, that:

(1) relates to a particular illness, disease, or treatment; or

(2) regulates the differences in rates applicable to services provided within a health benefit plan network or outside the network.

(j) The commissioner by rule shall implement the exemption authorized by Subsection (i).

(k) A health group cooperative may offer more than one health benefit plan, but each plan offered must be made available to all employees covered by the cooperative.

(l) A health benefit plan issuer may, with notice to the commissioner, provide health benefit plan coverage to an expanded

service area that includes the entire state. A health benefit plan issuer may apply for approval of an expanded service area that comprises less than the entire state by filing with the commissioner an application, in a form and manner prescribed by the commissioner, at least 60 days before the date the health benefit plan issuer issues coverage to the health group cooperative in the expanded service area. At the expiration of 60 days after the date of receipt by the department of a filed application, the application is considered approved by the department unless, before that date, the application was either affirmatively approved or disapproved by written order of the commissioner. The commissioner, after notice and opportunity for hearing, may rescind an approval granted to a health benefit plan issuer under this subsection if the commissioner finds that the health benefit plan issuer has failed to market fairly to all eligible employers in the state or the expanded service area.

(m) The provisions of this section do not limit or restrict a small or large employer's access to health benefit plans under this chapter.

(n) A health benefit plan provided through a health group cooperative must provide coverage for diabetes equipment, supplies, and services as required by Subchapter B, Chapter 1358.

(b) Article 26.14A, Insurance Code, as added by Section 4, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.052. (a) Subchapter B, Chapter 1501, Insurance Code, is amended to conform to Section 7, Chapter 782, Acts of the

78th Legislature, Regular Session, 2003, by adding Section 1501.0582 to read as follows:

Sec. 1501.0582. HEALTH GROUP COOPERATIVE: EXPEDITED APPROVAL PROCESS. The department shall develop an expedited approval process for health benefit plan coverage arranged by a health group cooperative.

(b) Sections 1501.062(a) and (c), Insurance Code, are amended to conform to Section 7, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) A cooperative is not an insurer and the employees of the cooperative are not required to be licensed under Title 13. This exemption from licensure includes a health group cooperative that acts to provide information about and to solicit membership in the cooperative, subject to Section 1501.0581(d).

(c) An agent used and compensated by a cooperative may market the products and services sponsored by the cooperative without being appointed by each small or large employer health benefit plan issuer participating in the cooperative. The agent may not market any other product or service of a participating small or large employer health benefit plan issuer that is not sponsored by the cooperative unless the agent has been appointed by that issuer.

(c) Section 1501.063, Insurance Code, is amended to conform to Section 4, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, and Section 7, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1501.063. STATUS [~~COOPERATIVE~~] AS EMPLOYER. (a) A

small employer health coalition that otherwise meets the description of a small employer is considered a single small employer for all purposes under this chapter.

(b) A health group cooperative that is composed only of small employers is considered a single employer under this code and shall be treated in the same manner as a small employer for the purposes of this chapter, including for the purposes of any provision relating to premium rates and issuance and renewal of coverage. A health group cooperative that is composed of small and large employers is considered a single employer under this code and, in relation to the small employers that are members of the cooperative, shall be treated in the same manner as a small employer. A health group cooperative that is composed of small and large employers may elect to extend the protections of this chapter that are applicable to small employer groups to the large employer groups that participate in the cooperative. A health group cooperative shall have sole authority to make benefit elections and perform other administrative functions under this code for the cooperative's participating employers.

(c) Any other [~~A~~] cooperative formed under this subchapter is considered an employer solely for the purposes of benefit elections under this code.

(d) Section 4, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, and Section 7, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.053. (a) Section 1501.058, Insurance Code, is amended to conform to Section 6, Chapter 782, Acts of the 78th

Legislature, Regular Session, 2003, by adding Subsection (d) to read as follows:

(d) To be eligible to exercise the authority granted under Subsection (a)(1), a health group cooperative must have at least 10 participating employers.

(b) Section 1501.061, Insurance Code, is amended to conform to Section 3, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1501.061. REQUIREMENTS APPLICABLE TO HEALTH BENEFIT PLAN ISSUERS WITH WHICH COOPERATIVE MAY CONTRACT. A cooperative may contract only with a small or large employer health benefit plan issuer that [~~desires to offer coverage through the cooperative and that~~] demonstrates that the issuer:

(1) is in good standing with the department;

(2) has the capacity to administer health benefit plans;

(3) is able to monitor and evaluate the quality and cost-effectiveness of care and applicable procedures;

(4) is able to conduct utilization management and establish applicable procedures and policies;

(5) is able to ensure that enrollees have adequate access to health care providers, including adequate numbers and types of providers;

(6) has a satisfactory grievance procedure and is able to respond to enrollees' calls, questions, and complaints; and

(7) has financial capacity, either through satisfying financial solvency standards, as applied by the commissioner, or

through appropriate reinsurance or other risk-sharing mechanisms.

(c) Subchapter B, Chapter 1501, Insurance Code, is amended to conform to Section 3, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, and Section 6, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1501.065 to read as follows:

Sec. 1501.065. CERTAIN ACTIONS BASED ON RISK CHARACTERISTICS OR HEALTH STATUS PROHIBITED. A cooperative may not limit, restrict, or condition an employer's or employee's membership in a cooperative or choice among benefit plans based on:

(1) risk characteristics of a group or of any member of a group; or

(2) health status related factors, duration of coverage, or any similar characteristic related to the health status or experience of a group or of any member of a group.

(d) Section 3, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, and Section 6, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.054. (a) Section 1501.154(c), Insurance Code, is amended to conform to Section 5, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(c) A small employer health benefit plan issuer may elect not to offer a health benefit plan to a small employer that offers multiple health benefit plans if:

(1) the plans are provided by more than one issuer; and

(2) the issuer would have less than 75 percent of the employer's eligible employees enrolled in the issuer's plan[~~; and~~

[~~(3) the issuer's plan is not provided through a purchasing cooperative~~].

(b) Section 5, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.055. (a) Section 1501.213(b), Insurance Code, is amended to conform to Section 3, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) A health maintenance organization that participates in a purchasing cooperative that provides employees of small employers a choice of health benefit plans may use rating methods in accordance with this subchapter that are used by other small employer health benefit plan issuers participating in the same cooperative, including rating by age and gender, if the health maintenance organization has established:

(1) a separate class of business, as provided by Section 1501.202; and

(2) a separate line of business, as provided under Section 1501.255(b) [~~and Title XIII, Public Health Service Act (42 U.S.C. Section 300e et seq.)~~].

(b) Section 3, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.056. (a) Section 1501.252, Insurance Code, is amended to conform to Section 4, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1501.252. HEALTH BENEFIT PLANS. (a) A small employer health benefit plan issuer shall offer <u>a standard health benefit plan as authorized by Chapter 1507</u> [~~the following two health~~

~~benefit plans as adopted by the commissioner:~~

[~~(1) the catastrophic care health benefit plan; and~~

[~~(2) the basic coverage health benefit plan~~].

(b) A small employer health benefit plan issuer may offer to a small employer additional benefit riders to the standard health benefit plan or may design and offer standard health benefit plans with additional mandatory benefits [~~either of the health benefit plans required by Subsection (a)~~].

(c) Subject to this chapter, a small employer health benefit plan issuer shall [~~may~~] also offer to a small employer at least one [~~any~~] other health benefit plan authorized under this code that provides state-mandated health benefits. Section 1501.251 does not apply to a health benefit plan offered to a small employer under this subsection.

(b) Section 4, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.057. (a) Section 1501.255(b), Insurance Code, is amended to conform to Section 6, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) A health maintenance organization [~~may offer~~]:

(1) shall offer at least one [~~a~~] state-approved basic health care [~~benefit~~] plan that complies with this chapter, Chapters 843, 1271, 1272, and 1367, Subchapter A, Chapter 1452, Title XIII, Public Health Service Act (42 U.S.C. Section 300e et seq.), and its subsequent amendments, and rules adopted under those laws and may offer additional such plans;

(2) shall offer a standard health benefit plan under

Subchapter B, Chapter 1507, and may offer additional benefit riders to the standard health benefit plan or offer standard health benefit plans with additional mandatory benefits [~~developed by the commissioner under Section 1501.253 and additional benefit riders to the plan~~]; and [~~or~~]

(3) may offer a point-of-service contract in connection with an insurer that includes optional coverage for out-of-area services, emergency care, or out-of-network care.

(b) Section 6, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.058. (a) Section 1501.253, Insurance Code, is repealed to conform to the repeal of Article 26.44A, Insurance Code, by Section 9, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003.

(b) Section 1501.258, Insurance Code, is amended to conform to Section 5, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, and to the repeal of Article 26.44A, Insurance Code, by Section 9, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1501.258. FORMS. (a) A [~~The commissioner shall:~~

[~~(1) prescribe the benefits section of the catastrophic care health benefit plan and the basic coverage health benefit plan policy forms in accordance with Section 1501.253; and~~

[~~(2) develop prototype policies for each of the health benefit plans that include all contractual provisions required to produce an entire contract in accordance with this code;~~

[~~(b) With regard to each portion of the policy form for the~~

~~catastrophic care health benefit plan or the basic coverage health benefit plan, other than the benefits section, a~~] small employer health benefit plan issuer shall comply with:

(1) Chapter 1701 as it relates to policy form approval; and

(2) Chapter 1271 as it relates to evidence of coverage approval.

(b) [~~(c)~~] A small employer health benefit plan issuer may not offer [~~the catastrophic care health~~] benefit plans [~~plan or the basic coverage health benefit plan~~] through a policy form or evidence of coverage that does not comply with this chapter.

(c) Section 5, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.059. (a) Sections 1501.352(a) and (c), Insurance Code, are amended to conform to Section 6, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, and Section 7, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) A small employer health benefit plan issuer or agent may not, because of the health status or claims experience of the eligible employees of a small employer and those employees' dependents, directly or indirectly encourage or direct the employer to:

(1) refrain from applying for coverage with the issuer;

(2) seek coverage from another issuer; [~~or~~]

(3) apply for a particular small employer health

benefit plan; or

(4) become or not become a member of a particular small employer health coalition.

(c) Subsection (b) does not apply to an arrangement that provides compensation to an agent based on a percentage of premium, provided [~~except~~] that:

(1) the percentage may not vary because of health status or claims experience; and

(2) the small employer health benefit plan issuer does not:

(A) exclude any additional premium charged to the small employer because of health status or claims experience from the premium amount to which the percentage is applied; or

(B) apply a smaller percentage to any additional premium charged to the small employer because of health status or claims experience than is applied to other premiums charged to the small employer.

(b) Section 1501.353, Insurance Code, is amended to conform to Section 7, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, by adding Subsection (d) to read as follows:

(d) A small employer health benefit plan issuer may not use an agent compensation schedule that provides compensation in a specific dollar amount for each individual covered during a specified period or for each group of individuals covered during a specified period.

(c) Section 6, Chapter 231, Acts of the 78th Legislature, Regular Session, 2003, and Section 7, Chapter 1179, Acts of the 78th

Legislature, Regular Session, 2003, are repealed.

SECTION 11.060. Section 5, Chapter 782, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.061. (a) Subchapter A, Chapter 1502, Insurance Code, is amended to conform to the enactment of Article 27.07, Insurance Code, by Section 2.125, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1502.0011 to read as follows:

Sec. 1502.0011. EXCEPTION. This chapter does not apply to a health benefit plan provided under the state Medicaid program or the state child health plan.

(b) Article 27.07, Insurance Code, as added by Section 2.125, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.062. (a) Section 1502.053, Insurance Code, is amended to conform to Section 2.124, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. The issuer of a [~~A~~] children's health benefit plan approved under Section 1502.051 [~~issuer~~] is not subject to the premium tax or the tax on revenues imposed under Chapter 222 with respect to money received for coverage provided under that plan.

(b) Section 2.124, Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.063. (a) Section 1503.003(b), Insurance Code, is amended to conform to Section 2, Chapter 546, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) A health benefit plan that requires as a condition of coverage for a child [~~up to~~] 25 years of age or older that the child be a full-time student at an educational institution must provide the coverage:

(1) for the entire academic term during which the child begins as a full-time student and remains enrolled, regardless of whether the number of hours of instruction for which the child is enrolled is reduced to a level that changes the child's academic status to less than that of a full-time student; and

(2) continuously until the 10th day of instruction of the subsequent academic term, on which date the health benefit plan may terminate coverage for the child if the child does not return to full-time student status before that date.

(b) Section 2, Chapter 546, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.064. (a) Section 1506.002, Insurance Code, is amended to conform to Section 1, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1506.002. DEFINITION OF HEALTH BENEFIT PLAN. (a) In this chapter, "health benefit plan" means an individual or group health benefit plan and includes:

(1) a hospital or medical expense incurred policy;

(2) coverage of medical or health care services offered by:

(A) a group hospital service corporation operating under Chapter 842;

(B) a fraternal benefit society operating under

Chapter 885;

(C) a stipulated premium company operating under Chapter 884;

(D) a health maintenance organization;

(E) a multiple employer welfare arrangement subject to Chapter 846; or

(F) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; and

(3) any other health care plan or arrangement that pays for or furnishes medical or health care services by insurance or otherwise, including stop-loss insurance or excess loss insurance or reinsurance for individual or group health insurance or for any other health care plan or arrangement.

(b) In this chapter, "health benefit plan" does not include:

(1) [~~short-term insurance;~~

[~~(2) accident insurance;~~

[~~(3)~~] a plan providing coverage only for dental or vision care;

(2) [~~(4) fixed indemnity insurance, including hospital indemnity insurance;~~

[~~(5)~~] credit insurance;

(3) [~~(6)~~] long-term care insurance;

(4) [~~(7)~~] disability income insurance;

(5) [~~(8) other limited benefit coverage, including specified disease coverage;~~

[~~(9)~~] coverage issued as a supplement to liability insurance;

(6) [~~(10)~~] insurance arising out of a workers' compensation law or similar law;

(7) [~~(11)~~] automobile medical payment insurance; or

(8) [~~(12)~~] insurance coverage under which benefits are payable with or without regard to fault and that is statutorily required to be contained in a liability insurance policy or equivalent self-insurance.

(b) Section 1, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.065. (a) Section 1506.004(a), Insurance Code, is amended to conform to Section 12, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) Annually, the state auditor may [~~shall~~] conduct a special audit of the pool under Chapter 321, Government Code. The special audit may [~~must~~] include a financial audit and an economy and efficiency audit.

(b) Section 12, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.066. (a) Sections 1506.051(b) and (d), Insurance Code, are amended to conform to Section 2, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) The board consists of nine members appointed by the commissioner as follows:

(1) at least two, but not more than four, members must be individuals who are affiliated with a health benefit plan issuer authorized to write health benefit plans in this state;

(2) at least two of the members must be individuals or the parents of individuals who are covered by the pool or are reasonably expected to qualify for coverage by the pool; and

(3) the other members of the board may be selected from individuals such as:

(A) a physician licensed to practice in this state by the Texas State Board of Medical Examiners;

(B) a hospital administrator;

(C) an advanced nurse practitioner; or

(D) a representative of the public who is not[~~:~~

[~~(i)~~] employed by or affiliated with an insurance company or insurance plan, group hospital service corporation, or health maintenance organization[~~; or~~

[~~(ii) licensed as, employed by, or affiliated with a physician, hospital, or other health care provider~~].

(d) An individual is not disqualified under Subsection (b)(3)(D) [~~(b)(3)(D)(i)~~] from representing the public if the individual's only affiliation with an insurance company or insurance plan, group hospital service corporation, or health maintenance organization is as an insured or as an individual who has coverage through a plan provided by the corporation or organization.

(b) Section 2, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.067. (a) Section 1506.103(c), Insurance Code, is amended to conform to Section 3, Chapter 840, Acts of the 78th

Legislature, Regular Session, 2003, to read as follows:

(c) The pool may issue additional types of health benefit coverage to provide optional coverages that comply with applicable provisions of state and federal law, including a Medicare supplement benefit plan for individuals 65 years of age or older who are eligible for Medicare.

(b) Section 3, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.068. (a) Section 1506.105(e), Insurance Code, is amended to conform to Section 5, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(e) Premium [~~Initial pool premium rates may not be less than 125 percent or greater than 150 percent of rates established as applicable for individual standard rates. Subsequent premium~~] rates shall be established to provide fully for all of the expected costs of claims, including recovery of prior losses, expenses of operation, investment income from claim reserves, and any other cost factors, subject to the limitation [~~limitations~~] described in this subsection. In no event may pool premium rates exceed 200 percent of rates applicable to individual standard risks.

(b) Section 5, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.069. (a) Section 1506.151(a), Insurance Code, is amended to conform to Section 9, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) The pool shall offer coverage consistent with major medical expense coverage to each eligible individual who is under

the age of 65 [~~not eligible for Medicare~~].

(b) Section 9, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.070. (a) Section 1506.152, Insurance Code, is amended to conform to Sections 6 and 8, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) An individual who is a legally domiciled resident of this state is eligible for coverage from the pool if the individual:

(1) provides to the pool evidence that the individual maintained health benefit plan coverage for the preceding 18 months with no gap in coverage longer than 63 days and with the most recent coverage being provided through an employer-sponsored plan, church plan, or government plan;

(2) provides to the pool evidence that the individual maintained health benefit plan coverage under another state's qualified Health Insurance Portability and Accountability Act health program that was terminated because the individual did not reside in that state and submits an application for pool coverage not later than the 63rd day after the date the coverage described by this subdivision was terminated; [~~or~~]

(3) has been a legally domiciled resident of this state for the preceding 30 days, is a citizen of the United States or has been a permanent resident of the United States for at least three continuous years, and provides to the pool:

(A) a notice of rejection of, or refusal to issue, substantially similar individual health benefit plan

coverage from a health benefit plan issuer, other than an insurer that offers only stop-loss, excess loss, or reinsurance coverage, if the rejection or refusal was for health reasons;

(B) certification from an agent or salaried representative of a health benefit plan issuer that states that the agent or salaried representative cannot obtain substantially similar individual coverage for the individual from any health benefit plan issuer that the agent or salaried representative represents because, under the underwriting guidelines of the health benefit plan issuer, the individual will be denied coverage as a result of a medical condition of the individual;

(C) an offer to issue substantially similar individual coverage only with conditional riders;

(D) a notice of refusal by a health benefit plan issuer to issue substantially similar individual coverage except at a rate exceeding the pool rate; or

(E) a diagnosis of the individual with one of the medical or health conditions on the list adopted under Section 1506.154; or

(4) provides to the pool evidence that, on the date of application to the pool, the individual is certified as eligible for trade adjustment assistance or for pension benefit guaranty corporation assistance, as provided by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210).

(e) Notwithstanding Sections 1506.153(1)-(6), an individual who is certified as eligible for trade adjustment assistance or for pension benefit guaranty corporation assistance,

as provided by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210), and who has at least three months of prior health benefit plan coverage, as described by Section 1506.155(d), is not required to exhaust any benefits from the continuation of coverage under Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.), as amended (COBRA), or state continuation benefits to be eligible for coverage from the pool.

(b) Sections 6 and 8, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.071. (a) Section 1506.153, Insurance Code, is amended to conform to Section 7, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1506.153. INELIGIBILITY FOR COVERAGE. Notwithstanding Sections 1506.152(a)-(d) [~~Section 1506.152~~], an individual is not eligible for coverage from the pool if:

(1) on the date pool coverage is to take effect, the individual has health benefit plan coverage from a health benefit plan issuer or health benefit arrangement in effect;

(2) at the time the individual applies to the pool, the individual is eligible for other health care benefits, including benefits from the continuation of coverage under Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.), as amended (COBRA), other than:

(A) coverage, including COBRA or other continuation coverage or conversion coverage, maintained for any preexisting condition waiting period under a pool policy;

(B) employer group coverage conditioned by a limitation of the kind described by Section 1506.152(a)(3)(A) or (C); or

(C) individual coverage conditioned by a limitation described by Section 1506.152(a)(3)(C) or (D);

(3) within 12 months before the date the individual applies to the pool, the individual terminated coverage in the pool, unless the individual demonstrates a good faith reason for the termination;

(4) the individual is confined in a county jail or imprisoned in a state <u>or federal</u> prison;

(5) any of the individual's premiums are paid for or reimbursed under a government-sponsored program or by a government agency or health care provider, other than as an otherwise qualifying full-time employee of a government agency or health care provider or as a dependent of such an employee;

(6) the individual's prior coverage with the pool was terminated:

(A) during the 12-month period preceding the date of application for nonpayment of premiums; or

(B) for fraud; or

(7) the individual is eligible for health benefit plan coverage provided in connection with a policy, plan, or program paid for or sponsored by an employer, even though the employer coverage is declined.

(b) Section 1506.155, Insurance Code, is amended to conform to Section 10, Chapter 840, Acts of the 78th Legislature, Regular

Session, 2003, by adding Subsection (d) to read as follows:

(d) A preexisting condition provision may not be applied to an individual who has been certified as eligible for trade adjustment assistance or for pension benefit guaranty corporation assistance, as provided by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210), if the individual:

(1) was continuously covered by a health benefit plan for a period of three months before the individual's separation from employment; and

(2) applies for coverage from the pool not later than the 63rd day after the date on which the prior coverage was terminated.

(c) Section 1506.158(a), Insurance Code, is amended to conform to Section 7, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) An individual's pool coverage ends:

(1) on the date the individual ceases to be a legally domiciled resident of this state, unless the individual:

(A) is a student younger than 25 years of age and is financially dependent on a [~~the~~] parent covered by the pool;

(B) is a child for whom an individual covered by the pool may be obligated to pay child support; or

(C) is a child who is disabled and dependent on a [~~the~~] parent covered by the pool, regardless of the age of the child;

(2) on the first day of the month following the date the individual requests coverage to end;

(3) on the date the individual covered by the pool dies;

(4) on the date state law requires cancellation of the coverage;

(5) at the option of the pool, on the 31st day after the date the pool sends to the individual any inquiry concerning the individual's eligibility, including an inquiry concerning the individual's residence, to which the individual does not reply;

(6) on the 31st day after the date a premium payment for pool coverage becomes due if the payment is not made before that day; [~~or~~]

(7) on the date the individual is 65 years of age and eligible for coverage under Medicare, unless the coverage received from the pool is Medicare supplement coverage issued by the pool; or

(8) at the time the individual ceases to meet the eligibility requirements for coverage.

(d) Sections 7 and 10, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.072. (a) Subchapter F, Chapter 1506, Insurance Code, is amended to conform to Section 11, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1506.2521 to read as follows:

Sec. 1506.2521. ANNUAL REPORT TO BOARD. Each health benefit plan issuer shall report to the board the information requested by the board, as of December 31 of the preceding year.

(b) Sections 1506.253(a) and (c), Insurance Code, are amended to conform to Section 11, Chapter 840, Acts of the 78th

Legislature, Regular Session, 2003, to read as follows:

(a) The board shall recover any net loss of the pool by assessing each health benefit plan issuer an amount determined annually by the board based on information in annual statements, the health benefit plan issuer's annual report to the board under Section 1506.2521, and any other reports required by and filed with the board.

(c) For purposes of the assessment under this subchapter [~~Subsection (b)~~], gross health benefit plan premiums do not include premiums collected for:

(1) coverage under a Medicare supplement benefit plan [~~premiums~~] subject to Chapter 1652;

(2) coverage under a [~~or~~] small employer health benefit plan [~~premiums~~] subject to Subchapters A-H, Chapter 1501; or

(3) coverage or insurance listed in Section 1506.002(b).

(c) Section 11, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.073. Section 4, Chapter 840, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.074. (a) Subtitle G, Title 8, Insurance Code, is amended to conform to the enactment of Article 3.80, Insurance Code, by Section 1, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, and to conform to the enactment of Section 9N, Texas Health Maintenance Act (Chapter 20A, Vernon's Texas Insurance Code), by Section 2, Chapter 1179, Acts of the 78th

Legislature, Regular Session, 2003, by adding Chapter 1507 to read as follows:

CHAPTER 1507. CONSUMER CHOICE OF BENEFITS PLANS

SUBCHAPTER A. CONSUMER CHOICE OF BENEFITS HEALTH INSURANCE PLANS

Sec. 1507.001. PURPOSE. The legislature recognizes the need for individuals, employers, and other purchasers of coverage in this state to have the opportunity to choose health insurance plans that are more affordable and flexible than existing market policies offering accident and sickness insurance coverage. The legislature, therefore, seeks to increase the availability of health insurance coverage by allowing insurers authorized to engage in the business of insurance in this state to issue accident and sickness policies that, in whole or in part, do not offer or provide state-mandated health benefits.

Sec. 1507.002. DEFINITIONS. In this subchapter:

(1) "Health carrier" means any entity authorized under this code or another insurance law of this state that provides health insurance or health benefits in this state. The term includes an insurance company, a group hospital service corporation under Chapter 842, and a stipulated premium company under Chapter 884.

(2) "Standard health benefit plan" means an accident or sickness insurance policy that, in whole or in part, does not offer or provide state-mandated health benefits, but that provides creditable coverage as defined by Section 1205.004(a) or 1501.102(a).

Sec. 1507.003. STATE-MANDATED HEALTH BENEFITS. (a) For

purposes of this subchapter, "state-mandated health benefits" means coverage required under this code or other laws of this state to be provided in an individual, blanket, or group policy for accident and health insurance or a contract for a health-related condition that:

(1) includes coverage for specific health care services or benefits;

(2) places limitations or restrictions on deductibles, coinsurance, copayments, or any annual or lifetime maximum benefit amounts; or

(3) includes a specific category of licensed health care practitioner from whom an insured is entitled to receive care.

