A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
THE LICENSURE OF INSURERS AND RELATED ENTITIES,
LIFE INSURANCE, AND CERTAIN GROUP BENEFIT PROGRAMS
FOR GOVERNMENTAL EMPLOYEES

Submitted to the 77th Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas
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FOREWORD

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logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable--all toward promoting the stated purpose of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

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

Titles 6 and 7, and Subtitle H, Title 8, Insurance Code, are a nonsubstantive revision of the Texas statutes relating to the licensure of insurers and related entities, life insurance, and certain group benefit programs for governmental employees. These titles are derived from provisions of the Insurance Code of 1951

previously designated as part of Title 1, Insurance Code.

When the revision of the Insurance Code is complete, the code will be divided into titles, subtitles, chapters, subchapters, and sections. Sections will be numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Note that gaps in chapter and section numbering are for future expansion. The material that has been incorporated in this nonsubstantive revision by the 77th Legislature is added to the Insurance Code of 1951 as Titles 6 and 7 and Subtitle H, Title 8. Material incorporated into the revision of the Insurance Code by the 76th Legislature is designated as Title 2. Existing material in the Insurance Code that is not affected by either revision is contained in Title 1.

The revisor's report reflects Titles 6 and 7 and Subtitle H, Title 8, Insurance Code, as enacted by the passage of H.B. No. 2811, Acts of the 77th Legislature, Regular Session, 2001. The revisor's report states the Revised Law, which is the text of the new law, and then provides the Source Law, which is the text of the former law from which the revised law is derived. If further explanation of either the revised law or the source law is required, a Revisor's Note is included after the source law. All substance in the source law is revised in the revised law or the reason for its omission is explained in a revisor's note.

Note that, to provide all affected parties a complete legislative cycle to more closely review the revision, Titles 6 and 7 and Subtitle H, Title 8, Insurance Code, will not take effect until June 1, 2003.

Because of the extensive reorganization of many statutes, and even sentences within a statute, it may be helpful to refer to the source law as printed in the Insurance Code as it existed before the revision (so that the quoted source law may be seen in its former context) and to the disposition table (showing where

the former statutes appear, as revised, in the code). The disposition table is printed as Appendix C to the revisor's report.

The revision required conforming amendments to several statutes. These conforming amendments, which were also enacted into law by the passage of H.B. No. 2811, are printed in Appendix A to the revisor's report. Appendix A also includes a section listing the laws repealed effective June 1, 2003, and a section stating the legislature's intent that the code be a nonsubstantive revision.

In reviewing the revisor's report to Titles 6 and 7 and Subtitle H, Title 8, Insurance Code, the reader should keep in mind the following:

(1) Except as provided by Section 30.003, Insurance Code, as amended by H.B. No. 2811, the Code Construction Act (Chapter 311, Government Code) applies to the code. That act sets out certain principles of statutory construction applicable to new codes and also provides some definitions. The act is printed as Appendix B to the revisor's report.

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

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

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

TITLE 6. ORGANIZATION OF INSURERS AND RELATED ENTITIES

SUBTITLE A. GENERAL PROVISIONS APPLICABLE TO INSURERS AND RELATED ENTITIES

[Chapters 806-820 reserved for expansion]

SUBTITLE B. ORGANIZATION OF REGULATED ENTITIES

[Chapters 829-840 reserved for expansion]

SUBTITLE C. LIFE, HEALTH, AND ACCIDENT INSURERS AND RELATED ENTITIES

SUBTITLE C. SPECIALIZED COVERAGES

CHAPTER 1151. INDUSTRIAL LIFE INSURANCE

CHAPTER 1152. SEPARATE ACCOUNTS, VARIABLE CONTRACTS, AND RELATED PRODUCTS

CHAPTER 1153. CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

TITLE 8. HEALTH INSURANCE AND OTHER HEALTH COVERAGES

[Subtitles A-G reserved]

SUBTITLE H. HEALTH BENEFITS AND OTHER COVERAGES FOR GOVERNMENTAL EMPLOYEES

CHAPTER 1551. TEXAS EMPLOYEES GROUP BENEFITS ACT

CHAPTER 1552. GROUP LONG-TERM CARE INSURANCE FOR STATE EMPLOYEES

[Chapters 1553-1574 reserved for expansion]

CHAPTER 1575. TEXAS PUBLIC SCHOOL EMPLOYEES GROUP BENEFITS PROGRAM

CHAPTER 1576. GROUP LONG-TERM CARE INSURANCE FOR PUBLIC SCHOOL EMPLOYEES

CHAPTER 1577. REQUIRED AVAILABILITY OF INSURANCE FOR SCHOOL DISTRICT EMPLOYEES AND RETIREES

CHAPTER 1578. PURCHASE OF INSURANCE BY ASSOCIATION OF TEACHERS AND SCHOOL ADMINISTRATORS

[Chapters 1579-1600 reserved for expansion]

CHAPTER 1601. UNIFORM INSURANCE BENEFITS ACT FOR EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM AND THE TEXAS A&M UNIVERSITY SYSTEM

[Chapters 1602-1624 reserved for expansion]

CHAPTER 1625. TRANSFER BETWEEN CERTAIN GOVERNMENTAL PROGRAMS

TITLE 6. ORGANIZATION OF INSURERS AND RELATED ENTITIES

SUBTITLE A. GENERAL PROVISIONS APPLICABLE TO INSURERS AND RELATED ENTITIES

CHAPTER 801. CERTIFICATE OF AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 801.001. DEFINITIONS. In this chapter:

(1) "Control" has the meaning described by Section 823.005.

(2) "Insurer" means the issuer of an insurance policy

that is issued to another in consideration of a premium and that insures against a loss that may be insured against under the law. The term includes a:

(A) fraternal benefit society;

(B) Lloyd's plan;

(C) mutual company of any kind, including a:

(i) statewide mutual assessment association;

(ii) local mutual aid association or burial association; and

(iii) county or farm mutual insurance company;

(D) reciprocal or interinsurance exchange; and

(E) stock company.

(3) "Person" has the meaning assigned by Section 823.002. (V.T.I.C. Art. 1.14, Secs. 2 (part), 3 (part).)

Source Law

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

Sec. 3. . . . As used in this section, "control" and "person" have the meanings assigned by Section 2, Article 21.49-1 of this code. . . .

Revisor's Note

(1) Section 2, V.T.I.C. Article 1.14, defines "carrier." The revised law substitutes "insurer" for "carrier" for consistency of terms in this chapter and because "insurer" is the more commonly used modern term. Throughout this chapter, references to "carrier" have been changed appropriately.

(2) Section 2, V.T.I.C. Article 1.14, in the definition of "carrier," revised in this section as the definition of "insurer," refers to county and farm mutual fire associations. The revised law omits the reference to "fire" because Section 2 applies to mutual companies "of all kinds." It is clear, therefore, that all kinds of county and farm mutual insurance companies are included in the meaning of the defined term.

Revised Law

Sec. 801.002. EXEMPTION FOR CERTAIN FRATERNAL BENEFIT SOCIETIES. This chapter does not apply to a fraternal benefit society that:

(1) sells insurance policies only as an incidental benefit to its members; and

(2) on September 6, 1955, was:

(A) organized and licensed by the department as a fraternal benefit society; or

(B) exempt under former Article 10.12 or 10.38, revised as Section 885.004. (V.T.I.C. Art. 1.14, Sec. 3 (part).)

Source Law

Sec. 3. . . . Provided, however, that fraternal benefit societies that sell insurance policies only as an incidental benefit to their members and which are now so organized and licensed by the Board of Insurance Commissioners of Texas or which are now exempt under the provisions of Article 10.12 or Article 10.38 of the Insurance Code are hereby exempted from the provisions of this Act.

Revisor's Note

(1) Section 3, V.T.I.C. Article 1.14, exempts from the application of V.T.I.C. Article 1.14, revised in part as this chapter, certain fraternal benefit societies that are "now" organized and licensed by the Texas Department of Insurance or "now" exempt under Article 10.12 or 10.38, Insurance Code. Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, added Section 3 to V.T.I.C. Article 1.14 and was effective

September 6, 1955. The revised law substitutes "September 6, 1955," for the references to "now."

(2) Section 3, V.T.I.C. Article 1.14, refers to the "Board of Insurance Commissioners of Texas." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners and the State Board of Insurance have been changed appropriately.

[Sections 801.003-801.050 reserved for expansion]

SUBCHAPTER B. CERTIFICATE OF AUTHORITY

Revised Law

Sec. 801.051. ISSUANCE OF CERTIFICATE; ELIGIBILITY. The department shall issue under the department's seal a certificate of authority to act as an insurer to an applicant applying for the certificate if the department determines that the applicant has complied with the law. (V.T.I.C. Art. 1.14, Sec. 1 (part).)

Source Law

Sec. 1. . . . Should the State Board of Insurance be satisfied that any insurance carrier applying for a certificate of authority has in all respects fully complied with the law, it shall be its duty to issue to such carrier a certificate of authority, under its seal . . . .

Revisor's Note

Section 1, V.T.I.C. Article 1.14, prohibits certain persons from engaging in the business of insurance unless permitted by

statute. The revised law omits that part of Section 1 as unnecessary because it duplicates Section 101.102, Insurance Code (prohibiting a person from doing an act that constitutes the business of insurance except as authorized by statute). The omitted law reads:

Art. 1.14

Sec. 1. No individual, group of individuals, association or corporation, unless now or hereafter otherwise permitted by statute, shall be permitted to engage in the business of insuring others against those losses which may be insured against under the laws of this state. . . .

Revised Law

Sec. 801.052. EFFECT AND CONTENTS OF CERTIFICATE. A certificate of authority issued to an insurer under this chapter authorizes the insurer to engage in the business of insurance. The certificate of authority must state the specific kinds of insurance authorized under the certificate. (V.T.I.C. Art. 1.14, Sec. 1 (part).)

Source Law

Sec. 1. . . . a certificate of authority . . . authorizing such carrier to transact insurance business, naming therein the particular kinds of insurance. . . .

Revised Law

Sec. 801.053. DURATION OF CERTIFICATE. A certificate of authority issued to an insurer under this chapter is effective until it is suspended or revoked. (V.T.I.C. Art. 1.14, Sec. 1 (part).)

Source Law

Sec. 1. . . . Each such certificate of authority heretofore or hereafter issued shall be in full force and effect until it is revoked, canceled or suspended according to law; . . . .

Revisor's Note

(1) Section 1, V.T.I.C. Article 1.14, refers to a certificate "in full force and effect." The revised law omits the reference to "full force" because "in full force" is included in the meaning of "in effect."

(2) Section 1, V.T.I.C. Article 1.14, refers to a certificate of authority that is "revoked, canceled or suspended." Throughout this chapter, the revised law omits "canceled" because its meaning is included in the meaning of "revoked."

Revised Law

Sec. 801.054. PREFERENCE FOR DOMESTIC COMPANY. In issuing a certificate of authority to an applicant under this chapter, the department shall give preference to an application submitted by a domestic company. (V.T.I.C. Art. 1.14, Sec. 2 (part).)

Source Law

Sec. 2. . . . Provided that the Board of Insurance Commissioners shall give preference to applications of domestic companies in . . . issuing Certificates of Authority.

Revised Law

Sec. 801.055. DEPOSIT OF FEES. A fee collected by the department under this chapter for a certificate of authority shall be deposited to the credit of the Texas Department of Insurance operating account. (V.T.I.C. Art. 1.14, Sec. 1A.)

Source Law

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

Revisor's Note

Section 1A, V.T.I.C. Article 1.14, requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

Revised Law

Sec. 801.056. FAILURE TO PROVIDE COMPLETE SET OF FINGERPRINTS: GROUND FOR DENIAL OF APPLICATION. (a) In this section, "authorization" means any authorization issued by the department to engage in an activity regulated under this code, including:

(1) a certificate of authority;

(2) a certificate of registration;

(3) a license; and

(4) a permit.

(b) The department may deny an application for an authorization if the applicant or a corporate officer of the applicant fails to provide a complete set of fingerprints on request by the department. (V.T.I.C. Art. 1.10C, Subsec. (e) (part).)

Source Law

(e) The department may deny . . . an applicant for any license, permit, certificate of authority or certificate of registration who fails to provide a complete set of fingerprints on request and may deny a certificate of authority to an insurance company whose corporate officers fail to provide complete sets of fingerprints on request.

Revised Law

Sec. 801.057. FAILURE TO FILE ANNUAL STATEMENT: GROUND FOR REVOCATION OR SUSPENSION. A certificate of authority of an insurer that fails to file an annual statement required by law is subject to being suspended or revoked by the department. (V.T.I.C. Art. 1.14, Sec. 1 (part).)

Source Law

Sec. 1. . . . provided, however, that failure to file any annual statement required by law will subject the certificate of authority to being revoked, canceled or suspended.

[Sections 801.058-801.100 reserved for expansion]

SUBCHAPTER C. COMPETENCE, FITNESS, OR REPUTATION

Revised Law

Sec. 801.101. DEPARTMENT INQUIRY. The department may inquire into the competence, fitness, or reputation of:

(1) an officer or director of an insurer; or

(2) a person having control of an insurer. (V.T.I.C. Art. 1.14, Sec. 3 (part).)

Source Law

Sec. 3. The Board may inquire into the competence, fitness and reputation of the officers and directors of each carrier and of any person having control of such carrier. . . .

Revised Law

Sec. 801.102. DENIAL OF APPLICATION OR REVOCATION OF CERTIFICATE. If after conducting an inquiry under Section 801.101 the department determines that, based on substantial evidence, the person who is the subject of the inquiry is not worthy of the public confidence, the department shall, after written notice and hearing:

(1) deny the application for a certificate of authority; or

(2) revoke the insurer's certificate of authority.
(V.T.I.C. Art. 1.14, Sec. 3 (part).)

Source Law

Sec. 3. . . . If, after inquiry, and based on substantial evidence, it shall appear to the Board that such officers, directors and any person having control of such carrier, or any of them, are not worthy of the public confidence, it shall give such carrier notice in writing [of its intention to refuse the application for Certificate of Authority, or to revoke the certificate once granted,] . . . .

After notice and hearing, [the Board shall . . . record . . . its findings and order,] which shall be subject to full review as provided by Article 1.04(f) of this code. . . .

Revisor's Note

(1) Section 3, V.T.I.C. Article 1.14, requires the Texas Department of Insurance to give notice of its intention to deny an application for a certificate of authority or to revoke a certificate of authority, but does not expressly require the department to deny the application or revoke the certificate. The revised law clarifies the department's duty to deny an application or revoke a certificate by including an express statement to that effect.

(2) Section 3, V.T.I.C. Article 1.14, includes certain notice and hearing procedures relating to the denial of an application for a certificate of authority or the revocation of a certificate of authority by the Texas Department of Insurance. In 1976, those provisions were impliedly repealed by the Administrative Procedure and Texas Register Act (Chapters 2001 and 2002, Government Code), which prescribes the procedures to be used by a state agency in denying an application or revoking a certificate. The original enactment of the Administrative Procedure and Texas Register Act repeals all conflicting law. The language in Section 3 relating to the notice and hearing procedures is omitted from the revised law because the enactment

of that language predates the administrative procedure law and is repealed. The omitted law reads:

Sec. 3. . . . [it shall give such carrier notice in writing] of its intention to refuse the application for Certificate of Authority, or to revoke the certificate once granted, stating specifically why the Board intends such action, and the place and time for hearing by the Board, not sooner than ten (10) days nor later than twenty (20) days thereafter.

[After notice and hearing,] the Board shall forthwith record in its official minutes its findings and order . . . .

(3) Section 3, V.T.I.C. Article 1.14, refers to the findings and order of the Texas Department of Insurance, "which shall be subject to full review as provided by Article 1.04(f) of this code." The revised law omits the quoted language as unnecessary because it duplicates the authority provided under Subchapter D, Chapter 36, Insurance Code, which was formerly V.T.I.C. Article 1.04.

[Sections 801.103-801.150 reserved for expansion]

SUBCHAPTER D. FELONY CONVICTION

Revised Law

Sec. 801.151. ISSUANCE OF CERTIFICATE PROHIBITED. Except as provided by Sections 801.153 and 801.154, the department may not issue a certificate of authority to an applicant if a corporate officer or member of the board of directors of the applicant has been convicted of a felony involving:

(1) moral turpitude; or

(2) breach of a fiduciary duty. (V.T.I.C. Art. 1.14A, Subsec. (a).)

Source Law

Art. 1.14A. (a) Except as provided by Subsection (c) of this section, the department may not issue a certificate of authority to an insurance company if a corporate officer or a member of the board of directors of the company has been convicted of a felony involving moral turpitude or breach of a

fiduciary duty.

Revised Law

Sec. 801.152. REVOCATION OF CERTIFICATE. After notice and hearing, the department may revoke the certificate of authority of an insurer if a corporate officer or member of the board of directors of the insurer is convicted of a felony involving:

(1) moral turpitude; or

(2) breach of a fiduciary duty. (V.T.I.C. Art. 1.14A, Subsec. (b).)

Source Law

(b) The department may, after notice and hearing, revoke the certificate of authority of an insurance company if a corporate officer or member of the board of directors of the company is convicted of a felony involving moral turpitude or breach of a fiduciary duty.

Revised Law

Sec. 801.153. PETITION FOR ISSUANCE OR REINSTATEMENT OF CERTIFICATE. A company may petition the commissioner for issuance or reinstatement of a certificate of authority of the company that is denied or revoked under this subchapter:

(1) not earlier than the later of:

(A) the fifth anniversary of the date of the final conviction; or

(B) if the officer or director is sentenced to confinement or imprisonment or placed on community supervision, the fifth anniversary of the date the officer or director completes the sentence or period of community supervision; or

(2) after the officer or director ceases to be an officer or director of the insurer. (V.T.I.C. Art. 1.14A, Subsecs. (c), (d) (part), (e).)

Source Law

(c) A company whose application for issuance of a certificate of authority has been denied under Subsection (a) of this section or whose certificate of authority has been revoked under Subsection (b) of this section may petition the commissioner for issuance or reinstatement of the certificate.