(b) For purposes of this subchapter, "state-mandated health benefits" does not include benefits that are mandated by federal law or standard provisions or rights required under this code or other laws of this state to be provided in an individual, blanket, or group policy for accident and health insurance that are unrelated to a specific health illness, injury, or condition of an insured, including provisions related to:

(1) continuation of coverage under:

(A) Subchapters F and G, Chapter 1251;

(B) Section 1201.059; and

(C) Subchapter B, Chapter 1253;

(2) termination of coverage under Sections 1202.051 and 1501.108;

(3) preexisting conditions under Subchapter D, Chapter 1201, and Sections 1501.102-1501.105;

(4) coverage of children, including newborn or adopted children, under:

(A) Subchapter D, Chapter 1251;

(B) Sections 1201.053, 1201.061, 1201.063-1201.065, and Subchapter A, Chapter 1367;

(C) Chapter 1504;

(D) Chapter 1503;

(E) Section 1501.157;

(F) Section 1501.158; and

(G) Sections 1501.607-1501.609;

(5) services of practitioners under:

(A) Subchapters A, B, and C, Chapter 1451; or

(B) Section 1301.052;

(6) supplies and services associated with the treatment of diabetes under Subchapter B, Chapter 1358;

(7) coverage for serious mental illness under Subchapter A, Chapter 1355, if the standard health benefit plan is issued to a large employer as defined by Section 1501.002;

(8) coverage for childhood immunizations and hearing screening as required by Subchapters B and C, Chapter 1367, other than Section 1367.053(c) and Chapter 1353;

(9) coverage for reconstructive surgery for certain craniofacial abnormalities of children as required by Subchapter D, Chapter 1367;

(10) coverage for the dietary treatment of phenylketonuria as required by Chapter 1359;

(11) coverage for referral to a non-network physician

or provider when medically necessary covered services are not available through network physicians or providers, as required by Section 1271.055; and

(12) coverage for cancer screenings under:

(A) Chapter 1356;

(B) Chapter 1362; and

(C) Chapter 1363.

Sec. 1507.004. STANDARD HEALTH BENEFIT PLANS AUTHORIZED; MINIMUM REQUIREMENT. (a) A health carrier may offer one or more standard health benefit plans.

(b) Any standard health benefit plan must include coverage for direct services to an obstetrical or gynecological care provider as required by Subchapter F, Chapter 1451.

Sec. 1507.005. NOTICE TO POLICYHOLDER. (a) Each written application for participation in a standard health benefit plan must contain the following language at the beginning of the document in bold type:

"You have the option to choose this Consumer Choice of Benefits Health Insurance Plan that, either in whole or in part, does not provide state-mandated health benefits normally required in accident and sickness insurance policies in Texas. This standard health benefit plan may provide a more affordable health insurance policy for you, although, at the same time, it may provide you with fewer health benefits than those normally included as state-mandated health benefits in policies in Texas. If you choose this standard health benefit plan, please consult with

your insurance agent to discover which state-mandated health benefits are excluded in this policy."

(b) Each standard health benefit plan must contain the following language at the beginning of the document in bold type:

"This Consumer Choice of Benefits Health Insurance Plan, either in whole or in part, does not provide state-mandated health benefits normally required in accident and sickness insurance policies in Texas. This standard health benefit plan may provide a more affordable health insurance policy for you, although, at the same time, it may provide you with fewer health benefits than those normally included as state-mandated health benefits in policies in Texas. Please consult with your insurance agent to discover which state-mandated health benefits are excluded in this policy."

Sec. 1507.006. DISCLOSURE STATEMENT. (a) A health carrier providing a standard health benefit plan must provide a proposed policyholder or policyholder with a written disclosure statement that:

(1) acknowledges that the standard health benefit plan being purchased does not provide some or all state-mandated health benefits;

(2) lists those state-mandated health benefits not included in the standard health benefit plan; and

(3) if the standard health benefit plan is issued to an individual policyholder, provides a notice that purchase of the plan may limit the policyholder's future coverage options in the

event the policyholder's health changes and needed benefits are not available under the standard health benefit plan.

(b) Each applicant for initial coverage and each policyholder on renewal of coverage must sign the disclosure statement provided by the health carrier under Subsection (a) and return the statement to the health carrier. Under a group policy or contract, the term "applicant" means the employer.

(c) A health carrier must:

(1) retain the signed disclosure statement in the health carrier's records; and

(2) on request from the commissioner, provide the signed disclosure statement to the department.

Sec. 1507.007. ADDITIONAL POLICIES. A health carrier that offers one or more standard health benefit plans under this subchapter must also offer at least one accident or sickness insurance policy that provides state-mandated health benefits and is otherwise authorized by this code.

Sec. 1507.008. RATES. A health carrier shall file for informational purposes the rates to be used with a standard health benefit plan. Nothing in this section shall be construed as granting the commissioner any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any individual accident and sickness insurance policy or policies.

Sec. 1507.009. RULES. The commissioner shall adopt rules necessary to implement this subchapter.

[Sections 1507.010-1507.050 reserved for expansion]

SUBCHAPTER B. CONSUMER CHOICE OF BENEFITS HEALTH MAINTENANCE ORGANIZATION PLANS

Sec. 1507.051. PURPOSE. The legislature recognizes the need for individuals and employers in this state to have the opportunity to choose health maintenance organization plans that are more affordable and flexible than existing market health care plans offered by health maintenance organizations. The legislature, therefore, seeks to increase the availability of health care plans by allowing health maintenance organizations authorized to operate health maintenance organizations in this state to issue group or individual evidences of coverage that, in whole or in part, do not offer or provide state-mandated health benefits.

Sec. 1507.052. DEFINITIONS. (a) In this subchapter, "standard health benefit plan" means a group or individual evidence of coverage that, in whole or in part, does not offer or provide state-mandated health benefits but that provides creditable coverage as defined by Section 1205.004(a) or 1501.102(a).

(b) In this subchapter, terms defined by Section 843.002 have the meanings assigned by that section.

Sec. 1507.053. STATE-MANDATED HEALTH BENEFITS. (a) For purposes of this subchapter, "state-mandated health benefits" means coverage required under this code or other laws of this state to be provided in an evidence of coverage that:

(1) includes coverage for specific health care services or benefits;

(2) places limitations or restrictions on

deductibles, coinsurance, copayments, or any annual or lifetime maximum benefit amounts, including limitations provided in Section 1271.151; or

(3) includes a specific category of licensed health care practitioner from whom an enrollee is entitled to receive care.

(b) For purposes of this subchapter, "state-mandated health benefits" does not include coverage that is mandated by federal law or standard provisions or rights required under this code or other laws of this state to be provided in an evidence of coverage that are unrelated to a specific health illness, injury, or condition of an enrollee, including provisions related to:

(1) continuation of coverage under Subchapter G, Chapter 1251;

(2) termination of coverage under Sections 1202.051 and 1501.108;

(3) preexisting conditions under Subchapter D, Chapter 1201, and Sections 1501.102-1501.105;

(4) coverage of children, including newborn or adopted children, under:

(A) Chapter 1504;

(B) Chapter 1503;

(C) Section 1501.157;

(D) Section 1501.158; and

(E) Sections 1501.607-1501.609;

(5) services of providers under Section 843.304;

(6) coverage for serious mental health illness under

Subchapter A, Chapter 1355, if the standard health benefit plan is issued to a large employer as defined by Section 1501.002; and

(7) coverage for cancer screenings under:

(A) Chapter 1356;

(B) Chapter 1362; and

(C) Chapter 1363.

Sec. 1507.054. STANDARD HEALTH BENEFIT PLANS AUTHORIZED. A health maintenance organization authorized to issue an evidence of coverage in this state may offer one or more standard health benefit plans.

Sec. 1507.055. NOTICE TO ENROLLEES. (a) Each written application for enrollment in a standard health benefit plan must contain the following language at the beginning of the document in bold type:

"You have the option to choose this Consumer Choice of Benefits Health Maintenance Organization health care plan that, either in whole or in part, does not provide state-mandated health benefits normally required in evidences of coverage in Texas. This standard health benefit plan may provide a more affordable health plan for you, although, at the same time, it may provide you with fewer health plan benefits than those normally included as state-mandated health benefits in Texas. If you choose this standard health benefit plan, please consult with your insurance agent to discover which state-mandated health benefits are excluded in this evidence of coverage."

(b) Each standard health benefit plan must contain the

following language at the beginning of the document in bold type:

"This Consumer Choice of Benefits Health Maintenance Organization health care plan, either in whole or in part, does not provide state-mandated health benefits normally required in evidences of coverage in Texas. This standard health benefit plan may provide a more affordable health plan for you, although, at the same time, it may provide you with fewer health plan benefits than those normally included as state-mandated health benefits in Texas. Please consult with your insurance agent to discover which state-mandated health benefits are excluded in this evidence of coverage."

Sec. 1570.056. DISCLOSURE STATEMENT. (a) A health maintenance organization providing a standard health benefit plan must provide a proposed contract holder or a contract holder with a written disclosure statement that:

(1) acknowledges that the standard health benefit plan being purchased does not provide some or all state-mandated health benefits;

(2) lists those state-mandated health benefits not included in the standard health benefit plan; and

(3) if the standard health benefit plan is issued to an individual certificate holder, provides a notice that purchase of the plan may limit the certificate holder's future coverage options in the event the certificate holder's health changes and needed benefits are not available under the standard health benefit plan.

(b) Each applicant for initial enrollment and each contract holder on renewal must sign the disclosure statement provided by

the health maintenance organization under Subsection (a) and return the statement to the health maintenance organization. Under a group evidence of coverage, the term "applicant" means the employer.

(c) A health maintenance organization must:

(1) retain the signed disclosure statement in the organization's records; and

(2) on request from the commissioner, provide the signed disclosure statement to the department.

Sec. 1507.057. ADDITIONAL EVIDENCES OF COVERAGE. A health maintenance organization that offers one or more standard health benefit plans under this subchapter must also offer at least one evidence of coverage that provides state-mandated health benefits and is otherwise authorized by this code.

Sec. 1507.058. RATES. A health maintenance organization shall file for informational purposes the rates to be used with a standard health benefit plan. Nothing in this section shall be construed as granting the commissioner any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any evidence of coverage.

Sec. 1507.059. RULES. The commissioner shall adopt rules necessary to implement this subchapter.

(b) Section 1271.005(b), Insurance Code, is amended to conform to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) Subchapter B, Chapter 1355, applies to a health maintenance organization providing benefits for mental health

treatment in a residential treatment center for children and adolescents or crisis stabilization unit to the extent that:

(1) Subchapter B, Chapter 1355, does not conflict with this chapter, Chapter 843, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507; and

(2) the residential treatment center for children and adolescents or crisis stabilization unit is located within the service area of the health maintenance organization and is subject to inspection and review as required by this chapter, Chapter 843, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, or rules adopted under this chapter, Chapter 843, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507.

(c) Section 1271.007(a), Insurance Code, is amended to conform to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) This chapter, Chapters 843, 1272, and 1367, [~~and~~] Subchapter A, Chapter 1452, and Subchapter B, Chapter 1507, do not require a health maintenance organization, physician, or provider to recommend, offer advice concerning, pay for, provide, assist in, perform, arrange, or participate in providing or performing any health care service that violates the religious convictions of the health maintenance organization, physician, or provider.

(d) Section 1271.103(a), Insurance Code, is amended to conform to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) After notice and opportunity for hearing, the commissioner may withdraw approval of the form of an evidence of

coverage or group contract or an amendment to one of those forms if the commissioner determines that the form violates this chapter, Chapter 843, 1272, or 1367, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, or a rule adopted by the commissioner.

(e) Sections 1272.001(a)(1), (3), and (4), Insurance Code, are amended to conform to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(1) "Delegated entity" means an entity, other than a health maintenance organization authorized to engage in business under Chapter 843, that by itself, or through subcontracts with one or more entities, undertakes to arrange for or provide medical care or health care to an enrollee in exchange for a predetermined payment on a prospective basis and that accepts responsibility for performing on behalf of the health maintenance organization a function regulated by this chapter, Chapter 843, 1271, or 1367, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507. The term does not include:

(A) an individual physician; or

(B) a group of employed physicians, practicing medicine under one federal tax identification number, whose total claims paid to providers not employed by the group constitute less than 20 percent of the group's total collected revenue computed on a calendar year basis.

(3) "Delegated third party" means a third party other than a delegated entity that contracts with a delegated entity, either directly or through another third party, to:

(A) accept responsibility for performing a

function regulated by this chapter, Chapter 843, 1271, or 1367, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507; or

(B) receive, handle, or administer funds, if the receipt, handling, or administration is directly or indirectly related to a function regulated by this chapter, Chapter 843, 1271, or 1367, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507.

(4) "Delegation agreement" means an agreement by which a health maintenance organization assigns the responsibility for a function regulated by this chapter, Chapter 843, 1271, or 1367, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507.

(f) Section 1272.052(a), Insurance Code, is amended to conform to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) A health maintenance organization that delegates a function required by this chapter, Chapter 843, 1271, or 1367, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, shall execute a written delegation agreement with the entity to which the function is delegated.

(g) Section 1272.059, Insurance Code, is amended to conform to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1272.059. CONTRACTS WITH DELEGATED THIRD PARTY. A delegation agreement required by Section 1272.052 must provide that:

(1) any agreement under which the delegated entity directly or indirectly delegates a function required by this

chapter, Chapter 843, 1271, or 1367, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, including the handling of funds, if applicable, to a delegated third party must be in writing; and

(2) the delegated entity, in contracting with a delegated third party directly or through a third party, shall require the delegated third party to comply with the requirements of Section 1272.057 and any rules adopted by the commissioner implementing that section.

(h) Section 1272.208(a), Insurance Code, is amended to conform to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) Regardless of whether a delegated entity complies with a request for corrective action under Section 1272.207, the commissioner may order a health maintenance organization with which the entity has entered into a delegation agreement to take any action the commissioner determines is necessary to ensure that the health maintenance organization is complying with this chapter, Chapter 843, 1271, or 1367, [~~or~~] Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507.

(i) Section 1501.255(b), Insurance Code, is amended to conform to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) A health maintenance organization may offer:

(1) a state-approved health benefit plan that complies with this chapter, Chapters 843, 1271, 1272, and 1367, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Title XIII, Public

Health Service Act (42 U.S.C. Section 300e et seq.), and its subsequent amendments, and rules adopted under those laws;

(2) a health benefit plan developed by the commissioner under Section 1501.253 and additional benefit riders to the plan; or

(3) a point-of-service contract in connection with an insurer that includes optional coverage for out-of-area services, emergency care, or out-of-network care.

(j) Section 4151.002, Insurance Code, is amended to conform to Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 4151.002. EXEMPTIONS. A person is not an administrator if the person is:

(1) an employer acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer;

(2) a union acting on behalf of its members;

(3) an insurer or a group hospital service corporation subject to Chapter 842 acting with respect to a policy lawfully issued and delivered by the insurer or corporation in and under the law of a state in which the insurer or corporation was authorized to engage in the business of insurance;

(4) a health maintenance organization that is authorized to operate in this state under Chapter 843 with respect to any activity that is specifically regulated under that chapter, Chapter 1271, 1272, or 1367, [~~or~~] Subchapter A, Chapter 1452<u>, or Subchapter B, Chapter 1507</u>;

(5) an agent licensed under Subchapter B, Chapter 4054, who receives commissions as an agent and is acting:

(A) under appointment on behalf of an insurer authorized to engage in the business of insurance in this state; and

(B) in the customary scope and duties of the person's authority as an agent;

(6) a creditor acting on behalf of its debtor with respect to insurance that covers a debt between the creditor and its debtor, if the creditor performs only the functions of a group policyholder or a creditor;

(7) a trust established in conformity with 29 U.S.C. Section 186 or a trustee or employee who is acting under the trust;

(8) a trust that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, or a trustee or employee acting under the trust;

(9) a custodian or a custodian's agent or employee who is acting under a custodian account that complies with Section 401(f), Internal Revenue Code of 1986;

(10) a bank, credit union, savings and loan association, or other financial institution that is subject to supervision or examination under federal or state law by a federal or state regulatory authority, if the institution is performing only those functions for which the institution holds a license under federal or state law;

(11) a company that advances and collects a premium or charge from its credit card holders on their authorization, if the company does not adjust or settle claims and acts only in the

company's debtor-creditor relationship with its credit card holders;

(12) a person who adjusts or settles claims in the normal course of the person's practice or employment as a licensed attorney and who does not collect any premium or charge in connection with annuities or with life, health, or accident benefits, including pharmacy benefits;

(13) an adjuster licensed by the department who is engaged in the performance of the person's powers and duties as an adjuster in the scope of the person's license;

(14) a person who provides technical, advisory, utilization review, precertification, or consulting services to an insurer, plan, or plan sponsor but does not make any management or discretionary decisions on behalf of the insurer, plan, or plan sponsor;

(15) an attorney in fact for a Lloyd's plan operating under Chapter 941 or for a reciprocal or interinsurance exchange operating under Chapter 942 who is acting in the capacity of attorney in fact under the applicable chapter;

(16) a joint fund, risk management pool, or self-insurance pool composed of political subdivisions of this state that participate in a fund or pool through interlocal agreements, any nonprofit administrative agency or governing body or other nonprofit entity that acts solely on behalf of a fund, pool, agency, or body, or any other fund, pool, agency, or body established under or for the purpose of implementing an interlocal governmental agreement;

(17) a self-insured political subdivision;

(18) a plan under which insurance benefits are provided exclusively by an insurer authorized to engage in the business of insurance in this state and the administrator of which is:

(A) a full-time employee of the plan's organizing or sponsoring association, trust, or other entity; or

(B) a trustee of the organizing or sponsoring trust; or

(19) a parent of a wholly owned direct or indirect subsidiary insurer authorized to engage in the business of insurance in this state or a wholly owned direct or indirect subsidiary insurer that is a part of the parent's holding company system that, under an agreement regulated and approved under Chapter 823 or a similar statute of the domiciliary state if the parent or subsidiary insurer is a foreign insurer engaged in business in this state, on behalf of only itself or an affiliated insurer:

(A) collects premiums or contributions, if the parent or subsidiary insurer:

(i) prepares only billing statements and places those statements in the United States mail; and

(ii) causes all collected premiums to be deposited directly in a depository account of the particular affiliated insurer; or

(B) furnishes proof-of-loss forms, reviews claims, determines the amount of the liability for those claims,

and negotiates settlements, if the parent or subsidiary insurer pays claims only from the funds of the particular subsidiary by checks or drafts of that subsidiary.

(k) Article 3.80, Insurance Code, as added by Section 1, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, and Section 9N, Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), as added by Section 2, Chapter 1179, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 11.075. (a) Chapter 1652, Insurance Code, is amended to conform to Section 1, Chapter 530, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter F to read as follows:

SUBCHAPTER F. OUTPATIENT PRESCRIPTION DRUGS

Sec. 1652.251. OUTPATIENT PRESCRIPTION DRUG BENEFIT PLANS. (a) An entity described by Section 1652.003 that issues a Medicare supplement benefit plan in this state may offer a group or individual policyholder:

(1) an outpatient prescription drug benefit plan authorized under 42 U.S.C. Section 1395ss; or

(2) a new or innovative outpatient prescription drug benefit plan filed with and approved by the commissioner under Section 1652.055.

(b) The commissioner shall approve or disapprove an outpatient drug benefit plan described by Subsection (a) that is filed for approval under Section 1652.055 not later than the 60th day after the date the entity files the plan with the department. A

drug benefit plan that has not been approved or disapproved by the commissioner before the 61st day after the date the plan is filed with the department is considered approved on that day.

Sec. 1652.252. PRESCRIPTION DRUG DISCOUNT PROGRAMS. (a) In this section, "prescription drug discount program" means any program that entitles a participant to purchase prescription drugs or other medical supplies and services from vendors at a discount under an agreement made with a participating pharmacy.

(b) An entity described by Section 1652.003 may offer participation in a prescription drug discount program in connection with the solicitation of an application for issuance of a Medicare supplement benefit plan.

(c) An offer of participation in a prescription drug discount program described by this section is not a violation of Chapter 541 or any other law prohibiting the offer of rebates in the solicitation of insurance policies.

(b) Section 1, Chapter 530, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.076. (a) Section 1701.060, Insurance Code, is amended to conform to Section 15.04, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 1701.060. GENERAL RULEMAKING AUTHORITY. (a) The commissioner may[~~, within the standards and purposes of this chapter,~~] adopt reasonable rules necessary to implement the purposes of this chapter, including, after notice and hearing, rules that establish procedures and criteria under which:

(1) each type of form submitted to the department

under this chapter will be reviewed and approved by the commissioner or exempted under Section 1701.005(b); and

(2) particular types of forms designated by the commissioner may be given a summary review and approval if considered appropriate by the commissioner to expedite review and approval of those forms.

(b) A rule adopted under this chapter may not be repealed or amended until after [~~before~~] the first anniversary of the date the rule was adopted unless the commissioner determines [~~after notice and in a public hearing~~] that repeal or amendment is in the significant and material interests of the citizens of this state or is necessary as a result of legislative enactment [~~there is a compelling public need for the rule to be repealed or amended~~].

(b) Section 15.04, Chapter 206, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.077. Section 2501.007, Insurance Code, is amended to conform to Sections 51 and 59, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 2501.007. REFERENCES TO TITLE. In this title, a reference to this title includes a reference to:

(1) Chapter 223;

(2) Chapter 271; and

(3) [~~Section 171.0527, Tax Code; and~~

[~~(4)~~] Subchapter U, Chapter 171, Tax Code.

SECTION 11.078. Section 171.0527, Tax Code, is repealed to conform to Sections 51 and 59, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 11.079. Section 2602.402(b), Insurance Code, is amended to more closely conform to the source law from which it was derived to read as follows:

(b) Except as otherwise provided by this section, the receiver appointed under an order of receivership of a title insurance company domiciled in this state may recover on behalf of the company from an affiliate that controlled the company the amount of a distribution, other than a stock dividend the company paid on its capital [~~common~~] stock, made during the five years preceding the date of the petition for liquidation or rehabilitation.

SECTION 11.080. Section 4001.009(a), Insurance Code, is amended to conform to the enactment of Articles 21.07-5, 21.21-6A, 21.21-11, 21.30, 21.49-2U, 21.49-2V, 21.52Y, 21.52Z, and 21.55A, Insurance Code, by Section 3.02 of Chapter 207, Section 12.02 of Chapter 206, Section 2 of Chapter 205, Section 20 of Chapter 214, Section 3.01 of Chapter 206, Section 8.02 of Chapter 206, Section 21 of Chapter 214, and Section 2.01 of Chapter 207, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) As referenced in Section 4001.003(9), a reference to an agent in the following laws includes a subagent without regard to whether a subagent is specifically mentioned:

(1) Chapters 281, 523, 541-556, 558, 559, 702, 703, 705, 821, 823-825, 827, 828, 844, 1108, 1205-1209, 1211-1213, 1352, 1353, 1357, 1358, 1360-1363, 1369, 1453-1455, [~~and~~] 1503, and 4102;

(2) Subchapter C, Chapter 521;

(3) Subchapter F, Chapter 542;

(4) Subchapters G and I, Chapter 544;

(5) Subchapter A, Chapter 557;

(6) [~~(4)~~] Subchapter B, Chapter 805;

(7) [~~(5)~~] Subchapter D, Chapter 1103;

(8) [~~(6)~~] Subchapters B, C, D, and E, Chapter 1204, excluding Sections 1204.153 and 1204.154;

(9) [~~(7)~~] Subchapter B, Chapter 1366;

(10) [~~(8)~~] Subchapters B, C, and D, Chapter 1367, excluding Section 1367.053(c);

(11) [~~(9)~~] Subchapters A, C, D, E, F, H, and I, Chapter 1451;

(12) [~~(10)~~] Subchapter B, Chapter 1452;

(13) [~~(11)~~] Sections 551.004, 982.001, 982.002, 982.004, 982.052, 982.102, 982.103, 982.104, 982.106, 982.107, 982.108, 982.110, 982.111, and 982.112;

(14) [~~(12)~~] Subchapters D, E, and F, Chapter 982;

(15) [~~(13)~~] Section 1101.003(a); and

(16) [~~(14)~~] Chapter 107, Occupations Code.

SECTION 11.081. (a) Section 4101.002(a), Insurance Code, is amended to conform to Section 3.01, Chapter 207, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) This chapter does not apply to:

(1) an attorney who:

(A) adjusts insurance losses periodically and incidentally to the practice of law; and

(B) does not represent that the attorney is an adjuster;

(2) a salaried employee of an insurer who is not regularly engaged in the adjustment, investigation, or supervision of insurance claims;

(3) a person employed only to furnish technical assistance to a licensed adjuster, including:

(A) an attorney;

(B) an engineer;

(C) an estimator;

(D) a handwriting expert;

(E) a photographer; and

(F) a private detective;

(4) an agent or general agent of an authorized insurer who processes an undisputed or uncontested loss for the insurer under a policy issued by the agent or general agent;

(5) a person who performs clerical duties and does not negotiate with parties to disputed or contested claims;

(6) a person who handles claims arising under life, accident, and health insurance policies;

(7) a person:

(A) who is employed principally as:

(i) a right-of-way agent; or

(ii) a right-of-way and claims agent;

(B) whose primary responsibility is the acquisition of easements, leases, permits, or other real property rights; and

(C) who handles only claims arising out of operations under those easements, leases, permits, or other

contracts or contractual obligations; [~~or~~]

(8) an individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments; or

(9) a public insurance adjuster licensed under Chapter 4102.

(b) Section 3.01, Chapter 207, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 11.082. (a) Subtitle C, Title 13, Insurance Code, is amended to conform to the enactment of Article 21.07-5, Insurance Code, by Section 3.02, Chapter 207, Acts of the 78th Legislature, Regular Session, 2003, by adding Chapter 4102 to read as follows:

CHAPTER 4102. PUBLIC INSURANCE ADJUSTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4102.001. DEFINITIONS. In this chapter:

(1) "License holder" means a person licensed under this chapter as a public insurance adjuster.

(2) "Person" includes an individual, firm, company, association, organization, partnership, limited liability company, or corporation.

(3) "Public insurance adjuster" means:

(A) a person who, for direct, indirect, or any other compensation:

(i) acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or

personal property; or

(ii) on behalf of any other public insurance adjuster, investigates, settles, or adjusts or advises or assists an insured with a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

(B) a person who advertises, solicits business, or holds himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property.