(d) Except as provided by Subsection (e) of this section, a petition for issuance or reinstatement of a certificate of authority may not be made before the date five years after the date of final conviction or, if the officer or director of the petitioner has been sentenced to prison or to probation, five years after the date the sentence or probation terminates. . . .

(e) A petition for issuance or reinstatement of a certificate of authority may be made at any time after the officer or director who has been convicted of a felony involving moral turpitude or breach of a fiduciary duty is no longer an officer or director of the company.

Revisor's Note

Subsection (d), V.T.I.C. Article 1.14A, refers to "probation." The revised law substitutes "community supervision" for "probation" because under Section 4.04(a), Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, a reference in law to "probation" means "community supervision."

Revised Law

Sec. 801.154. GRANT OF PETITION. The commissioner shall grant a petition for issuance or reinstatement of a certificate of authority under this subchapter if the petitioner demonstrates that granting the petition would be in the public interest and that justice would best be served by granting the petition. (V.T.I.C. Art. 1.14A, Subsec. (f).)

Source Law

(f) The commissioner shall grant the petition if the petitioner demonstrates that it would be in the public interest and that justice would best be served if the certificate of authority were issued or reinstated.

Revised Law

Sec. 801.155. RULES RELATING TO CONTENTS OF PETITION. The department may adopt rules under this subchapter prescribing the contents of a petition for issuance or reinstatement of a certificate of authority. (V.T.I.C. Art. 1.14A, Subsec. (d) (part).)

Source Law

(d) . . . The board may adopt rules setting forth the contents of the petition.

CHAPTER 802. ANNUAL STATEMENT

SUBCHAPTER A. ANNUAL STATEMENT OF INSURANCE COMPANIES

[Sections 802.004-802.050 reserved for expansion]

SUBCHAPTER B. FILING WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

CHAPTER 802. ANNUAL STATEMENT

SUBCHAPTER A. ANNUAL STATEMENT OF INSURANCE COMPANIES

Revised Law

Sec. 802.001. FORM OF ANNUAL STATEMENT. (a) The commissioner, as necessary to obtain an accurate indication of the company's condition and method of transacting business, may change the form of any annual statement required to be filed by any kind of insurance company.

(b) The form may require only information that relates to the business of the insurance company. (V.T.I.C. Art. 1.11, Subsec. (a) (part).)

Source Law

Art. 1.11. (a) The commissioner may, from time to time, make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to it best adapted to elicit a true exhibit of their condition and methods of transacting business. Such form shall elicit only such information as shall pertain to the business of the company.

. . .

Revisor's Note

Subsection (a), V.T.I.C. Article 1.11, provides that the commissioner may modify the form of annual statements "from time to time." The revised law omits the quoted language as unnecessary because, in this context, the power to take an action includes the power to act "from time to time."

Revised Law

Sec. 802.002. ACTUARIAL OPINION REQUIRED. (a) In this section, "qualified actuary" means:

(1) a member in good standing of the American Academy of Actuaries; or

(2) a person who has otherwise demonstrated actuarial competence to the satisfaction of the commissioner or an insurance regulatory official of another state in which the insurance company is domiciled.

(b) An insurance company's annual statement must include a statement of a qualified actuary entitled "Statement of Actuarial Opinion" that:

(1) is located on or is attached to the first page of the annual statement; and

(2) provides the opinion of the actuary relating to policy reserves and other actuarial items for life insurance, accident and health insurance, and annuities, or loss and loss adjustment expense reserves for property and casualty risks, as described in the annual statement instructions of the National Association of Insurance Commissioners as appropriate for the type of risks insured. (V.T.I.C. Art. 1.11, Subsecs. (c), (d).)

Source Law

(c) Included on or attached to page 1 of the annual statement shall be the statement of a qualified actuary, entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to policy reserves and other actuarial items for life, accident and health, and annuities, or loss and loss adjustment expense reserves for property and casualty risks, as described in the NAIC annual statement instructions as appropriate for the type of risks insured.

(d) In this article, "qualified actuary" means a member in good standing of the American Academy of Actuaries or a person who has otherwise demonstrated actuarial competence to the satisfaction of the commissioner of insurance or other insurance regulatory official of the insurer's domiciliary state.

Revised Law

Sec. 802.003. FILING DATE OF ANNUAL STATEMENT DELIVERED BY POSTAL SERVICE. Except as otherwise specifically provided, for an annual statement that is required to be filed in the offices of the commissioner and that is delivered by the United States Postal Service to the offices of the commissioner after the date on which the annual statement is required to be filed, the date of filing is:

(1) the date of the postal service postmark stamped on the cover in which the document is mailed; or

(2) any other evidence of mailing authorized by the postal service reflected on the cover in which the document is mailed. (V.T.I.C. Art. 1.11(a) (part).)

Source Law

(a) . . . If any annual statement, . . . required to be filed or deposited in the offices of the commissioner, . . . is delivered by the United States Postal Service to the offices of the commissioner . . ., as required, after the prescribed date on which the annual statement, . . . is to be filed, the date of the United States Postal Service postmark stamped on the cover in which the document is mailed, or any other evidence of mailing authorized by the United States Postal Service reflected on the cover in which the document is mailed, shall be deemed to be the date of filing, unless otherwise specifically made an exception to this general statute.

[Sections 802.004-802.050 reserved for expansion]

SUBCHAPTER B. FILING WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Revised Law

Sec. 802.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies to each company regulated by the commissioner, including:

(1) a stock life, health, or accident insurance company;

(2) a mutual life, health, or accident insurance company;

(3) a stock fire or casualty insurance company;

(4) a mutual fire or casualty insurance company;

(5) a Mexican casualty company;

(6) a Lloyd's plan;

(7) a reciprocal or interinsurance exchange;

(8) a fraternal benefit society;

(9) a title insurance company;

(10) an attorney's title insurance company;

(11) a stipulated premium insurance company;

(12) a nonprofit legal service corporation;

(13) a health maintenance organization;

(14) a statewide mutual assessment company;

(15) a local mutual aid association;

(16) a local mutual burial association;

(17) an association exempt under Section 887.102;

(18) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 842;

(19) a county mutual insurance company; and

(20) a farm mutual insurance company. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . This section is applicable to all companies regulated by the State Board of Insurance including domestic and foreign, stock and mutual life, health, and accident insurance companies; domestic and foreign, stock and mutual, fire and casualty insurance companies; Mexican casualty companies; domestic and foreign Lloyd's plan insurers; domestic and foreign reciprocal or interinsurance exchanges; domestic and foreign fraternal benefit societies; domestic and foreign title insurance companies; attorney's title insurance companies; stipulated premium insurance companies; nonprofit legal service corporations; health maintenance organizations; statewide mutual assessment companies; local mutual aid associations; local mutual burial associations; exempt associations under Article 14.17 of this code; nonprofit hospital, medical, or dental service corporations including companies subject to Chapter 20 of this code; county mutual insurance companies; and farm mutual insurance companies. . . .

Revisor's Note

V.T.I.C. Article 1.11(b) provides that the article is applicable to all companies regulated by the the State Board of Insurance (meaning the Texas Department of Insurance), including certain "domestic or foreign" insurers. The revised law omits the reference to "domestic or foreign" as unnecessary. The authority of the department to regulate domestic and foreign insurance companies is specified in other provisions of the code and, because the revised law applies to all companies regulated by the department, it is not necessary to distinguish domestic and foreign companies in this section.

Revised Law

Sec. 802.052. CONCURRENT FILING WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. (a) Each domestic, foreign, or alien insurance company authorized to engage in the business of insurance in this state shall file a copy of the company's annual statement with the National Association of Insurance Commissioners at the time the company files the statement with the commissioner.

(b) The statement required by Subsection (a) must:

(1) meet requirements adopted by the commissioner, including:

(A) a change in substance or form;

(B) an additional filing; and

(C) any requirement that the statement be in a computer compatible format; and

(2) include the signed jurat page and the actuarial opinion, as required by the jurisdiction in which the insurance company is domiciled.

(c) The insurance company shall also file with the National Association of Insurance Commissioners a copy of any amendment or addition to the annual statement that is subsequently filed with the commissioner. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) Each domestic, foreign, and alien insurer authorized to transact insurance in this state, at the time it files its annual statement with the State Board of Insurance, shall file with the National Association of Insurance Commissioners a copy of its annual statement, along with any changes in substance and form, including a requirement that the submission be in computer compatible format, or additional filings, if any, as may be prescribed by the State Board of Insurance. The information filed shall include the signed jurat page and the actuarial certification, as required by the state of domicile. Any amendments and additions to the annual statement subsequently filed with the State Board of Insurance also shall be filed with the National Association of Insurance Commissioners. . . .

Revisor's Note

Subsection (b), V.T.I.C. Article 1.11, refers to an "actuarial certification, as required by the state of domicile." The revised law substitutes "opinion" for "certification" for consistency with the terminology used in Subsection (c), V.T.I.C. Article 1.11, revised in this code as Section 802.002. The revised law substitutes "jurisdiction" for "state" because Subsection (b), V.T.I.C. Article 1.11, applies to alien insurance companies. An alien insurance company is a company domiciled in a foreign country, and "jurisdiction" is a more appropriate term in that context.

Revised Law

Sec. 802.053. EXEMPTION AUTHORITY. The commissioner may exempt any class of insurance companies from the requirements of this subchapter if the commissioner believes the information required under this subchapter will not be useful for regulatory purposes. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . The Board may exempt any class of insurers from the requirements of this section if the Board believes the information required by this section will not be useful for regulatory purposes. . . .

Revised Law

Sec. 802.054. COMPLIANCE. The commissioner may consider a foreign insurance company to be in compliance with the requirements of Section 802.052 if the company is domiciled in a state with a law substantially similar to that section. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . The Board may deem foreign insurers that are domiciled in a state that has a law substantially similar to this section to be in compliance with this section. . . .

Revised Law

Sec. 802.055. COSTS. (a) An insurance company shall pay the costs of preparing and furnishing to the National Association of Insurance Commissioners the information required under Section 802.052.

(b) Except as provided by Subsection (a), costs relating to providing the information required under Section 802.052 may not be assessed against an insurance company. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . The expense for preparing and furnishing such annual statement and other filings to the National Association of Insurance Commissioners shall be that of the insurer. There shall be no other costs or expenses of any kind levied, charged, or assessed against the insurer relating to such filings. . . .

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 1.11, prohibits certain "costs or expenses" from being "levied, charged, or assessed" against an insurance company. The revised law omits the reference to "expenses" because that term is included in the meaning of "costs." The revised law also omits the references to "levied" and "charged" because those terms are included in the meaning of "assessed."

(2) Subsection (b), V.T.I.C. Article 1.11, refers to costs or expenses "of any kind." The revised law omits the quoted language because it is unnecessary and does not add to the clear meaning of the law.

Revised Law

Sec. 802.056. STATUS OF REPORTS AND OTHER INFORMATION. A report or any other information resulting from the collection, review, analysis, and distribution of information developed from the filing of annual statement convention blanks and provided to the department by the National Association of Insurance Commissioners is considered part of the process of examination of insurance companies under this code, including Articles 1.15-1.19. (V.T.I.C. Art. 1.11, Subsec. (b) (part).)

Source Law

(b) . . . Reports or other information communicated to the State Board of Insurance by the National Association of Insurance Commissioners from the collection, review, analysis, and dissemination of information developed from the filing of annual statement convention blanks is considered part of the process of examination of insurance companies under Articles 1.15-1.19 of this code and other provisions of this code, and this information is an integral part of those examinations.

Revisor's Note

Subsection (b), V.T.I.C. Article 1.11, states that certain reports and information are considered a part of the process of examination of insurance companies, and that "this information is

an integral part of those examinations." The revised law omits the quoted language because it does not add to the clear meaning of the law. A statement that the information is considered part of the examination process is sufficient. An additional statement that the information is "an integral part" of that process is unnecessary.

CHAPTER 803. LOCATION OF BOOKS, RECORDS, ACCOUNTS, AND OFFICES OUTSIDE OF THIS STATE

CHAPTER 803. LOCATION OF BOOKS, RECORDS, ACCOUNTS, AND OFFICES OUTSIDE OF THIS STATE

Revised Law

Sec. 803.001. DEFINITIONS. In this chapter:

(1) "Domestic company" means any entity licensed, chartered, or organized under this code, including:

(A) a county mutual insurance company;

(B) a farm mutual insurance company;

(C) a fire and marine insurance company;

(D) a fraternal benefit society;

(E) a general casualty company;

(F) a group hospital service corporation;

(G) a health maintenance organization;

(H) a life, health, and accident insurance company;

(I) a Lloyd's plan;

(J) a local mutual aid association;

(K) a mutual life insurance company;

(L) a mutual insurance company other than a mutual life insurance company;

(M) a nonprofit legal services corporation;

(N) a reciprocal exchange;

(O) a statewide mutual assessment company;

(P) a stipulated premium insurance company;

(Q) a surety and trust company; and

(R) a title insurance company.

(2) "Insurance holding company system" has the meaning described by Section 823.006. (V.T.I.C. Art. 1.28, Sec. 1(a) (part), New.)

Source Law

Art. 1.28

Sec. 1. (a) . . . a domestic insurance company, including a life, health, and accident insurance company, fire and marine insurance company, surety and trust company, general casualty company, title insurance company, fraternal benefit society, mutual life insurance company, local mutual aid association, statewide mutual assessment company, mutual insurance company other than life, farm mutual insurance company, county mutual insurance company, Lloyds plan, reciprocal exchange, group hospital service corporation, health maintenance organization, stipulated premium insurance company, nonprofit legal services corporation, or any other entity licensed under the Insurance Code or chartered or organized under the laws of this state . . . an insurance holding company system, as defined by Article 21.49-1, Insurance Code, as added by Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), ...

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 1.28, refers to a "domestic insurance company" or "any other entity licensed under the Insurance Code or chartered or organized under the laws of this state that is an affiliated member of an insurance holding

company system." "Insurance company" is a term used in conjunction with traditional insurance. Included in the source law are entities, such as health maintenance organizations, that are not insurers. Consequently, "domestic company" is a more accurate term than "insurance company." In addition, the revised law adds the definition of "domestic company" for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

(2) Section 1(a), V.T.I.C. Article 1.28, refers to "a domestic insurance company . . . or any other entity licensed under the Insurance Code or chartered or organized under the laws of this state . . . ." The revised law substitutes "chartered, or organized under this code" for "chartered or organized under the laws of this state" because all of the laws of this state relating to the chartering or organization of domestic insurance companies or other insurance entities have been codified in this code.

Revised Law

Sec. 803.002. APPLICABILITY OF CHAPTER. This chapter applies only to a domestic company that is:

(1) an affiliate of an insurance holding company system and in compliance with Chapter 823;

(2) a nonprofit legal services corporation the claims and daily affairs of which are handled under contract by a foreign insurer that holds a certificate of authority to engage in a similar business in this state; or

(3) a health maintenance organization that is affiliated with another health maintenance organization or a health care provider. (V.T.I.C. Art. 1.28, Secs. 1(a) (part), (b).)

Source Law

(a) . . . [a domestic insurance company] . . . that is an affiliated member of [an insurance holding company system,] . . . .

(b) The domestic insurance company must be:

(1) an affiliate of an insurance holding company system as defined in Article 21.49, Insurance Code, as added by Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that has made the necessary filings as required by that article and that is in compliance with that article;

(2) a nonprofit legal services corporation whose claims and daily affairs are handled under contract by a foreign insurer licensed to do a similar business in this state; or

(3) a health maintenance organization that is affiliated with other health maintenance organizations or health care providers.

Revisor's Note

(1) Section 1(b), V.T.I.C. Article 1.28, refers to an affiliate of an insurance holding company system "that has made the necessary filings as required by that article and that is in compliance with that article." The revised law omits the reference to "necessary filings as required by that article" as unnecessary because an affiliate must have made any "necessary" filings to be "in compliance with that article."

(2) Section 1(b), V.T.I.C. Article 1.28, refers to a foreign insurer "licensed" to engage in business in this state. The revised law substitutes "that holds a certificate of authority" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 803.003. AUTHORITY TO LOCATE OUT OF STATE. (a) A domestic company may locate and maintain its principal offices and all or any part of its books, records, and accounts outside this state at any other location in the United States if:

(1) the company has given written notice of this intention to the commissioner, except as provided by Subsection (b);

(2) the commissioner has not disapproved the notice

before the 31st day after the date on which the company gives the notice; and

(3) the company meets the requirements of this chapter.

(b) A separate notice under this section is not required if:

(1) the domestic company has an agreement to maintain its books and records outside of the state with an affiliate; and

(2) the agreement:

(A) has been approved under Chapter 823; and

(B) contains substantially all the information required for notice under this section. (V.T.I.C. Art. 1.28, Secs. 1(a) (part), (f).)

Source Law

Sec. 1. (a) On giving written notice of intent to the commissioner of insurance, and if the commissioner of insurance does not disapprove within 30 days after that notice is given, [a domestic insurance company, including a life, health, and accident insurance company, fire and marine insurance company, surety and trust company, general casualty company, title insurance company, fraternal benefit society, mutual life insurance company, local mutual aid association, statewide mutual assessment company, mutual insurance company other than life, farm mutual insurance company, county mutual insurance company, Lloyds plan, reciprocal exchange, group hospital service corporation, health maintenance organization, stipulated premium insurance company, nonprofit legal services corporation, or any other entity licensed under the Insurance Code or chartered or organized under the laws of this state that is an affiliated member of an insurance holding company system, as defined by Article 21.49-1, Insurance Code, as added by Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code),] may locate and maintain all or any portion of its books, records, and accounts and its principal offices outside this state at a location within the United States

if the company meets the requirements of this section. . . .

(f) A separate notice of intent shall not be required if the domestic insurer has an agreement to maintain its books and records outside of the state with an affiliate and such agreement has been approved or deemed approved as required by Article 21.49-1, Insurance Code, and such agreement contains substantially all the information required for such notice under this article.