Sec. 4102.002. GENERAL EXEMPTIONS. This chapter does not apply to:

(1) an officer or employee of the federal or state government or of a political subdivision of the state government while the officer or employee is engaged in the performance of official duties;

(2) an attorney engaged in the performance of the attorney's professional duties;

(3) insurers admitted to do business in the state and agents licensed by this state, engaged in the performance of their duties in connection with insurance transactions;

(4) the legal owner of personal property that has been sold under a conditional sales agreement or a mortgagee under the terms of a chattel mortgage;

(5) a salaried office employee who performs exclusively clerical or administrative duties attendant to the disposition of the business regulated by this chapter;

(6) a photographer, estimator, appraiser, engineer,

or arbitrator employed by a public insurance adjuster exclusively for the purpose of furnishing technical assistance to the licensed public insurance adjuster;

(7) a private investigator licensed under Chapter 1702, Occupations Code, while acting within the scope of that license; or

(8) a full-time salaried employee of a property owner or a property management company retained by a property owner who:

(A) does not hold the employee out as:

(i) a public insurance adjuster; or

(ii) a building, roofing, or other restoration contractor;

(B) has not been hired to handle a specific claim resulting from a fire or casualty loss; and

(C) acts at the sole discretion of the property owner or management company regarding a claim related to the owner's property.

Sec. 4102.003. CERTAIN CONSTRUCTION REGARDING PRACTICE OF LAW PROHIBITED. This chapter may not be construed as entitling a person who is not licensed by the Supreme Court of Texas to practice law in this state.

Sec. 4102.004. RULES. The commissioner may adopt reasonable and necessary rules to implement this chapter, including rules regarding:

(1) the qualifications of license holders, in addition to those prescribed by this chapter, that are necessary to promote and protect the public interest;

(2) the regulation of the conduct of license holders;

(3) the prescription of fees required by Section 4102.066; and

(4) the regulation of advertisements under Section 4102.113 and the definition of "advertisement" as the term is used in that section.

Sec. 4102.005. CODE OF ETHICS. The commissioner, with guidance from the public insurance adjusters examination advisory committee, by rule shall adopt:

(1) a code of ethics for public insurance adjusters that fosters the education of public insurance adjusters concerning the ethical, legal, and business principles that should govern their conduct;

(2) recommendations regarding the solicitation of the adjustment of losses by public insurance adjusters; and

(3) any other principles of conduct or procedures that the commissioner considers necessary and reasonable.

Sec. 4102.006. NOTICE TO LAST ADDRESS. Notice by registered mail, return receipt requested, sent to the last known address of an applicant for a license, a license holder, or another person to whom notice is required to be sent under this chapter, as reflected by the records of the department, constitutes sufficient notice under this chapter.

[Sections 4102.007-4102.050 reserved for expansion]

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 4102.051. LICENSE REQUIRED; EXEMPTION. (a) A person may not act as a public insurance adjuster in this state or hold

himself or herself out to be a public insurance adjuster in this state unless the person holds a license or certificate issued by the commissioner under Section 4102.053, 4102.054, or 4102.069.

(b) A license is not required for:

(1) an attorney licensed to practice law in this state who has complied with Section 4102.053(a)(6); or

(2) a person licensed as a general property and casualty agent under Chapter 4051 while acting for an insured concerning a loss under a policy issued by that agent.

Sec. 4102.052. APPLICATION. (a) An application for a license under this chapter must be on a form prescribed by the commissioner.

(b) The completed application must be notarized and be accompanied by a nonrefundable license application fee, as provided by Section 4102.066, for each application submitted.

Sec. 4102.053. ISSUANCE OF LICENSE TO RESIDENT. (a) The commissioner shall issue a public insurance adjuster license to an applicant on determining that the application meets the requirements of this chapter, the license application fee has been paid, and the applicant is an individual who:

(1) is at least 18 years of age;

(2) is a citizen of the United States or has complied with all federal laws pertaining to employment or to the transaction of business in the United States;

(3) is a resident of this state;

(4) is trustworthy and of a moral character that reasonably ensures that the applicant will conduct the business of

a public insurance adjuster fairly and in good faith without detriment to the public;

(5) has not been convicted of a felony in the 10 years preceding filing an application under this chapter or, if convicted of a felony in the 10 years preceding filing an application under this chapter, has received a full pardon from that conviction and is otherwise relieved from any disabilities connected with that conviction;

(6) has sufficient experience or training relating to the assessment of:

(A) real and personal property values; and

(B) physical loss of or damage to real or personal property that may be the subject of insurance and claims under insurance;

(7) is sufficiently informed as to the terms and effects of the types of insurance contracts that provide coverage on real and personal property;

(8) possesses knowledge and experience adequate to enable the applicant to engage in the business of a public insurance adjuster fairly and without injury to the public or any member of the public with whom the applicant may have business as a public insurance adjuster;

(9) has successfully passed the license examination prescribed under Section 4102.057 or is exempt from the examination requirement under this chapter;

(10) has complied with the financial responsibility requirements imposed under Section 4102.105; and

(11) has complied with any other requirements under applicable state law, including provision of a complete set of fingerprints on request, as provided by Section 4001.103.

(b) The commissioner may issue a resident public insurance adjuster license to an applicant who has been convicted of a felony 11 or more years before filing an application under this chapter if the commissioner determines that the applicant is qualified to act as a public insurance adjuster and that the circumstances surrounding the applicant's conviction do not warrant the denial of a license issued under this chapter.

Sec. 4102.054. ISSUANCE OF LICENSE TO NONRESIDENT. (a) The commissioner may issue a nonresident license to an applicant for a public insurance adjuster license who is not a permanent resident of this state on determining that the application meets the requirements of this chapter, the nonresident license application fee has been paid, and the applicant is an individual who:

(1) is at least 18 years of age;

(2) except as provided by Section 4102.058, has passed, to the satisfaction of the commissioner, an examination approved by the commissioner and of sufficient scope as prescribed by Section 4102.057;

(3) is self-employed as a public insurance adjuster or associated with or employed by a public insurance adjusting firm or other public insurance adjuster;

(4) is trustworthy and of a moral character that reasonably ensures that the applicant will conduct the business of a public insurance adjuster fairly and in good faith without

detriment to the public;

(5) has never been convicted of a felony or, if convicted of a felony, has received a full pardon from that conviction and is otherwise relieved from any disabilities connected with that conviction;

(6) has sufficient experience or training relating to the assessment of:

(A) real and personal property values; and

(B) physical loss of or damage to real or personal property that may be the subject of insurance and claims under insurance;

(7) is sufficiently informed as to the terms and effects of the types of insurance contracts that provide coverage on real and personal property;

(8) possesses knowledge and experience adequate to enable the applicant to engage in the business of a public insurance adjuster fairly and without injury to the public or any member of the public with whom the applicant may have business as a public insurance adjuster;

(9) if currently licensed as a resident public insurance adjuster in the applicant's state of residence, provides with the application a certificate or letter of authorization from the licensing authority of the applicant's state of residence that:

(A) states that the applicant holds a current or comparable license to act as a public insurance adjuster; and

(B) meets the requirements of Subsection (b);

(10) if the applicant's state of residence does not

require licensure as a resident public insurance adjuster and the applicant has been licensed as an adjuster, agent, broker, or other insurance representative in the applicant's state of residence or any other state within the past three years, provides with the application a certificate or letter of authorization from the licensing authority that:

(A) states that the applicant holds or has held a license to act as an adjuster, agent, broker, or other insurance representative; and

(B) meets the requirements of Subsection (c);

(11) files proof of financial responsibility in accordance with Section 4102.105; and

(12) complies with any other requirements under applicable state law, including provision of a complete set of fingerprints on request, as provided by Section 4001.103.

(b) A certificate or letter required by Subsection (a)(9) must:

(1) be signed by the appropriate licensing official of the applicant's state of residence; and

(2) disclose whether the applicant has ever had any license or eligibility to hold any license declined, denied, suspended, or revoked and whether the applicant has ever been placed on probation and whether an administrative fine or penalty has been levied against the applicant and, if so, the reason for the action.

(c) A certificate or letter required by Subsection (a)(10) must:

(1) be signed by the appropriate licensing official; and

(2) disclose whether the applicant has ever had any license or eligibility to hold any license declined, denied, suspended, or revoked and whether the applicant has ever been placed on probation and whether an administrative fine or penalty has been levied against the applicant and, if so, the reason for the action.

Sec. 4102.055. ISSUANCE OF LICENSE TO BUSINESS ENTITY ORGANIZED IN THIS STATE. (a) The commissioner shall adopt rules necessary to issue a public insurance adjuster license to a business entity organized under the laws of this state.

(b) Rules adopted by the commissioner under Subsection (a) must:

(1) be analogous to the provisions of Chapter 4001 that relate to licensure of corporations and partnerships; and

(2) contain qualifications for the issuance of a public insurance adjuster license analogous to the qualifications described by Section 4102.053.

(c) The commissioner may not issue a public insurance adjuster license to a business entity described by Subsection (a) unless at least one officer, active partner, or other managing individual of the business entity, and each individual performing acts of a public insurance adjuster on behalf of the business entity in this state, are individually licensed by the department under Section 4102.053 separately from the business entity.

Sec. 4102.056. ISSUANCE OF LICENSE TO BUSINESS ENTITY NOT

ORGANIZED IN THIS STATE. (a) The commissioner shall adopt rules necessary to issue a public insurance adjuster license to a business entity organized under the laws of another state or the United States.

(b) Rules adopted by the commissioner under Subsection (a) must:

(1) be analogous to the provisions of Chapter 4001 that relate to issuance of licenses to business entities; and

(2) contain:

(A) qualifications for the issuance of a public insurance adjuster license analogous to the qualifications described by Section 4102.054; and

(B) requirements for the performance of the duties and powers of a public insurance adjuster analogous to the requirements described by Section 4102.054.

(c) The department may not issue a public insurance adjuster license to a business entity described by Subsection (a) unless at least one officer, active partner, or other managing individual of the business entity, and each individual performing acts of a public insurance adjuster on behalf of the business entity in this state, are individually licensed by the department under Section 4102.054 separately from the business entity.

Sec. 4102.057. EXAMINATION REQUIRED. (a) Except as otherwise provided by this chapter, each applicant for a license as a public insurance adjuster must, before the issuance of the license, take and pass an examination to the satisfaction of the commissioner.

(b) The examination required by this section must be prescribed by the commissioner and must be of sufficient scope to reasonably test the applicant's:

(1) knowledge of basic insurance theory, essential elements of contracts, and claims ethics;

(2) technical competence in the handling of the types of claims for which the applicant is being tested; and

(3) knowledge of:

(A) Chapter 541;

(B) Subchapters A and B, Chapter 542;

(C) Chapter 547;

(D) the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code);

(E) analogous laws as specified by the commissioner;

(F) statutory provisions related to the unauthorized practice of law contained in Subchapter G, Chapter 81, Government Code; and

(G) the duties and responsibilities of public insurance adjusters under the law.

(c) The commissioner shall, within a reasonable period not to exceed 30 days after the date of the examination, transmit the results of the examination and the action taken on the application to the applicant.

(d) An examination is not required for the renewal of a license issued under this chapter.

Sec. 4102.058. EXEMPTION FROM EXAMINATION REQUIREMENT. The examination requirement imposed by Section 4102.057 does not apply to:

(1) an applicant who is licensed as a resident public insurance adjuster in the applicant's state of residence, if the state requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of that state has been entered into by the department; or

(2) an applicant who is licensed as a nonresident public insurance adjuster in a state other than the applicant's state of residence, if the state of licensure requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of the state of licensure has been entered into by the department.

Sec. 4102.059. EXAMINATION ADVISORY COMMITTEE. (a) The commissioner may appoint a public insurance adjusters examination advisory committee composed of at least five members to assist in developing the examination required by Section 4102.057. At least three members must be eligible for licensure as public insurance adjusters. At least one member must be a person from the insurance industry who is not a public insurance adjuster, and at least one member must represent consumer interests.

(b) A member of the advisory committee is not entitled to compensation for service on the committee. A member is entitled to reimbursement for reasonable and necessary expenses incurred in performing services for the committee, subject to any limitation in the General Appropriations Act.

Sec. 4102.060. EXAMINATION FORM AND TIME. (a) The answers of an examinee to an examination required under this chapter shall be made by the examinee in writing. A written examination may be supplemented by oral examination.

(b) The examination shall be given at times and places within the state as the commissioner considers necessary to reasonably serve the convenience of both the commissioner and examinees.

(c) The commissioner may require a waiting period of reasonable duration before an examinee who fails the examination, but who is otherwise qualified, may be reexamined.

(d) The scheduling and administration of examinations required under Section 4102.057 shall be effected by persons approved by the commissioner.

Sec. 4102.061. LICENSE FORM. The commissioner shall prescribe the form of the licenses issued under this chapter. Each license must contain:

(1) the name of the public insurance adjuster and the address of the public insurance adjuster's place of business;

(2) the date of issuance and the date of expiration of the license; and

(3) if applicable, the name of the firm with which the public insurance adjuster is employed at the time the license is issued.

Sec. 4102.062. EXPIRATION. A license issued under this chapter expires on the second anniversary of the date of issuance unless suspended or revoked by the commissioner.

Sec. 4102.063. NOTICE OF EXPIRATION. At least 30 days before the expiration of a license, the department shall send written notice of the impending license expiration to the license holder at the license holder's last known mailing address according to the records of the department.

Sec. 4102.064. RENEWAL OF UNEXPIRED LICENSE. (a) A license holder may renew a license that has not expired and has not been suspended or revoked by filing with the department a properly completed renewal application, in the form prescribed by the commissioner, that demonstrates continued compliance with the license requirements imposed under this chapter or adopted by rule by the commissioner. The completed renewal application must be accompanied by:

(1) a renewal fee in the amount determined by the commissioner under Section 4102.066(b); and

(2) evidence of compliance with the continuing education requirements imposed under Section 4102.109.

(b) A license holder must submit the completed renewal application, evidence of compliance with the continuing education requirements, and the renewal fee to the commissioner not later than the 30th day before the second anniversary date of the license.

(c) On the filing of a completed renewal application, renewal fee, and, if applicable, evidence of compliance with the continuing education requirements, the original license continues in force until:

(1) the department issues the renewal license; or

(2) the commissioner issues an order revoking the

license.

Sec. 4102.065. RENEWAL OF EXPIRED LICENSE. (a) A person whose license has been expired for 90 days or less may renew the license by:

(1) submitting to the department:

(A) a completed renewal application in the form prescribed by the commissioner; and

(B) evidence of compliance with the continuing education requirements; and

(2) paying to the department the required renewal fee and an additional fee that is equal to one-half of the renewal fee for the license.

(b) A person whose license has been expired for more than 90 days but less than one year may not renew the license but is entitled to a new license without taking the applicable examination if the person submits to the department:

(1) a new application;

(2) evidence of compliance with the continuing education requirements;

(3) the license fee; and

(4) an additional fee equal to one-half of the license fee.

(c) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination, if examination is required for original issuance of the license, and by complying with the requirements and procedures for obtaining an original license.

(d) The department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in continual practice in the other state up to and including the date of the application. The person must pay to the department a fee that is equal to the license fee.

Sec. 4102.066. FEES. (a) The commissioner shall collect in advance the following nonrefundable fees:

(1) for a public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner;

(2) for a nonresident public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner;

(3) for each public insurance adjuster examination, a fee in an amount to be determined by rule by the commissioner; and

(4) for a public insurance adjuster trainee certificate under Section 4102.069, a registration fee in an amount to be determined by rule by the commissioner.

(b) The amount of the fee for the renewal of a license or a certificate issued under this chapter shall be determined by rule by the commissioner.

(c) The commissioner shall set the fees in amounts reasonable and necessary to implement this chapter.

Sec. 4102.067. USE OF FEES. (a) When collected, the fees authorized by this chapter shall be deposited with the comptroller to the credit of the Texas Department of Insurance operating

account.

(b) The department may use any portion of the fees collected to:

(1) enforce this chapter;

(2) employ persons as the department considers necessary to investigate and make reports regarding alleged violations of this code and misconduct on the part of public insurance adjusters; and

(3) pay the salaries and expenses of persons and office employees and other expenses necessary to enforce this chapter.

(c) A person employed by the department under this section may examine under oath any person for the purpose of gathering information and evidence and may have the information and evidence reduced to writing.

(d) All expenses incurred under this section shall be paid from the fees collected under this chapter.

Sec. 4102.068. LICENSE NOT ASSIGNABLE. A license issued under this chapter is not assignable.

Sec. 4102.069. REGISTRATION PROGRAM FOR TRAINEES. (a) A public insurance adjuster trainee must register with the department for a temporary certificate under this section. An applicant for a temporary certificate as a trainee must apply to the commissioner on a form prescribed by the commissioner. The form must be accompanied by a nonrefundable registration fee as prescribed by Section 4102.066(a)(4).

(b) A temporary certificate may be issued under this section

only for educational and training purposes. The holder of a temporary certificate may practice only under the direction and sponsorship of a license holder of this state.

(c) The sponsor of a public insurance adjuster trainee shall attest, on a form prescribed by the commissioner, that the trainee is under the supervision and control of the sponsor and that the sponsor has met the financial responsibility requirements of Section 4102.105.

(d) A temporary certificate expires on the 180th day after the date of issuance and may be renewed once on application to the commissioner. An individual is not entitled to hold more than two consecutive temporary certificates.

(e) Each individual who holds a temporary certificate under this section must comply with the financial responsibility requirements imposed under Section 4102.105.

[Sections 4102.070-4102.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 4102.101. GENERAL AUTHORITY. (a) A license issued under this chapter authorizes the adjusting of claims on behalf of insureds for fire and allied coverages, burglary, flood, and all other property claims, both real and personal, including loss of income, but only when the client is an insured under the insurance policy.

(b) This chapter does not limit or diminish the authority of a license holder to investigate or adjust a loss to less than the authority for that purpose that may be exercised by an adjuster licensed under Chapter 4101.

Sec. 4102.102. COMPLIANCE WITH INSURANCE CONTRACT. A license holder shall prepare each claim for an insured represented by the license holder in accordance with the terms and conditions of the contract of insurance under which recovery is sought.

Sec. 4102.103. CONTRACT FOR SERVICES REQUIRED. (a) A license holder may not, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the commissioner, executed in duplicate by the license holder and the insured or the insured's duly authorized representative. A license holder may not use any form of contract that is not approved by the commissioner.

(b) The contract must contain a provision allowing the client to rescind the contract by written notice to the license holder within 72 hours of signature, and must include a prominently displayed notice in 12-point boldface type that states "WE REPRESENT THE INSURED ONLY." The commissioner by rule may require additional prominently displayed notice requirements in the contract as the commissioner considers necessary.

(c) One copy of the contract shall be kept on file in this state by the license holder and must be available at all times for inspection, without notice, by the commissioner or the commissioner's duly authorized representative.

Sec. 4102.104. COMMISSIONS. (a) Except as provided by Subsection (b), a license holder may receive a commission for service provided under this chapter consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation. The total

commission received may not exceed 10 percent of the amount of the insurance settlement on the claim.

(b) A license holder may not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim on a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy in accordance with Section 862.053. The license holder is entitled to reasonable compensation from the insured for services provided by the license holder on behalf of the insured, based on the time spent on a claim that is subject to this subsection and expenses incurred by the license holder, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(c) Except for the payment of a commission by the insured, all persons paying any proceeds of a policy of insurance or making any payment affecting an insured's rights under a policy of insurance must:

(1) include the insured as a payee on the payment draft or check; and

(2) require the written signature and endorsement of the insured on the payment draft or check.

(d) A public insurance adjuster may not accept any payment that violates Subsection (c).

(e) Notwithstanding any authorization the insured may have given to a public insurance adjuster, a public insurance adjuster may not sign and endorse any payment draft or check on behalf of an

insured.

Sec. 4102.105. FINANCIAL RESPONSIBILITY. (a) As a continuing condition of licensure, a public insurance adjuster must file proof of financial responsibility with respect to transactions with insureds under this chapter in an amount determined by the commissioner by rule. The financial responsibility must include the ability to pay sums the public insurance adjuster is obligated to pay under any judgment against the public insurance adjuster by an insured, based on an error, omission, fraud, negligent act, or unfair practice of the public insurance adjuster or any person for whose acts the public insurance adjuster is legally liable in the transaction of the public insurance adjuster's business under this code.

(b) In determining the amount of the financial responsibility requirement, the commissioner shall consider the nature of the obligation, other financial security requirements under this code, and financial security requirements adopted for public insurance adjusters in other states. In determining the types of financial responsibility required, the commissioner may consider a surety bond or a professional liability policy or similar policy or contract of professional liability coverage acceptable to the commissioner.

Sec. 4102.106. PLACE OF BUSINESS. (a) Each license holder who is a resident of this state or a business entity organized under the laws of this state shall:

(1) maintain a place of business in this state that is accessible to the general public; and

(2) maintain in the place of business the records required by this chapter.

(b) The address of the place of business must appear on the face of the license.

(c) The license holder shall promptly notify the commissioner of any change in the address of the license holder's place of business.

Sec. 4102.107. AGENT FOR SERVICE OF PROCESS. (a) Each nonresident license holder shall maintain an agent in this state for service of process.

(b) The name and address of the nonresident license holder's out-of-state business address and the name and address of the agent must appear on the face of the license.

(c) The nonresident license holder shall promptly notify the department of any change in the address of the license holder's place of business or in the agent for service of process.

Sec. 4102.108. POSTING OF LICENSE. A license issued under this chapter must at all times be posted in a conspicuous place in the principal place of business of the license holder.

Sec. 4102.109. CONTINUING EDUCATION. (a) Each license holder must annually complete at least 15 hours of continuing education courses. The commissioner by rule shall prescribe the requirements for continuing education courses under this section.

(b) Notwithstanding Subsection (a), the commissioner may waive any continuing education requirement for a nonresident public insurance adjuster with a valid license from another state having continuing education requirements substantially equivalent to

those of this state.

Sec. 4102.110. RECORD MAINTENANCE. (a) A license holder shall keep a complete record in this state of each of the license holder's transactions as a public insurance adjuster. The records must include each of the following:

(1) the name of the insured;

(2) the date, location, and amount of the loss;

(3) a copy of the contract between the license holder and the insured;

(4) the name of the insurer and the amount, expiration date, and number of each policy under which the loss is covered;

(5) an itemized statement of the recoveries by the insured from the sources known to the license holder;

(6) the total compensation received for the adjustment; and

(7) an itemized statement of disbursements made by the license holder from recoveries received on behalf of the insured.

(b) Records required to be kept under this section must be:

(1) maintained in this state for at least five years after the termination of a transaction with the insured; and

(2) open to examination by the commissioner.

Sec. 4102.111. FIDUCIARY CAPACITY. (a) All funds received as claim proceeds by a license holder acting as a public insurance adjuster are received and held by the license holder in a fiduciary capacity. A license holder may not divert or appropriate fiduciary funds received or held.

(b) An applicant for a license to act as a public insurance

adjuster must, as part of the application, endorse an authorization for disclosure to the commissioner of all financial records of any funds the public insurance adjuster holds as a fiduciary. The authorization continues in force and effect for as long as the license holder continues to be licensed under this chapter.

Sec. 4102.112. RELOCATION TO ANOTHER STATE. (a) Not later than the 30th day after moving from one state to another state, a nonresident or resident public insurance adjuster licensed in this state shall file with the department:

(1) the license holder's new address; and

(2) proof of authorization to engage in the business of public insurance adjuster in the new state of residence if that state requires licensure of public insurance adjusters.

(b) The department may not charge a fee or require a license application under Subsection (a).

Sec. 4102.113. ADVERTISEMENTS. Each advertisement by a license holder soliciting or advertising business must display the license holder's name, address, and license number as they appear in the records of the commissioner.

Sec. 4102.114. DUTIES OF NONRESIDENT LICENSE HOLDER. (a) A nonresident license holder shall comply with all of the requirements of this chapter in performing any of the activities of a public insurance adjuster in this state, including the requirements on record maintenance in Section 4102.110.

(b) The failure of a nonresident license holder, as determined by the commissioner after notice and an opportunity for a hearing, to properly maintain records in accordance with this

chapter and make them available to the department on request constitutes grounds for the suspension of the nonresident license issued under this chapter, in accordance with Section 4102.201.

(c) Each individual who holds a nonresident license shall comply with all other laws and rules of this state applicable to public insurance adjusters, including the law governing the collection of state sales tax as appropriate for services performed under this chapter.

(d) After licensure as a nonresident public insurance adjuster, as a condition of doing business in this state, the license holder must annually, not later than January 1 and on a form prescribed by the commissioner, submit an affidavit certifying that the licensee is familiar with and understands the laws specified in Section 4102.057(b), the applicable rules adopted under those laws, and the terms and conditions of the types of insurance contracts that provide coverage on real and personal property. Compliance with the filing requirement provided by this subsection is necessary for the issuance, continuation, reinstatement, or renewal of a nonresident public insurance adjuster license.

(e) A nonresident license holder is subject to Section 4102.208(b), relating to failure to maintain the financial responsibility requirements.

[Sections 4102.115-4102.150 reserved for expansion]

SUBCHAPTER D. PROHIBITED CONDUCT

Sec. 4102.151. SOLICITATION PROHIBITED DURING NATURAL DISASTER. A license holder may not solicit or attempt to solicit a client for employment during the progress of a loss-producing

natural disaster occurrence.

Sec. 4102.152. SOLICITATION PROHIBITED DURING CERTAIN HOURS. (a) A license holder may not solicit or attempt to solicit business on a loss or a claim in person, by telephone, or in any other manner at any time except between the hours of 9 a.m. and 9 p.m. on a weekday or a Saturday and between noon and 9 p.m. on a Sunday.

(b) This section does not prohibit a license holder from accepting phone calls or personal visits during the prohibited hours from an insured on the insured's initiation.

Sec. 4102.153. CERTAIN REPORTS AND DISCLOSURES PROHIBITED. A license holder may not knowingly make any false report to the license holder's employer or client and may not divulge to any other person, except as the law may require, any information obtained except at the direction of the employer or the client for whom the information is obtained.

Sec. 4102.154. USE OF BADGE PROHIBITED. A license holder may not use a badge in connection with the official activities of the license holder's business.

Sec. 4102.155. CERTAIN DELEGATION PROHIBITED. A license holder may not permit an employee or agent, in the employee's or agent's own name, to advertise, solicit or engage clients, furnish reports or present bills to clients, or in any manner conduct business for which a license is required under this chapter.