Revised Law

Sec. 803.004. LOCATION AT BRANCH OR AGENCY OFFICE. This chapter does not apply to the location and maintenance of the normal books, records, and accounts of a domestic company, including policyholder and claim files, relating to the business produced by or through an agency of the company at a branch or agency office located in the United States, regardless of whether the agency is an affiliate of the company as provided in Chapter 823. (V.T.I.C. Art. 1.28, Sec. 1(a) (part).)

Source Law

Sec. 1. (a) . . . This article does not apply to or prohibit the location and maintenance of the normal books, records, and accounts including policyholder and claim files of a domestic insurance company, relating to the business produced by or through an agency of the company whether or not such agency is an affiliate under Article 21.49-1, at the branch office or agency office, if that office is located in the United States.

Revisor's Note

Section 1(a), V.T.I.C. Article 1.28, states that the article "does not apply to or prohibit the location and maintenance" of certain items. The revised law omits "or prohibit" as unnecessary because its meaning is included in the meaning of "does not apply to."

Revised Law

Sec. 803.005. CONTROL OF BOOKS, RECORDS, ACCOUNTS, AND OFFICES. (a) The books, records, accounts, or offices of a domestic company must be under the company's direct supervision, management, and control.

(b) The ultimate controlling person of an insurance holding company system affiliated with a domestic company, or the immediate or intermediate controlling person of the domestic company, must be domiciled, licensed, or admitted to transact business in a jurisdiction in the United States. (V.T.I.C. Art. 1.28, Secs. 1(c), (d).)

Source Law

(c) The ultimate controlling person of the insurance holding company system, the immediate controlling person of the domestic insurance company, or an intermediate controlling person of the domestic insurance company must be legally domiciled, licensed, or admitted to transact business in a jurisdiction within the United States.

(d) The books, records, accounts, or offices of the domestic insurance company are under the company's direct supervision, management, and control.

Revisor's Note

Section 1(c), V.T.I.C. Article 1.28, states that a company must be legally domiciled, licensed, or admitted to transact business in a jurisdiction within the United States. The revised law omits the word "legally" as unnecessary because it does not add to the clear meaning of the law. The absence of the word "legally" does not imply that it is legal for a company to be illegally domiciled, licensed, or admitted to transact business in the United States.

Revised Law

Sec. 803.006. AGENT FOR SERVICE OF PROCESS. A domestic company that under this chapter has moved its principal offices and any part of its books, records, and accounts outside this

state and the controlling person of an affiliated insurance holding company system must comply with Section 804.102. (V.T.I.C. Art. 1.28, Sec. 1(e).)

Source Law

(e) Both the domestic insurance company and the controlling person of the affiliated insurance holding company system must appoint and maintain a person in this state as attorney for service of process in the manner provided by Section 2(b), Article 1.36, of this code. The commissioner is authorized to accept service and notify the insurance company, in the manner provided by Section 3, Article 1.36, of this code, if the insurance company does not appoint or maintain an attorney for acceptance of process.

Revisor's Note

Section 1(e), V.T.I.C. Article 1.28, refers to the appointment of a person as agent for service of process, and states that the commissioner is authorized to accept service if the company does not appoint or maintain the agent. In addition, Section 1(e) refers to Section 2(b), V.T.I.C. Article 1.36, revised in this code as Section 804.102, as providing the manner for implementing this law. The revised law substitutes a reference to Section 804.102, which duplicates the requirements of Section 1(e).

Revised Law

Sec. 803.007. EXAMINATION EXPENSES. A credit on or an offset against the amount of premium taxes to be paid by a domestic company to the state in a taxable year may not be allowed on:

(1) a fee or examination expense paid to another state; or

(2) an examination expense:

(A) incurred by a representative of the department that is directly attributable to an examination of the books, records, accounts, or principal offices of a domestic

company located outside this state; or

(B) paid in a different taxable year. (V.T.I.C. Art. 1.28, Sec. 2(a).)

Source Law

Sec. 2. (a) A credit on or offset to the amount of premium taxes to be paid by the domestic insurance company to the state in a taxable year may not be allowed on:

(1) examination expenses incurred by representatives of the department that are directly attributable to an examination of the books, records, accounts, or principal offices of a domestic insurance company located outside this state;

(2) examination expenses or fees paid to a state other than this state; or

(3) examination expenses paid in a different taxable year.

Revised Law

Sec. 803.008. RULES. The commissioner shall adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency. (V.T.I.C. Art. 1.28, Sec. 1(g).)

Source Law

(g) The commissioner shall adopt rules allowing the maintenance of the books and records of a domestic insurer subject to this article with a nonaffiliated entity other than an agency and to allow a domestic health maintenance organization to comply with this article.

Revisor's Note

Section 1(g), V.T.I.C. Article 1.28, refers to "a domestic insurer" and a "domestic health maintenance organization." The revised law substitutes the term "domestic company" for the reason stated in Revisor's Note (1) to Section 803.001. A domestic company, as defined by Section 803.001, includes a

domestic health maintenance organization.

Revised Law

Sec. 803.009. CONFLICTING PROVISIONS. This chapter prevails over a conflicting provision of any other law of this state, including Articles 1.16, 4.10, 4.11, and 9.59. (V.T.I.C. Art. 1.28, Sec. 2(b).)

Source Law

(b) This article prevails over any conflicting provisions in Articles 1.16, 4.10, 9.59, and 4.11 of this code or any other law of this state.

CHAPTER 804. SERVICE OF PROCESS

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 804.004-804.100 reserved for expansion]

SUBCHAPTER B. PERSONS AUTHORIZED TO RECEIVE SERVICE OF PROCESS

[Sections 804.109-804.200 reserved for expansion]

CHAPTER 804. SERVICE OF PROCESS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 804.001. DEFINITION. In this chapter, "process" means legal process, including a demand or notice required or permitted by law. (New.)

Revisor's Note

(1) The definition of "commissioner" is omitted from the revised law as unnecessary because Section 31.001, Insurance Code, defines "commissioner" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance. The omitted law reads:

Art. 1.36

Sec. 1. In this article, "commissioner" means the Commissioner of Insurance.

(2) The definition of "process" is derived from Sections 2, 3, 4, 7, 8, 10, and 12, V.T.I.C. Article 1.36. The definition is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 804.002. RULES. The commissioner may adopt rules essential for the effective implementation of this chapter.

(V.T.I.C. Art. 1.36, Sec. 13.)

Source Law

Sec. 13. The State Board of Insurance may promulgate rules as may be determined by it to be essential for the effective implementation of this article.

Revisor's Note

Section 13, V.T.I.C. Article 1.36, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the board have been changed appropriately.

Revised Law

Sec. 804.003. FEES. A fee collected under this chapter shall be deposited to the credit of the Texas Department of Insurance operating account for use by the department. The department shall use the money for payment of salaries and other expenses arising from the:

(1) examination of insurance companies;

(2) licensure of insurance companies; and

(3) investigation of violations of the insurance laws of this state. (V.T.I.C. Art. 1.36, Sec. 3(h).)

Source Law

(h) Fees collected under this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund for the use and benefit of the State Board of Insurance as provided by legislative appropriation. The money deposited shall be used for the payment of salaries and other expenses arising out of and in connection with the examination of

insurance companies, the licensing of insurance companies, and investigations of violations of the insurance laws of this state.

Revisor's Note

(1) Section 3(h), V.T.I.C. Article 1.36, requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

(2) Section 3(h), V.T.I.C. Article 1.36, states that fees collected shall be for the use and benefit of the department "as provided by legislative appropriation." The revised law omits the quoted language as unnecessary because under Section 6, Article VIII, Texas Constitution, money may not be drawn from the treasury unless a specific appropriation is made.

(3) Section 3(h), V.T.I.C. Article 1.36, refers to expenses arising out of "and in connection with" certain activities. The revised law omits the quoted language because its meaning is included within the meaning of "arising out of."

[Sections 804.004-804.100 reserved for expansion]

SUBCHAPTER B. PERSONS AUTHORIZED TO RECEIVE SERVICE OF PROCESS

Revised Law

Sec. 804.101. DOMESTIC COMPANY. (a) In this section:

(1) "Domestic company" means a company that is domiciled in and authorized to engage in the business of insurance in this state.

(2) "Company" means:

(A) an insurance company, including:

(i) a casualty insurance company;

(ii) a county mutual insurance company;

(iii) an exempt association under Section 887.102;

(iv) a farm mutual insurance company;

(v) a fire insurance company;

(vi) a fraternal benefit society;

(vii) a life insurance company;

(viii) a Lloyd's plan;

(ix) a mutual assessment company;

(x) a mutual insurance company other than a mutual life insurance company;

(xi) a reciprocal exchange;

(xii) a risk retention group;

(xiii) a stipulated premium insurance company;

(xiv) a title insurance company; and

(xv) a carrier providing job protection insurance;

(B) a group hospital service corporation;

(C) a health maintenance organization;

(D) a prepaid legal services corporation; or

(E) any other company engaged in the business of insurance as a principal.

(b) A domestic company may be served with process by:

(1) serving the president, an active vice president, secretary, or attorney in fact at the home office or principal place of business of the company; or

(2) leaving a copy of the process at the home office or principal business office of the company during regular business hours. (V.T.I.C. Art. 1.36, Sec. 2(a); New.)

Source Law

Sec. 2. (a) Except as provided by Subsection (b) of this section, a domestic insurance carrier, including a casualty, county mutual, farm mutual, fire, fraternal, life, Lloyd's, mutual other than life, reciprocal, stipulated premium, or title insurance company, and any mutual assessment company, carrier providing job protection insurance, risk retention group, group hospital service corporation, health maintenance organization, prepaid legal services corporation, and exempt association under

Article 14.17 of this code authorized to conduct the business of insurance in this state, and any other company domiciled in Texas and engaged in the business of insurance as a principal, may be served with legal process, notice, or demand required or permitted by law by serving the president, any active vice-president, secretary, or attorney in fact at the home office or principal place of business of that carrier or by leaving a copy of the process, notice, or demand at the home office or principal business office of the carrier during regular business hours.

Revisor's Note

Section 2(a), V.T.I.C. Article 1.36, refers to a "domestic insurance carrier" and various other entities "authorized to conduct the business of insurance in this state." "Carrier" is a term used in conjunction with traditional insurance. Included in the source law are entities, such as health maintenance organizations, that are not insurers. Consequently, the revised law uses "domestic company" to refer to certain entities instead of the less accurate term "insurance carrier." In addition, the revised law adds the definitions of "company" and "domestic company" for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 804.102. DOMESTIC COMPANY THAT MAINTAINS PRINCIPAL OFFICES OR BOOKS, RECORDS, AND ACCOUNTS OUT OF STATE. (a) In this section, "domestic company" has the meaning assigned by Section 803.001.

(b) As a condition of being authorized to engage in the business of insurance in this state, a domestic company that under Chapter 803 has moved its principal offices and any part of its books, records, and accounts outside this state and the controlling person of an affiliated insurance holding company system must appoint and maintain as agent for service of process a person in this state on whom a judicial or administrative process may be served.

(c) If a domestic company does not appoint or maintain a person in this state as agent for service of process or the agent cannot with reasonable diligence be found, the commissioner may accept service of process and notify the company in the manner provided by Subchapter C. (V.T.I.C. Art. 1.36, Sec. 2(b).)

Source Law

(b) As a condition of being authorized to conduct the business of insurance in this state, a domestic carrier and the controlling person of the affiliated insurance holding company system that has moved its principal offices and any portion of its books, records, and accounts outside this state under Article 1.28 of this code must appoint and maintain a person in this state as attorney for service of process on whom all judicial and administrative processes, notices, or demands may be served. The commissioner is authorized to accept service and notify the carrier, in the manner provided by Section 3 of this article, if the carrier does not appoint or maintain an attorney for acceptance of service who cannot with reasonable diligence be found.

Revisor's Note

(1) Section 2(b), V.T.I.C. Article 1.36, refers to a domestic "carrier" that takes certain actions under V.T.I.C. Article 1.28. The revised law refers to a "domestic company" because that is the phrase used in Chapter 803, which revises Article 1.28. A reference to the definition of "domestic company" in Section 803.001 is added for clarification.

(2) Section 2(b), V.T.I.C. Article 1.36, refers to the appointment and maintenance of a person as "attorney" to receive service of process. It is clear from the context that the person does not need to be an attorney at law to receive service of process. The revised law substitutes "agent" for "attorney" throughout this chapter for consistency and because the word "agent" is more commonly used to describe the person designated to receive service of process in the context of Section 2(b).

Revised Law

Sec. 804.103. AUTHORIZED ALIEN OR FOREIGN COMPANY. (a) In this section, "company" means:

(1) an insurance company, including a:

(A) fire, casualty, or fire and casualty insurance company;

(B) fraternal benefit society;

(C) life insurance company, including a mutual or nonprofit life insurance company;

(D) Lloyd's plan;

(E) Mexican casualty insurance company;

(F) mutual fire, mutual casualty, or mutual fire and casualty insurance company;

(G) reciprocal exchange;

(H) risk retention group; and

(I) title insurance company;

(2) a health maintenance organization; and

(3) any other insurance company, regardless of its type or category, authorized to engage in the business of insurance in this state.

(b) As a condition to being issued a certificate of authority to engage in the business of insurance in this state, an alien or foreign company must appoint a person in this state as agent for service of process on whom any process to be served on the company may be served.

(c) The commissioner is an alien or foreign company's agent on whom process may be served as provided by Subchapter C if the:

(1) company fails to appoint or maintain an agent under Subsection (b);

(2) agent appointed under Subsection (b) cannot with reasonable diligence be found; or

(3) company's certificate of authority is revoked.

(V.T.I.C. Art. 1.36, Sec. 4.)

Source Law

Sec. 4. (a) As a condition of being issued a certificate of authority to conduct the business of insurance in this state, foreign or alien insurance carriers, including a life, mutual life, nonprofit life, fire, mutual fire and/or casualty, fire and casualty, casualty, Mexican casualty, Lloyd's, reciprocal, fraternal, and title insurance company, and a health maintenance organization, risk retention group, and any other foreign or alien insurance company regardless of its type or category authorized to conduct the business of insurance in this state, shall appoint a person in this state as attorney for service of process on whom any process, notice, or demand required or permitted by law to be served on the insurance company may be served.

(b) If a foreign or alien insurance company authorized to transact business in this state fails to appoint or maintain an attorney for service in this state, or if an attorney for service cannot with reasonable diligence be found, or if the certificate of authority of a foreign insurance company is revoked, the commissioner shall be the attorney for service of the company on whom process, notice, or demand may be served as provided by Section 3 of this article.

Revisor's Note

Section 4(a), V.T.I.C. Article 1.36, refers to "insurance carriers" and various other entities "authorized to conduct the business of insurance in this state." Instead of the quoted language, the revised law refers to "company" for the reasons stated in the revisor's note to Section 804.101.

Revised Law

Sec. 804.104. RISK RETENTION GROUP NOT CHARTERED IN THIS STATE. A risk retention group that is not chartered but that is registered in this state under Section 4(b)(3), Article 21.54, must designate the commissioner as its agent for service of process and receipt of legal documents. (V.T.I.C. Art. 1.36, Sec.

5(a).)

Source Law

Sec. 5. (a) A risk retention group registered in this state under Article 21.54 of this code must designate the commissioner as its agent for service of process and receipt of legal documents.

Revisor's Note

(1) Section 5(a), V.T.I.C. Article 1.36, refers to a risk retention group registered under V.T.I.C. Article 21.54. Only one section in Article 21.54 refers to registration of a risk retention group. For the reader's convenience, the revised law cites the section which deals with a registered risk retention group. In addition, the revised law clarifies that this section deals only with a risk retention group not chartered in this state. See Section 4(a), Article 21.54.

(2) Section 5, V.T.I.C. Article 21.54, refers to the section providing the procedures and fees for service under this section. The revised law omits the cross-reference as unnecessary because Sections 804.201, 804.202, and 804.203 are sufficient to state what law applies when the commissioner is designated or appointed as agent to receive service of process on a person's behalf. The omitted law reads:

(b) Procedures and fees for service of process on a risk retention group are governed by Section 3 of this article.

Revised Law

Sec. 804.105. PERSON IN RECEIVERSHIP. (a) Service of process with respect to an individual, insurer, or other entity for which a court has appointed the liquidator as receiver must be made only on the receiver.

(b) If Subsection (a) applies, service on the commissioner or the secretary of state has no effect. (V.T.I.C. Art. 1.36, Sec. 6.)

Source Law

Sec. 6. If a court of competent jurisdiction has appointed the liquidator as receiver for any person, insurer, or other entity, service of process with respect to that person, insurer, or other entity must be made on the person designated liquidator as receiver. This service of process has no effect if it is made on the commissioner or the secretary of state.

Revisor's Note

Section 6, V.T.I.C. Article 1.36, refers to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary because the general laws of civil jurisdiction determine which courts have jurisdiction over a matter. For example, see Sections 24.007 through 24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 804.106. ELIGIBLE SURPLUS LINES INSURER; POLICY REQUIREMENT FOR INSURER AND AGENT. (a) Each surplus lines insurer that assumes a surplus lines risk under Chapter 981 is subject to this section.

(b) Any act of engaging in the business of insurance by an eligible surplus lines insurer:

(1) constitutes the irrevocable appointment of the secretary of state by that insurer as agent for service of process arising from the insurer's engaging in the business of insurance in this state, other than service of process for an action or proceeding by the department or state; and

(2) signifies the insurer's agreement that service under this subsection has the same effect as personal service on the insurer or the insurer's successor in interest.

(c) An appointment under Subsection (b)(1) is binding on the eligible surplus lines insurer and the insurer's successor in interest.

(d) A policy issued by an eligible surplus lines insurer or a certificate of insurance issued by the surplus lines agent must

contain a provision stating the substance of this section and designating the person to whom the commissioner is to mail process. The plaintiff shall supply this address in any citation served under this section.

(e) This section is in addition to any other method provided by law for service of process on a surplus lines insurer, including the method provided by Subchapter C. (V.T.I.C. Art. 1.36, Sec. 12.)