Sec. 4102.156. PRACTICE OF LAW PROHIBITED. A license holder may not render services or perform acts that constitute the practice of law, including the giving of legal advice to any person

in the license holder's capacity as a public insurance adjuster.

Sec. 4102.157. CERTAIN BUSINESS PROHIBITED. A license holder may not solicit or attempt to solicit business, directly or indirectly, or act in any manner on a bodily injury loss covered by a life, health, or accident insurance policy or on any claim for which the client is not an insured under the insurance policy.

Sec. 4102.158. CONFLICTS OF INTEREST PROHIBITED. (a) A license holder may not:

(1) participate directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the license holder; or

(2) engage in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting any remuneration from, or having a financial interest in, any salvage firm, repair firm, or other firm that obtains business in connection with any claim the license holder has a contract or agreement to adjust.

(b) A license holder may not, without the knowledge and consent of the insured in writing, acquire an interest in salvaged property that is the subject of a claim adjusted by the license holder.

(c) A license holder may not represent an insured on a claim or charge a fee to an insured while representing the insurance carrier against which the claim is made.

Sec. 4102.159. MISREPRESENTATION PROHIBITED. A license holder may not use any misrepresentation to solicit a contract or agreement to adjust a claim.

Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. A license holder may not:

(1) advance money to any potential client or insured;

(2) pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, to a person who is not a licensed public insurance adjuster a fee, commission, or other valuable consideration for the referral of an insured to the public insurance adjuster based on the insured entering into a contract with that public insurance adjuster; or

(3) otherwise offer to pay a fee, commission, or other valuable consideration exceeding $100 to a person not licensed as a public insurance adjuster for referring an insured to the license holder.

Sec. 4102.161. CERTAIN REPRESENTATIONS PROHIBITED. A license holder may not use any letterhead, advertisement, or other printed matter, or use any other means, to represent that the license holder is an instrumentality of the federal government, of a state, or of a political subdivision of a state.

Sec. 4102.162. USE OF DIFFERENT NAME PROHIBITED. A license holder may not use a name different from the name under which the license holder is currently licensed in an advertisement, solicitation, or contract for business.

[Sections 4102.163-4102.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

Sec. 4102.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The commissioner may deny an application for a license under this chapter or suspend or revoke a license issued

under this chapter on the basis of:

(1) a violation of this chapter or of any rule adopted by the commissioner under this chapter;

(2) a cause that constitutes grounds for denial of an original license;

(3) misrepresentation or fraud in obtaining a license;

(4) failure to pass a required license examination;

(5) the misappropriation or conversion of money required to be held in a fiduciary capacity;

(6) material misrepresentation, with intent to deceive, of the terms of an insurance contract;

(7) engaging in a fraudulent transaction;

(8) demonstrated incompetence or untrustworthiness in the conduct of the license holder's affairs under the license, as determined by the commissioner;

(9) conviction of a felony by a final judgment in a court of competent jurisdiction; or

(10) material misrepresentation, with intent to deceive, of the person's status as a public insurance adjuster.

(b) If the department proposes to refuse to issue an original license under this chapter or to suspend, revoke, or refuse to renew a license under this chapter, the person affected is entitled to notice and hearing as provided by Section 4005.104.

(c) A final order entered as a result of a hearing under this section may be appealed to a court of competent jurisdiction as provided by Subchapter D, Chapter 36.

(d) An order suspending a license issued under this chapter

must specify the period of the suspension not to exceed 12 months.

(e) The holder of a license that is revoked or suspended for cause shall surrender the license to the commissioner on demand.

(f) The commissioner may issue a license or reinstate a suspended or revoked license on a finding that the cause for suspension, revocation, or refusal no longer exists.

Sec. 4102.202. APPLICATION FOR LICENSE AFTER SUSPENSION, DENIAL OF APPLICATION, OR REVOCATION OF LICENSE. (a) A person whose license is suspended under this chapter may apply for a new license only after the expiration of the period of suspension.

(b) A person whose license is revoked or whose application for a license is denied, except for a failure to submit a completed application, may not apply for a new license until the fifth anniversary of:

(1) the effective date of the denial or revocation; or

(2) if the applicant or license holder seeks judicial review of the department's action, the date of the final court order or decree affirming that action.

(c) The commissioner may deny a timely application filed under Subsection (b) if the applicant does not show good cause why the denial of the previous license application or the revocation of the license should not be considered a bar to the issuance of the new license.

(d) Subsection (c) does not apply to an applicant whose license application was denied for failure by the applicant to:

(1) pass the required written examination; or

(2) submit a properly completed license application.

Sec. 4102.203. DISCIPLINARY PROCEEDING FOR CONDUCT COMMITTED BEFORE SURRENDER OR FORFEITURE OF LICENSE. (a) The department may institute a disciplinary proceeding against a former license holder for conduct that the license holder committed before the effective date of a voluntary surrender or automatic forfeiture of the license.

(b) In a proceeding under this section, the fact that the license holder has surrendered or forfeited the license does not affect the license holder's culpability for the conduct.

Sec. 4102.204. ADMINISTRATIVE PENALTY. The commissioner, in lieu of suspending or revoking a license for a violation of this chapter or a rule adopted under this chapter, may impose on a license holder an administrative penalty in an amount not to exceed $2,000 per violation if the commissioner determines that that action better serves the purposes of this chapter.

Sec. 4102.205. AUTOMATIC FINES. Section 4005.109 applies to violations of this chapter.

Sec. 4102.206. CRIMINAL PENALTY; SANCTIONS. (a) A person commits an offense if the person violates this chapter. An offense under this subsection is a Class B misdemeanor.

(b) If conduct that constitutes an offense under Subsection (a) also constitutes an offense under any other law, the person committing the offense may be prosecuted under this section or the other law.

(c) In addition to the criminal penalties imposed under Subsection (a), a person in violation of this chapter is subject to the sanctions provided by Sections 541.108-541.110, as if the

person had violated an order under those sections.

Sec. 4102.207. INSURED OPTION TO VOID CONTRACT. (a) Any contract for services regulated by this chapter that is entered into by an insured with a person who is in violation of Section 4102.051 may be voided at the option of the insured.

(b) If a contract is voided under this section, the insured is not liable for the payment of any past services rendered, or future services to be rendered, by the violating person under that contract or otherwise.

Sec. 4102.208. EMERGENCY CEASE AND DESIST ORDER. (a) If the commissioner believes that a person is engaging in acts or practices in violation of Section 4102.051, the commissioner ex parte may issue an emergency cease and desist order, in accordance with Subchapter B, Chapter 83, requiring the person to immediately cease and desist from engaging further in the acts or practices.

(b) In addition to any other remedy available under this code, if the commissioner believes that a person is committing a violation by failing to maintain the financial responsibility requirements of Section 4102.105, the commissioner ex parte may issue an emergency cease and desist order and suspend the person's license, in accordance with Subchapter B, Chapter 83, requiring the person to immediately cease and desist from engaging in the activities of a public insurance adjuster.

(c) A license suspended under Subsection (b) may be reinstated on the approval of an application for reinstatement filed with the commissioner, in the form prescribed by the commissioner, with proof that the financial responsibility

requirements of Section 4102.105 have been met. The commissioner may deny the application for reinstatement:

(1) for any reason that would justify a refusal to issue, or a suspension or revocation of, a license; or

(2) for the performance by the applicant of any practice for which a license under this chapter is required while the applicant is under suspension for failure to keep the financial responsibility requirements in force.

(b) Article 21.07-5, Insurance Code, as added by Section 3.02, Chapter 207, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

PART 2. CHANGES RELATING TO REFERENCES TO THE INSURANCE CODE

SECTION 11.101. Section 17.46(b), Business & Commerce Code, is amended to read as follows:

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1) passing off goods or services as those of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of facts;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under Section 4151.152 [~~19A, Article 21.07-6~~], Insurance Code, in accordance with rules adopted by the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage, unless:

(A) the discount is authorized under an agreement between the seller of the card and the provider of those goods and services or the discount or card is offered to members of the seller;

(B) the seller does not represent that the card provides insurance coverage of any kind; and

(C) the discount is not false, misleading, or

deceptive;

(19) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(20) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 to involve obligations in excess of those which are appropriate to the goods;

(21) promoting a pyramid promotional scheme, as defined by Section 17.461;

(22) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(23) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out

of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

(25) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction;

(26) selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act; or

(27) taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

(A) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity.

SECTION 11.102. Section 17.50(a), Business & Commerce Code, is amended to read as follows:

(a) A consumer may maintain an action where any of the following constitute a producing cause of economic damages or damages for mental anguish:

(1) the use or employment by any person of a false, misleading, or deceptive act or practice that is:

(A) specifically enumerated in a subdivision of Subsection (b) of Section 17.46 of this subchapter; and

(B) relied on by a consumer to the consumer's detriment;

(2) breach of an express or implied warranty;

(3) any unconscionable action or course of action by any person; or

(4) the use or employment by any person of an act or practice in violation of Chapter 541 [~~Article 21.21~~], Insurance Code.

SECTION 11.103. Effective January 1, 2006, Section 2.003, Business Organizations Code, is amended to read as follows:

Sec. 2.003. GENERAL PROHIBITED PURPOSES. A domestic entity

may not:

(1) engage in a business or activity that:

(A) is expressly unlawful or prohibited by a law of this state;

(B) cannot lawfully be engaged in by that entity under state law; or

(C) may not be engaged in by an entity without first obtaining a license under the laws of this state to engage in that business or activity and a license cannot lawfully be granted to the entity; or

(2) operate as a:

(A) bank;

(B) trust company;

(C) savings association;

(D) insurance company;

(E) railroad company;

(F) cemetery organization; or

(G) abstract or title company governed by Title 11 [~~Chapter 9~~], Insurance Code.

SECTION 11.104. Section 12.003(b), Civil Practice and Remedies Code, is amended to read as follows:

(b) Notwithstanding any other law, a person or a person licensed or regulated by Title 11 [~~Chapter 9~~], Insurance Code (the Texas Title Insurance Act), does not have a duty to disclose a fraudulent, as described by Section 51.901(c), Government Code, court record, document, or instrument purporting to create a lien or purporting to assert a claim on real property or an interest in

real property in connection with a sale, conveyance, mortgage, or other transfer of the real property or interest in real property.

SECTION 11.105. Section 38.006, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 38.006. EXCEPTIONS. This chapter does not apply to a contract issued by an insurer that is subject to the provisions of:

(1) Title 11 [~~Article 3.62, Insurance Code;~~

[~~(2) Section 1, Chapter 387, Acts of the 55th Legislature, Regular Session, 1957 (Article 3.62-1, Vernon's Texas Insurance Code);~~

[~~(3) Chapter 9~~], Insurance Code;

(2) Chapter 541 [~~(4) Article 21.21~~], Insurance Code; [~~or~~]

(3) [~~(5)~~] the Unfair Claim Settlement Practices Act (Subchapter A, Chapter 542 [~~Article 21.21-2~~], Insurance Code); or

(4) Subchapter B, Chapter 542, Insurance Code.

SECTION 11.106. Section 75.004(c), Civil Practice and Remedies Code, is amended to read as follows:

(c) This section does not affect the liability of an insurer or insurance plan in an action under Chapter 541 [~~Article 21.21~~], Insurance Code, or an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.

SECTION 11.107. Section 88.001(6), Civil Practice and Remedies Code, is amended to read as follows:

(6) "Health insurance carrier" means an authorized insurance company that issues policies of accident and health [~~sickness~~] insurance under Chapter 1201, [~~Section 1, Chapter 397,~~

~~Acts of the 54th Legislature, 1955 (Article 3.70-1, Vernon's Texas~~] Insurance Code[~~)~~].

SECTION 11.108. Sections 22.004(a), (b), (c), (i), and (j), Education Code, are amended to read as follows:

(a) A district shall participate in the uniform group coverage program established under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, as provided by Subchapter D [~~Section 5~~] of that chapter [~~article~~].

(b) A district that does not participate in the program described by Subsection (a) shall make available to its employees group health coverage provided by a risk pool established by one or more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 842, Insurance Code, or a health maintenance organization under Chapter 843, Insurance Code. The coverage must meet the substantive coverage requirements of Chapter 1251, Subchapter A, Chapter 1364, and Subchapter A, Chapter 1366 [~~Article 3.51-6~~], Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under Chapter 1551, Insurance Code. The board of trustees of the Teacher Retirement System of Texas shall adopt rules to determine whether a school district's group health coverage is

comparable to the basic health coverage specified by this subsection. The rules must provide for consideration of the following factors concerning the district's coverage in determining whether the district's coverage is comparable to the basic health coverage specified by this subsection:

(1) the deductible amount for service provided inside and outside of the network;

(2) the coinsurance percentages for service provided inside and outside of the network;

(3) the maximum amount of coinsurance payments a covered person is required to pay;

(4) the amount of the copayment for an office visit;

(5) the schedule of benefits and the scope of coverage;

(6) the lifetime maximum benefit amount; and

(7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(c) The cost of the coverage provided under the program described by Subsection (a) shall be paid by the state, the district, and the employees in the manner provided by Chapter 1579 [~~Article 3.50-7~~], Insurance Code. The cost of coverage provided under a plan adopted under Subsection (b) shall be shared by the employees and the district using the contributions by the state

described by Subchapter F, Chapter 1579 [~~Section 9, Article 3.50-7~~], Insurance Code, or by Chapter 1580 [~~Article 3.50-8~~], Insurance Code.

(i) Notwithstanding any other provision of this section, a district participating in the uniform group coverage program established under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, may not make group health coverage available to its employees under this section after the date on which the program of coverages provided under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, is implemented.

(j) This section does not preclude a district that is participating in the uniform group coverage program established under Chapter 1579 [~~Article 3.50-7~~], Insurance Code, from entering into contracts to provide optional insurance coverages for the employees of the district.

SECTION 11.109. Section 65.013(b), Finance Code, is amended to read as follows:

(b) An investment by an insurance company in a savings account is eligible for tax reducing purposes under Chapter 221 [~~Article 4.10~~], Insurance Code.

SECTION 11.110. Section 95.010(b), Finance Code, is amended to read as follows:

(b) An investment by an insurance company in a deposit account is eligible for tax reducing purposes under Chapters 221 and 222 [~~Articles 4.10 and 4.11~~], Insurance Code.

SECTION 11.111. Section 182.021, Finance Code, is amended to read as follows:

Sec. 182.021. ACTIVITIES NOT REQUIRING CHARTER. Subject to Subchapter C, Chapter 187, a company does not engage in the trust business in a manner requiring a state charter by:

(1) acting in a manner authorized by law and in the scope of authority as an agent of a trust institution;

(2) rendering a service customarily performed as an attorney in a manner approved and authorized by the Supreme Court of Texas or State Bar of Texas;

(3) acting as trustee under a deed of trust made only as security for the payment of money or for the performance of another act;

(4) conducting business as a trust institution if the exercise of fiduciary powers in this state by the trust institution is not otherwise prohibited by law;

(5) engaging in a business regulated by the Office of Consumer Credit Commissioner, except as limited by rules adopted by the finance commission;

(6) receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Texas Real Estate Commission;

(7) engaging in a securities transaction or providing an investment advisory service as a licensed and registered dealer, salesman, or advisor to the extent that the activity is regulated by the State Securities Board or the Securities and Exchange Commission;

(8) engaging in the sale and administration of an insurance product by an insurance company or agent <u>authorized or</u>

licensed by the Texas Department of Insurance to the extent that the activity is regulated by the Texas Department of Insurance;

(9) engaging in the lawful sale of prepaid funeral benefits under a permit issued by the banking commissioner under Chapter 154;

(10) engaging in the lawful business of a perpetual care cemetery corporation under Chapter 712, Health and Safety Code;

(11) engaging as a principal or agent in the lawful sale of checks under a license issued by the banking commissioner under Chapter 152;

(12) acting as trustee under a voting trust as provided by Article 2.30, Texas Business Corporation Act;

(13) acting as trustee by a public, private, or independent institution of higher education or a university system, as defined by Section 61.003, Education Code, including an affiliated foundation or corporation of such an institution or system acting as trustee as provided by the Education Code;

(14) engaging in another activity expressly excluded from the application of this subtitle by rule of the finance commission;

(15) rendering services customarily performed by a certified accountant in a manner authorized by the Texas State Board of Public Accountancy;

(16) serving as trustee of a charitable trust as provided by Article 2.31, Texas Non-Profit Corporation Act (Article 1396-2.31, Vernon's Texas Civil Statutes);

(17) performing escrow or settlement services if licensed or authorized under Title 11 [~~Chapter 9~~], Insurance Code;

(18) acting as a qualified intermediary in a tax deferred exchange under Section 1031, Internal Revenue Code of 1986, and applicable regulations; or

(19) providing permitted services at a trust representative office established in this state pursuant to Subchapter C, Chapter 187.

SECTION 11.112. Section 278.001(2), Finance Code, is amended to read as follows:

(2) "Currency transmission business" means engaging in or offering currency transmission as a service or for profit. The term does not include:

(A) a federally insured financial institution, as defined by Section 201.101, that is organized under the laws of this state, another state, or the United States; or

(B) a title insurance company or title insurance agent, as defined by Section 2501.003 [~~Article 9.02~~], Insurance Code.

SECTION 11.113. Section 303.407, Finance Code, is amended to read as follows:

Sec. 303.407. ENFORCEMENT BY TEXAS DEPARTMENT OF INSURANCE. The Texas Department of Insurance shall enforce this chapter as it applies to contracts subject to Chapter 651 [~~24~~], Insurance Code.

SECTION 11.114. Section 303.502(a), Finance Code, is amended to read as follows:

(a) Except as inconsistent with this chapter:

(1) a person subject to Chapter 651 [~~24~~], Insurance Code, who contracts for, charges, or receives an interest rate authorized by this chapter remains subject to that chapter; and

(2) a party to an insurance premium finance agreement, including an agreement for an open-end account, has all the rights provided by Chapter 651 [~~24~~], Insurance Code.

SECTION 11.115. Section 307.001(7), Finance Code, is amended to read as follows:

(7) "Title insurance" means insurance that may be issued only by persons regulated under Title 11 [~~Chapter 9~~], Insurance Code, and that insures:

(A) a lender or owner against loss caused by:

(i) defective title held by the mortgagor or owner or insured;

(ii) unknown mortgages or defective recording of mortgages or liens on real property;

(iii) failure of any person to pay ad valorem taxes resulting in a lien; or

(iv) failure to research properly title, taxes, liens, or other matters relative to the validity of loans or liens secured by real property or insurance; or

(B) the validity, enforceability, or priority of any lien or title on real property.

SECTION 11.116. Sections 342.051(c) and (d), Finance Code, are amended to read as follows:

(c) A person is not required to obtain a license under Subsection (a) if the person is:

(1) a bank, savings bank, or savings and loan association organized under the laws of the United States or under the laws of the institution's state of domicile; or

(2) subject to Chapter 651 [~~24~~], Insurance Code.

(d) An insurance agent licensed under Subchapter B, C, D, or E, Chapter 4051 [~~Article 21.14~~], Insurance Code, is not required to obtain a license to negotiate or arrange a loan on behalf of a bank, savings bank, or savings and loan association provided that the insurance agent or the bank, savings bank, or savings and loan association does not make the provision of insurance a condition to apply for or obtain a loan or service from the bank, savings bank, or savings and loan association.

SECTION 11.117. Section 348.012, Finance Code, is amended to read as follows:

Sec. 348.012. APPLICABILITY OF INSURANCE PREMIUM FINANCING PROVISIONS. Chapter 651 [~~24~~], Insurance Code, does not apply to a retail installment transaction.

SECTION 11.118. Section 348.208(c), Finance Code, is amended to read as follows:

(c) Notwithstanding any other law, service contracts sold by a retail seller of a motor vehicle to a retail buyer are not subject to Chapter 101 or 226, Insurance Code.

SECTION 11.119. Section 533.0025(c), Government Code, is amended to read as follows:

(c) In determining whether a model or arrangement described by Subsection (b) is more cost-effective, the commissioner must consider:

(1) the scope, duration, and types of health benefits or services to be provided in a certain part of this state or to a certain population of recipients;

(2) administrative costs necessary to meet federal and state statutory and regulatory requirements;

(3) the anticipated effect of market competition associated with the configuration of Medicaid service delivery models determined by the commission; and

(4) the gain or loss to this state of a tax collected under Chapter 222 [~~Article 4.11~~], Insurance Code.

SECTION 11.120. Section 551.079, Government Code, is amended to read as follows:

Sec. 551.079. TEXAS DEPARTMENT OF INSURANCE. (a) The requirements of this chapter do not apply to a meeting of the commissioner of insurance or the commissioner's designee with the board of directors of a guaranty association established under Chapter 2602, Insurance Code, or Article [~~9.48,~~] 21.28-C[~~,~~] or 21.28-D, Insurance Code, in the discharge of the commissioner's duties and responsibilities to regulate and maintain the solvency of a person regulated by the Texas Department of Insurance.

(b) The commissioner of insurance may deliberate and determine the appropriate action to be taken concerning the solvency of a person regulated by the Texas Department of Insurance in a closed meeting with persons in one or more of the following categories:

(1) staff of the Texas Department of Insurance;

(2) a regulated person;

(3) representatives of a regulated person; or

(4) members of the board of directors of a guaranty association established under Chapter 2602, Insurance Code, or Article [~~9.48,~~] 21.28-C[~~,~~] or 21.28-D, Insurance Code.

SECTION 11.121. Section 1471.062, Government Code, is amended to read as follows:

Sec. 1471.062. ASSESSMENTS CONSIDERED TAXES. For purposes of a title insurance policy issued under Title 11 [~~Chapter 9~~], Insurance Code, an assessment under this subchapter and any interest on or expenses or attorney's fees related to the assessment are considered taxes.

SECTION 11.122. Section 2253.021(f), Government Code, is amended to read as follows:

(f) A bond required under this section must clearly and prominently display on the bond or on an attachment to the bond:

(1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

(2) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521 [~~Article 1.35D~~], Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

SECTION 11.123. Section 2253.024(a), Government Code, is amended to read as follows:

(a) A prime contractor, on the written request of a person

who provides public work labor or material and when required by Subsection (c), shall provide to the person:

(1) the name and last known address of the governmental entity with whom the prime contractor contracted for the public work;

(2) a copy of the payment and performance bonds for the public work, including bonds furnished by or to the prime contractor; and

(3) the name of the surety issuing the payment bond and the performance bond and the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521 [~~Article 1.35D~~], Insurance Code, for obtaining information concerning licensed insurance companies.

SECTION 11.124. Section 2253.026(d), Government Code, is amended to read as follows:

(d) A governmental entity shall furnish the following information to a person who makes a request under Subsection (a):

(1) a certified copy of a payment bond and any attachment to the bond;

(2) the public work contract for which the bond was given; and

(3) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521 [~~Article 1.35D~~], Insurance Code, for obtaining information concerning licensed insurance companies.

SECTION 11.125. Sections 62.059(a) and (d), Health and Safety Code, are amended to read as follows:

(a) In this section, "group health benefit plan" means a plan described [~~has the meaning assigned~~] by Section 1207.001 [~~Article 21.52K~~], Insurance Code.

(d) If the commission determines that it is cost-effective to enroll the child in the group health benefit plan, the commission shall:

(1) inform the child and the child's parent or guardian of the availability of the premium assistance program under this section;

(2) offer, as an optional alternative to enrollment in the commission's state child health plan program, a premium assistance payment to assist with the employee's or member's share of the required premiums for the group health benefit plan that is available to the child; and

(3) provide written notice to the issuer of the group health benefit plan in accordance with Chapter 1207 [~~Article 21.52K~~], Insurance Code.

SECTION 11.126. Section 81.102(a), Health and Safety Code, is amended to read as follows:

(a) A person may not require another person to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:

(1) the medical procedure or test is required under Subsection (d), under Section 81.050, or under Article 21.31, Code of Criminal Procedure;

(2) the medical procedure or test is required under

Section 81.090, and no objection has been made under Section 81.090(1);

(3) the medical procedure or test is authorized under Chapter 545 [~~Article 21.21-4~~], Insurance Code;

(4) a medical procedure is to be performed on the person that could expose health care personnel to AIDS or HIV infection, according to board guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted; or

(5) the medical procedure or test is necessary:

(A) as a bona fide occupational qualification and there is not a less discriminatory means of satisfying the occupational qualification;

(B) to screen blood, blood products, body fluids, organs, or tissues to determine suitability for donation;

(C) in relation to a particular person under this chapter;

(D) to manage accidental exposure to blood or other body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the health care agency or facility;

(E) to test residents and clients of residential facilities of the Texas Department of Mental Health and Mental Retardation, but only if:

(i) the test result would change the medical or social management of the person tested or others who

associated with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the residential facility or the Texas Department of Mental Health and Mental Retardation and approved by the department; or

(F) to test residents and clients of residential facilities of the Texas Youth Commission, but only if:

(i) the test result would change the medical or social management of the person tested or others who associate with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the Texas Youth Commission.

SECTION 11.127. Section 161.0073(c), Health and Safety Code, is amended to read as follows:

(c) A person required to report information to the department for registry purposes or authorized to receive information from the registry may not disclose the individually identifiable information to any other person without written consent of the parent, managing conservator, or guardian of the child, except as provided by Chapter 159, Occupations Code, or Section 602.053 [~~Article 28B.04~~], Insurance Code.

SECTION 11.128. Section 32.038(a), Human Resources Code, is amended to read as follows:

(a) The department may receive directly from an insurance company any payments to which the department is entitled under Section 1204.153 [~~Article 3.76~~], Insurance Code.

SECTION 11.129. Section 32.0422(a)(2), Human Resources

Code, is amended to read as follows:

(2) "Group health benefit plan" means a plan described [~~has the meaning assigned~~] by Section 1207.001 [~~Article 21.52K~~], Insurance Code.

SECTION 11.130. Section 32.0422(e), Human Resources Code, is amended to read as follows:

(e) If the department determines that it is cost-effective to enroll the individual in the group health benefit plan, the department shall:

(1) require the individual to apply to enroll in the group health benefit plan as a condition for eligibility under the medical assistance program; and

(2) provide written notice to the issuer of the group health benefit plan in accordance with Chapter 1207 [~~Article 21.52K~~], Insurance Code.