Source Law

Sec. 12. (a) Any act of doing an insurance business by an eligible surplus lines insurance company constitutes an irrevocable appointment of the Secretary of State by that insurer binding on it and its successors in interest to be the lawful attorney for service of that insurer. The Secretary of State may be served with any process, notice, or demand arising out of doing an insurance business in this state by that insurer, except in an action, suit, or proceeding by the State Board of Insurance or by the state.

(b) Any act of doing an insurance business by an eligible surplus lines insurance company signifies the insurer's agreement that legal process served under this section has the same legal force and validity as personal service of process in this state on that insurer or its successor in interest.

(c) Any policy issued by the surplus lines insurer or any certificate of insurance issued by the surplus lines agent must contain a provision stating the substance of this section and designating the Person to whom the commissioner is to mail process. This address must be supplied by the plaintiff in the citation that is served.

(d) Each surplus lines insurer assuming a surplus lines risk under this article is considered to have made itself subject to the terms of this section.

(e) This section is cumulative of any other methods that may be provided by law for service of process on a surplus lines insurer, including Section 3 of this article.

Revisor's Note

(1) Section 12(a), V.T.I.C. Article 1.36, refers to "an action, suit, or proceeding." The revised law omits "suit" because its meaning is included within the meaning of "action."

(2) Section 12(d), V.T.I.C. Article 1.36, refers to "[e]ach surplus lines insurer assuming a surplus lines risk under this article." A surplus lines insurer does not assume a surplus lines risk under this article, which governs service of process. Instead, V.T.I.C. Article 1.14-2, revised as Chapter 981, governs the assumption of surplus lines risk in Texas. The revised law is drafted accordingly.

Revised Law

Sec. 804.107. UNAUTHORIZED PERSON OR INSURER. (a) In this section, "personal representative" includes an executor or administrator.

(b) Any act of engaging in the business of insurance as provided by Subchapter B, Chapter 101, by an unauthorized person or insurer:

(1) constitutes the irrevocable appointment of the commissioner by that person or insurer as agent for service of process arising from the person's or insurer's engaging in the business of insurance in this state, other than service of process for an action or proceeding by the department or state;

(2) constitutes the irrevocable appointment of the secretary of state by that person or insurer as agent for service of process for an action or proceeding described by Subsection (c) and arising from the person's or insurer's engaging in the business of insurance in this state; and

(3) signifies the agreement of the person or insurer that process served under this subsection and Subsection (d) has the same effect as personal service in this state on that person or insurer or the personal representative of that person or insurer or if a corporation, the corporation's successor in interest.

(c) The process may be served on the secretary of state only in an action or proceeding brought:

(1) in court by the department or the state against an unauthorized person or insurer; or

(2) before the department by a process against the unauthorized person or insurer.

(d) Service of process on an unauthorized person or insurer may be served on a person in this state that engages, on the behalf of the unauthorized person or insurer, in an act of engaging in the business of insurance in this state as provided by Subchapter B, Chapter 101.

(e) In an action or proceeding in which process is served under Subsection (b) or (d), a plaintiff or complainant is not entitled to a default judgment or determination before the 30th day after the date on which the copy of the process is mailed to the defendant.

(f) This section does not apply to an entity that was an eligible surplus lines insurer under Chapter 981 on the date on which the applicable coverage was issued.

(g) This section does not limit or diminish the right to serve process on a person or insurer in any other manner provided by law. (V.T.I.C. Art. 1.36, Secs. 7(a), (b), (c), (d), 8(a), (b), (c), (f), 10.)

Source Law

Sec. 7. (a) Any act of doing an insurance business as provided by Section 2 of Article 1.14-1 of this code by an unauthorized person or insurer is equivalent to and constitutes an irrevocable appointment of the commissioner by that person or insurer, binding on him, his executor, administrator, or personal representative or, if a corporation, successor in interest to be the lawful attorney for service of that person or insurer. The commissioner may be served any process, notice, or demand arising out of doing an insurance business in this state by that person or insurer, except in an action, suit, or proceeding by the State Board of Insurance or by the state.

(b) Any act of doing an insurance business as provided by Section 2 of Article 1.14-1 of this code by any unauthorized

person or insurer signifies the person's or insurer's agreement that legal process served under this section has the same legal force and validity as personal service of process in this state on that person or insurer or his executor, administrator, or personal representative or, if a corporation, its successor in interest.

(c) In addition to service under Section 3 of this article and Subsection (a) of this section, service of process, notice, or demand on an unauthorized person or insurer is valid if served on any person in this state who on behalf of that unauthorized person or insurer is doing any act of an insurance business as provided by Section 2 of Article 1.14-1 of this code. This section does not apply to surplus lines insurers which were deemed eligible surplus lines insurers pursuant to Article 1.14-2 of this code at the date the applicable coverage was issued.

(d) A plaintiff or complainant is not entitled to a judgment by default in any action, suit, or proceeding in which process, notice, or demand is served under this section earlier than the 30th day after the date on which the copy of the process, notice, or demand served is mailed to the defendant.

Sec. 8. (a) Service of process may be effected on the secretary of state only in those actions, suits, or other proceedings brought:

(1) in court by the State Board of Insurance or by the state against unauthorized persons or insurers; or

(2) before the State Board of Insurance by notice, order, pleading, or process against unauthorized persons or insurers.

(b) Any act of doing an insurance business as provided by Section 2 of Article 1.14-1 of this code by any unauthorized person or insurer is equivalent to and constitutes an irrevocable appointment of the secretary of state by that person or insurer, binding on him, his executor, administrator, or personal representative or, if a corporation, successor in interest to be the lawful attorney for service of that person or insurer. The

secretary of state may be served legal notice, order, pleading, or other process in any proceeding described by Subsection (a) of this section that arises out of doing an insurance business in this state by that person or insurer. This section does not apply to surplus lines insurers which were deemed eligible surplus lines insurers pursuant to Article 1.14-2 of this code at the date applicable coverage was issued.

(c) Any act of doing an insurance business as provided by Section 2 of Article 1.14-1 of this code by any unauthorized person or insurer signifies that such person or insurer agrees that a notice, order, pleading, or other legal process in the proceeding described by Subsection (a) of this section has the same legal force and validity as personal service of process in this state on that person or insurer or his executor, administrator, or personal representative or, if a corporation, its successor in interest.

(f) A plaintiff or complainant is not entitled to a judgment or determination by default in any court or administrative proceeding in which a notice, order, pleading, or other process in proceedings is served under this section earlier than the 30th day after the date the copy of the service is mailed to the defendant.

Sec. 10. Sections 7 and 8 of this article do not limit or abridge the right to serve process, notice, other pleading, or demand on any person or insurer in any other manner provided by law.

Revisor's Note

(1) Section 7(a), V.T.I.C. Article 1.36, refers to "an action, suit, or proceeding." The revised law omits "suit" for the reason stated in Revisor's Note (1) to Section 804.106.

(2) Section 8, V.T.I.C. Article 1.36, refers to a "notice, order, pleading, or other legal process," and Section 10, V.T.I.C. Article 1.36, refers to "process, notice, other

pleading, or demand." Section 804.001 defines "process" to mean legal process, including a notice or demand. The context of this section and the entire article shows that the term "process" includes not only "notice," but also "order" and "pleading." Throughout this chapter, the revised law substitutes "process" for "order" and "pleading" because the meaning of those words is included within the meaning of "process."

(3) Section 10, V.T.I.C. Article 1.36, provides that Sections 7 and 8 of that article, revised in this section, do not "limit or abridge" the right to serve process. The revised law substitutes "diminish" for "abridge" because the terms are synonymous and the former is more commonly used.

Revised Law

Sec. 804.108. INSURANCE HOLDING COMPANY SYSTEM LAW. A person, as that term is defined by Section 823.002, that violates Chapter 823 is considered to have appointed the commissioner as agent for service of process on the person for an action or proceeding arising from a violation of that chapter. (V.T.I.C. Art. 1.36, Sec. 7(e) (part).)

Source Law

(e) . . . Any person defined by Subsection (i) of Section 2 of Article 21.49-1 of this code is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person to be his lawful attorney on whom process in any action, suit, or proceeding arising out of violations of Article 21.49-1 of this code may be served. . . . Procedures and fees for service of process are governed by Section 3 of this article.

Revisor's Note

Section 7(e), V.T.I.C. Article 1.36, states that "[p]rocedures and fees for service of process are governed by Section 3 of this article" (now revised as Subchapter C). The revised law omits the cross-reference as unnecessary because Subchapter C provides sufficient authority as to what law applies

when the commissioner is designated or appointed as agent to receive service of process on a person's behalf.

[Sections 804.109-804.200 reserved for expansion]

SUBCHAPTER C. PROCEDURES RELATING TO SERVICE OF PROCESS ON COMMISSIONER

Revised Law

Sec. 804.201. PROCEDURE FOR SERVING COMMISSIONER. (a) Process served by serving the commissioner under this chapter must be directed to the defendant and include:

(1) for an unauthorized person or insurer, the name and address of the person or insurer to be served;

(2) for a risk retention group, the name and address of the group to be served;

(3) for a surplus lines insurer, the name and address of the insurer to be served;

(4) for an unincorporated association, trust, or other organization formed under Article 3.71, the name and address of the association, trust, or organization; or

(5) for an authorized company, the name and address of the company as it appears in the department records.

(b) Process may be served on the commissioner:

(1) personally by a disinterested person who is at least 18 years of age leaving two copies of the process at the office of the department during regular business hours with:

(A) the commissioner; or

(B) an appointee of the commissioner authorized to receive process; or

(2) by certified or registered mail.

(c) A fee not to exceed $50, payable by check or money order to the department, must accompany each process served on the commissioner. (V.T.I.C. Art. 1.36, Secs. 3(a), (b), (c).)

Source Law

Sec. 3. (a) If service of legal process, notice, or demand is to be effected on a company or organization by serving the commissioner, the process, notice, or demand may be served

personally by a disinterested person over 18 years of age by leaving at the offices of the State Board of Insurance during regular business hours two copies of the process, notice, or demand with the commissioner or with any appointee of the commissioner authorized to receive process or by certified or registered mail.

(b) A fee of not more than $50, payable by check or money order to the State Board of Insurance, must be provided for each legal process, notice, or demand served on the commissioner, and the fee must accompany each service of legal process, notice, or demand filed with the commissioner.

(c) The citation must be directed to the defendant insurance company or organization, served through the commissioner, and must include the following:

(1) for a licensed company, the name and address of the company as it appears in the records of the State Board of Insurance;

(2) for an unauthorized person or insurer, the name and address of the person or insurer to be served;

(3) for a surplus lines insurer, the name and address of the company to be served;

(4) for a risk retention group, the name and address of the group to be served; or

(5) for an unincorporated association, trust, or other organization formed under Article 3.71 of this code, the name and address of the association, trust, or organization.

Revisor's Note

Section 3(c)(1), V.T.I.C. Article 1.36, refers to a "licensed" company. The revised law substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 804.202. EFFECT OF SERVICE ON COMMISSIONER. Service on the commissioner acting as agent for service of process is

service on the principal. (V.T.I.C. Art. 1.36, Sec. 3(g).)

Source Law

(g) Service on the commissioner acting as attorney for service constitutes service on the principal.

Revised Law

Sec. 804.203. MAILING PROCESS; CERTIFICATE. (a) The commissioner shall immediately send by registered or certified mail, return receipt requested, one copy of process served on the commissioner under Section 804.201 to:

(1) the defendant at the address supplied in the process as provided by Sections 804.201(a)(1) through (4); or

(2) if Section 804.201(a)(5) applies, the home office or principal business office of the authorized company, as indicated in the department records.

(b) The commissioner shall send by registered or certified mail, return receipt requested, copies of process served under Section 804.108 to the last known address of the person.

(c) On receiving the return receipt for certified or registered mail, the commissioner shall issue a certificate showing the service and proof of delivery by a return receipt to the plaintiff and clerk of the court or agency where the proceeding is pending.

(d) The commissioner shall provide on request the certificate described by Subsection (c). The commissioner may charge a fee not to exceed $10 for the certificate. (V.T.I.C. Art. 1.36, Secs. 3(d), (f), 7(e) (part).)

Source Law

[Sec. 3]

(d) If the process, notice, or demand is served on the commissioner, he shall immediately have one copy forwarded by certified or registered mail to:

(1) the home office or principal business office of the company, if licensed, as indicated in the records of the

State Board of Insurance; or

(2) the defendant at the address supplied in the citation as provided by Subdivision (2), (3), (4), or (5) of Subsection (c) of this section.

(f)(1) Upon receiving the return receipt, the commissioner shall issue a certificate showing the service and proof of delivery by a return receipt for certified or registered mail to the plaintiff and clerk of the court or agency where the case is pending.

(2) The commissioner shall provide on request a certificate issued by him showing the service and proof of delivery by a return receipt for certified or registered mail. The commissioner may charge a fee not to exceed $10 for this certificate.

[Sec. 7]

(e) . . . Copies of process shall be served on the commissioner and transmitted by the commissioner by registered or certified mail to that person at his last known address. . . .

Revisor's Note

(1) Section 3(d)(1), V.T.I.C. Article 1.36, refers to a "licensed" company. The revised law substitutes "authorized" for "licensed" for the reasons stated in the revisor's note to Section 804.201.

(2) Section 7(e), V.T.I.C. Article 1.36, states that "copies of process shall be served on the commissioner." The revised law omits the quoted language as unnecessary because Section 804.108 states that the commissioner is the agent for service of process, and Section 7(e) states that the commissioner shall mail copies of process.

Revised Law

Sec. 804.204. RECORD. The commissioner shall keep a record of:

(1) each process served on the commissioner under this

chapter; and

(2) the action taken by the commissioner regarding the process. (V.T.I.C. Art. 1.36, Sec. 3(e).)

Source Law

(e) The commissioner shall keep a record of any process, notice, or demand served on him under this article and the action taken by him with reference to the process, notice, or demand.

[Sections 804.205-804.300 reserved for expansion]

SUBCHAPTER D. PROCEDURES RELATING TO SERVICE OF PROCESS ON SECRETARY OF STATE

Revised Law

Sec. 804.301. PROCEDURE FOR SERVING SECRETARY OF STATE. Process served by serving the secretary of state under Section 804.107 must be served by leaving two copies of the process at the office of the secretary of state during regular business hours with:

(1) the secretary of state; or

(2) an appointee of the secretary of state authorized to receive service. (V.T.I.C. Art. 1.36, Sec. 8(d).)

Source Law

(d) Service of a notice, order, pleading, or other process in a proceeding described by Subsection (a) of this section must be made by leaving at the office of the secretary of state during regular business hours two copies of the notice, order, pleading, or other process. The copies may be left with the secretary of state or with any appointee of the secretary of state authorized to receive service.

Revised Law

Sec. 804.302. MAILING PROCESS. The secretary of state shall mail one copy of process in the proceeding served on the secretary of state under Section 804.301 to the defendant in a

court proceeding or to whom the process in an administrative proceeding is addressed or directed, at the person's or entity's last known home office or principal place of business. (V.T.I.C. Art. 1.36, Sec. 8(e) (part).)

Source Law

(e) The secretary of state shall mail one copy of the notice, order, pleading, or other process in the proceeding to the defendant in a court proceeding or to whom the notice, order, pleading, or process in an administrative proceeding is addressed or directed at the person's or entity's last known home office or principal place of business. . . .

Revised Law

Sec. 804.303. RECORD. The secretary of state shall keep a record of each process served on the secretary of state. (V.T.I.C. Art. 1.36, Sec. 8(e) (part).)

Source Law

(e) . . . The secretary of state shall keep a record of the notices, orders, pleadings, and other process served on him.

Revisor's Note
(End of Chapter)

Section 9, V.T.I.C. Article 1.36, states that the attorney general may enforce an order or decision resulting from "a court proceeding or an administrative proceeding before the State Board of Insurance under Sections 7 and 8 of this article." The revised law omits this section as unnecessary for several reasons. First, although Section 9 refers to proceedings "under Sections 7 and 8" of Article 1.36, this statement is inaccurate, as there are no proceedings under those sections. Instead, those sections state conditions under which the commissioner or secretary of state may be served on an unauthorized person's behalf. Second, V.T.I.C. Article 1.09-1 provides that the

department "shall be represented and advised by the Attorney General in all legal matters." Finally, Section 101.105 specifically addresses the attorney general with respect to "unauthorized insurance," which is the subject of Sections 7 and 8, Article 1.36. The omitted law reads:

Sec. 9. The attorney general, on request of the State Board of Insurance, may proceed in the courts of this or any other state or in any federal court or agency to enforce an order or decision resulting from a court proceeding or an administrative proceeding before the State Board of Insurance under Sections 7 and 8 of this article.

CHAPTER 805. DIRECTORS, OFFICERS, AND OTHER INTERESTED PERSONS

SUBCHAPTER A. ACTIVITIES OF DIRECTORS, OFFICERS, AND SHAREHOLDERS

[Sections 805.005-805.020 reserved for expansion]

SUBCHAPTER B. CERTAIN PAYMENTS BY DIRECTORS, OFFICERS, AND TRUSTEES

CHAPTER 805. DIRECTORS, OFFICERS, AND OTHER INTERESTED PERSONS

SUBCHAPTER A. ACTIVITIES OF DIRECTORS, OFFICERS, AND SHAREHOLDERS

Revised Law

Sec. 805.001. DEFINITIONS. In this subchapter:

(1) "Major shareholder" means an individual, corporation, partnership, association, joint-stock company, business trust, or unincorporated organization that is directly or indirectly the beneficial owner of more than 10 percent of any class of an equity security of an insurer.

(2) "Subsidiary" means a corporation:

(A) of which at least 50 percent of any class of an equity security is owned by an insurer; or

(B) that is managed, directly or indirectly controlled, or subject to control by an insurer. (V.T.I.C. Art. 1.29, Secs. 1(a) (part), (b) (part).)

Source Law

Art. 1.29

Sec. 1. (a) [No director or officer of any insurance company] transacting business in or organized under the laws of this State, and [no person] who is directly or indirectly the beneficial owner of more than 10% of any class of equity security of any such insurance company, ...