SECTION 11.131. Section 401.011(1), Labor Code, is amended to read as follows:

(1) "Adjuster" means a person licensed under Chapter 4101, [~~407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas~~] Insurance Code[~~)~~].

SECTION 11.132. Section 402.084(b), Labor Code, is amended to read as follows:

(b) Information on a claim may be released as provided by Subsection (a) 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 established under Subchapter G, Chapter 407, 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;

(7) a third-party litigant in a lawsuit in which the cause of action arises from the incident that gave rise to the injury; or

(8) a subclaimant under Section 409.009 that is an insurance carrier that has adopted an antifraud plan under Subchapter B, Chapter 704 [~~Article 3.97-3~~], Insurance Code, or the authorized representative of such a subclaimant.

SECTION 11.133. Section 403.001(c), Labor Code, is amended to read as follows:

(c) Money deposited in the general revenue fund under this section may be used to satisfy the requirements of Section 201.052 [~~Article 4.19~~], Insurance Code.

SECTION 11.134. Section 403.002(c), Labor Code, is amended to read as follows:

(c) A workers' compensation insurance company is taxed at the rate established under Section 403.003. The tax shall be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Chapter 255 [~~Article 5.68~~], Insurance Code.

SECTION 11.135. Section 403.003(a), Labor Code, is amended to read as follows:

(a) The commission shall set and certify to the comptroller the rate of maintenance tax assessment not later than October 31 of each year, taking into account:

(1) any expenditure projected as necessary for the commission to:

(A) administer this subtitle during the fiscal year for which the rate of assessment is set; and

(B) reimburse the general revenue fund as provided by Section 201.052 [~~Article 4.19~~], Insurance Code;

(2) projected employee benefits paid from general revenues;

(3) a surplus or deficit produced by the tax in the preceding year;

(4) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under this subtitle; and

(5) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud.

SECTION 11.136. Sections 405.003(d) and (e), Labor Code, are amended to read as follows:

(d) The tax on insurance companies and on self-insurance groups described by Subsection (a) shall be assessed, collected, and paid in the same manner and at the same time as the maintenance tax established for the support of the department under Chapter 255 [~~Article 5.68~~], Insurance Code. The tax on certified self-insurers

shall be assessed, collected, and paid in the same manner and at the same time as the self-insurer maintenance tax collected under Section 407.104.

(e) Amounts received under this section shall be deposited in the general revenue fund [~~state treasury~~] in accordance with Section 251.004 [~~Article 5.68(e)~~], Insurance Code, to be used:

(1) for the operation of the department's duties under this chapter; and

(2) to reimburse the general revenue fund in accordance with Section 201.052 [~~Article 4.19~~], Insurance Code.

SECTION 11.137. Section 407.001(5), Labor Code, is amended to read as follows:

(5) "Qualified claims servicing contractor" means a person who provides claims service for a certified self-insurer, who is a separate business entity from the affected certified self-insurer, and who is:

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

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

(C) a third-party administrator that has on its staff an individual licensed under Chapter 4101, [~~407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas~~] Insurance Code[~~)~~].

SECTION 11.138. Section 407A.301(e), Labor Code, is amended to read as follows:

(e) The tax under this section shall be collected by the

comptroller as provided by Section 201.051 and Chapter 255 [~~Article 5.68~~], Insurance Code.

SECTION 11.139. Sections 407A.302(a) and (c), Labor Code, are amended to read as follows:

(a) Subject to Subsection (b), each group shall pay the maintenance tax imposed under Chapter 255 [~~Article 5.68~~], Insurance Code, for the administrative costs incurred by the department in implementing this chapter.

(c) The maintenance tax assessed under this section is subject to Chapter 255 [~~Article 5.68~~], Insurance Code, and shall be collected by the comptroller in the manner provided by that chapter [~~article~~].

SECTION 11.140. Section 407A.304(b), Labor Code, is amended to read as follows:

(b) The rate for the premium tax under this section is the rate assessed under Chapter 221 [~~Article 4.10~~], Insurance Code.

SECTION 11.141. Section 408.0221(g), Labor Code, is amended to read as follows:

(g) The standards adopted for preferred provider networks under Chapter 1301 [~~Article 3.70-3C~~], Insurance Code, [~~as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997,~~] apply as minimum standards for regional health care delivery networks created under this section and are adopted by reference in this section except to the extent they are inconsistent with this subtitle. The advisory committee may also recommend additional standards, including standards that require:

(1) for each geographic region, access to an adequate

number of health care providers and treating doctors in each appropriate health care discipline and the professional specialties within those disciplines and a viable network through:

(A) the use of economic profiling as described by Section 1301.058 [~~Article 3.70-3C~~], Insurance Code[~~, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997~~]; and

(B) limitations on the number of providers, as provided by Chapter 1301, Insurance Code [~~that article~~];

(2) the ability of an employee to receive treatment by a regional network provider within a reasonable amount of time of the regional network's knowledge of the need or request for treatment and within a reasonable travel distance for the employee;

(3) a reasonable effort by the regional network to attract health care providers who reflect the ethnic and cultural background of the regional employee population;

(4) the availability of board-certified occupational medicine specialists to provide expertise on disability management and prevention and treatment of occupational injuries and illnesses;

(5) accreditation of the regional networks or a commitment to seek accreditation from a nationally recognized organization such as the American Accreditation HealthCare Commission or the National Committee for Quality Assurance;

(6) the use of strict credentialing criteria by regional networks in the selection and deselection of its health care providers, including verification that the provider:

(A) is on the commission's list of approved doctors, if the provider is required to be on that list;

(B) has not, at the time of selection or deselection, been sanctioned or made subject to additional utilization review requirements by the commission;

(C) is not, at the time of selection or deselection, subject to sanctions or substantive practice restrictions imposed by the provider's licensing authority;

(D) has or is able to obtain practice privileges, if required, at a participating hospital; and

(E) is covered by professional liability insurance coverage as required by the regional network contract;

(7) satisfactory evidence of the regional network's ability to comply with any financial requirements and ensure delivery of services;

(8) compliance with ongoing training and educational requirements established by the commission;

(9) the use of nationally recognized, scientifically valid, and outcome-based treatment standards as guidelines for health care;

(10) disclosure of the availability of interpreter services as appropriate for the evaluation and treatment of employees;

(11) timely and accurate reporting of data to appropriately manage and determine the effectiveness of the regional network in reducing medical costs and ensuring quality of care;

(12) a process for reconsideration of medical necessity denials and dispute resolution within the regional network; and

(13) a process for reviewing requests for a change in treating doctors made under Section 408.0222(s).

SECTION 11.142. Section 408.0223(d), Labor Code, is amended to read as follows:

(d) The standards adopted for preferred provider networks under Chapter 1301 [~~Article 3.70-3C~~], Insurance Code, [~~as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, and as subsequently amended,~~] apply as minimum standards for insurance carrier networks and are adopted by reference in this section except to the extent those standards are inconsistent with this subtitle. The advisory committee, defined in Section 408.0221, may recommend additional standards for insurance carrier networks that are no more stringent than the additional standards that the advisory committee recommends for regional health care delivery networks pursuant to Section 408.0221(g).

SECTION 11.143. Section 413.011(c), Labor Code, is amended to read as follows:

(c) This section may not be interpreted in a manner that would discriminate in the amount or method of payment or reimbursement for services in a manner prohibited by Sections 1451.104(a) and (c) [~~Section 3(d), Article 21.52~~], Insurance Code, or as restricting the ability of chiropractors to serve as treating doctors as authorized by this subtitle. The commission shall also develop guidelines relating to fees charged or paid for providing

expert testimony relating to an issue arising under this subtitle.

SECTION 11.144. Section 415.002(a), Labor Code, is amended to read as follows:

(a) An insurance carrier or its representative commits an administrative violation if that person wilfully or intentionally:

(1) misrepresents a provision of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;

(2) terminates or reduces benefits without substantiating evidence that the action is reasonable and authorized by law;

(3) instructs an employer not to file a document required to be filed with the commission;

(4) instructs or encourages an employer to violate a claimant's right to medical benefits under this subtitle;

(5) fails to tender promptly full death benefits if a legitimate dispute does not exist as to the liability of the insurance carrier;

(6) allows 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;

(7) fails to confirm medical benefits coverage to a person or facility providing medical treatment to a claimant if a legitimate dispute does not exist as to the liability of the insurance carrier;

(8) fails, without good cause, to attend a dispute resolution proceeding within the commission;

(9) attends a dispute resolution proceeding within the commission without complete authority or fails to exercise authority to effectuate agreement or settlement;

(10) adjusts a workers' compensation claim in a manner contrary to license requirements for an insurance adjuster, including the requirements of Chapter 4101, [~~407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas~~] Insurance Code[~~)~~], or the rules of the commissioner of insurance [~~State Board of Insurance~~];

(11) fails to process claims promptly in a reasonable and prudent manner;

(12) fails to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier;

(13) misrepresents the reason for not paying benefits or terminating or reducing the payment of benefits;

(14) dates documents to misrepresent the actual date of the initiation of benefits;

(15) makes a notation on a draft or other instrument indicating that the draft or instrument represents a final settlement of a claim if the claim is still open and pending before the commission;

(16) fails or refuses to pay benefits from week to week as and when due directly to the person entitled to the benefits;

(17) fails to pay an order awarding benefits;

(18) controverts a claim if the evidence clearly indicates liability;

(19) unreasonably disputes the reasonableness and necessity of health care;

(20) violates a commission rule; or

(21) fails to comply with a provision of this subtitle.

SECTION 11.145. Section 157.102(a), Local Government Code, is amended to read as follows:

(a) The commissioners court of a county that adopts rules under Section 157.101 may require persons participating in the group health and related benefits plan to contribute toward the payment of the plan. The commissioners court may establish a fund to pay for the group health and related benefits. The fund may take the form of a single nonprofit trust as described by Section 222.002(c)(5)(A) [~~2(c)(1), Article 4.11~~], Insurance Code.

SECTION 11.146. Section 376.165(f), Local Government Code, is amended to read as follows:

(f) For purposes of a title insurance policy issued under Title 11 [~~Chapter 9~~], Insurance Code, an assessment is a tax.

SECTION 11.147. Section 89.043(e), Natural Resources Code, is amended to read as follows:

(e) The commission shall file for record a copy of the notice in the office of the county clerk of the county in which the well is located. The notice filed with the county need not be acknowledged. The copy of the notice filed in the office of the county clerk must contain the section, block, survey, and abstract number, when available to the commission, of the land on which the well is located. The clerk shall record the notice in the real

property records of the county. The commission shall not be charged a fee for the filing or recording of the notice. The commission shall furnish a copy of the notice to a holder of a lien on the well or a nonoperator on that person's request. For purposes of title insurance policies issued under authority of Title 11 [~~Chapter 9~~], Insurance Code, this notice is not a notice of enforcement or violation of law, ordinance, or governmental regulation unless the notice contains a legally sufficient description of the specific land on which the well is located.

SECTION 11.148. Section 505.303(c), Occupations Code, is amended to read as follows:

(c) For purposes of Subchapter C, Chapter 1451 [~~Article 21.52~~], Insurance Code:

(1) a person recognized as qualified for the independent practice of clinical social work may use the title "Licensed Clinical Social Worker" or another title approved by the board; and

(2) a board-approved title under this subsection has the same meaning and effect as the title "Licensed Clinical Social Worker."

SECTION 11.149. Section 953.004(a), Occupations Code, is amended to read as follows:

(a) An insurer who issues or renews prepaid legal service contracts under Article 5.13-1, Insurance Code, shall notify the commissioner of insurance in writing not later than the 60th day before transferring regulation of the insurer's legal service contracts from the Texas Department of Insurance to the Texas

Department of Licensing and Regulation. An insurer that complies with this section is exempt from the requirements of Chapters 551 and [~~:~~

[~~(1) Articles 21.49-2, 21.49-2A, 21.49-2B, 21.49-2D, and 21.49-2E, Insurance Code; and~~

[~~(2) Chapter~~] 827, Insurance Code.

SECTION 11.150. Section 1304.152(b), Occupations Code, is amended to read as follows:

(b) The insurer may not cancel the policy until the insurer delivers to the provider a written notice of cancellation that complies with the notice requirements prescribed by Subchapters B and C, Chapter 551 [~~Articles 21.49-2A and 21.49-2B~~], Insurance Code, for cancellation of an insurance policy under those subchapters [~~articles~~]. The provider shall forward a copy of the cancellation notice to the executive director not later than the 15th business day after the date the notice is delivered to the provider. Cancellation of the policy does not reduce the insurer's responsibility for a service contract issued by the provider and insured under the policy before the date of the cancellation.

SECTION 11.151. Section 1702.002(9), Occupations Code, is amended to read as follows:

(9) "Insurance agent" means:

(A) a person licensed under Subchapter B, C, D, or E, Chapter 4051, [~~Article 21.14~~] or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; or

(C) a person authorized to represent an insurance fund or pool created by a local government under Chapter 791,

Government Code.

SECTION 11.152. Section 1704.211(c), Occupations Code, is amended to read as follows:

(c) An agent designated by a power of attorney under Subsection (a) is not required under this chapter to obtain a general property and casualty [~~local recording~~] agent license under Chapter 4051 [~~Article 21.14~~], Insurance Code.

SECTION 11.153. Section 1958.154(d), Occupations Code, is amended to read as follows:

(d) The commissioner of insurance shall adopt rules describing the information that must be provided in the certificate of mold remediation. In adopting the rules, the commissioner shall design the certificate as necessary to comply with any requirements imposed under Subchapter G, Chapter 544 [~~Article 21.21-11~~], Insurance Code.

SECTION 11.154. Section 2154.001(10), Occupations Code, is amended to read as follows:

(10) "Insurance agent" means:

(A) a person, firm, or corporation licensed under Subchapter B, C, D, or E, Chapter 4051, [~~Article 21.14~~] or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; and

(C) a person authorized to represent an insurance fund or pool created by a city, county, or other political subdivision of the state under Chapter 791, Government Code.

SECTION 11.155. Section 2154.207(d), Occupations Code, is amended to read as follows:

(d) A certificate of insurance for surplus lines coverage obtained under Chapter 981 [~~Article 1.14-2~~], Insurance Code, through a licensed Texas surplus lines agent resident in this state may be filed with the commissioner as evidence of coverage required by this section.

SECTION 11.156. Section 2306.203(b), Occupations Code, is amended to read as follows:

(b) An insurer who issues a reimbursement insurance policy under this chapter may not cancel the policy until the insurer delivers to the warrantor a written notice of cancellation that complies with the notice requirements prescribed by Subchapters B and C, Chapter 551 [~~Articles 21.49-2A and 21.49-2B~~], Insurance Code, for cancellation of an insurance policy under those subchapters [~~articles~~]. The warrantor shall forward a copy of the cancellation notice to the department not later than the 15th business day after the date the notice is delivered to the warrantor.

SECTION 11.157. Section 35.01(2), Penal Code, is amended to read as follows:

(2) "Health care provider" means a person who renders health care services or an agent or employee of an organization that renders or provides a facility and means to render health care services. The term includes a physician, surgeon, person who may be selected by an insured or a beneficiary under Subchapter C, Chapter 1451 [~~Article 21.52~~], Insurance Code, and person defined as a provider of health care under Section 152.003, Occupations Code.

SECTION 11.158. Section 53.202, Property Code, is amended

to read as follows:

Sec. 53.202. BOND REQUIREMENTS. The bond must:

(1) be in a penal sum at least equal to the total of the original contract amount;

(2) be in favor of the owner;

(3) have the written approval of the owner endorsed on it;

(4) be executed by:

(A) the original contractor as principal; and

(B) a corporate surety authorized and admitted to do business in this state and licensed by this state to execute bonds as surety, subject to Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code);

(5) be conditioned on prompt payment for all labor, subcontracts, materials, specially fabricated materials, and normal and usual extras not exceeding 15 percent of the contract price; and

(6) clearly and prominently display on the bond or on an attachment to the bond:

(A) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

(B) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521 [~~Article 1.35D~~], Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent

may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

SECTION 11.159. Section 63.004(b), Property Code, is amended to read as follows:

(b) If the holder of a lien secured by a manufactured home transfers loan or credit advance documents to a lender refinancing the lien, that lender and a title insurance company, title insurance agent or direct operation, or attorney to whom the loan or credit advance documents are delivered holds the loan or credit advance documents in trust for that lienholder. In this subsection, "direct operation" has the meaning assigned by Section 2501.003 [~~Article 9.02~~], Insurance Code.

SECTION 11.160. Section 3805.153, Special District Local Laws Code, is amended to read as follows:

Sec. 3805.153. ASSESSMENTS CONSIDERED TAXES. For purposes of a title insurance policy issued under Title 11 [~~Chapter 9~~], Insurance Code, an assessment is a tax.

SECTION 11.161. Section 112.058(d), Tax Code, is amended to read as follows:

(d) All protest payments of the following taxes that become due during the fiscal biennium beginning September 1, 1987, may not be placed in a suspense account, but shall immediately be deposited to the credit of the fund or funds to which those taxes are allocated by law:

(1) taxes imposed under Chapter 151, 152, 154, 155, 156, 157, or 171 of this code;

(2) taxes imposed under Article 4.11A, Insurance Code;

(3) surtaxes imposed under Chapters 221, 222, 223, 225, and 226 [~~Article 1.14-1, 1.14-2, 4.10, 4.11, or 9.59~~], Insurance Code; and

(4) taxes and fees paid under the provisions enacted by Article 9, H.B. No. 61, Acts of the 70th Legislature, 2nd Called Session, 1987.

SECTION 11.162. Section B, Article 2.01, Texas Business Corporation Act, is amended to read as follows:

B. No corporation may adopt this Act or be organized under this Act or obtain authority to transact business in this State under this Act:

(1) If any one or more of its purposes for the transaction of business in this State is expressly prohibited by any law of this State.

(2) If any one or more of its purposes for the transaction of business in this State is to engage in any activity which cannot lawfully be engaged in without first obtaining a license under the authority of the laws of this State to engage in such activity and such a license cannot lawfully be granted to a corporation.

(3) If among its purposes for the transaction of business in this State, there is included, however worded, a combination of the two businesses listed in either of the following:

(a) The business of raising cattle and owning land therefor, and the business of operating stockyards and of slaughtering, refrigerating, canning, curing or packing meat.

Owning and operating feed lots and feeding cattle shall not be considered as engaging in "the business of raising cattle and owning land therefor" within the purview of this paragraph of this subsection.

(b) The business of engaging in the petroleum oil producing business in this State and the business of engaging directly in the oil pipe line business in this State: provided, however, that a corporation engaged in the oil producing business in this State which owns or operates private pipe lines in and about its refineries, fields or stations or which owns stock of corporations engaged in the oil pipe line business shall not be deemed to be engaging directly in the oil pipe line business in this State; and provided that any corporation, or group of corporations acting in partnership or other combination with other corporations, engaged as a common carrier in the pipe line business for transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals or other mineral solutions, shall have all of the rights and powers conferred by Sections 111.019 through 111.022, Natural Resources Code.

(4) If any one or more of its purposes is to operate any of the following:

(a) Banks, (b) trust companies, (c) building and loan associations or companies, (d) insurance companies of every type and character that operate under the insurance laws of this State, and corporate attorneys in fact for reciprocal or inter-insurance exchanges, (e) railroad companies, (f) cemetery companies, (g) cooperatives or limited cooperative associations,

(h) labor unions, (i) abstract and title insurance companies whose purposes are provided for and whose powers are prescribed by Title 11, [~~Chapter 9 of the~~] Insurance Code [~~of this State~~].

SECTION 11.163. Section 643.101(e), Transportation Code, is amended to read as follows:

(e) Unless state law permits a commercial motor vehicle to be self-insured, any insurance required for a commercial motor vehicle must be obtained from:

(1) an insurer authorized to do business in this state whose aggregate net risk, after reinsurance, under any one insurance policy is not in excess of 10 percent of the insurer's policyholders' surplus, and credit for such reinsurance is permitted by law; or

(2) an insurer that meets the eligibility requirements of a surplus lines insurer pursuant to Chapter 981 [~~Article 1.14-2~~], Insurance Code. Notwithstanding any other provision in law, an insurer in compliance with this subsection shall be deemed to be in compliance with any rating or financial criteria established for motor carriers by any political subdivision of the state.

SECTION 11.164. Section 49.231(n), Water Code, is amended to read as follows:

(n) For purposes of title insurance policies issued under the authority of Title 11 [~~Chapter 9~~], Insurance Code, standby fees are considered taxes.

ARTICLE 12. CHANGES RELATING TO LABOR CODE

SECTION 12.001. Section 204.022(a), Labor Code, as amended

by Chapters 77, 526, and 817, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if the employee's last separation from the employer's employment before the employee's benefit year:

(1) was required by a federal statute;

(2) was required by a statute of this state or an ordinance of a municipality of this state;

(3) would have disqualified the employee under Section 207.044, 207.045, 207.051, or 207.053 if the employment had been the employee's last work;

(4) imposes a disqualification under Section 207.044, 207.045, 207.051, or 207.053;

(5) was caused by a medically verifiable illness of the employee or the employee's minor child;

(6) was based on a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), if the employee would have been entitled to unemployment assistance benefits under Section 410 of that act (42 U.S.C. Section 5177) had the employee not received state unemployment compensation benefits;

(7) was caused by a natural disaster, fire, flood, or explosion that causes employees to be separated from one employer's employment;

(8) was based on a disaster that results in a disaster

declaration by the governor under Section 418.014, Government Code;

(9) resulted from the employee's resigning from partial employment to accept other employment that the employee reasonably believed would increase the employee's weekly wage; [~~or~~]

(10) [~~(9)~~] was caused by the employer being called to active military service in any branch of the United States armed forces on or after January 1, 2003; or

(11) [~~(9)~~] resulted from the employee leaving the employee's workplace to protect the employee from family violence or stalking as evidenced by:

(A) an active or recently issued protective order documenting family violence against, or the stalking of, the employee or the potential for family violence against, or the stalking of, the employee;

(B) a police record documenting family violence against, or the stalking of, the employee; and

(C) a physician's statement or other medical documentation of family violence against the employee.

SECTION 12.0015. Section 204.022(d), Labor Code, as added by Chapter 817, Acts of the 78th Legislature, Regular Session, 2003, is amended to correct a reference to read as follows:

(d) For purposes of Subsection (a)(11) [~~(a)(9)~~]:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Stalking" means conduct described by Section 42.072, Penal Code.

SECTION 12.002. Section 403.006(a), Labor Code, as amended

by Chapters 211 and 1296, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) The subsequent injury fund is a dedicated [~~general revenue~~] account in the general revenue fund [~~in the state treasury~~]. Money in the account may be appropriated only for the purposes of this section or as provided by other law. [~~Section 403.095, Government Code, does not apply to the subsequent injury fund.~~]

SECTION 12.003. Section 410.306(b), Labor Code, is amended to correct a reference to read as follows:

(b) The commission on payment of a reasonable fee shall make available to the parties a certified copy of the commission's record. All facts and evidence the record contains are admissible to the extent allowed under the Texas Rules of [~~Civil~~] Evidence.

ARTICLE 13. CHANGES RELATING TO

LOCAL GOVERNMENT CODE

SECTION 13.001. Section 271.0565, Local Government Code, as amended by Chapters 660 and 725, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 271.0565. PRE-BID CONFERENCE. (a) The commissioners court of a county or the governing body of a district or authority created under Section 59, Article XVI, Texas Constitution, if the governing body is the commissioners court of the county in which the district is located, may require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions of prospective bidders.

(b) [~~(c)~~] After a conference is conducted under Subsection (a) [~~(b)~~], any additional required notice for the proposed contract may be sent by certified mail, return receipt requested, only to prospective bidders who attended the conference. Notice under this subsection is not subject to the requirements of Section 271.055.

ARTICLE 14. CHANGES RELATING TO NATURAL RESOURCES CODE

SECTION 14.001. Section 31.013, Natural Resources Code, as amended in part by Chapter 1091, Acts of the 78th Legislature, Regular Session, 2003, and repealed by Chapter 285, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 31.013. BONDS. The land office shall pay the expenses necessary and incidental to the execution of [~~the~~] bonds required by law to be executed by employees of the land office.

SECTION 14.002. Section 31.017, Natural Resources Code, as amended by Chapter 1091, Acts of the 78th Legislature, Regular Session, 2003, and repealed in part by Chapter 285, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

Sec. 31.017. RECEIVER. With the consent of the governor, the commissioner shall appoint a suitable person to serve as receiver for the land office.

SECTION 14.003. Section 31.062, Natural Resources Code, as repealed by Chapter 1091, Acts of the 78th Legislature, Regular Session, 2003, and amended in part by Chapter 285, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to

read as follows:

Sec. 31.062. EMBEZZLEMENT. [~~(c)~~] If a [~~the~~] suspended receiver [~~clerk~~] is found guilty of embezzlement, the receiver [~~clerk~~] shall be removed from office and a suit shall be instituted to recover on a bond authorized under Chapter 653, Government Code.

SECTION 14.004. Section 31.1571, Natural Resources Code, as amended by Chapter 1091, Acts of the 78th Legislature, Regular Session, 2003, and Chapter 149, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 31.1571. GOVERNOR'S REPORT. (a) At any time, the commissioner may make a report to the governor recommending real estate transactions or other actions involving any real property included in the most recent evaluation report and identified as not used or substantially underused.

(b) After the commissioner recommends a real estate transaction to the governor under this section, the commissioner shall notify the state agency that owns or controls the real property and the Texas Department of Housing and Community Affairs. Not later than the 60th day after the date the written recommendation is received, the state agency and the Texas Department of Housing and Community Affairs may file with the governor their comments on or objections to the recommendation.

(c) If the commissioner recommends a real estate transaction to the governor involving real property identified as not used or substantially underused and the division's analysis of the highest and best use for the real property is determined to be residential, the Texas Department of Housing and Community Affairs

shall evaluate the property and identify any property suitable for affordable housing. The Texas Department of Housing and Community Affairs shall submit comments concerning any property suitable for affordable housing and any documents supporting the comments to the governor not later than the 60th day after the date it receives the report prepared under this section.

(d)[~~(c)~~] Any unused or underused state property may be sold or leased, or an easement over the property may be granted, to the United States for the use and benefit of the United States armed forces if the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the sale, lease, or easement would materially assist the military in accomplishing its mission. A sale, lease, or easement under this subsection must be at market value. The state shall retain all minerals it owns with respect to the land, but it may relinquish the right to use the surface to extract them.

(e)[~~(d)~~] Notwithstanding any other law, real property that the commissioner has reported as unused or substantially underused and recommended for a real estate transaction may not be developed, sold, or otherwise disposed of by the state agency that owns or controls the real property before the earlier of:

(1) the date the governor rejects a recommended real estate transaction involving the real property; or

(2) two years from the date the recommendation is approved, unless extended by the governor.

(f)[~~(e)~~] If a state agency that owns or controls real property reported as unused or substantially underused intends to

dispose of or change the use of the real property prior to the time provided by Subsection (e)[~~(d)~~], the governor may require a general development plan for future use of the real property or any other information. At any time, the governor may request that the state agency provide its general development plan or any other information to the land office for evaluation and may consult with the commissioner. The plan shall be submitted no later than 30 days prior to the time that the real estate transaction would be approved by operation of law if not disapproved by the governor. The governor may take such plan into consideration in determining whether to reject the commissioner's recommendation.

(g)[~~(f)~~] The commissioner may conduct the transaction unless the governor gives the commissioner written notice disapproving the recommendation. The governor must provide written notice of disapproval under this subsection not later than the 90th day after the date the governor receives the commissioner's written recommendation.

SECTION 14.005. Section 31.301(e), Natural Resources Code, as amended by Chapter 328, Acts of the 78th Legislature, Regular Session, 2003, is repealed to conform to the repeal of the law from which it was derived by Chapter 1091, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 14.006. (a) Section 40.153, Natural Resources Code, is amended to correct a reference to read as follows:

Sec. 40.153. REIMBURSEMENT OF FUND. The commissioner shall recover to the use of the fund, either from persons responsible for the unauthorized discharge or otherwise liable or from the federal

fund, jointly and severally, all sums owed to or expended from the fund. This section does not apply to sums expended under Section 40.152(a)(9) [~~40.152(a)(10)~~].

(b) Section 40.161(c), Natural Resources Code, is amended to correct a reference to read as follows:

(c) This section does not apply to a sum expended under Section 40.152(a)(9) [~~40.152(a)(10)~~].

ARTICLE 15. CHANGES RELATING TO OCCUPATIONS CODE

SECTION 15.001. (a) Section 51.055(a), Occupations Code, as amended by Chapters 816 and 1170, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 51.052(a), Occupations Code, as amended by Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) Members of the commission serve staggered six-year terms. The terms of [~~one or~~] two or three members expire on February 1 of each odd-numbered year.

(b) Section 25.01, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 15.002. Section 3(e), Article 9032, Revised Statutes, is codified as Section 58.105, Occupations Code, and amended to read as follows:

Sec. 58.105. CIVIL PENALTY. (a) A person who discloses genetic information in violation of Sections 58.102-58.104 is liable for a civil penalty not to exceed $10,000.

(b) The attorney general may bring an action in the name of the state to recover a civil penalty under this section, plus reasonable attorney's fees and court costs.

SECTION 15.003. Section 3(e), Article 9032, Revised Statutes, is repealed.

SECTION 15.004. (a) Section 110.051(b), Occupations Code, is amended to conform to Section 42.01, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) The council consists of seven [~~six~~] part-time members, appointed by the governor with the advice and consent of the senate as follows:

(1) three [~~two~~] representatives of the public; and

(2) four members each of whom meets the requirements for registration as a sex offender treatment provider.

(b) Section 110.054, Occupations Code, is amended to conform to Section 42.02, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 110.054. TERMS. Members of the council serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

(c) Subchapter H, Chapter 110, Occupations Code, is amended to conform to Section 27, Chapter 326, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 110.354 to read as follows:

Sec. 110.354. EMERGENCY SUSPENSION. (a) The council or a three-member committee of council members designated by the council shall temporarily suspend the registration of a person registered under this chapter if the council or committee determines from the evidence or information presented to it that continued practice by the person would constitute a continuing and imminent threat to the

public welfare.

(b) A registration may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

(d) Chapter 110, Occupations Code, is amended to conform to Section 27, Chapter 326, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter J to read as follows:

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 110.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The council may impose an administrative penalty on a person registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 110.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than $50 or more than $5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Sec. 110.453. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner of public health or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the council a report stating:

(1) the facts on which the determination is based; and

(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee shall give written notice of the report to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 110.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the

person in writing may:

(1) accept the determination and recommended administrative penalty of the commissioner of public health or the commissioner's designee; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner of public health or the commissioner's designee, the council by order shall approve the determination and impose the recommended penalty.

Sec. 110.455. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner of public health or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the council a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 110.456. DECISION BY COUNCIL. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the council by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the council's order given to the person

must include a statement of the right of the person to judicial review of the order.

Sec. 110.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the council's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the council's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner of public health or the commissioner's designee by certified mail.

(c) If the commissioner of public health or the

commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 110.458. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Sec. 110.459. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Sec. 110.460. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Sec. 110.461. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

(e) The following are repealed:

(1) Section 27, Chapter 326, Acts of the 78th Legislature, Regular Session, 2003; and

(2) Sections 42.01 and 42.02, Chapter 1170, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 15.0045. Section 262.1515(a), Occupations Code, is amended to correct a reference to read as follows:

(a) A licensed dentist may delegate a service, task, or procedure, pursuant to this section, to a dental hygienist, without complying with Section 262.151(a)(2) if:

(1) the dental hygienist has at least two years' experience in the practice of dental hygiene; and

(2) the service, task, or procedure is performed in

one of the following locations:

(A) a nursing facility as defined in Section 242.301, Health and Safety Code; or

(B) a school-based health center established under Subchapter B, Chapter 38 [~~Section 38.011~~], Education Code[~~, as added by Chapter 1418, Acts of the 76th Legislature, Regular Session, 1999~~].

SECTION 15.005. Section 411.1388(a), Government Code, is amended to read as follows:

(a) The Interagency Council on Sex Offender Treatment is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who:

(1) is registered to provide mental health or medical services for the rehabilitation of sex offenders under Chapter 110, Occupations Code [~~462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes)~~]; or

(2) has applied for registration or renewal of a registration to provide mental health or medical services for the rehabilitation of sex offenders under Chapter 110, Occupations Code [~~462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes)~~].

SECTION 15.006. Section 562.108(a), Occupations Code, as amended by Chapters 582 and 914, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(a) A Class A or Class C pharmacy, or a Class E pharmacy

located not more than 20 miles from any institution in this state that is licensed under Chapter 242 or 252, Health and Safety Code, may maintain controlled substances and dangerous drugs in an emergency medication kit used at an institution licensed under those chapters. A United States Department of Veterans Affairs pharmacy or another federally operated pharmacy may maintain controlled substances and dangerous drugs in an emergency medication kit used at an institution licensed under Chapter 242, Health and Safety Code, that is a veterans home, as defined by Section 164.002, Natural Resources Code. The controlled substances and dangerous drugs may be used only for the emergency medication needs of a resident at the institution. A Class E pharmacy may not maintain drugs in an emergency medication kit for an institution that is located more than 20 miles from a pharmacy.

SECTION 15.007. (a) Part 1, Chapter 1051, Occupations Code, is redesignated as Article 1, Chapter 1051, Occupations Code, and the heading of Part 1, Chapter 1051, Occupations Code, is amended to read as follows:

ARTICLE [~~PART~~] 1. GENERAL PROVISIONS; BOARD OF ARCHITECTURAL EXAMINERS

(b) Part 2, Chapter 1051, Occupations Code, is redesignated as Article 2, Chapter 1051, Occupations Code, and the heading of Part 2, Chapter 1051, Occupations Code, is amended to read as follows:

ARTICLE [~~PART~~] 2. GENERAL PROVISIONS APPLYING TO ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS

(c) Part 3, Chapter 1051, Occupations Code, is redesignated

as Article 3, Chapter 1051, Occupations Code, and the heading of Part 3, Chapter 1051, Occupations Code, is amended to read as follows:

ARTICLE [~~PART~~] 3. PROVISIONS APPLYING ONLY TO ARCHITECTS

(d) Section 1051.603, Occupations Code, is amended to read as follows:

Sec. 1051.603. LANDSCAPE ARCHITECTURE. This article [~~part~~] does not:

(1) limit the practice of landscape architecture; or

(2) prohibit the use of the title "Landscape Architect" by a qualified person.

(e) Section 1051.604, Occupations Code, is amended to read as follows:

Sec. 1051.604. INTERIOR DESIGN. This article [~~part~~] does not:

(1) limit the practice of interior design; or

(2) prohibit the use of the title "Interior Designer" by a qualified person.

(f) Section 1051.653(a), Occupations Code, is amended to read as follows:

(a) The board shall administer scholarships to applicants for examination under this article [~~part~~] in a manner the board determines best serves the public purpose of:

(1) promoting the professional needs of the state;

(2) increasing the number of highly trained and educated architects available to serve the residents of the state;

(3) improving the state's business environment and

encouraging economic development; and

(4) identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture.

SECTION 15.008. Section 1602.253, Occupations Code, is repealed to conform to Section 1, Chapter 311, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 15.009. Section 1702.324(b), Occupations Code, as amended by Chapters 936, 1237, and 1276, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(b) This chapter does not apply to:

(1) a manufacturer or a manufacturer's authorized distributor who sells equipment to a license holder or registrant that is used in the operations for which the person is required to be licensed or registered;

(2) a person engaged exclusively in the business of obtaining and providing information to:

(A) determine creditworthiness;

(B) collect debts; or

(C) ascertain the reliability of information provided by an applicant for property, life, or disability insurance or an indemnity or surety bond;

(3) a person engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(4) a person who:

(A) is engaged in the business of psychological

testing or other testing and interviewing services, including services to determine attitudes, honesty, intelligence, personality, and skills, for preemployment purposes; and

(B) does not perform any other service that requires a license under this chapter;

(5) a person who:

(A) is engaged in obtaining information that is a public record under Chapter 552, Government Code, regardless of whether the person receives compensation;

(B) is not a full-time employee, as defined by Section 61.001, Labor Code, of a person licensed under this chapter; and

(C) does not perform any other act that requires a license under this chapter;

(6) a licensed engineer practicing engineering or directly supervising engineering practice under Chapter 1001, including forensic analysis, burglar alarm system engineering, and necessary data collection;

(7) an employee of a cattle association who inspects livestock brands under the authority granted to the cattle association by the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture;

(8) a landman performing activities in the course and scope of the landman's business;

(9) an attorney while engaged in the practice of law;

(10) a person who obtains a document for use in litigation under an authorization or subpoena issued for a written

or oral deposition;

(11) an admitted insurer, insurance adjuster, agent, or insurance broker licensed by the state, performing duties in connection with insurance transacted by that person;

(12) a person who on the person's own property or on property owned or managed by the person's employer:

(A) installs, changes, or repairs a mechanical security device;

(B) repairs an electronic security device; or

(C) cuts or makes a key for a security device; or

(13) security personnel, including security contract personnel, working at a commercial nuclear power plant licensed by the United States Nuclear Regulatory Commission.

SECTION 15.010. (a) Subchapter A, Chapter 2306, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Section 2306.006 to conform to Section 18.002, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

<u>Sec. 2306.006. APPLICABILITY OF OTHER LAW. Section 51.405 does not apply to this chapter.</u>

(b) Section 2306.051(a), Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.003, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) The <u>commission</u> [~~executive director~~] may adopt rules as

necessary to implement this chapter.

(c) Sections 2306.101(a) and (b), Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, are amended to conform to Section 18.004, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) The Vehicle Protection Product Warrantor Advisory Board is an advisory body to the commission [~~department~~].

(b) The advisory board consists of six members appointed by the presiding officer of the commission, with the commission's approval, [~~executive director~~] as follows:

(1) two members who are officers, directors, or employees of a warrantor who has been approved or expects to be approved by the department;

(2) two members who are officers, directors, or employees of a retail outlet or other entity located in this state that sells vehicle protection products and is approved or expected to be approved by the department; and

(3) two members who are residents of this state and, at the time of appointment, are consumers of vehicle protection products issued by warrantors registered or expected to be registered under this chapter.

(d) Section 2306.102, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.004, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 2306.102. ADVISORY BOARD DUTIES. The advisory board shall advise[~~:~~

[~~(1)~~] the commission [~~executive director~~] on adopting rules, [~~and~~] enforcing and administering this chapter,[~~;~~] and

[~~(2) the commission on~~] setting fees.

(e) Section 2306.103, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.004, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 2306.103. TERMS; VACANCY. (a) Members of the advisory board serve staggered six-year terms, with the terms of two members expiring on February 1 of each odd-numbered year. [~~The executive director shall appoint the initial six board members to terms of six years or less in order to create staggered terms for the subsequent members of the advisory board.~~]

(b) The presiding officer of the commission, with the commission's approval, [~~executive director~~] shall fill any vacancy on the advisory board by appointing an individual who meets the qualifications for the vacant advisory board position to serve the remainder of the unexpired term.

(f) Section 2306.104, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.004, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 2306.104. PRESIDING OFFICER. The presiding officer of

the commission, with the commission's approval, [~~executive director~~] shall designate one member of the advisory board to serve as presiding officer of the board for two years.

(g) Section 2306.105(a), Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.004, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) The advisory board shall meet at least every six months and may meet at other times at the call of the presiding officer of the board or the presiding officer of the commission [~~executive director~~].

(h) Section 2306.153, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.005, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 2306.153. REGISTRATION FEE. Each registered warrantor must pay an annual registration fee[~~, not to exceed $2,500,~~] as set by the commission to cover the costs of administering this chapter.

(i) Section 2306.154, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.005, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 2306.154. RENEWAL OF REGISTRATION. The commission [~~executive director~~] shall adopt rules providing for the renewal of

a warrantor's registration.

(j) Subchapter E, Chapter 2306, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Section 2306.2025 to conform to Sections 23.001 and 26.081, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 2306.2025. FINANCIAL SECURITY REQUIREMENTS; VALET PARKING SERVICES. (a) In this section, "valet parking service" has the meaning assigned by Section 686.001(3), Transportation Code.

(b) A valet parking service must abide by the financial responsibility requirements provided by Chapter 686, Transportation Code.

(c) The department may coordinate with the Texas Department of Insurance to assure consistency with the standard proof of motor vehicle liability insurance form prescribed by Section 601.081, Transportation Code.

(k) Section 2306.204(f), Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.006, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(f) The commission [~~executive director~~] shall adopt rules governing how a warrantor shall protect nonpublic personal information provided by a consumer to the warrantor.

(l) Section 2306.252, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.007, Chapter

816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 2306.252. INJUNCTION. The executive director may bring an action against a warrantor for injunctive relief under Section 51.352 for a threatened or existing violation of this chapter or of an order or rule adopted [~~by the executive director~~] under this chapter.

(m) Section 2306.254, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is amended to conform to Section 18.007, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 2306.254. VIOLATIONS OF A SIMILAR NATURE. For purposes of Section [~~Sections 2306.251 and~~] 2306.253, violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice determined to be a violation of this chapter occurred.

(n) Section 2306.251, Occupations Code, as added by Section 14A.629, Chapter 1276, Acts of the 78th Legislature, Regular Session, 2003, is repealed to conform to Section 18.008(2), Chapter 816, Acts of the 78th Legislature, Regular Session, 2003.

(o) Article 18 and Sections 23.001 and 26.081, Chapter 816, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

ARTICLE 16. CHANGES RELATING TO

PENAL CODE

SECTION 16.001. Section 22.01(b), Penal Code, as amended by

Chapters 294 and 1019, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(2) a member of the defendant's family or household, if it is shown on the trial of the offense that the defendant has been previously convicted of an offense against a member of the defendant's family or household under this section; [~~or~~]

(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or[~~,~~] Section 51.02(13) or (14), Family Code[~~, or Section 51.02(14), Family Code~~], or an employee of that person:

(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or

(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract; or

(4) [~~(3)~~] a person the actor knows is a security officer while the officer is performing a duty as a security officer.

SECTION 16.002. Section 22.01(e), Penal Code, as amended by Chapters 1019 and 1028, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(e) In this section:

(1) "Family" has the meaning assigned by Section 71.003, Family Code.

(2) "Household" has the meaning assigned by Section 71.005, Family Code.

(3) "Security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

(4) [~~(3)~~] "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator, or staff member.

SECTION 16.003. Section 22.07, Penal Code, as amended by Chapters 139, 388, and 446, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 22.07. TERRORISTIC THREAT. (a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

(1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;

(2) place any person in fear of imminent serious

bodily injury;

(3) prevent or interrupt the occupation or use of a building, [~~,~~] room, [~~,~~] place of assembly, [~~,~~] place to which the public has access, [~~,~~] place of employment or occupation, [~~,~~] aircraft, automobile, or other form of conveyance, [~~,~~] or other public place;

(4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;

(5) place the public or a substantial group of the public in fear of serious bodily injury; or

(6) influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.

(b) An offense under Subsection (a)(1) [~~Subdivision (1) or (2) of Subsection (a)~~] is a Class B misdemeanor.

(c) An offense under Subsection (a)(2) is a Class B misdemeanor, except that the [~~an~~] offense [~~under Subdivision (2) of Subsection (a)~~] is a Class A misdemeanor if the offense:

(1) is committed against a member of the person's family or household or otherwise constitutes family violence; or

(2) [~~if the offense~~] is committed against a public servant.

(d) An offense under Subsection (a)(3) [~~Subdivision (3) of Subsection (a)~~] is a Class A misdemeanor, unless the actor causes pecuniary loss of $1,500 or more to the owner of the building, room, place, or conveyance, in which event the offense is a state jail

felony.

(e) An offense under Subsection (a)(4), (a)(5), or (a)(6) [~~Subdivision (4), (5), or (6) of Subsection (a)~~] is a felony of the third degree.

(f) [~~(e)~~] In this section:

(1) "Family" has the meaning assigned by Section 71.003, Family Code.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Household" has the meaning assigned by Section 71.005, Family Code.

(g) [~~(c)~~] For purposes of Subsection (d), the [~~The~~] amount of pecuniary loss [~~under Subsection (b)~~] is the amount of economic loss suffered by the owner of the building, room, place, or conveyance as a result of the prevention or interruption of the occupation or use of the building, room, place, or conveyance.

SECTION 16.004. Section 46.12(d), Penal Code, is amended to correct a reference to read as follows:

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 46.11; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of [~~Criminal~~] Evidence.

ARTICLE 17. CHANGES RELATING TO PROPERTY CODE

SECTION 17.001. Section 5.008(e), Property Code, is amended to correct typographical and grammatical errors to read as follows:

(e) This section does not apply to a transfer:

(1) pursuant to a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee [~~mortgage~~] by a mortgagor or successor in interest, or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust or a sale pursuant to a court ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to one or more other co-owners;

(7) made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;

(9) to or from any governmental entity;

(10) [~~transfers~~] of a new residence [~~residences~~] of not more than one dwelling unit which has [~~have~~] not previously been occupied for residential purposes; or

(11) [~~transfers~~] of real property where the value of any dwelling does not exceed five percent [~~(5%)~~] of the value of the property.

ARTICLE 18. CHANGES RELATING TO SPECIAL DISTRICT LOCAL LAWS CODE

SECTION 18.001. (a) Subchapter C, Chapter 1002, Special District Local Laws Code, is amended to conform to Section 1, Chapter 762, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 1002.110 to read as follows:

Sec. 1002.110. PUBLIC WORKS CONTRACTS. With respect to the construction of public works, the district has all of the powers and duties conferred on a municipality under Subchapter H, Chapter 271, Local Government Code, with respect to the construction of a facility. To the extent of any conflict, this section prevails over any other law relating to the construction of public works engaged in by the district.

(b) Chapter 762, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 18.002. (a) Section 3802.052(b), Special District Local Laws Code, is amended to conform to Section 1, Chapter 1252, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) The mayor and members of the governing body of the City of Houston shall consider for appointment [~~appoint~~] as directors [~~for the positions indicated~~] persons representing the following interests:

(1) [~~positions 1, 11, and 12 must represent~~] owners of multifamily rental housing with at least 200 rental units;

(2) lessees [~~position 2 must be a lessee~~] of office space of at least 30,000 square feet of rentable area;

(3) [~~positions 9 and 10 must represent~~] owners of office facilities with at least 500 employees or a taxable value in excess of $10 million;

(4) [~~positions 8, 13, and 14 must represent~~] owners of multitenant office buildings;

(5) [~~position 15 must represent~~] owners of multitenant retail property or major retail tenants [~~of at least 20,000 square feet~~];

(6) [~~position 16 must represent~~] owners of temporary lodging facilities with on-site food service;

(7) [~~position 17 must represent~~] owners of undeveloped property with a contiguous area of at least five acres; and

(8) [~~positions 3, 4, 5, 6, and 7 must represent the district at large and may be filled by~~] any other person qualified to serve on the board as provided by Section 375.063, Local Government Code, to represent the district at large.

(b) Subchapter C, Chapter 3802, Special District Local Laws Code, is amended to conform to Section 2, Chapter 1252, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 3802.106 to read as follows:

Sec. 3802.106. CONFERENCE AND CONVOCATION CENTERS. The district may finance, acquire, lease as a lessor or lessee, construct, improve, operate, or maintain conference and convocation centers and supporting facilities. The district may enter into a long-term operating agreement with any person for the center or facility.

(c) Chapter 1252, Acts of the 78th Legislature, Regular

Session, 2003, is repealed.

SECTION 18.003. (a) The heading to Chapter 3805, Special District Local Laws Code, is amended to conform to Section 1, Chapter 766, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

CHAPTER 3805. HARRIS COUNTY IMPROVEMENT [~~UPPER KIRBY MANAGEMENT~~] DISTRICT NO. 3

(b) Section 3805.001(2), Special District Local Laws Code, is amended to conform to Section 3, Chapter 766, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(2) "District" means the Harris County Improvement [~~Upper Kirby Management~~] District No. 3.

(c) Section 3805.002, Special District Local Laws Code, is amended to conform to Section 2, Chapter 766, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 3805.002. HARRIS COUNTY IMPROVEMENT [~~UPPER KIRBY MANAGEMENT~~] DISTRICT NO. 3. A special district known as the "Harris County Improvement [~~Upper Kirby Management~~] District No. 3" is a governmental agency and political subdivision of this state.

(d) Subchapter D, Chapter 3805, Special District Local Laws Code, is amended to conform to Section 4, Chapter 766, Acts of the 78th Legislature, Regular Session, 2003, by adding Sections 3805.1525 and 3805.1526 to read as follows:

Sec. 3805.1525. ASSESSMENT IN PART OF DISTRICT. An assessment may be imposed on only a part of the district if only that part will benefit from the service or improvement.

Sec. 3805.1526. PETITION REQUIRED FOR ASSESSMENT AND FOR

FINANCING SERVICES AND IMPROVEMENTS. (a) The board may not impose an assessment or finance a service or improvement project under this chapter unless a written petition requesting the improvement or service has been filed with the board.

(b) The petition must be signed by:

(1) the owners of a majority of the assessed value of real property in the district or in the area of the district that will be subject to the assessment as determined by the most recent certified tax appraisal roll for Harris County; or

(2) at least 25 persons who own real property in the district or the area of the district that will be subject to the assessment, if more than 25 persons own real property in the district or area that will be subject to the assessment as determined by the most recent certified tax appraisal roll for Harris County.

(e) Section 3805.155, Special District Local Laws Code, is amended to conform to Section 5, Chapter 766, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 3805.155. PROPERTY OF CERTAIN UTILITIES [~~ELECTRIC UTILITY~~] EXEMPT FROM ASSESSMENT AND IMPACT FEES. The district may not impose an impact fee or assessment on the property, including equipment[~~,~~] or facilities, of:

(1) an electric utility as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(3) a telecommunications provider as defined by

Section 51.002, Utilities Code; or

(4) a cable operator as defined by 47 U.S.C. Section 522, as amended.

(f) Subchapter D, Chapter 3805, Special District Local Laws Code, is amended to conform to Section 6, Chapter 766, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 3805.157 to read as follows:

Sec. 3805.157. USE OF ELECTRICAL OR OPTICAL LINES. (a) The district may impose an assessment to pay the cost of:

(1) burying or removing electrical power lines, telephone lines, cable or fiber optic lines, or any other type of electrical or optical line;

(2) removing poles and any elevated lines using the poles; and

(3) reconnecting the lines described by Subdivision (2) to the buildings or other improvements to which the lines were connected.

(b) The district may acquire, operate, or charge fees for the use of the district conduits for:

(1) another person's:

(A) telecommunications network;

(B) fiber-optic cable; or

(C) electronic transmission line; or

(2) any other type of transmission line or supporting facility.

(c) The district may not require a person to use a district conduit.

(g) Chapter 3805, Special District Local Laws Code, is amended to conform to Section 7, Chapter 766, Acts of the 78th Legislature, Regular Session, 2003, by adding Subchapter F to read as follows:

SUBCHAPTER F. PUBLIC TRANSIT SYSTEM AND PARKING FACILITIES

Sec. 3805.251. PUBLIC TRANSIT SYSTEM; PETITION REQUIRED. (a) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain a public transit system to serve the area within the boundaries of the district.

(b) Before the district may act under Subsection (a), a petition must be filed with the district that requests the action with regard to a public transit system. The petition must be signed by owners of property representing a majority of the total assessed value or a majority of the area of the real property in the district that abuts the right-of-way in which the public transit system is proposed to be located. The determination of a majority is based on the property owners along the entire right-of-way of the proposed transit project and may not be computed on a block-by-block basis.

Sec. 3805.252. PARKING FACILITIES AUTHORIZED; OPERATION BY PRIVATE ENTITY; TAX EXEMPTION. (a) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities, including:

(1) lots, garages, parking terminals, or other structures or accommodations for parking motor vehicles; and

(2) equipment, entrances, exits, fencing, and other accessories necessary for safety and convenience in parking vehicles.