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

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

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 1.29, refers to a "person who is directly or indirectly the beneficial owner of more than 10% of any class of equity security" of an insurer and subsequently refers to that person as a "shareholder." For drafting convenience and to clarify that each reference to a "shareholder" of an insurer under V.T.I.C. Article 1.29 means a person who is directly or indirectly the beneficial owner of more than 10 percent of any class of equity security of the insurer, the revised law adds the definition of "major shareholder" and throughout the subchapter substitutes that term for the substance of the definition and for each reference to a "shareholder."

(2) Section 1(b), V.T.I.C. Article 1.29, defines "person." The revised law incorporates the substance of that definition

into the added definition of "major shareholder" because the only reference to "person" in the source law is the reference to a "person" who is a shareholder, as described by Revisor's Note (1) to this section.

Revised Law

Sec. 805.002. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to any insurer, including a:

(1) capital stock company;

(2) reciprocal or interinsurance exchange;

(3) Lloyd's plan;

(4) fraternal benefit society;

(5) mutual company, including a mutual assessment company;

(6) local mutual aid association;

(7) burial association;

(8) county mutual insurance company;

(9) farm mutual insurance company;

(10) fidelity, guaranty, or surety company;

(11) mutual life insurance company;

(12) mutual insurance company other than a mutual life insurance company;

(13) stipulated premium company;

(14) title insurance company; and

(15) any other insurance company engaged in the business of insurance in or organized under the laws of this state or otherwise regulated under this code.

(b) A provision of this code limiting regulation under this code does not limit the application of this subchapter.

(c) This subchapter controls if there is ambiguity or a conflict between this subchapter and another provision of this code. (V.T.I.C. Art. 1.29, Secs. 1(b) (part), 2.)

Source Law

[Sec. 1]

(b) . . . .

"Insurance company," as used herein, shall include and mean

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

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

Revisor's Note

Section 1(b), V.T.I.C. Article 1.29, defines "insurance company" to include "trust companies organized under the provisions of Chapter 7 of this Code." Those provisions were derived originally from Chapter 10, General Laws, Acts of the 29th Legislature, 1st Called Session, 1905, and were eventually transferred to the Insurance Code on the enactment of that code in 1951. The revised law omits the reference to "trust companies" because Section 1, Chapter 388, Acts of the 55th Legislature, Regular Session, 1957, repealed the provisions of Chapter 7, Insurance Code. The remainder of Chapter 388 enacted new requirements applicable to the creation and organization of trust companies, some of which were added to Vernon's Texas Civil Statutes as Article 1513a. That article was repealed by Chapter 168, Acts of the 70th Legislature, 1987, which added the substance of Article 1513a to the law on the organization of trust companies contained in Chapter XI, The Texas Banking Code (Article 342-1101 et seq., Vernon's Texas Civil Statutes). To

the extent that any trust companies organized under Chapter 7, Insurance Code, still exist and operate as insurers, they are included in the reference under Subsection (a)(15) of the revised law to "any other insurance company engaged in the business of insurance." The omitted law reads:

(b) . . . trust companies organized under the provisions of Chapter 7 of this Code . . . .

Revised Law

Sec. 805.003. PROHIBITED ACTIVITIES. (a) A director, officer, or major shareholder of an insurer may not:

(1) except as provided by this subchapter, directly, indirectly, or through a substantial interest in another corporation, firm, or business unit receive money or another thing of value for negotiating, procuring, recommending, or aiding in a purchase, sale, or exchange of property or a loan from the insurer or its subsidiary;

(2) directly, indirectly, or through a substantial interest in another corporation, firm, or business unit have a pecuniary interest in a purchase, sale, exchange, or loan described by Subdivision (1) as a principal, co-principal, agent, or beneficiary; or

(3) directly or indirectly accept a loan or guarantee described by Subsection (b).

(b) An insurer may not directly, indirectly, or through its subsidiary make a loan to or guarantee the financial obligation of a director, officer, or major shareholder of an insurer. (V.T.I.C. Art. 1.29, Sec. 1(a) (part).)

Source Law

Sec. 1. (a) No director or officer of any insurance company . . . [and] no person [who is directly or indirectly the beneficial owner of more than 10% of any class of equity security of any such insurance company,] shall receive, except as permitted by this Article, any money or valuable thing, either directly or indirectly or through any substantial interest in any

other corporation, firm or business unit for negotiating, procuring, recommending or aiding in any purchase, sale or exchange of property or loan, made by any such company or any subsidiary thereof; nor shall he be pecuniarily interested, either as principal, co-principal, agent or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation, firm or business unit, in any such purchase, sale, exchange or loan; nor shall such company make any loan to or guarantee the financial obligation of any such director, officer or shareholder, either directly or indirectly, or through its subsidiaries, nor shall any such director, officer or shareholder accept any such loan or guarantee either directly or indirectly.

Revised Law

Sec. 805.004. ACTIVITIES NOT PROHIBITED. This subchapter does not prohibit:

(1) a director, officer, or major shareholder of an insurer from:

(A) becoming a policyholder of the insurer and exercising the usual rights of a policyholder;

(B) participating as beneficiary in a pension plan, deferred compensation plan, profit-sharing or bonus plan, stock option plan, or similar plan adopted by the insurer and for which the director, officer, or major shareholder may be eligible under the terms of the plan;

(C) receiving a salary, bonus, or other remuneration for a service rendered to the insurer as an employee of the insurer and not in violation of another provision of this code; or

(D) entering into an arms-length transaction with the insurer if:

(i) the transaction is not prohibited by another statute; and

(ii) the commissioner approves the transaction before the transaction is made;

(2) a director of an insurer from:

(A) performing professional services not required of a director by law; or

(B) receiving director's fees or reimbursement for an expense incurred in the performance of a duty as a director;

(3) a transaction within an insurance holding company system by an insurer with its holding company, subsidiary, or affiliate that:

(A) is not prohibited by law;

(B) meets the test of being fair and proper; and

(C) is regulated by another statute;

(4) a transaction or arrangement that:

(A) is not prohibited by law; and

(B) meets the test of being fair and proper as prescribed by rules adopted by the commissioner; or

(5) the approval and payment of lawful dividends to policyholders and shareholders. (V.T.I.C. Art. 1.29, Sec. 1(c).)

Source Law

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

(1) Any such director, officer or shareholder from becoming a policyholder of the insurance company and enjoying the usual rights of a policyholder or from participating as beneficiary in any pension plan, deferred compensation plan, profit-sharing or bonus plan, stock option plan, or similar plan adopted by the insurance company and to which he may be eligible under the terms of such plan; or prohibit any such director, officer or shareholder from receiving salaries, bonuses and other remuneration for services rendered to the insurance company as an employee and not in violation of other provisions of the Insurance Code.

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

directors.

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

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

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

Revisor's Note

(1) Section 1(c)(1), V.T.I.C. Article 1.29, refers to a policyholder "enjoying the usual rights of a policyholder . . . ." The revised law substitutes "exercising" for "enjoying" because the terms are synonymous in context and the former is more commonly used.

(2) Section 1(c)(5)(B), V.T.I.C. Article 1.29, refers to "rules and regulations." The revised law omits the reference to "regulations" because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

(3) Sections 1(c)(4) and 1(c)(5)(B), V.T.I.C. Article 1.29, refer to the "Commissioner of Insurance" and the "State Board of Insurance," respectively. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the

commissioner of insurance and the Texas Department of Insurance. The revised law is drafted accordingly.

[Sections 805.005-805.020 reserved for expansion]

SUBCHAPTER B. CERTAIN PAYMENTS BY DIRECTORS, OFFICERS, AND TRUSTEES

Revised Law

Sec. 805.021. LIABILITY FOR FEE AND TAX PAYMENTS. (a) In this section, "fee or tax" includes a license, excise, privilege, premium, or occupation fee or tax.

(b) A director, officer, or trustee of an insurer is not personally liable, in complying with the law, for the payment of or for the determination not to contest the payment of a fee or tax to a state or a political subdivision of a state that the board of directors or trustees considers to be in the corporate interest of the insurer.

(c) Subsection (b) does not apply if, before the payment of the fee or tax, the state court of final appellate jurisdiction or the United States Supreme Court expressly holds that the law imposing the fee or tax is invalid.

(d) This section does not directly or indirectly limit, minimize, or interpret the rights and powers of an insurer or the directors, officers, or trustees of an insurer. (V.T.I.C. Art. 21.37.)

Source Law

Art. 21.37. No officer, trustee, or director of any insurer shall, in complying with the statutes, be subject to any personal liability by reason of any payment, or determination not to contest payment, deemed by the board of directors or trustees to be in the corporate interest of such insurer, of any license, excise, privilege, premium, occupation, or other fee or tax to any State, territory, or political subdivision thereof, unless prior to such payment the statute, ordinance, or other law imposing such fee or tax shall have been expressly held invalid by the State Court having final appellate jurisdiction in the premises, or by the Supreme Court of the United States; provided,

however, that nothing contained herein shall be construed as directly or indirectly limiting, minimizing, or interpreting the rights and powers of insurers and their officers, trustees, and directors heretofore existing.

Revisor's Note

(1) V.T.I.C. Article 21.37 refers to a "State, [or] territory . . . ." The revised law omits the reference to "territory" as unnecessary because Section 311.005(7), Government Code (Code Construction Act), defines "state," when referring to a part of the United States, to include any territory of the United States. That definition applies to the revised law.

(2) V.T.I.C. Article 21.37 refers to a "statute, ordinance, or other law." The revised law omits the references to "statute" and "ordinance" because "law" is defined as a body of rules of action or conduct prescribed by a controlling authority and having binding legal force, and "statute" and "ordinance" are included within the scope of that definition.

[Chapters 806-820 reserved for expansion]

SUBTITLE B. ORGANIZATION OF REGULATED ENTITIES

CHAPTER 821. GENERAL PROVISIONS

SUBCHAPTER A. MINIMUM INSURANCE TO BE MAINTAINED BY INSURER

[Sections 821.005-821.050 reserved for expansion]

SUBCHAPTER B. ASSOCIATION OF INSURANCE COMPANIES

CHAPTER 821. GENERAL PROVISIONS

SUBCHAPTER A. MINIMUM INSURANCE TO BE MAINTAINED BY INSURER

Revised Law

Sec. 821.001. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to any insurer that is required by law to hold

a certificate of authority issued by the department, including:

(1) a domestic insurance company;

(2) a mutual life insurance company;

(3) a statewide mutual assessment company;

(4) a mutual insurance company other than a life insurance company operating under Chapter 883;

(5) a Lloyd's plan;

(6) a reciprocal or interinsurance exchange; and

(7) a title insurance company.

(b) This subchapter does not apply to:

(1) an insurer before the second anniversary of the date the insurer's original certificate of authority is issued; or

(2) an insurer that was paid more than $50,000 in gross premium income by policyholders during the preceding accounting year of the insurer. (V.T.I.C. Art. 21.45, Sec. 1 (part).)

Source Law

Art. 21.45

Sec. 1. Every domestic insurance company, corporation, mutual life insurance company, state-wide mutual assessment company, mutual insurance company other than life operating under and governed by the provisions of Chapter 15 of the Insurance Code, Lloyds, reciprocal or interinsurance exchange, title insurance company, or other insurer which is by law required to be licensed by the Board of Insurance Commissioners of the State of Texas . . . provided, however, that the provisions of this Act shall not apply to any such insurer which has had paid to it by Policy Holders gross premium income in excess of Fifty Thousand Dollars ($50,000) during its last preceding accounting year, or until two (2) years after its original certificate of authority has been issued; and . . . .

Revisor's Note

(1) Section 1, V.T.I.C. Article 21.45, refers to an "insurance company" and a "corporation." The revised law omits the reference to "corporation" as unnecessary because the meaning of that term is included within the meaning of "company."

(2) Section 1, V.T.I.C. Article 21.45, refers to a mutual insurance company "operating under and governed by the provisions of Chapter 15 of the Insurance Code." The revised law omits "governed by" as unnecessary because a company operating under a chapter is necessarily governed by that chapter.

(3) Section 1, V.T.I.C. Article 21.45, refers to an insurer "required to be licensed." The revised law substitutes "required to hold a certificate of authority" for "required to be licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(4) V.T.I.C. Article 21.45 refers to the "Board of Insurance Commissioners." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners or the State Board of Insurance have been changed appropriately.

(5) Section 1, V.T.I.C. Article 21.45, refers to "its last preceding accounting year," meaning the last preceding accounting year of an insurer. The revised law substitutes "the preceding accounting year of the insurer" for "its last preceding accounting year."

Revised Law

Sec. 821.002. EXEMPTIONS. This subchapter does not apply to:

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

(2) a local mutual aid association or local mutual burial association operating under Chapters 886, 887, and 888;

(3) a statewide mutual assessment company or association operating under Chapters 881, 887, or 888;

(4) another association operating under Subchapter C, Chapter 887;

(5) a farm mutual insurance company operating under Chapter 911; or

(6) a county mutual fire insurance company operating under Chapter 912. (V.T.I.C. Art. 21.45, Sec. 3.)

Source Law

Sec. 3. The local mutual aid associations and local mutual burial associations authorized to transact business under Chapters 12 and 14 of the Insurance Code, state-wide mutual assessment companies or associations authorized to transact business under Chapters 13 and 14 of the Insurance Code, farm mutual insurance companies authorized to transact business under Chapter 16 of the Insurance Code, county mutual fire insurance companies authorized to transact business under Chapter 17 of the Insurance Code, fraternal benefit societies authorized to transact business under Chapter 10 of the Insurance Code, and those associations which are authorized to transact business under the provisions of Article 14.17 of the Insurance Code, shall be exempt from the provisions of this Article.

Revised Law

Sec. 821.003. MINIMUM REQUIREMENTS. An insurer must maintain at all times not less than 100 policyholders or certificate holders nor less than $200,000 of insurance that the insurer has written or acquired through reinsurance contracts.

(V.T.I.C. Art. 21.45, Sec. 1 (part).)

Source Law

Sec. 1. [Every domestic insurance company, corporation, mutual life insurance company, state-wide mutual assessment company, mutual insurance company other than life operating under and governed by the provisions of Chapter 15 of the Insurance Code, Lloyds, reciprocal or interinsurance exchange, title insurance company, or other insurer which is by law required to be licensed by the Board of Insurance Commissioners of the State of Texas,] shall maintain in force at all times not less than one hundred (100) Policy Holders or Certificate Holders nor less than Two Hundred Thousand Dollars ($200,000) of insurance which has been written by said insurer or which has been acquired through reinsurance contracts; . . . .

Revised Law

Sec. 821.004. REPORT TO ATTORNEY GENERAL; SUIT AGAINST INSURER. (a) The department shall report to the attorney general an insurer's failure to comply with this subchapter.

(b) On receiving a report under Subsection (a), the attorney general shall bring suit in a district court in Travis County against the insurer to cancel, forfeit, and revoke the insurer's:

(1) charter, articles of association, or articles of agreement; and

(2) certificate of authority. (V.T.I.C. Art. 21.45, Sec. 2.)

Source Law

Sec. 2. The Board of Insurance Commissioners shall report to the Attorney General the failure of any insurer to comply with the provisions of this Article, whereupon the Attorney General shall bring suit in any district court of Travis County, Texas, for the purpose of cancelling, forfeiting and revoking the charter, articles of association, or articles of agreement, and

for the purpose of cancelling, forfeiting and revoking the certificate of authority of any such insurer.

Revisor's Note
(End of Subchapter)

Section 1, V.T.I.C. Article 21.45, provides that, until one year after the effective date of the article, the article does not apply to an insurer that has been issued an original certificate of authority before the effective date of the article. The revised law omits that provision as executed law because Article 21.45, which took effect on September 5, 1955, has been in effect for more than one year and now applies to any insurer not otherwise excepted whose original certificate of authority was issued before that date. The omitted law reads:

Sec. 1. . . . further provided that the provisions of this Act shall not take effect as to any insurer which has heretofore been issued an original certificate of authority until one (1) year after the effective date of this Act.

[Sections 821.005-821.050 reserved for expansion]

SUBCHAPTER B. ASSOCIATION OF INSURANCE COMPANIES

Revised Law

Sec. 821.051. PAYMENT OF TAXES AND FEES; COMPLIANCE WITH LAW. (a) Life, health, fire, marine, or inland marine insurance companies that associate to issue or sell insurance policies may not engage in the business of insurance in this state until each company has:

(1) paid the company's taxes and fees that are due; and

(2) complied with all requirements of law.

(b) The commissioner may not authorize to engage in the business of insurance in this state an insurance company that does not comply with Subsection (a). (V.T.I.C. Art. 21.34.)

Source Law

Art. 21.34. In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this State until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the Board to do business in this State.

Revisor's Note

V.T.I.C. Article 21.34 refers to "marine or inland" insurance companies. The revised law substitutes "inland marine" for "inland" because "inland marine insurance" is the phrase more commonly used in the insurance industry.

CHAPTER 822. GENERAL INCORPORATION AND REGULATORY REQUIREMENTS FOR INSURANCE COMPANIES OTHER THAN LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 822.004-822.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF COMPANY

CHAPTER 822. GENERAL INCORPORATION AND REGULATORY REQUIREMENTS FOR INSURANCE COMPANIES OTHER THAN LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 822.001. APPLICABILITY OF CHAPTER. Except as otherwise provided by this code, this chapter applies to the formation of each company or organization that proposes to engage in any kind of insurance business other than a life, health, or accident insurance company organized or operating under Chapter 841, 881, 882, 884, 885, 886, 887, or 888. (V.T.I.C. Art. 2.01, Subsec. (a); Art. 2.18 (part).)

Source Law

Art. 2.01. (a) The provisions of this Chapter shall apply to the formation of each company or organization which proposes to engage in any kind of insurance business, other than life, health or accident insurance companies organized or operating under the provisions of Chapters 3, 10, 11, 12, 13, 14, or 22 of this Code; and except as in this Code otherwise provided.