(b) A parking facility of the district must be leased to or operated on behalf of the district by an entity other than the district.

(c) The district's parking facilities are a program authorized by the legislature under Section 52-a, Article III, Texas Constitution, and serve a public purpose under that section even if leased or operated by a private entity for a term of years.

(d) The district's public parking facilities and any lease to a private entity are exempt from the payment of ad valorem taxes and state and local sales and use taxes.

Sec. 3805.253. RULES FOR TRANSIT OR PARKING SYSTEM. (a) The district may adopt rules covering its public transit system or its public parking facilities.

(b) A rule adopted under this section that relates to or affects the use of the public right-of-way or a requirement for off-street parking is subject to all applicable municipal charter, code, or ordinance requirements.

Sec. 3805.254. PAYING COST OF PUBLIC TRANSIT SYSTEM OR PARKING FACILITIES. (a) The district may use any of its resources, including revenue, assessments, taxes, and grant or contract proceeds, to pay the cost of acquiring and operating a public transit system or public parking facilities.

(b) The district may:

(1) set and impose fees, charges, or tolls for the use of the public transit system or the public parking facilities; and

(2) issue bonds or notes to finance the cost of these facilities.

(c) Except as provided by Section 3805.251, if the district pays for or finances the cost of acquiring or operating a public transit system or public parking facilities with resources other than assessments, a petition of property owners or a public hearing is not required.

Sec. 3805.255. PAYMENT IN LIEU OF TAXES TO OTHER TAXING UNIT. If the district's acquisition of property for a parking facility that is leased to or operated by a private entity results in removing from a taxing unit's tax rolls real property otherwise subject to ad valorem taxation, the district shall pay to the taxing unit in which the property is located, on or before January 1 of each year, as a payment in lieu of taxes, an amount equal to the ad valorem taxes that otherwise would have been levied for the preceding tax year on that real property by the taxing unit, without including the value of any improvements constructed on the property.

(h) Chapter 766, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 18.004. (a) The heading to Chapter 3814, Special District Local Laws Code, is amended to conform to Section 1, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

CHAPTER 3814. HARRIS COUNTY IMPROVEMENT [~~ENERGY CORRIDOR MANAGEMENT~~] DISTRICT NO. 4

(b) Section 3814.001(2), Special District Local Laws Code, is amended to conform to Section 4, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(2) "District" means the Harris County Improvement [~~Energy Corridor Management~~] District No. 4.

(c) Section 3814.002, Special District Local Laws Code, is amended to conform to Section 2, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 3814.002. HARRIS COUNTY IMPROVEMENT [~~ENERGY CORRIDOR MANAGEMENT~~] DISTRICT NO. 4. The Harris County Improvement [~~Energy Corridor Management~~] District No. 4 is a special district created under Section 59, Article XVI, Texas Constitution.

(d) Section 3814.003, Special District Local Laws Code, is amended to conform to Section 3, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, by adding Subsection (d) to read as follows:

(d) By creating the district and in authorizing the City of Houston, Harris County, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

(e) Subchapter A, Chapter 3814, Special District Local Laws Code, is amended to conform to Section 11, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 3814.0055 to read as follows:

Sec. 3814.0055. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created by the municipality under Chapter 311, Tax Code;

(2) a tax abatement reinvestment zone created by the municipality under Chapter 312, Tax Code; or

(3) an enterprise zone created by the municipality under Chapter 2303, Government Code.

(f) Section 3814.051, Special District Local Laws Code, is amended to conform to Section 5, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 3814.051. BOARD OF DIRECTORS. (a) The district is governed by a board of:

(1) nine voting directors appointed under Section 3814.052; and

(2) nonvoting directors as provided by Section 3814.053.

(b) If the board determines that it is in the best interest of the district, the board by resolution may increase or decrease the number of directors on the board except that the board may not consist of fewer than seven or more than 15 directors.

(g) Section 3814.053, Special District Local Laws Code, is amended to conform to Section 6, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, by adding Subsection (c) to read as follows:

(c) A nonvoting director is not included for determining a board quorum.

(h) Section 3814.101, Special District Local Laws Code, is amended to conform to Section 7, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 3814.101. ADDITIONAL POWERS OF DISTRICT. The

district may exercise the powers given to:

(1) a corporation created under Section 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that section; and

(2) a housing finance corporation created under Chapter 394, Local Government Code, to provide housing or residential development projects in the district.

(i) Subchapter C, Chapter 3814, Special District Local Laws Code, is amended to conform to Section 11, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 3814.108 to read as follows:

Sec. 3814.108. MEMBERSHIP IN CHARITABLE ORGANIZATION. The district may join and pay dues to an organization that:

(1) enjoys tax-exempt status under Section 501(c)(3), 501(c)(4), or 501(c)(6), Internal Revenue Code of 1986 (26 U.S.C. Section 501), as amended; and

(2) performs a service or provides an activity that furthers a district purpose.

(j) Subchapter C, Chapter 3814, Special District Local Laws Code, is amended to conform to Section 11, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 3814.109 to read as follows:

Sec. 3814.109. ECONOMIC DEVELOPMENT PROGRAM. (a) The district may establish and provide for the administration of one or more programs, including programs to loan or grant public money or

provide district personnel or services, to:

(1) promote state or local economic development; and

(2) stimulate business and commercial activity in the district.

(b) For purposes of this section, the district has all of the powers and authority of a municipality under Chapter 380, Local Government Code.

(k) Section 3814.151, Special District Local Laws Code, is amended to conform to Section 8, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 3814.151. PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS WITH ASSESSMENTS. (a) The board may not finance a service or an improvement project with assessments under this chapter unless a written petition requesting that service or improvement is filed with the board.

(b) The petition must be signed by:

(1) the owners of a majority of the assessed value of real property in the district subject to assessment according to the most recent certified tax appraisal roll for Harris County; or

(2) at least 25 owners of real property [~~land~~] in the district, if more than 25 persons own real property in the district according to the most recent certified tax appraisal roll for Harris County.

(l) Section 3814.154, Special District Local Laws Code, is amended to conform to Section 10, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, by adding Subsection (d) to read as follows:

(d) The board may make a correction to or deletion from the assessment roll without notice and hearing required for an additional assessment if the correction or deletion does not increase the amount of a parcel of land.

(m) Section 3814.158, Special District Local Laws Code, is amended to conform to Section 9, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The [~~In addition to the elections required under Subchapter L, Chapter 375, Local Government Code, the~~] district must hold an election in the manner provided by Subchapter L, Chapter 375, Local Government Code, [~~that subchapter~~] to obtain voter approval before the district may:

(1) impose a maintenance tax; or

(2) issue a bond payable from ad valorem taxes [~~or assessments~~].

(c) Section 375.243, Local Government Code, does not apply to the district.

(n) Subchapter D, Chapter 3814, Special District Local Laws Code, is amended to conform to Section 11, Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 3814.159 to read as follows:

Sec. 3814.159. TAX AND ASSESSMENT ABATEMENTS. The district may grant in the manner authorized by Chapter 312, Tax Code, an abatement for a tax or assessment owed to the district.

(o) Sections 3814.052(b) and 3814.055, Special District Local Laws Code, are repealed to conform to Section 12, Chapter 324,

Acts of the 78th Legislature, Regular Session, 2003.

(p) Chapter 324, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

SECTION 18.005. (a) Section 3817.154, Special District Local Laws Code, is amended to conform to Section 11, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, by adding Subsection (d) to read as follows:

(d) Chapter 321, Tax Code, applies to the imposition, computation, administration, enforcement, and collection of the sales and use tax imposed by this section except to the extent it is inconsistent with this chapter.

(b) Section 11, Chapter 209, Acts of the 78th Legislature, Regular Session, 2003, is repealed.

ARTICLE 19. CHANGES RELATING TO TAX CODE

SECTION 19.001. Section 41.66(a), Tax Code, is amended to correct a reference to the State Property Tax Board to read as follows:

(a) The appraisal review board shall establish by rule the procedures for hearings it conducts as provided by Subchapters A and C of this chapter. On request made by a property owner in the owner's notice of protest or in a separate writing delivered to the appraisal review board on or before the date the notice of protest is filed, the property owner is entitled to a copy of the hearing procedures. The copy of the hearing procedures shall be delivered to the property owner not later than the 10th day before the date the hearing on the protest begins and may be delivered with the notice of the protest hearing required under Section 41.46(a). The

notice of protest form prescribed by the comptroller [~~State Property Tax Board~~] under Section 41.44(d) or any other notice of protest form made available to a property owner by the appraisal review board or the appraisal office shall provide the property owner an opportunity to make or decline to make a request under this subsection. The appraisal review board shall post a copy of the hearing procedures in a prominent place in the room in which the hearing is held.

SECTION 19.002. Section 352.002(a), Tax Code, as amended by Chapters 64, 637, 741, 1097, and 1108, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) The commissioners courts of the following counties by the adoption of an order or resolution may impose a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs $2 or more each day, and is ordinarily used for sleeping:

(1) a county that has a population of more than 3.3 million;

(2) a county that has a population of 90,000 or more, borders the United Mexican States, and does not have three or more cities that each have a population of more than 17,500;

(3) a county in which there is no municipality;

(4) a county in which there is located an Indian reservation under the jurisdiction of the United States government;

(5) a county that has a population of 30,000 or less, that has no more than one municipality with a population of less

than 2,500, and that borders two counties located wholly in the Edwards Aquifer Authority established by Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993;

(6) a county that borders the Gulf of Mexico;

(7) a county that has a population of less than 5,000, that borders the United Mexican States, and in which there is located a major observatory;

(8) a county that has a population of 12,000 or less and borders the Toledo Bend Reservoir;

(9) a county that has a population of less than 12,000 and an area of less than 275 square miles;

(10) a county that has a population of 30,000 or less and borders Possum Kingdom Lake;

(11) a county that borders the United Mexican States and has a population of more than 300,000 and less than 600,000;

(12) a county that has a population of 35,000 or more and borders or contains a portion of Lake Fork Reservoir;

(13) a county that borders the United Mexican States and in which there is located a national recreation area;

(14) a county that borders the United Mexican States and in which there is located a national park of more than 400,000 acres;

(15) a county that has a population of 28,000 or less, that has no more than four municipalities, and that is located wholly in the Edwards Aquifer Authority established by Chapter 626, Acts of the 73rd Legislature, Regular Session, 1993;

(16) a county that has a population of 25,000 or less,

whose territory is less than 750 square miles, and that has two incorporated municipalities, each with a population of 800 or less, located on the Frio River; [~~and~~]

(17) a county that has a population of 34,000 or more and borders Lake Buchanan; [~~.~~]

(18) [~~(17)~~] a county that has a population of more than 45,000 and less than 75,000, that borders the United Mexican States, and that borders or contains a portion of Falcon Lake; [~~.~~]

(19) [~~(17)~~] a county with a population of 21,000 or less that borders the Neches River and in which there is located a national preserve; and [~~.~~]

(20) [~~(17)~~] a county that has a population of 22,500 or less and that borders or contains a portion of Lake Livingston.

SECTION 19.003. Section 352.002(d), Tax Code, as amended by Chapters 64, 1097, and 1108, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(d) The tax imposed by a county authorized by Subsection (a)(4), (6), (8), (10), (11), (12), [~~or~~] (17), (19), or (20) to impose the tax does not apply to a hotel located in a municipality that imposes a tax under Chapter 351 applicable to the hotel. This subsection does not apply to a county authorized by Subsection (a)(6) to impose the tax that:

(1) has a population of less than 40,000 and adjoins the most populous county in this state; or

(2) has a population of more than 200,000 and borders the Neches River.

ARTICLE 20. CHANGES RELATING TO TRANSPORTATION CODE

SECTION 20.001. Section 201.112(a), Transportation Code, as amended by Chapters 312, 713, and 1325, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) The commission may by rule establish procedures for the informal resolution of a claim arising out of a contract described by:

(1) Section 22.018;

(2) Chapter 223;

(3) Chapter 361; [~~or~~]

(4) Section 391.091; or

(5) [~~(4)~~] Chapter 2254, Government Code.

SECTION 20.002. Section 223.042, Transportation Code, as amended by Chapters 28 and 274, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

Sec. 223.042. PRIVATIZATION OF MAINTENANCE CONTRACTS. (a) Of the amount spent in a fiscal year by the department for maintenance projects, the department shall spend not less than 50 percent through contracts awarded by competitive bids.

(b) Money spent for maintenance projects to which this section does not apply is [~~are~~] included when computing the amount of expenditures for maintenance projects in a fiscal year.

(c) The department may award a contract under this section as a purchase of service under Subtitle D, Title 10, Government Code, if the department:

(1) estimates that the contract will involve an amount

less than $15,000; and

(2) determines that the competitive bidding procedure in this chapter is not practical.

(d) The department shall consider all of its direct and indirect costs in determining the cost of providing the services. The department shall use the cost accounting procedures and instructions developed by the State Council on Competitive Government under Section 2162.102(c)(2), Government Code, in determining its cost. On request, the State Council on Competitive Government shall provide technical assistance to the department about the cost accounting procedures and instructions.

(e) Subsection (a) does not apply unless the department determines that a function of comparable quality and quantity can be purchased or performed at a savings by using private sector contracts.

(f) The department shall file a report with the Legislative Budget Board on September 1 of each fiscal year detailing the contracts awarded by the department under this section during the previous fiscal year.

(g) The commission shall adopt rules to administer this section.

(h) In this section, "maintenance project" means any routine or preventive maintenance activity. The term includes mowing, concrete removal and replacement, illumination maintenance, guardrail repair, fence repair, litter pick-up, herbicide spraying, pothole repair, silt and erosion control or repair, sign installation, highway overlaying, paint and bead

striping, rest area maintenance, and installation of raised pavement markings.

(i) This section does not apply to the purchase of materials for maintenance projects.

(j) [~~(i)~~] As an alternative to the requirements of Section 2253.021, Government Code, the department may require that a bond securing a contractor's performance under a contract awarded under this section for a routine maintenance activity:

(1) be in an amount equal to the greatest annual amount to be paid the contractor under the contract and remain in effect for one year from the day work is resumed after any default by the contractor; or

(2) be in an amount equal to the amount to be paid the contractor during the term of the bond and be for a term of two years, renewable annually in two-year increments.

(k) [~~(j)~~] A bond posted under Subsection (j) [~~(i)~~] must:

(1) be solely for the protection of the department; and

(2) be conditioned on the faithful performance of the maintenance work in accordance with the contract requirements.

SECTION 20.003. (a) Section 502.184(b), Transportation Code, is amended to conform to the repeal of Sections 502.254, 502.255, 502.256, 502.257, 502.267, 502.268, and 502.273 of that code and the enactment of Sections 504.202, 504.305, 504.315, 504.409, and 504.411 of that code by Chapter 1320, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) The fee for replacement of certain specialized license

plates is:

License plates issued under:	Fee:
Section 504.202 [~~502.254~~]	$1
Section 504.315(c) or (e) [~~502.255 or 502.257~~]	No fee
Section 504.305 or 504.411 [~~502.256 or 502.267~~]	$2
Section 504.409 [~~502.268~~]	$9
[~~Section 502.273~~	~~$30~~]

(b) Section 502.410(b), Transportation Code, is amended to conform to the repeal of Sections 502.253, 502.267, and 502.281 of that code and the enactment of Sections 504.201, 504.411, and 504.508 of that code by Chapter 1320, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(b) Subsection (a) does not apply to a statement or application filed or given under Section 502.184, [~~502.253, 502.267, 502.281,~~] 502.352, 502.353, 502.354, [~~or~~] 502.355, 504.201, 504.411, or 504.508.

(c) Section 681.0032, Transportation Code, is amended to conform to the repeal of Section 502.253 of that code and the enactment of Section 504.201 of that code by Chapter 1320, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 681.0032. ISSUANCE OF DISABLED PARKING PLACARDS TO CERTAIN INSTITUTIONS. (a) The department shall provide for the issuance of disabled parking placards described by Section 681.002 for a van or bus operated by an institution, facility, or residential retirement community for the elderly in which a person described by Section 504.201(a) [~~502.253(b)~~] resides, including an institution licensed under Chapter 242, Health and Safety Code, and

a facility licensed under Chapter 246 or 247 of that code.

(b) The application for a disabled parking placard must be made in the manner provided by Section 681.003(b) and be accompanied by a written statement signed by the administrator or manager of the institution, facility, or retirement community certifying to the department that the institution, facility, or retirement community regularly transports, as a part of the services that the institution, facility, or retirement community provides, one or more persons described by Section 504.201(a) [~~502.253(b)~~] who reside in the institution, facility, or retirement community. The department shall determine the eligibility of the institution, facility, or retirement community on the evidence the applicant provides.

(d) Section 681.004(a), Transportation Code, is amended to conform to the repeal of Section 502.253 of that code and the enactment of Section 504.201 of that code by Chapter 1320, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) A person with a permanent disability may receive:

(1) two disabled parking placards, if the person does not receive a set of special license plates under Section 504.201 [~~502.253~~]; or

(2) one disabled parking placard, if the person receives a set of special license plates under Section 504.201 [~~502.253~~].

(e) Sections 681.006(a) and (b), Transportation Code, are amended to conform to the repeal of Section 502.253 of that code and the enactment of Section 504.201 of that code by Chapter 1320, Acts

of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) Subject to Section 681.009(e), a vehicle may be parked for an unlimited period in a parking space or area that is designated specifically for persons with physical disabilities if:

(1) the vehicle is being operated by or for the transportation of a person with a disability; and

(2) there are:

(A) displayed on the vehicle special license plates issued under Section 504.201 [~~502.253~~]; or

(B) placed on the rearview mirror of the vehicle's front windshield a disabled parking placard.

(b) The owner of a vehicle is exempt from the payment of a fee or penalty imposed by a governmental unit for parking at a meter if:

(1) the vehicle is being operated by or for the transportation of a person with a disability; and

(2) there are:

(A) displayed on the vehicle special license plates issued under Section 504.201 [~~502.253~~]; or

(B) placed on the rearview mirror of the vehicle's front windshield a disabled parking placard.

(f) Section 681.007, Transportation Code, is amended to conform to the repeal of Section 502.253 of that code and the enactment of Section 504.201 of that code by Chapter 1320, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 681.007. PARKING PRIVILEGES: VEHICLES DISPLAYING INTERNATIONAL SYMBOL OF ACCESS. A vehicle may be parked and is

exempt from the payment of a fee or penalty in the same manner as a vehicle that has displayed on the vehicle special license plates issued under Section 504.201 [~~502.253~~] or a disabled parking placard as provided by Section 681.006 if there is displayed on the vehicle a license plate or placard that:

(1) bears the international symbol of access; and

(2) is issued by a state or by a state or province of a foreign country to the owner or operator of the vehicle for the transportation of a person with a disability.

(g) Sections 681.008(a) and (b), Transportation Code, are amended to conform to the repeal of Sections 502.254, 502.255, 502.257, 502.259, and 502.260 of that code and the enactment of Sections 504.202 and 504.315 of that code by Chapter 1320, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) A vehicle may be parked for an unlimited period in a parking space or area that is designated specifically for persons with physical disabilities if:

(1) the vehicle is being operated by or for the transportation of:

(A) the person who registered the vehicle under Section 504.202(a) [~~502.254(a)~~]; or

(B) a person described by Section 504.202(b) [~~502.254(b)~~] if the vehicle is registered under that subsection; and

(2) there are displayed on the vehicle special license plates issued under Section 504.202 [~~502.254~~].

(b) A vehicle on which license plates issued under Section

504.202 or Section 504.315(c), (d), (e), or (g) [~~502.254, 502.255, 502.257, 502.259, or 502.260~~] are displayed is exempt from the payment of a parking fee collected through a parking meter charged by a governmental authority other than a branch of the federal government, when being operated by or for the transportation of:

(1) the person who registered the vehicle under Section 504.202(a) or Section 504.315(c), (d), (e), or (g) [~~502.254(a), 502.255, 502.257, 502.259, or 502.260~~]; or

(2) a person described in Section 504.202(b) [~~502.254(b)~~] if the vehicle is registered under that subsection.

(h) Section 681.009(e), Transportation Code, is amended to conform to the repeal of Section 502.253 of that code and the enactment of Section 504.201 of that code by Chapter 1320, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(e) A private property owner or private person who controls property used for parking and who designates one or more uncovered parking spaces for the exclusive use of vehicles transporting persons with disabilities shall assign at least half of those spaces for the exclusive use of vehicles displaying a white on blue shield disabled parking placard, except that if an odd number of spaces is designated, only the number of spaces that is the largest whole number less than half of the number of designated spaces must be assigned for the exclusive use of vehicles displaying a white on blue shield placard. Van-accessible parking spaces shall be counted as assigned spaces under this subsection. These assigned spaces must be the spaces located closest to an accessible route to an entrance accessible to a person with a disability. The remaining

designated parking spaces may be used by vehicles displaying a white on blue shield disabled parking placard, a white on red shield disabled parking placard, or license plates issued under Section 504.201 [~~502.253~~]. This subsection applies only to a property used for parking that serves a building or other facility:

(1) that state law requires to be accessible to person with disabilities; and

(2) for which construction or an alteration of the building or other facility is completed on or after September 1, 1999.

(i) Sections 681.011(a), (b), and (m), Transportation Code, are amended to conform to the repeal of Sections 502.253 and 502.254 of that code and the enactment of Sections 504.201 and 504.202 of that code by Chapter 1320, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) A person commits an offense if:

(1) the person stands a vehicle on which are displayed license plates issued under Section 504.201 [~~502.253~~] or 504.202 [~~502.254~~] or a disabled parking placard in a parking space or area designated specifically for persons with disabilities by:

(A) a political subdivision; or

(B) a person who owns or controls private property used for parking as to which a political subdivision has provided for the application of this section under Subsection (f); and

(2) the standing of the vehicle in that parking space or area is not authorized by Section 681.006, 681.007, or 681.008.

(b) A person commits an offense if the person:

(1) stands a vehicle on which license plates issued under Section 504.201 [~~502.253~~] or 504.202 [~~502.254~~] are not displayed and a disabled parking placard is not displayed in a parking space or area designated specifically for individuals with disabilities by:

(A) a political subdivision; or

(B) a person who owns or controls private property used for parking as to which a political subdivision has provided for the application of this section under this Subsection (f); or

(2) stands a vehicle displaying a white on red shield disabled parking placard or license plates issued under Section 504.201 [~~502.253~~] in a space designated under Section 681.009(e) for the exclusive use of vehicles displaying a white on blue shield disabled parking placard.

(1) [~~(m)~~] A person commits an offense if the person:

(1) stands a vehicle on which are displayed license plates issued under Section 504.201 [~~502.253~~] or a disabled parking placard in a parking space or area for which this chapter creates an exemption from payment of a fee or penalty imposed by a governmental unit;

(2) does not have a disability;

(3) is not transporting a person with disability; and

(4) does not pay any applicable fee related to standing in the space or area imposed by a governmental unit or exceeds a limitation on the length of time for standing in the space

or area.

(j) Section 684.011(a), Transportation Code, is amended to conform to the repeal of Section 502.253 of that code and the enactment of Section 504.201 of that code by Chapter 1320, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

(a) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;

(2) prevents a vehicle from exiting a parking space in the facility;

(3) is in or obstructs a fire lane marked according to Subsection (c); or

(4) does not display the special license plates issued under Section 504.201 [~~502.253~~] or the disabled parking placard issued under Chapter 681 for a vehicle transporting a disabled person and is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person.

SECTION 20.004. Section 521.341, Transportation Code, as amended by Section 30.93(a), Chapter 165, Acts of the 75th Legislature, Regular Session, 1997, is amended to more closely conform to the change in law made by Section 3, Chapter 708, Acts of the 74th Legislature, Regular Session, 1995, to read as follows:

Sec. 521.341. REQUIREMENTS FOR AUTOMATIC LICENSE SUSPENSION. Except as provided by Sections 521.344(d)-(i), a license is automatically suspended on final conviction of the license holder of:

(1) an offense under Section 19.05, Penal Code, committed as a result of the holder's criminally negligent operation of a motor vehicle;

(2) an offense under Section 38.04, Penal Code, if the holder used a motor vehicle in the commission of the offense;

(3) an offense under Section 49.04 or 49.08, Penal Code;

(4) an offense under Section 49.07, Penal Code, if the holder [~~person~~] used a motor vehicle in the commission of the offense;

(5) an offense punishable as a felony under the motor vehicle laws of this state;

(6) an offense under Section 550.021; or

(7) an offense under Section 521.451 or 521.453.

SECTION 20.0045. Section 524.011(c), Transportation Code, is amended to correct a reference to read as follows:

(c) The report required under Subsection (b)(4)(D) [~~(b)(2)(B)~~] must:

(1) identify the arrested person;

(2) state the arresting officer's grounds for believing the person committed the offense;

(3) give the analysis of the specimen if any; and

(4) include a copy of the criminal complaint filed in the case, if any.

SECTION 20.005. Section 601.162(b), Transportation Code, is amended to more closely conform to the law from which that section was derived to read as follows:

(b) If a suspension is terminated under Subsection (a)(3)(C), on notice of a default in the payment of an installment under the agreement, the department shall promptly suspend the driver's license and vehicle registration or nonresident's operating privilege of the person defaulting. A suspension under this subsection continues until:

(1) the person deposits and maintains security in accordance with Section 601.153 in an amount determined by the department at the time of suspension under this subsection and files evidence of financial responsibility in accordance with Section 601.153; or

(2) the second anniversary of the date security was required [~~deposited~~] under Subdivision (1) if, during that period, an action on the agreement has not been instituted in a court in this state.

SECTION 20.006. Section 601.340(a), Transportation Code, is amended to more closely conform to the law from which that section was derived to read as follows:

(a) Except as provided by Subsection (b) or (c), the department shall suspend the registration of each motor vehicle registered in the name of a person if the department:

(1) under any state law, other than Section 521.341(7) [~~521.341(6)~~], suspends or revokes the person's driver's license on receipt of a record of a conviction or a forfeiture of bail; or

(2) receives a record of a guilty plea of the person entered for an offense for which the department would be required to suspend the driver's license of a person convicted of the offense.

ARTICLE 21. CHANGES RELATING TO UTILITIES CODE

SECTION 21.001. Section 39.903(a), Utilities Code, as amended by Chapters 211 and 1296, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(a) The system benefit fund is an account in the general revenue fund. Money in the account may be appropriated only for the purposes provided by this section or other law. Interest earned on the system benefit fund shall be credited to the fund. Section 403.095, Government Code, does not apply to the system benefit fund.

SECTION 21.002. Section 57.046(c), Utilities Code, as added by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is repealed as duplicative of Subsection (d) of that section.

SECTION 21.003. Sections 121.211(d), (e), (f), and (g), Utilities Code, as added by Chapters 200 and 520, Acts of the 78th Legislature, Regular Session, 2003, are reenacted to read as follows:

(d) The railroad commission may assess each investor-owned and each municipally owned natural gas distribution system subject to this chapter an annual inspection fee not to exceed 50 cents for each service line reported by the system on the Distribution Annual Report, Form RSPA F7100.1-1, due on March 15 of each year. The fee is due March 15 of each year.

(e) The railroad commission may assess each operator of a natural gas master metered system subject to this chapter an annual inspection fee not to exceed $100 for each master metered system. The fee is due June 30 of each year.

(f) The railroad commission may assess a late payment penalty of 10 percent of the total assessment due under Subsection (d) or (e) that is not paid within 30 days after the annual due date established by the applicable subsection.

(g) Each investor-owned and municipally owned natural gas distribution company and each natural gas master meter operator shall recover as a surcharge to its existing rates the amounts paid to the railroad commission under this section. Amounts collected under this subsection by an investor-owned natural gas distribution company shall not be included in the revenue or gross receipts of the company for the purpose of calculating municipal franchise fees or any tax imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122. Those amounts are not subject to a sales and use tax imposed by Chapter 151, Tax Code, or Chapters 321 through 327, Tax Code.

ARTICLE 22. CHANGES RELATING TO WATER CODE

SECTION 22.001. Section 5.756(d), Water Code, is amended to correct a reference to read as follows:

(d) The commission shall include in the annual enforcement report required by Section 5.126 [~~5.123, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997,~~] the comparative performance analysis required by Subsection (c), organized by region and regulated medium.

SECTION 22.0015. Section 16.093(a), Water Code, is amended to correct a reference to read as follows:

(a) The board may execute agreements with the United States Environmental Protection Agency or its successor agency and any

other federal agency that administers programs providing federal grants to local governments for the construction of treatment works, as defined in Section 17.001 [~~17.272 of this code~~]. The board may exercise all duties and responsibilities required for the administration by the board of the federal construction grant program.

SECTION 22.002. Section 26.0491(a), Water Code, is amended to correct a reference to read as follows:

(a) In this section, "separate sanitary sewer system" has the meaning assigned by Section 26.049 [~~29.049~~].

SECTION 22.003. Section 49.181(a), Water Code, as amended by Chapters 248 and 608, Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(a) A district may not issue bonds unless the commission determines that the project to be financed by the bonds is feasible and issues an order approving the issuance of the bonds. This section does not apply to:

(1) refunding bonds if the commission issued an order approving the issuance of the bonds or notes that originally financed the project;

(2) refunding bonds that are issued by a district under an agreement between the district and a municipality allowing the issuance of the district's bonds to refund bonds issued by the municipality to pay the cost of financing facilities; or

(3) bonds issued to and approved by the Farmers Home Administration, the United States Department of Agriculture, the North American Development Bank, or the Texas Water Development

Board.

SECTION 22.004. Section 49.278(a), Water Code, as amended by Chapters 248 and 1129, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(a) This subchapter does not apply to:

(1) equipment, materials, or machinery purchased by the district at an auction that is open to the public;

(2) contracts for personal or professional services or for a utility service operator;

(3) contracts made by a district engaged in the distribution and sale of electric energy to the public;

(4) contracts for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;

(5) high technology procurements; [~~or~~]

(6) contracts for the purchase of electricity for use by the district; or

(7) [~~(6)~~] contracts for services related to compliance with a state or federal construction storm water requirement, including acquisition of permits, construction, repair, and removal of temporary erosion control devices, cleaning of silt and debris from streets and storm sewers, monitoring of construction sites, and preparation and filing of all required reports.

ARTICLE 23. RENUMBERING

SECTION 23.001. The following provisions of enacted codes are renumbered or relettered and appropriate cross-references are

changed to eliminate duplicate citations or to relocate misplaced provisions:

(1) Section 5.55, Alcoholic Beverage Code, as added by Chapter 101, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 5.56, Alcoholic Beverage Code.

(2) Section 20.11, Business & Commerce Code, as added by Chapter 1291, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 20.021, Business & Commerce Code.

(3) Section 35.58, Business & Commerce Code, as added by Chapter 649, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 35.60, Business & Commerce Code.

(4) Section 35.58, Business & Commerce Code, as added by Chapter 808, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 35.61, Business & Commerce Code.

(5) Chapter 46, Business & Commerce Code, as added by Chapter 402, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Chapter 47, Business & Commerce Code, and Sections 46.001, 46.002, 46.003, and 46.004, Business & Commerce Code, as added by that Act, are renumbered as Sections 47.001, 47.002, 47.003, and 47.004, Business & Commerce Code, respectively.

(6) Subsection (d), Section 33.012, Civil Practice and Remedies Code, as added by Chapter 136, Acts of the 74th Legislature, Regular Session, 1995, is relettered as Subsection (e), Section 33.012, Civil Practice and Remedies Code.

(7) Article 13.28, Code of Criminal Procedure, as added by Chapter 415, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Article 13.29, Code of Criminal

Procedure.

(8) Article 38.39, Code of Criminal Procedure, as added by Chapter 2, Acts of the 77th Legislature, Regular Session, 2001, is renumbered as Article 38.43, Code of Criminal Procedure.

(9) Section 7.027, Education Code, as added by Chapter 201, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 7.028, Education Code.

(10) Section 11.064, Education Code, as added by Chapter 344, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 11.065, Education Code.

(11) Section 12.131, Education Code, as added by Chapter 193, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 12.132, Education Code.

(12) Section 21.413, Education Code, as added by Chapters 201 and 263, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 21.414, Education Code.

(13) Section 21.456, Education Code, as added by Chapter 1212, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 21.457, Education Code.

(14) Section 28.0212, Education Code, as added by Chapter 194, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 28.0214, Education Code.

(14-a) Section 29.089, Education Code, as added by Chapter 430, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 29.090, Education Code.

(15) Subchapter D, Chapter 32, Education Code, as added by Chapter 188, Acts of the 78th Legislature, Regular

Session, 2003, is relettered as Subchapter E, Chapter 32, Education Code, and Sections 32.151 and 32.152, Education Code, as added by that Act, are renumbered as Sections 32.201 and 32.202, Education Code, respectively.

(16) Section 37.021, Education Code, as added by Chapter 631, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 37.022, Education Code.

(17) Subsection (c-1), Section 42.152, Education Code, as added by Chapter 783, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (c-2), Section 42.152, Education Code.

(18) Section 43.020, Education Code, as added by Chapter 1270, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 43.021, Education Code.

(19) Section 55.1741, Education Code, as added by Chapter 1188, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 55.17411, Education Code.

(20) Section 56.3575, Education Code, as added by Chapter 728, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 56.4075, Education Code.

(21) Section 61.0816, Education Code, as added by Chapter 1200, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 61.0817, Education Code.

(22) Section 61.955, Education Code, as added by Chapter 820, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 61.9705, Education Code.

(23) Subsection (e), Section 84.032, Election Code, as

added by Chapter 393, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (f), Section 84.032, Election Code.

(24) Section 6.410, Family Code, as added by Chapter 1314, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 6.411, Family Code.

(25) Section 264.113, Family Code, as added by Chapter 234, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 264.115, Family Code.

(26) Section 15.413, Finance Code, as added by Chapter 533, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 15.415, Finance Code.

(27) Subchapter V, Chapter 54, Government Code, as added by Chapter 137, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subchapter W, Chapter 54, Government Code, and Sections 54.1151, 54.1152, 54.1153, 54.1154, 54.1155, and 54.1156, Government Code, as added by that Act, are renumbered as Sections 54.1171, 54.1172, 54.1173, 54.1174, 54.1175, and 54.1176, Government Code, respectively.

(28) Subchapter W, Chapter 54, Government Code, as added by Chapter 42, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subchapter Y, Chapter 54, Government Code, and Sections 54.1151, 54.1152, 54.1153, 54.1154, 54.1155, 54.1156, and 54.1157, Government Code, as added by that Act, are renumbered as Sections 54.1231, 54.1232, 54.1233, 54.1234, 54.1235, 54.1236, and 54.1237, Government Code, respectively.

(29) Section 411.1181, Government Code, as added by

Chapter 1237, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 411.1182, Government Code.

(30) Section 431.017, Government Code, as added by Chapter 949, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 431.018, Government Code.

(31) Subsection (k), Section 441.203, Government Code, as added by Chapter 785, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (l), Section 441.203, Government Code.

(32) Section 531.0224, Government Code, as added by Chapter 358, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 531.0225, Government Code.

(33) Section 531.063, Government Code, as added by Chapter 613, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 531.064, Government Code.

(34) Section 552.141, Government Code, as added by Chapter 804, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 552.143, Government Code.

(35) Section 552.141, Government Code, as added by Chapter 1215, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 552.144, Government Code.

(36) Section 659.262, Government Code, as added by Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 659.263, Government Code.

(37) Subsection (h), Section 1372.0231, Government Code, as added by Chapter 1329, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (j), Section

1372.0231, Government Code.

(38) Section 2054.255, Government Code, as added by Chapters 514 and 816, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 2054.355, Government Code.

(39) Section 2054.256, Government Code, as added by Chapters 514 and 816, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 2054.356, Government Code.

(40) Subsection (f), Section 2171.055, Government Code, as added by Chapter 501, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (g), Section 2171.055, Government Code.

(41) Subsection (c), Section 2175.061, Government Code, as added by Chapter 309, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (d), Section 2175.061, Government Code.

(42) Section 2306.563, Government Code, as added by Chapter 1050, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 2306.5621, Government Code.

(43) Chapter 3105, Government Code, as added by Chapter 614, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Chapter 3106, Government Code, and Sections 3105.001, 3105.002, 3105.003, 3105.004, 3105.005, 3105.006, and 3105.007, Government Code, as added by that Act, are renumbered as Sections 3106.001, 3106.002, 3106.003, 3106.004, 3106.005, 3106.006, and 3106.007, Government Code, respectively.

(44) Section 161.010, Health and Safety Code, as added by Chapter 844, Acts of the 78th Legislature, Regular Session,

2003, is renumbered as Section 161.0101, Health and Safety Code.

(45) Subchapter R, Chapter 161, Health and Safety Code, as added by Chapter 926, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subchapter S, Chapter 161, Health and Safety Code, and Sections 161.451 and 161.452, Health and Safety Code, as added by that Act, are renumbered as Sections 161.471 and 161.472, Health and Safety Code, respectively.

(46) Subchapter R, Chapter 161, Health and Safety Code, as added by Chapter 1011, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subchapter T, Chapter 161, Health and Safety Code, and Sections 161.451 and 161.452, Health and Safety Code, as added by that Act, are renumbered as Sections 161.501 and 161.502, Health and Safety Code, respectively.

(47) Subchapter I, Chapter 242, Health and Safety Code, as added by Chapter 189, Acts of the 74th Legislature, Regular Session, 1995, and as redesignated by Chapters 165 and 530, Acts of the 75th Legislature, Regular Session, 1997, is redesignated as Subchapter H-1, Chapter 242, Health and Safety Code.

(48) Section 281.106, Health and Safety Code, as added by Chapter 55, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 281.107, Health and Safety Code.

(49) Subchapter M, Chapter 285, Health and Safety Code, as added by Chapter 272, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subchapter N, Chapter 285, Health and Safety Code, and Sections 285.201 and 285.202, Health and Safety Code, as added by that Act, are renumbered as Sections 285.231 and 285.232, Health and Safety Code, respectively.

(50) Section 388.009, Health and Safety Code, as added by Chapter 1148, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 388.011, Health and Safety Code.

(51) Subdivision (6), Section 431.221, Health and Safety Code, as added by Chapter 383, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Subdivision (7), Section 431.221, Health and Safety Code.

(52) Section 533.0354, Health and Safety Code, as added by Chapter 358, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 533.0352, Health and Safety Code.

(53) Subchapter G, Chapter 756, Health and Safety Code, as added by Chapter 1082, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subchapter H, Chapter 756, Health and Safety Code, and Sections 756.101, 756.102, and 756.103, Health and Safety Code, as added by that Act, are renumbered as Sections 756.121, 756.122, and 756.123, Health and Safety Code, respectively.

(54) Subsection (e), Section 22.001, Human Resources Code, as added by Chapter 162, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (f), Section 22.001, Human Resources Code.

(55) Section 22.040, Human Resources Code, as added by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 22.041, Human Resources Code.

(56) Section 31.015, Human Resources Code, as added by Chapter 1169, Acts of the 78th Legislature, Regular Session, 2003,

is renumbered as Section 31.016, Human Resources Code.

(57) Subsection (z), Section 32.024, Human Resources Code, as added by Chapter 215, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (aa), Section 32.024, Human Resources Code.

(58) Section 32.0462, Human Resources Code, as added by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 32.0463, Human Resources Code.

(59) Section 32.059, Human Resources Code, as added by Chapter 208, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 32.057, Human Resources Code.

(60) Section 843.319, Insurance Code, as added by Chapter 214, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 843.321, Insurance Code.

(61) Section 1551.219, Insurance Code, as added by Chapter 589, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 1551.220, Insurance Code.

(62) Section 1575.162, Insurance Code, as added by Chapter 589, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 1575.164, Insurance Code.

(63) Subchapter I, Chapter 301, Labor Code, as added by Chapter 817, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subchapter J, Chapter 301, Labor Code, and Section 301.151, Labor Code, as added by that Act, is renumbered as Section 301.171, Labor Code.

(64) Subsection (d), Section 152.032, Local Government Code, as added by Chapter 581, Acts of the 78th

Legislature, Regular Session, 2003, is relettered as Subsection (e), Section 152.032, Local Government Code.

(65) Subsection (a-1), Section 152.074, Local Government Code, as added by Chapter 1225, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (a-2), Section 152.074, Local Government Code.

(66) Section 211.016, Local Government Code, as added by Chapter 279, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 211.017, Local Government Code.

(67) Section 378.0045, Local Government Code, as added by Chapter 1116, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 379B.0045, Local Government Code.

(68) Chapter 58, Occupations Code, as added by Chapter 1420, Acts of the 77th Legislature, Regular Session, 2001, and as renumbered by Chapter 1275, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Chapter 59, Occupations Code, and Section 58.001, Occupations Code, as added and renumbered by those Acts, is renumbered as Section 59.001, Occupations Code.

(69) Chapter 107, Occupations Code, as added by Chapter 1274, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Chapter 111, Occupations Code, and Sections 107.001, 107.002, 107.003, and 107.004, Occupations Code, as added by that Act, are renumbered as Sections 111.001, 111.002, 111.003, and 111.004, Occupations Code, respectively.

(70) Section 254.013, Occupations Code, as added by Chapter 17, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 254.015, Occupations Code.

(71) Section 254.013, Occupations Code, as added by Chapter 1163, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 254.016, Occupations Code.

(72) Section 254.014, Occupations Code, as added by Chapter 1163, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 254.017, Occupations Code.

(73) Subsection (c), Section 301.351, Occupations Code, as added by Chapter 876, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (d), Section 301.351, Occupations Code.

(74) Subsection (d), Section 801.361, Occupations Code, as added by Chapter 806, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (e), Section 801.361, Occupations Code.

(75) Chapter 953, Occupations Code, as added by Chapter 696, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Chapter 954, Occupations Code, and Section 953.001, Occupations Code, as added by that Act, is renumbered as Section 954.001, Occupations Code.

(76) Chapter 2306, Occupations Code, as added by Chapter 1045, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Chapter 2307, Occupations Code, and Sections 2306.001, 2306.002, 2306.003, 2306.004, 2306.005, 2306.006, 2306.007, 2306.008, 2306.009, 2306.010, and 2306.011, Occupations Code, as added by that Act, are renumbered as Sections 2307.001, 2307.002, 2307.003, 2307.004, 2307.005, 2307.006, 2307.007, 2307.008, 2307.009, 2307.010, and 2307.011, Occupations Code,

respectively.

(77) Subsection (d), Section 32.45, Penal Code, as added by Chapters 198 and 257, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (e), Section 32.45, Penal Code.

(78) Subsection (g), Section 46.15, Penal Code, as added by Chapter 421, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (h), Section 46.15, Penal Code.

(79) Subsection (f), Section 55.004, Property Code, as added by Chapter 1266, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (h), Section 55.004, Property Code.

(80) Subsections (h) and (i), Section 11.20, Tax Code, as added by Chapter 1052, Acts of the 78th Legislature, Regular Session, 2003, are relettered as Subsections (j) and (k), Section 11.20, Tax Code, respectively.

(81) Subsection (m), Section 23.55, Tax Code, as added by Chapter 288, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (o), Section 23.55, Tax Code.

(82) Subsection (g), Section 312.204, Tax Code, as added by Chapter 978, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (h), Section 312.204, Tax Code.

(83) Subsection (l), Section 321.203, Tax Code, as added by Chapter 1155, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (m), Section 321.203,

Tax Code.

(84) Section 225.057, Transportation Code, as added by Chapter 45, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 225.056, Transportation Code.

(85) Subsection (i), Section 644.153, Transportation Code, as added by Chapter 1325, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subsection (u), Section 644.153, Transportation Code.

(86) Subchapter O, Chapter 60, Water Code, as added by Chapter 249, Acts of the 78th Legislature, Regular Session, 2003, is relettered as Subchapter P, Chapter 60, Water Code, and Sections 60.451 and 60.452, Water Code, as added by that Act, are renumbered as Sections 60.481 and 60.482, Water Code, respectively.

SECTION 23.002. The following reference changes are made to conform the provisions amended to the renumbering changes made by Section 23.001 of this Act:

(1) Subsection (g), Article 18.18, Code of Criminal Procedure, is amended to read as follows:

(g) For purposes of this article:

(1) "criminal instrument" has the meaning defined in the Penal Code;

(2) "gambling device or equipment, altered gambling equipment or gambling paraphernalia" has the meaning defined in the Penal Code;

(3) "prohibited weapon" has the meaning defined in the Penal Code;

(4) "dog-fighting equipment" means:

(A) equipment used for training or handling a fighting dog, including a harness, treadmill, cage, decoy, pen, house for keeping a fighting dog, feeding apparatus, or training pen;

(B) equipment used for transporting a fighting dog, including any automobile, or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog;

(C) equipment used to promote or advertise an exhibition of dog fighting, including a printing press or similar equipment, paper, ink, or photography equipment; or

(D) a dog trained, being trained, or intended to be used to fight with another dog;

(5) "obscene device" and "obscene" have the meanings assigned by Section 43.21, Penal Code; [~~.~~]

(6) "re-encoder" has the meaning assigned by Section 35.60 [~~35.58~~], Business & Commerce Code; and

(7) "scanning device" has the meaning assigned by Section 35.60 [~~35.58~~], Business & Commerce Code.

(2) Subsection (a), Section 47.003, Business & Commerce Code, as renumbered from Section 46.003, Business & Commerce Code, by this article, is amended to read as follows:

(a) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a person who is violating or threatening to violate Section 47.002 [~~46.002~~]. The action may be brought in a district court of Travis County or of a county in which

any part of the violation or threatened violation occurs.

(3) Subsections (a) and (b), Section 47.004, Business & Commerce Code, as renumbered from Section 46.004, Business & Commerce Code, by this article, are amended to read as follows:

(a) A sex offender commits an offense if the offender violates Section 47.002(a) [~~46.002(a)~~].

(b) A sexually oriented business commits an offense if the business violates Section 47.002(b) [~~46.002(b)~~].

(4) Subsection (a), Section 56.4075, Education Code, as renumbered from Section 56.3575, Education Code, by this article, is amended to read as follows:

(a) The coordinating board may award a grant in an amount not more than three times the amount that may be awarded under Section 56.407 [~~56.357, as added by Chapter 624, Acts of the 77th Legislature, Regular Session, 2001,~~] to a student who:

(1) is enrolled in a program that fulfills the educational requirements for licensure or certification by the state in a health care profession that the coordinating board, in consultation with the Texas Workforce Commission and the statewide health coordinating council, has identified as having a critical shortage in the number of license holders needed in this state;

(2) has completed at least one-half of the work toward a degree or certificate that fulfills the educational requirement for licensure or certification; and

(3) meets all the requirements to receive a grant award under Section 56.407 [~~56.357, as added by Chapter 624, Acts of the 77th Legislature, Regular Session, 2001~~].

(5) Subsection (b), Section 54.1232, Government Code, as renumbered from Section 54.1152, Government Code, by this article, is amended to read as follows:

(b) A magistrate appointed under Section 54.1231 [~~54.1151~~] must take the constitutional oath of office required of appointed officers of this state.

(6) Section 1372.0222, Government Code, is amended to read as follows:

Sec. 1372.0222. DEDICATION OF PORTION OF STATE CEILING FOR FIRE FIGHTER AND POLICE OFFICER HOME LOAN PROGRAM. Until August 1, out of that portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds under Section 1372.022, $25 million shall be allotted each year and made available exclusively to the Texas State Affordable Housing Corporation for the purpose of issuing qualified mortgage bonds in connection with the fire fighter and police officer home loan program established under Section 2306.5621 [~~2306.563~~].

(7) Subsection (a), Section 2306.553, Government Code, is amended to read as follows:

(a) The public purpose of the corporation is to perform activities and services that the corporation's board of directors determines will promote the public health, safety, and welfare through the provision of adequate, safe, and sanitary housing primarily for individuals and families of low, very low, and extremely low income, for professional educators under the professional educators home loan program as provided by Section 2306.562, and for fire fighters and police officers under the fire

fighter and police officer home loan program as provided by Section 2306.5621 [~~2306.563~~]. The activities and services shall include engaging in mortgage banking activities and lending transactions and acquiring, holding, selling, or leasing real or personal property.

(8) Section 161.452, Health and Safety Code, as added by Chapter 1011, Acts of the 78th Legislature, Regular Session, 2003, is renumbered as Section 161.502, Health and Safety Code, as provided by this article, and amended to read as follows:

Sec. 161.502 [~~161.452~~]. DUTIES OF DEPARTMENT. The department shall:

(1) establish guidelines for the provision of the information required by Section 161.501 [~~161.451~~];

(2) make available on the department's website a printable list of professional organizations that provide postpartum counseling and assistance to parents; and

(3) update the list required under Subdivision (2) monthly.

(9) Article 21.30, Insurance Code, is amended to read as follows:

Art. 21.30. WAIVER OF CERTAIN PROVISIONS FOR CERTAIN FEDERAL PLANS. If the commissioner of insurance, in consultation with the commissioner of health and human services, determines that a provision of Section 3A, 3C-3J, or 10-12, Article 3.70-3C of this code, as added by Chapter 1024, Acts of the 75th Legislature, Regular Session, 1997, Section 843.209 or 843.321 [~~843.319~~] of this code, Subchapter J, Chapter 843 of this code, or Article 21.52Z of

this code will cause a negative fiscal impact on the state with respect to providing benefits or services under Subchapter XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), as amended, or Subchapter XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, the commissioner of insurance by rule shall waive the application of that provision to the providing of those benefits or services.

(10) Section 1455.005, Insurance Code, is amended to read as follows:

Sec. 1455.005. RULES. Subject to Section 111.004 [~~107.004~~], Occupations Code, the commissioner may adopt rules necessary to implement this chapter.

(11) Subsection (a), Section 152.032, Local Government Code, is amended to read as follows:

(a) Except as provided by Subsections (b), [~~and~~] (d), and (e), the amount of the compensation and allowances of a county auditor may not exceed the amount of the compensation and allowances received from all sources by the highest paid elected county officer, other than a judge of a statutory county court, whose salary and allowances are set by the commissioners court.

SECTION 23.003. If the number, letter, or designation assigned by Section 23.001 of this Act conflicts with a number, letter, or designation assigned by another Act of the 79th Legislature:

(1) the other Act controls, and the change made by Section 23.001 of this Act has no effect; and

(2) any cross-reference change made by Section 23.002

of this Act to conform to that change made by Section 23.001 of this Act has no effect.

ARTICLE 24. EFFECTIVE DATE

SECTION 24.001. This Act takes effect September 1, 2005.

S.B. No. 979 By Raya

A BILL TO BE ENTITLED

AN ACT:

relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 78th Legislature to other Acts of that legislature.

MAR 03 2005 Filed with the Secretary of the Senate

MAR 14 2005 Read and referred to Committee on ADMINISTRATION

_____ Reported favorably _____

_____ Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

_____ Ordered not printed

_____ Laid before the Senate

_____ Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent / ____ yeas, ____ nays

_____ Read second time, _____, and ordered engrossed by: { unanimous consent / a viva voce vote / ____ yeas, ____ nays

_____ Senate and Constitutional 3 Day Rule suspended by a vote of ____ yeas, ____ nays.

_____ Read third time, _____, and passed by: { A viva voce vote / ____ yeas, ____ nays

_____
SECRETARY OF THE SENATE

OTHER ACTION:

_____ Engrossed

_____ Sent to House

Engrossing Clerk _____

_____ Received from the Senate

_____ Read first time and referred to Committee on _____

_____ Reported ____favorably (as amended) (as substituted)

_____ Sent to Committee on (Calendars) (Local & Consent Calendars)

_____ Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of ____ yeas, ____ nays, ____ present, not voting)

_____ Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of ____ yeas, ____ nays, ____ present, not voting.

_____ Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of ____ yeas, ____ nays, ____ present, not voting)

_____ Returned to Senate.

_____
CHIEF CLERK OF THE HOUSE

_____ Returned from House without amendment.

_____ Returned from House with ____ amendments.

_____ Concurred in House amendments by a viva voce vote ____ yeas, ____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____

_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____ , Chairman;

_____ , _____ , _____ .

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
{ _____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
{ _____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
{ _____ yeas, _____ nays