Art. 2.18. . . . None of the provisions of this Chapter 2 shall apply to insurance companies organized or operating under the provisions of Chapter 3 or Chapter 11 of this Code, and Chapters 10, 12, 13, or 14 of this Code.

Revisor's Note

Subsection (a), V.T.I.C. Article 2.01, refers to Chapter 3 of this code. The pertinent portions of Chapter 3 relating to the formation of domestic life, health, and accident insurance companies are revised in Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 822.002. APPLICABILITY OF LAW GOVERNING CORPORATIONS. An insurance company incorporated in this state is subject to the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and any other law of this state that governs corporations in general to the extent those laws are not inconsistent with this code. (V.T.I.C. Art. 2.18 (part).)

Source Law

Art. 2.18. The laws governing corporations in general shall apply to and govern insurance companies incorporated in this State in so far as the same are not inconsistent with any provision of this Code. . . .

Revisor's Note

V.T.I.C. Article 2.18 refers to "laws governing corporations in general." For the convenience of the reader, the revised law adds references to the Texas Business Corporation Act and the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), which are laws that govern corporations in general.

Revised Law

Sec. 822.003. EFFECT ON TRANSACTIONS BETWEEN INSURANCE COMPANIES AND OTHERS. The following sections do not restrict or modify any provision of this code relating to a transaction between an insurance company and the insurance company's affiliates, or between an insurance company and certain shareholders, directors, or officers of the insurance company, as provided by Subchapter A, Chapter 805, and Chapter 823:

(1) Sections 822.055 and 822.056;

(2) Section 822.057(a)(4);

(3) Section 822.061;

(4) Section 822.156;

(5) Sections 822.158(d) and (e); and

(6) Sections 822.206 and 822.207. (V.T.I.C. Art. 2.07, Sec. 7(c).)

Source Law

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

Revisor's Note

Section 7(c), V.T.I.C. Article 2.07, refers to "Chapter 1037, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1.29, Vernon's Texas Insurance Code), and Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), as the same now exist or may be amended in the future." The pertinent parts of those articles are revised as Subchapter A, Chapter 805, and Chapter 823, respectively. The revised law is drafted accordingly. The

revised law omits the phrase "as the same now exist or may be amended in the future" because Section 311.027, Government Code (Code Construction Act), applicable to the revised law, states that a reference to a statute includes reenactments, revisions, or amendments of the statute.

Revisor's Note

(End of Subchapter)

(1) V.T.I.C. Article 2.03-1 provides that "[l]ive stock insurance companies organized prior to April 1, 1955 under the provisions of Article 2.03 of the Insurance Code and continuing to do a live stock insurance business only" are exempt from the provisions of this code. The original provision of V.T.I.C. Article 2.03, which provided for the organization of livestock insurance companies, was amended by Section 6, Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, to incorporate the provisions relating to amendments to charters now contained in V.T.I.C. Article 2.03. The effect of the amendment is to repeal by omission the original provisions of Article 2.03. The subject of livestock insurance companies was addressed by Section 12a of the 1955 amendment, the provision enacting V.T.I.C. Article 2.03-1. Article 2.03-1 is omitted from the revised law because, according to the records of the Texas Department of Insurance, no livestock insurance company exists that continues to write livestock insurance exclusively. The omitted law reads:

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

(2) V.T.I.C. Article 2.19 prohibits the incorporation of certain companies mentioned in "Acts of 1923 of the 38th Legislature, Chapter 157, page 336, being Article 4698, Revised Civil Statutes of 1925." Section 1 of Chapter 157 describes certain cooperative savings and contract loan companies that were required to be dissolved by that same section not later than the

10th anniversary of the date on which that Act was passed. The revised law omits V.T.I.C. Article 2.19 as unnecessary because this chapter does not purport to authorize the formation of a cooperative savings and contract loan company. The omitted law reads:

Art. 2.19. There shall not be incorporated any such Co-operative Savings and Contract Loan Companies as are mentioned in Acts of 1923 of the 38th Legislature, Chapter 157, page 336, being Article 4698, Revised Civil Statutes of 1925.

[Sections 822.004-822.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF COMPANY

Revised Law

Sec. 822.051. FORMATION OF COMPANY. (a) Any number of persons may form a company for the purpose of engaging in the business of insurance.

(b) To form a company, each incorporator must adopt and sign the articles of incorporation of the company as provided by this code. (V.T.I.C. Art. 2.01, Subsec. (b) (part).)

Source Law

(b) Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign Articles of Incorporation as provided in this Code. . . .

Revisor's Note

Subsection (b), V.T.I.C. Article 2.01, refers to "persons desiring to form a company." Throughout this chapter, the revised law substitutes the term "incorporators" for "persons desiring to form a company" or "corporators" for drafting convenience and for consistency with modern usage and other provisions of this code.

Revised Law

Sec. 822.052. ARTICLES OF INCORPORATION. Articles of incorporation of a proposed insurance company must state:

(1) the name of the company;

(2) the location of the company's principal business office;

(3) the kind of insurance business in which the company proposes to engage;

(4) the amount of the company's capital stock; and

(5) the amount of the company's surplus. (V.T.I.C. Art. 2.02, Subsec. (a) (part).)

Source Law

Art. 2.02. (a) Such Articles of Incorporation shall contain:

1. The name of the company; . . .

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

3. The kind of insurance business in which the company proposes to engage; . . .

4. The amount of its capital stock and its surplus . . . .

Revised Law

Sec. 822.053. COMPANY'S NAME. An insurance company's name may not be so similar to the name of another insurance company as to likely mislead the public. (V.T.I.C. Art. 2.02, Subsec. (a) (part).)

Source Law

(a) . . .

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

. . .

Revised Law

Sec. 822.054. CAPITAL STOCK AND SURPLUS REQUIREMENTS. (a) An insurance company must have capital stock in an amount of at least $1 million and surplus in an amount of at least $1 million.

(b) At the time of incorporation, the required capital and surplus must be in cash. (V.T.I.C. Art. 2.02, Subsecs. (a) (part), (d).)

Source Law

(a) . . .

. . .

4. [The amount of its capital stock and its surplus,] which shall in no case be less than $1 million capital and $1 million surplus.

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

Revised Law

Sec. 822.055. SHARES OF STOCK WITH PAR VALUE. (a) An insurance company organized under the laws of this state may authorize the issuance of shares of stock with a par value of not less than $1 or more than $100. The company may increase from time to time the number of shares with a par value by an amendment to the company's charter.

(b) Each par value share of stock must be fully paid before issuance in an amount that is not less than the share's par value. Par value shares issued under this section are not subject to additional call or assessment, and the subscriber or holder of those shares is not required to make an additional payment with respect to those shares.

(c) When an application for charter or an amendment to the charter authorizing the issuance of shares of stock with a par value is filed, the insurance company shall file with the department a statement under oath stating:

(1) the total number of par value shares subscribed; and

(2) the actual total consideration the company received for those shares.

(d) The shareholders of an insurance company authorizing

par value shares of stock must in good faith subscribe and fully pay for shares representing at least 50 percent of the total par value of the authorized shares with a par value before the company:

(1) is granted a charter; or

(2) amends its charter to:

(A) authorize the issuance of par value shares; or

(B) increase or decrease from time to time the number of authorized par value shares.

(e) If all of the authorized par value shares of stock are not subscribed and paid for when the charter is granted or the amendment is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors stating the total number of shares issued and the total consideration received for those shares. The company shall file the certificate not later than the 90th day after the date of issuance of those remaining shares. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company.

(f) The consideration received by an insurance company for a par value share constitutes capital to the extent of its par value and the remainder, if any, constitutes surplus. (V.T.I.C. Art. 2.07, Secs. 1(a), (b), (c).)

Source Law

Sec. 1. (a) The shares of any insurance company organized under the laws of this State, if shares with a nominal or par value, shall be divided into shares of not less than One Dollar ($1) each, and not more than One Hundred Dollars ($100) each and the stockholders of any such company authorizing the issuance of its stock with a nominal or par value shall be required in good faith to subscribe and fully pay for shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value before said

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

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

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

Revisor's Note

(1) Section 1, V.T.I.C. Article 2.07, refers to shares with a "nominal or par value." The revised law omits the term "nominal" because, in context, the terms are synonymous and "par value" is more commonly used.

(2) Section 1(a), V.T.I.C. Article 2.07, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the "State Board of Insurance" or the board have been changed to "commissioner" or "department," as appropriate.

(3) Section 1(a), V.T.I.C. Article 2.07, provides that "[i]n no event shall the capital or surplus be less than the minimum required by this Chapter." The revised law omits the quoted language as unnecessary because it duplicates the minimum capital and surplus requirements of V.T.I.C. Article 2.02(a), revised in pertinent part as Section 822.054.

(4) Section 1(c), V.T.I.C. Article 2.07, provides for a change in the number of authorized shares by "lawful charter amendment." The revised law omits the word "lawful" as unnecessary because it does not add to the clear meaning of the law.

Revised Law

Sec. 822.056. SHARES OF STOCK WITHOUT PAR VALUE. (a) An insurance company organized under the laws of this state, on incorporation or by an amendment to its charter, may authorize the issuance of shares of stock without par value.

(b) Each share of stock without par value must be equal in all respects.

(c) An insurance company may issue and dispose of authorized shares without par value for money or for notes, bonds, mortgages, and stock in the form authorized by law for capital stock of insurance companies. Each share of stock without par value must be fully paid before issuance. After the company receives payment for a share of stock issued under this section, the share is not subject to additional call or assessment and the subscriber or holder of the share is not required to make an additional payment with respect to the share.

(d) The shareholders of an insurance company authorizing shares of stock without par value must in good faith subscribe and pay for shares representing at least 50 percent of the authorized shares without par value before the company is granted a charter or has its charter amended to authorize the issuance of shares without par value. The total amount paid for the shares must be at least $250,000.

(e) If all of the authorized shares of stock without par value are not subscribed and paid for when the charter is granted or the amendment is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors stating the number of shares without par value issued and the consideration received for those shares. An insurance company may issue and dispose of those remaining authorized shares for money or an instrument authorized for minimum capital under Section 822.204 and Article 2.10.

(f) The insurance company shall file the certificate required by Subsection (e) not later than the 90th day after the date of issuance of those remaining shares. The portion of the consideration received for shares without par value that is

designated as capital by the company's directors, or by the company's shareholders if the charter or articles of incorporation reserve the right to make that determination to the shareholders, constitutes capital and the remainder, if any, constitutes surplus. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company. (V.T.I.C. Art. 2.07, Secs. 2, 3, 5.)

Source Law

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

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

Sec. 5. In the event all of the shares of stock without

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

Revisor's Note

Section 5, V.T.I.C. Article 2.07, refers to the consideration for shares "required by Article 2.03, Section 5 of this Code." Section 5, Article 2.03, provides that "[t]he property involved in any increase of capital or surplus or both is properly valued and is as authorized by Article 2.08 or Article 2.10 of this Code, as same may be applicable." Section 5, V.T.I.C. Article 2.07, thus, requires that the form of consideration received for shares under that section must be the same as the form property may take under V.T.I.C. Article 2.08 or 2.10. Article 2.08 is revised as Section 822.204. V.T.I.C. Article 2.10 has yet to be revised in this code. The revised law is drafted accordingly.

Revised Law

Sec. 822.057. APPLICATION FOR CHARTER. (a) To obtain a charter for an insurance company, the incorporators must pay to

the department the fees prescribed by law and file with the department:

(1) an application for charter on the form and containing the information prescribed by the commissioner;

(2) the company's proposed articles of incorporation;

(3) an affidavit made by the incorporators or officers of the company that states that:

(A) the capital and surplus is the bona fide property of the company; and

(B) the information in the articles of incorporation is true and correct; and

(4) if the application provides for the issuance of shares of stock without par value, a certificate authenticated by the incorporators stating:

(A) the number of shares without par value that are subscribed; and

(B) the actual consideration received by the company for those shares.

(b) If the commissioner is not satisfied with the affidavit filed under Subsection (a)(3), the commissioner may require that the incorporators provide at their expense additional evidence of a matter required in the affidavit before the commissioner:

(1) receives the proposed articles of incorporation or the application for charter;

(2) provides notice of a hearing on the application for charter or holds a hearing; or

(3) issues a certificate of authority to the company.

(c) The commissioner may not delay providing notice of a hearing on the application for charter for more than 10 days. (V.T.I.C. Art. 2.01, Subsec. (b) (part); Art. 2.05; Art. 2.07, Sec. 4 (part).)

Source Law

[Art. 2.01]

(b) . . . Applicants shall file with the Board an application for charter on such form and include therein such

information as may be prescribed by the Board, including the affidavit or affidavits provided by Article 2.05, and the proposed Articles of Incorporation or of Association, and shall deposit with the Board the fees prescribed by law.

Art. 2.05. The corporators or officers of any such company shall be required to certify under oath to the Board the truth and correctness of the facts set out in the Articles of Incorporation and in addition shall certify under oath to the Board that the capital and surplus is the bona fide property of such company.

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

[Art. 2.07]

Sec. 4. Insurance companies authorizing the issuance of shares of their stock without a nominal or par value, shall furnish to and file with the Board at the time of the filing of the charter or . . . authorizing the issuance of such stock, a certificate authenticated by the incorporators as to the original charter and . . . setting forth the number of shares without nominal or par value subscribed, and the actual consideration received by the company for such shares. . . .

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 2.01, refers to "the proposed Articles of Incorporation or of Association." In the context of the Insurance Code, articles of association are used to describe certain organizational documents of certain types of fraternal benefit societies under Chapter 10, local mutual aid associations under Chapter 12, and joint underwriting

associations under Article 21.49-3b. V.T.I.C. Article 2.01(a), revised as Section 822.001, states that this chapter does not apply to the formation of fraternal benefit societies or of local mutual aid associations. Joint underwriting associations are not corporate entities and this chapter does not apply to their formation. Consequently, the revised law omits the reference to articles of association as unnecessary.

(2) V.T.I.C. Article 2.05 refers to an "original Certificate of Authority." The revised law omits "original" as unnecessary because, in the context of the revised law, it is clear that the certificate of authority that is the subject of the application is an original, not amended, certificate.

Revised Law

Sec. 822.058. ACTION BY COMMISSIONER AFTER FILING OF APPLICATION FOR CHARTER. (a) On receipt of an application for the charter of an insurance company, the commissioner may set the date for a hearing on the application.

(b) After the items required for a charter under Sections 822.057(a)(1) and (2) are filed with the department and the proposed insurance company has complied with all legal requirements and before any hearing, the commissioner shall conduct an examination of the company to determine whether:

(1) the minimum capital stock and surplus requirements of Section 822.054 are satisfied;

(2) the capital stock and surplus is the bona fide property of the company; and

(3) the insurance company has fully complied with insurance laws.

(c) The commissioner may appoint a competent and disinterested person to conduct the examination required by this section. The examiner shall file an affidavit of the examiner's findings with the commissioner. The commissioner shall record the affidavit. (V.T.I.C. Art. 2.01, Subsec. (c) (part); Art. 2.04; Art. 2.06.)

Source Law

[Art. 2.01]

(c) Upon receipt of such application, the Board may set a date for the hearing of the same . . . .

Art. 2.04. When the Articles of Incorporation and Application for Charter of persons desiring to form a company under this Chapter have been deposited with the Board, and the law in all other respects has been complied with by the company, prior to the hearing provided by Article 2.01, the Board shall make or cause an examination to be made by some competent and disinterested person or persons appointed by them for that purpose; and if it shall be found that the capital stock and surplus of the company, to the amount required by law, has been paid in, and is possessed by it, in money, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, the examiners or examiner shall so report to the Board.

Art. 2.06. If the examination be made by one, other than the Chairman, the finding shall be certified under the oath of the examiner. Such finding and certificate shall be filed and recorded in the office of the Chairman of the Board.

Revisor's Note

V.T.I.C. Article 2.06 refers to "the Chairman" and "the Chairman of the Board," meaning the chairman of the Board of Insurance Commissioners. Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31

defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners and the State Board of Insurance have been changed appropriately.

Revised Law

Sec. 822.059. ACTION ON APPLICATION FOR CHARTER. (a) The date for a hearing on an application for charter may not be before the 11th or later than the 60th day after the date notice is provided under this section.

(b) The department shall publish notice to all interested parties of the place and date of a hearing in one or more daily newspapers of this state.

(c) The original report of the examination performed under Section 822.058 must be a part of the record of the proceedings of the hearing. (V.T.I.C. Art. 2.01, Subsecs. (c) (part), (d).)

Source Law

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

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

Revised Law

Sec. 822.060. ACTION ON APPLICATION. (a) In considering the application, the commissioner, not later than the 30th day after the date on which a hearing under Section 822.057 is completed, shall determine if:

(1) the proposed capital structure of the company meets the requirements of this code;

(2) the proposed officers, directors, attorney in fact, or managing head of the company have sufficient insurance

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

(3) the applicants are acting in good faith.

(b) If the commissioner determines by an affirmative finding any of the issues under Subsection (a) adversely to the applicants, the commissioner shall reject the application in writing, giving the reason for the rejection.

(c) If the commissioner does not reject the application under Subsection (b), the commissioner shall approve the application. On approval of an application, the articles of incorporation of the company shall be filed with the department. (V.T.I.C. Art. 2.01, Subsecs. (e), (f).)

Source Law

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

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

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

3. The applicants are acting in good faith.

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

Revisor's Note

Subsection (e), V.T.I.C. Article 2.01, refers to a "public hearing" of the former State Board of Insurance. Throughout this chapter, the revised law omits "public" as unnecessary. In context, "hearing" means a hearing open to the public.

Revised Law

Sec. 822.061. ISSUANCE OF CHARTER. (a) On receipt of a charter fee in the amount determined under Article 4.07, the commissioner shall examine the articles of incorporation filed with the department under Section 822.060 and any certificate filed under Section 822.057(a)(4).

(b) If the commissioner approves the articles of incorporation and, if applicable, the certificate filed under Section 822.057(a)(4), the commissioner shall certify and file the approved documents with the department records and, on receipt of a fee in the amount determined under Article 4.07, the commissioner shall issue a certified copy of the charter to the incorporators.

(c) When the insurance company's charter is issued, the charter is effective and the incorporators may proceed with the organization of the company as provided by this code. (V.T.I.C. Art. 2.07, Sec. 4 (part).)

Source Law

Sec. 4. . . . Upon receiving such certificate, together with a charter fee as provided by Article 4.07 of this Code, the Board shall examine the certificate and articles of incorporation, and if the Board approves the certificate and articles, it shall certify them and file them with the Board records. Upon receipt of proper payment, the Board shall furnish a certified copy of the charter to the incorporators or . . . same shall be effective. In case of original incorporation, said companies shall proceed to organize in the manner now provided by law for the organization of insurance companies.

Revisor's Note

Section 4, V.T.I.C. Article 2.07, refers to the receipt of "proper payment" for providing a certified copy of the charter to the incorporators. V.T.I.C. Article 4.07 is a comprehensive fee provision that authorizes the Texas Department of Insurance to set the amounts of various fees, including a fee for making

copies of any paper of record in the Texas Department of Insurance. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

[Sections 822.062-822.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Revised Law

Sec. 822.101. CERTIFICATE OF AUTHORITY. When the articles of incorporation of an insurance company have been filed with the department under Section 822.060 or the company has been authorized to engage in business as provided by law, the commissioner shall issue to the company a certificate of authority to commence business as proposed in the company's articles of incorporation or application for charter if the commissioner determines that the company has fully complied with the law. (V.T.I.C. Art. 2.21.)

Source Law

Art. 2.21. When the said Articles of Incorporation have been deposited with the Board, or when the right to do business has been approved as provided by law, and the law in all other respects has been complied with by the company, the Board shall issue to such company a Certificate of Authority to commence business as proposed in their Articles of Incorporation or application or declaration.

Revisor's Note

V.T.I.C. Article 2.21 refers to an insurance company's "declaration." In the Insurance Code, the term "declaration" is used to refer to a subscriber's declarations, which are documents related to the formation of reciprocal or interinsurance exchanges. V.T.I.C. Article 19.12, revised as Section 942.003, provides that, with certain exceptions, this chapter does not apply to the formation of reciprocal or interinsurance exchanges. Accordingly, the revised law omits the reference to "declaration" as unnecessary.

[Sections 822.102-822.150 reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF COMPANY

Revised Law

Sec. 822.151. CONDUCTING SHAREHOLDERS MEETING. (a) Except as otherwise provided by this code, at a meeting of an insurance company's shareholders to elect the company's board of directors or to transact other company business, a quorum is any number of shareholders whose cumulative ownership in the company represents at least 51 percent of the company's stock.

(b) A shareholder may vote in person or by proxy. (V.T.I.C. Art. 2.13.)

Source Law

Art. 2.13. Except as may be otherwise provided in this code, no meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present, in person or by proxy, a majority in value of the stockholders equal to fifty-one percent of the stock of such company.

Revisor's Note

(1) V.T.I.C. Article 2.13 provides that "no meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present" a certain majority in value of shareholders. The revised law adds a reference to the term "quorum," which means the number of persons or votes necessary for a body to act, for drafting convenience and consistency with other provisions of this code.

(2) V.T.I.C. Article 2.13 provides that the shareholders of an insurance company may not act at a meeting unless there is present "a majority in value of the stockholders equal to fifty-one percent of the stock of such company." The revised law omits "majority" as unnecessary because 51 percent is clearly a majority.

Revised Law

Sec. 822.152. BOARD OF DIRECTORS. (a) An insurance company organized under the laws of this state is managed by its board of

directors.

(b) The board consists of not fewer than seven directors. A director:

(1) is not required to be a shareholder unless such a qualification is required by the articles of incorporation or bylaws of the company; and

(2) serves until the director's successor is elected and accepts the position.

(c) The board of directors may adopt bylaws and regulations as necessary to conduct the company's business. A majority of the board is a quorum.

(d) The board of directors shall keep a full and correct record of the board's transactions. The shareholders or other interested persons may inspect those records during business hours.

(e) The directors shall fill a vacancy that occurs on the board or in any office of the company. (V.T.I.C. Arts. 2.11 (part), 2.12 (part), 2.15, 2.16, 2.17.)

Source Law

Art. 2.11. The affairs of any insurance companies organized under the laws of this state shall be managed by not fewer than seven (7) directors. . . . The directors then in office shall continue in office until their successors have been duly chosen and accepted the trust. . . . Neither directors nor . . . need be stockholders unless the Articles of Incorporation or bylaws so require.

Art. 2.12. . . . The directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted.

Art. 2.15. The directors may establish such by-laws and regulations, not inconsistent with law, as shall appear to them necessary for regulating and conducting the business of the company.

Art. 2.16. The directors shall keep a full and correct

record of their transactions, to be open during business hours to the inspection of stockholders and others interested therein.

Art. 2.17. The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of business.

Revisor's Note

(1) V.T.I.C. Article 2.15 provides that the directors may establish bylaws and regulations "not inconsistent with law." The revised law omits the quoted language as unnecessary because the law authorizing the directors to adopt bylaws and regulations cannot reasonably be read to authorize illegal bylaws or regulations.

(2) V.T.I.C. Article 2.17 provides that a majority of the board is a quorum "for the transaction of business." The revised law omits the quoted phrase as unnecessary. "Quorum" means the number of persons or votes necessary for a body to act.

Revised Law

Sec. 822.153. ELECTION OF DIRECTORS. (a) Not later than the 30th day after the date on which the company's subscription books are filed, the shareholders of an insurance company shall meet to elect the company's initial board of directors. At the meeting, each shareholder is entitled to one vote for each share of stock.

(b) The shareholders of an insurance company shall meet before May 1 of each year as provided by the company's bylaws to elect successor directors.

(c) If the shareholders do not elect directors at an annual meeting, the shareholders may elect the directors at a special shareholders meeting called for that purpose. Not later than the 30th day before the date of the special meeting, the shareholders must publish notice of the meeting in a newspaper of general circulation in the county in which the principal office of the company is located. (V.T.I.C. Arts. 2.11 (part), 2.12 (part).)

Source Law

Art. 2.11. . . . Within thirty (30) days after the subscription books of the company have been filed, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one (1) vote. . . . The annual meeting for the election of directors of any such company shall be held on or before April 30 of each year as the bylaws of the company may direct. . . .

Art. 2.12. If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty (30) days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located. . . .

Revised Law

Sec. 822.154. OFFICERS. (a) An insurance company's directors shall choose one of the directors to serve as the company's president.

(b) Other officers of the insurance company shall be chosen in accordance with the company's bylaws. An officer other than the president is not required to be a director or a shareholder unless such a qualification is required by the company's bylaws or articles of incorporation.

(c) An insurance company's officers shall perform duties, receive compensation, and provide security as stated in the company's bylaws. (V.T.I.C. Arts. 2.11 (part), 2.14.)

Source Law

Art. 2.11. . . . [Neither] . . . officers need be stockholders unless the Articles of Incorporation or bylaws so require.

Art. 2.14. The directors shall choose a president from their own number, and all other officers shall be chosen in accordance with the bylaws of the company, and none of such other

officers need be either a director or a stockholder except as required by the bylaws of such company. Officers shall perform such duties, receive such compensation and give such security as the bylaws may require.

Revised Law

Sec. 822.155. APPLICATION FOR AMENDMENT OF CHARTER. A domestic insurance company may amend its charter by paying to the commissioner a fee in the amount determined under Article 4.07 and by filing with the department:

(1) an application for a charter amendment on the form and containing the information prescribed by the commissioner; and

(2) the company's proposed amendment. (V.T.I.C. Art. 2.03 (part).)

Source Law

Art. 2.03. Any domestic insurance corporation subject to the provisions of this Chapter may make amendments to its charter as follows:

Applicants shall file with the Board the proposed amendment together with an application on such form and including such information as may be prescribed by the Board, and shall deposit with the Board the fees prescribed by law. . . .

Revisor's Note

V.T.I.C. Article 2.03 provides that a domestic insurance company must deposit with the Texas Department of Insurance "the fees prescribed by law" when it files an application for an amendment to the company's charter. V.T.I.C. Article 4.07 is a comprehensive fee provision that authorizes the department to set the amount of various fees, including a fee for the filing of an amendment to the company's charter. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

Revised Law

Sec. 822.156. CERTIFICATE REQUIRED FOR AMENDMENT OF CHARTER TO AUTHORIZE SHARES WITHOUT PAR VALUE. (a) If a proposed amendment to the charter of an insurance company authorizes the issuance of shares of stock without par value, the insurance company must file with the department, at the time the proposed amendment is filed, a certificate authenticated by a majority of the directors stating:

(1) the number of shares without par value that are subscribed; and

(2) the consideration the company received for those shares.

(b) On receipt of the certificate, the commissioner shall examine the certificate. The commissioner shall certify and file the certificate if the commissioner approves the certificate. (V.T.I.C. Art. 2.07, Sec. 4 (part).)

Source Law

Sec. 4. Insurance companies authorizing the issuance of shares of their stock without a nominal or par value, shall furnish to and file with the Board at the time of the filing of . . . amendment to the charter, authorizing the issuance of such stock, a certificate authenticated . . . by a majority of the directors as to an amendment, setting forth the number of shares without nominal or par value subscribed, and the actual consideration received by the company for such shares. Upon receiving such certificate . . . the Board shall examine the certificate . . . and if the Board approves the certificate . . . it shall certify [them] and file [them] with the Board records. . . .

Revised Law

Sec. 822.157. ACTION BY COMMISSIONER AFTER FILING OF APPLICATION FOR CHARTER AMENDMENT. (a) The commissioner may hold a hearing on an application for a charter amendment. If the commissioner determines to hold a hearing on the application, the

commissioner, after the items required for the charter amendment are filed with the commissioner, shall set a date for the hearing and publish notice of the hearing in one or more daily newspapers of this state.

(b) The commissioner may not require a hearing for an amendment relating to one or more of the following issues:

(1) a stock dividend resulting from a legal transfer of surplus to capital;

(2) a change in the name of the insurance company; or

(3) a change in the location of the insurance company's principal business office. (V.T.I.C. Art. 2.03 (part).)

Source Law

Art. 2.03. . . . Upon such filing the Board may give notice by publication in one or more daily newspapers of this State of a public hearing upon such application; provided that no hearing shall be required in event amendment to charter involves only a stock dividend by means of lawful transfer of surplus to capital or a change of name or a change of locality of the principal business office of said company or a combination of such amendments.

In considering any such application, the Board may hold public hearings and . . . .

Revised Law

Sec. 822.158. DETERMINATION ON APPLICATION FOR CHARTER AMENDMENT. (a) Not later than the 60th day after the date the application under Section 822.155 is filed, the commissioner shall determine whether:

(1) the proposed capital structure of the insurance company meets the requirements of this code;

(2) the officers, directors, and managing head of the insurance company have sufficient insurance experience, ability, standing, and good record to make success of the company probable;

(3) the applicants are acting in good faith;

(4) if the proposed amendment relates to a diminution of the insurance company's charter powers with respect to the kinds of insurance business in which the company may be engaged, all liabilities incidental to the exercise of the powers to be eliminated have been terminated or wholly reinsured; and

(5) the property involved in an increase of capital or surplus, or both, is:

(A) properly valued; and

(B) in the form authorized by Section 822.204 and Article 2.10, to the extent those provisions apply.

(b) If the commissioner determines by an affirmative finding any of the issues set out by Subsection (a) adversely to the applicants, the commissioner shall reject the application.

(c) If the commissioner does not reject the application under Subsection (b), the commissioner shall approve the application and the amendment shall be filed with the department.

(d) Except as provided by Subsection (e), when an amendment to an insurance company's charter is filed with the department, the amendment is effective.

(e) On approval of a certificate required under Section 822.156 and receipt of a fee in the amount determined under Article 4.07, the commissioner shall issue to the directors a certified copy of an amendment authorizing the issuance of shares of stock without par value that is filed under this section. The amendment is effective on issuance of the certified copy of the amendment. (V.T.I.C. Art. 2.03 (part); Art. 2.07, Sec. 4 (part).)

Source Law

Art. 2.03. . . .

[In considering any such application,] the Board . . . shall within 60 days determine whether or not:

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

2. The then officers and directors and managing head have sufficient insurance experience, ability, standing and good

record to render success of the company probable;

3. The applicants are acting in good faith;

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

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

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

[Art. 2.07]

Sec. 4. . . . Upon receipt of proper payment, the Board shall furnish a certified copy . . . of the amendment to the directors, and same shall be effective. . . .

Revisor's Note

Section 4, V.T.I.C. Article 2.07, provides that "[u]pon receipt of proper payment, the Board shall furnish a certified copy . . . of the amendment to the directors." The revised law substitutes a reference to a fee in the amount determined under Article 4.07 for the reason stated in the revisor's note to Section 822.061.

[Sections 822.159-822.200 reserved for expansion]

SUBCHAPTER E. CAPITAL, SURPLUS, AND GUARANTY FUND REQUIREMENTS

Revised Law

Sec. 822.201. APPLICABILITY OF CAPITAL AND SURPLUS REQUIREMENTS. The capital and surplus requirements of this chapter apply to each insurance company or other entity, other

than a farm mutual insurance company, authorized to write property and casualty insurance in this state including:

(1) a county mutual insurance company;

(2) a mutual insurance company, other than a mutual life insurance company;

(3) a Lloyd's plan; and

(4) a reciprocal or interinsurance exchange.

(V.T.I.C. Art. 2.01, Subsec. (g).)

Source Law

(g) Notwithstanding Subsection (a) of this article, effective January 1, 1992, the capital and surplus requirements imposed under Articles 2.02 and 2.20 of this Code apply to each insurance company or other entity admitted to do business and authorized to write property and casualty insurance in this state other than farm mutual insurance companies, but including county mutual insurance companies, mutual insurance companies other than mutual life insurance companies, Lloyd's plan companies, and reciprocal or interinsurance exchanges.

Revisor's Note

Subsection (g), V.T.I.C. Article 2.01, provides that "effective January 1, 1992, the capital and surplus requirements . . . apply to each insurance company or other entity." The revised law omits the reference to "effective January 1, 1992," because that provision is executed.

Revised Law

Sec. 822.202. FULL COVERAGE AUTOMOBILE INSURANCE; DETERMINATION OF AMOUNTS. Full coverage automobile insurance is one line of casualty insurance for purposes of determining:

(1) the amount of capital and surplus of a capital stock company under this code;

(2) the amount of surplus of a mutual insurance company or reciprocal exchange under this code; or

(3) the amount of the guaranty fund and surplus of a Lloyd's plan under this code. (V.T.I.C. Art. 2.02, Subsec. (a)

(part).)

Source Law

(a) . . .

. . .

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

. . .

Revised Law

Sec. 822.203. CAPITAL REQUIRED GENERALLY. To engage in the kinds of insurance business for which an insurance company organized under this chapter holds a certificate of authority, the company must have at least the minimum amount of capital required for a newly incorporated company under Section 822.054. (V.T.I.C. Art. 2.20 (part).)

Source Law

Art. 2.20. [(a) If an insurance company chartered under this chapter or a foreign or alien insurance company authorized to do business in this state and subject to the minimum capital and surplus requirements of this chapter has as of September 1, 1991 less than the minimum capital and surplus required for a newly incorporated company under Article 2.02 of this code, it may continue to transact the kind or kinds of insurance business for which it holds a Texas certificate of authority. However, the insurance company must increase its capital and surplus as required by this article.]

(c) [In addition to increases under Subsection (b) of this article, an insurance company subject to Subsection (a) of this article must increase its minimum capital according to the

following schedule:]

. . .

(10) not later than December 31, 2001, each company subject to this chapter must have at least the minimum capital required by Article 2.02 of this code for a newly incorporated company, notwithstanding any other provision of this code.

Revised Law

Sec. 822.204. FORM OF CAPITAL AND SURPLUS. (a) After incorporation and the issuance of a certificate of authority to an insurance company, the minimum capital stock and surplus of the company may consist only of:

(1) United States currency;

(2) bonds of this state;

(3) bonds or other evidences of indebtedness of the United States the principal and interest of which are guaranteed by the United States;

(4) bonds or other interest-bearing evidences of indebtedness of a county or municipality of this state; and

(5) notes secured by first mortgages:

(A) on otherwise unencumbered real property in this state the title to which is valid; and

(B) the payment of which is insured wholly or partly by the United States.

(b) Not more than 50 percent of the minimum capital stock and minimum surplus of an insurance company may be invested in an investment described by Subsection (a)(5). (V.T.I.C. Art. 2.08.)

Source Law

Art. 2.08. The minimum capital stock and minimum surplus of any such insurance company, except any writing life, health and accident insurance shall, following incorporation and granting of certificate of authority, consist only of the following:

1. Lawful money of the United States; or

2. Bonds of this state; or

3. Bonds or other evidences of indebtedness of the United States of America or any of its agencies when such obligations are guaranteed as to principal and interest by the United States of America; or

4. Notes secured by first mortgages upon unencumbered real estate in this state, the title to which is valid, and the payment of which notes is insured, in whole or in part, by the United States of America or any of its agencies, provided that such investments in such notes shall not exceed one-half (1/2) of the minimum capital stock and minimum surplus of the investing company; or

5. Bonds or other interest-bearing evidences of indebtedness of any counties, cities or other municipalities of this state.

Revisor's Note

(1) V.T.I.C. Article 2.08 refers to the minimum capital and surplus requirements of any insurance company "except any [insurance company] writing life, health and accident insurance." The revised law omits the quoted phrase as unnecessary because it duplicates the provision in V.T.I.C. Article 2.01, revised as Section 822.001, that expressly provides that this chapter does not apply to insurance companies writing life, health, and accident insurance.

(2) Section 4, V.T.I.C. Article 2.08, refers to "the United States of America or any of its agencies." The revised law omits the reference to "or any of its agencies" because, under Section 311.005(9), Government Code (Code Construction Act), "United States" includes an agency of the United States of America. That definition applies to the revised law.

(3) Section 5, V.T.I.C. Article 2.08, refers to "cities or other municipalities of this state." The revised law omits the term "cities" because under the Local Government Code, "city" is included in the meaning of the term "municipality."

Revised Law

Sec. 822.205. UNENCUMBERED SURPLUS OR GUARANTY FUND REQUIREMENTS FOR CERTAIN INSURANCE COMPANIES. (a) This section applies only to an insurance company that:

(1) writes insurance only in this state; and

(2) is not required by law to have capital stock.

(b) Notwithstanding any other provision of this subchapter other than Sections 822.212(b) and (c), an insurance company must have a minimum amount of unencumbered surplus or a minimum amount of guaranty fund and unencumbered surplus equal to the greater of:

(1) the amount of unencumbered surplus or the amount of guaranty fund and surplus, as appropriate, the company was required to have on August 31, 1991; or

(2) one-third of the company's net written premium for the preceding 12 months after deducting:

(A) lawfully ceded reinsurance; and

(B) any policy fees not ceded to reinsurers.

(V.T.I.C. Art. 2.20, Subsec. (f).)

Source Law

(f) Notwithstanding any other provision of this code other than Subsection (b) of this article, for insurers that write business only in this state and that are not required by law to have capital stock, the minimum free surplus or guaranty fund and free surplus required shall be the greater of that required of the insurer immediately prior to the effective date of this article or one-third of the net written premium of the insurer for the preceding 12 months after deducting:

(1) lawfully ceded reinsurance; and

(2) policy fees, if any, not ceded to reinsurers.

Revisor's Note

(1) Subsection (f), V.T.I.C. Article 2.20, refers to the "free surplus" and the "free surplus or guaranty fund" of certain insurance companies. The revised law substitutes "unencumbered

surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

(2) Subsection (f), V.T.I.C. Article 2.20, provides that the measurement of the minimum amount of unencumbered surplus or the minimum amount of guaranty fund and unencumbered surplus required of certain insurance companies must be determined by the greater of two amounts, one of which is the amount of unencumbered surplus or the amount of guaranty fund and unencumbered surplus "required of the insurer immediately prior to the effective date of this article." Although the quoted phrase refers to the effective date of Article 2.20, the phrase was added to that article by Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991. The apparent intent of the legislature in enacting the language contained in the quoted phrase was to refer to the effective date of that amendment, which is September 1, 1991. As a result, the revised law substitutes "August 31, 1991," for the phrase "immediately prior to the effective date of this article."

Revised Law

Sec. 822.206. REPURCHASE OF CAPITAL STOCK BY TENDER OFFER OR PRIVATE TRANSACTION. (a) An insurance company may, on prior approval of the department, purchase outstanding shares of the company's capital stock in accordance with the Texas Business Corporation Act either by making a tender offer or by entering into a negotiated private transaction.

(b) The application for approval under Subsection (a) must:

(1) state the number of shares offered;

(2) describe the shares;

(3) contain any pertinent information regarding the value of the shares, including:

(A) the price offered by the company for the shares;

(B) the book value of the shares; and

(C) the market value of the shares if a market exists for those shares; and

(4) demonstrate that the shares will be purchased using uncommitted earned surplus.

(c) Before filing the application the insurance company must present a copy of the application to the seller of the shares.

(d) The commissioner shall approve the application promptly if:

(1) the price offered by the insurance company for the shares appears to be a reasonably fair price; and

(2) the application complies with the requirements of this section and the Texas Business Corporation Act. (V.T.I.C. Art. 2.07, Sec. 7(a).)

Source Law

Sec. 7. (a) Any such company desiring to purchase, either by tender offer or through negotiated private transaction, issued and outstanding shares of the capital stock of such company may purchase said shares in the name of such company, in accordance with the provisions of the Texas Business Corporation Act, provided prior approval is first obtained from the State Board of Insurance. Application for approval shall specify the number of shares offered, their description, the price offered by the company, the book value of said shares, their market value if a market exists, and any other pertinent information regarding the value of said shares and show that said shares will be purchased out of uncommitted earned surplus. A copy of said application shall be given to the seller prior to the filing of said application with the State Board of Insurance. Said application shall be promptly approved by the State Board of Insurance if the application appears to involve a reasonably fair price and complies with this Article and the Texas Business Corporation Act.

Revised Law

Sec. 822.207. REPURCHASE OF CAPITAL STOCK ON OPEN MARKET. (a) On prior approval of the commissioner, an insurance company, the capital stock of which is listed on a national securities exchange, may purchase from time to time outstanding shares of the company's capital stock on the open market. The shares must be purchased:

(1) in the name of the company for its own account; and

(2) in accordance with the Texas Business Corporation Act.

(b) The application for approval under Subsection (a) must:

(1) state the maximum number of shares to be purchased;

(2) state the maximum period, not to exceed 180 days, during which the purchase will be made;

(3) describe the shares;

(4) contain a commitment that the company will not pay a price for the shares to be purchased that is greater than an amount equal to the average of the bid price and the asked price at the time of the purchase plus a standard broker's commission;

(5) contain any pertinent information relating to the value of the shares, including the book value of the shares; and

(6) demonstrate that the shares will be purchased using uncommitted earned surplus.

(c) The commissioner shall approve the application promptly if the application complies with the requirements of this section and the Texas Business Corporation Act. (V.T.I.C. Art. 2.07, Sec. 7(b).)

Source Law

(b) Any such company, the shares of whose capital stock are listed on a national securities exchange and which desires to purchase in its own name and for its own account issued and outstanding shares of such capital stock by means of purchases from time to time on the open market may do so in accordance with

the provisions of the Texas Business Corporation Act, provided prior approval is first obtained from the State Board of Insurance. Application for approval shall state the maximum number of shares which will be so purchased, the maximum period of time during which such purchases of shares will be made (not to exceed one hundred eighty days), the description of such shares, a commitment by the company that it will not pay for any such shares a price in excess of the mean between the bid price and the asked price at the time of such purchase plus a standard broker's commission, the book value of said shares, and any other pertinent information regarding the value of said shares and show that said shares will be purchased out of uncommitted earned surplus. Said application shall be promptly approved by the State Board of Insurance if the said application complies with this Article and the Texas Business Corporation Act.

Revised Law

Sec. 822.208. APPLICATION FOR REPURCHASE OF COMPANY'S SHARES SUBJECT TO OTHER LAW. An application filed by an insurance company under Section 822.206 or 822.207 is subject to the substantive requirements for the approval of payment of an extraordinary dividend under Chapter 823. (V.T.I.C. Art. 2.07, Sec. 7(d).)

Source Law

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

Revisor's Note

(1) Section 7(d), V.T.I.C. Article 2.07, provides that an application for the purchase of an insurer's own shares under that article "shall be deemed to be tantamount to an application for an extraordinary dividend under the provisions of said Article 21.49-1 of the Insurance Code and the application for such purchase shall be subject to and limited by the substantive requirements for approval of payment of an extraordinary dividend under said Article 21.49-1 of the Insurance Code." The revised law omits as unnecessary the portion of the quoted language comparing the application to an application under V.T.I.C. Article 21.49-1 as unnecessary in light of the substantive requirement that the application is subject to the requirements of Article 21.49-1 regarding the approval of payment of extraordinary dividends under that article.

(2) Section 7(d), V.T.I.C. Article 2.07, refers to "Article 21.49-1 of the Insurance Code as the same exists or may be amended in the future." V.T.I.C. Article 21.49-1 is revised as Chapter 823, and the revised law is drafted accordingly. The revised law omits as unnecessary the phrase "as the same exists or may be amended in the future" for the reason stated in the revisor's note to Section 822.003.

Revised Law

Sec. 822.209. REINVESTMENT OF CAPITAL STOCK. An insurance company may, as circumstances require, exchange and reinvest its capital stock in like securities. (V.T.I.C. Art. 2.09.)

Source Law

Art. 2.09. Any such company may exchange and re-invest its capital stock in like securities, as occasion may require.

Revised Law

Sec. 822.210. COMMISSIONER MAY REQUIRE LARGER CAPITAL AND SURPLUS AMOUNTS. (a) The commissioner by rule or guideline may require an insurance company organized under this chapter to maintain capital and surplus in amounts that exceed the minimum

amounts required by this chapter because of:

(1) the nature and kind of risks the company underwrites or reinsures;

(2) the premium volume of risks the company underwrites or reinsures;

(3) the composition, quality, duration, or liquidity of the company's investments;

(4) fluctuations in the market value of securities the company holds; or

(5) the adequacy of the company's reserves.

(b) A rule adopted under Subsection (a) must be designed to ensure the financial solvency of an insurance company for the protection of policyholders.

(c) An insurance company that, after notifying the commissioner, ceases to write or assume business continues to be subject to this section. (V.T.I.C. Art. 2.02, Subsec. (b); Art. 2.20, Subsecs. (d), (e) (part).)

Source Law

[Art. 2.02]

(b) The board may adopt rules, regulations, and guidelines, from time to time, requiring any company incorporated under this article, and any alien or foreign insurer admitted in this state to do the types of business authorized by this Chapter, to maintain capital and surplus levels in excess of the statutory levels required by this article based upon any of the following factors:

1. the nature and type of risks a company underwrites or reinsures;

2. the premium volume of risks a company underwrites or reinsures;

3. the composition, quality, duration, or liquidity of a company's investment portfolio;

4. fluctuations in the market value of securities a company holds; or

5. the adequacy of a company's reserves.

The rules and regulations, adopted under this subsection shall be designed to assure the financial solvency of companies for the protection of policyholders.

[Art. 2.20]

(d) The board may adopt rules, regulations, and guidelines, from time to time, requiring any company subject to this article to maintain capital and surplus levels in excess of the minimums required by Article 2.02 of this code for a newly incorporated company and in excess of the levels required in the schedule established under Subsection (c) of this article, based upon any of the following factors:

(1) the nature and type of risks a company underwrites or reinsures;

(2) the premium volume of risks a company underwrites or reinsures;

(3) the composition, quality, duration, or liquidity of a company's investment portfolio;

(4) fluctuations in the market value of securities a company holds; or

(5) the adequacy of a company's reserves.

The rules adopted under this subsection shall be designed to assure the financial solvency of companies for the protection of policyholders.

(e) If an insurance company that is subject to the minimum capital and surplus requirements of either Article 2.02 of this code or this article ceases to write or assume any business and so notifies the Commissioner of Insurance, the insurance company . . . shall be subject to the risk capital requirements of Subsection (d) of this article.

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 2.02, and Subsection (d), V.T.I.C. Article 2.20, refer to "rules, regulations, and guidelines." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code

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

(2) Subsection (b), V.T.I.C. Article 2.02, refers to the application of that subsection to "any alien or foreign insurer admitted in this state to do the types of business authorized by this Chapter." The revised law omits the quoted language as unnecessary because it duplicates V.T.I.C. Article 21.44, which is revised in Chapter 982.

Revised Law

Sec. 822.211. ACTION OF COMMISSIONER WHEN CAPITAL OR SURPLUS REQUIREMENTS NOT SATISFIED. If an insurance company does not comply with the capital and surplus requirements of this chapter, the commissioner may enter an order prohibiting the company from writing new business and may:

(1) place the company under state supervision or conservatorship;

(2) declare the company to be in a hazardous condition as provided by Article 1.32;

(3) declare the company to be impaired as provided by Section 5, Article 1.10; or

(4) apply to the company any other applicable sanction provided by this code. (V.T.I.C. Art. 2.02, Subsec. (c).)

Source Law

(c) The commissioner may order an insurer subject to the capital and surplus requirements of either this article or of Article 2.20 of this code that fails to comply with such article to cease writing new business, and the commissioner may also:

1. place the insurer under state supervision or conservatorship;

2. determine the insurer to be in a hazardous condition as provided by Article 1.32 of this code;

3. determine the insurer to be impaired as provided by Section 5 of Article 1.10 of this code; or

4. make the insurer subject to any other applicable sanctions provided by this code.

Revised Law

Sec. 822.212. INCREASE OF CAPITAL AND SURPLUS. (a) Notwithstanding Section 822.203, to engage in the kinds of insurance business for which an insurance company organized under this chapter holds a certificate of authority in this state, an insurance company organized under this chapter that on September 1, 1991, had less than the minimum amount of capital and surplus required for a newly incorporated company under Section 822.054 must:

(1) not later than December 31, 2000, have increased the amount of its capital by at least 90 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 1991; and

(2) not later than December 31, 2001, have at least the minimum amount of capital required under Section 822.054 for a newly incorporated company.

(b) An insurance company that on September 1, 1991, had less than the minimum amount of capital and surplus required for a newly incorporated company under Section 822.054 shall immediately increase the amount of its capital and surplus to an amount equal to the required amount of capital and surplus under Section 822.054 if there is:

(1) a change in the control of at least 50 percent of the voting securities of the insurance company;

(2) a change in the control of at least 50 percent of the voting securities of a holding company controlling the insurance company; or

(3) a change in control of at least 50 percent by any other method of control if the insurance company or holding company is not controlled by voting securities.

(c) For purposes of Subsection (b), a transfer of ownership that occurs because of death, regardless of whether the decedent dies testate or intestate, may not be considered a change in the control of an insurance company or holding company if ownership is transferred solely to one or more individuals each of whom

would be an heir of the decedent if the decedent had died intestate.

(d) An insurance company that, after notifying the commissioner, ceases to write or assume business is not required to comply with this section. If the company resumes writing business at a later date, the company shall comply with this section on the date the company resumes business. (V.T.I.C. Art. 2.20, Subsecs. (a), (b), (c) (part), (e) (part).)

Source Law

(a) If an insurance company chartered under this chapter or a foreign or alien insurance company authorized to do business in this state and subject to the minimum capital and surplus requirements of this chapter has as of September 1, 1991 less than the minimum capital and surplus required for a newly incorporated company under Article 2.02 of this code, it may continue to transact the kind or kinds of insurance business for which it holds a Texas certificate of authority. However, the insurance company must increase its capital and surplus as required by this article.

(b) The insurance company must increase its capital and surplus to the minimum capital and surplus required under Article 2.02 of this code immediately after any change of control of the insurance company or change of control of any holding company controlling the insurance company if, after September 1, 1991, there is a change of control of at least 50 percent of the voting securities of the insurance company or holding company or other means of control if the insurance company or holding company is not controlled by voting securities. For the purposes of this article, however, a transfer of ownership that occurs because of death, regardless of whether the decedent died testate or intestate, may not be considered a change of control of an insurance company or change of control of a holding company, if ownership is transferred solely to one or more natural persons each of whom would be an heir of the decedent if the decedent had died intestate.

(c) In addition to increases under Subsection (b) of this article, an insurance company subject to Subsection (a) of this article must increase its minimum capital according to the following schedule:

. . .

(9) not later than December 31, 2000, the insurance company's capital must be increased by at least 90 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991; and

(10) not later than December 31, 2001, each company subject to this chapter must have at least the minimum capital required by Article 2.02 of this code for a newly incorporated company, notwithstanding any other provision of this code.

(e) If an insurance company that is subject to the minimum capital and surplus requirements of either Article 2.02 of this code or this article ceases to write or assume any business and so notifies the Commissioner of Insurance, the insurance company shall not be required thereafter to increase the company's required minimum capital in accordance with Subsection (c) of this article but . . . . If the company should thereafter resume writing any business, the company shall be subject to and comply with Subsection (c) of this article at the amount of capital required as of such resumption of writing date.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 2.20, refers to "a foreign or alien insurance company authorized to do business in this state and subject to the minimum capital and surplus requirements of this chapter." The revised law omits the quoted language for the reason stated in Revisor's Note (2) to Section 822.210.

(2) Subsection (c), V.T.I.C. Article 2.20, requires certain insurance companies that do not comply with capital and surplus requirements on September 1, 1991, to continue to write insurance

in this state until December 31, 2000, as long as the companies increase their capital on an annual basis in scheduled increments. The revised law omits Subdivisions (1)-(8) of Subsection (c) because those provisions are executed. The omitted law reads:

[(c) In addition to increases under Subsection (b) of this article, an insurance company subject to Subsection (a) of this article must increase its minimum capital according to the following schedule:]

(1) not later than December 31, 1992, the insurance company's capital must be increased by at least 10 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(2) not later than December 31, 1993, the insurance company's capital must be increased by at least 20 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(3) not later than December 31, 1994, the insurance company's capital must be increased by at least 30 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(4) not later than December 31, 1995, the insurance company's capital must be increased by at least 40 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(5) not later than December 31, 1996, the insurance company's capital must be increased by at least 50 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(6) not later than December 31, 1997, the insurance company's capital must be increased by at least 60 percent of the

difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(7) not later than December 31, 1998, the insurance company's capital must be increased by at least 70 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

(8) not later than December 31, 1999, the insurance company's capital must be increased by at least 80 percent of the difference between the minimum capital level established by Article 2.02 of this code for a newly incorporated company and the company's capital on December 31, 1991;

. . .

Revisor's Note
(End of Chapter)

(1) Sections 1(d) and 6, V.T.I.C. Article 2.07, provide that the privileges and powers conferred by that article are cumulative of other powers conferred by law. An accepted general principle of statutory construction requires a statute to be given cumulative effect with other statutes unless the statutes are inconsistent. The revised law omits the provisions as unnecessary because the general principle applies to the provision. The omitted law reads:

[Sec. 1]

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

Sec. 6. The privileges and powers conferred by this article shall be in addition to any and all powers and privileges conferred by any other law or laws, and not in restriction or

limitation of any of the powers now permitted to such companies; provided, however . . . .

(2) Sections 1(d) and 6, V.T.I.C. Article 2.07, provide that life, health, and accident insurance companies operating under Chapter 3 of this code must be subject to Chapter 3 instead of Article 2.07. The revised law omits the provisions as unnecessary because V.T.I.C. Article 2.01(a), revised in pertinent part as Section 822.001, expressly provides that Chapter 2, revised in pertinent part as this chapter, does not apply to life, health, and accident insurance companies. The omitted law reads:

[Sec. 1]

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

Sec. 6. . . . life, health or accident insurance companies operating under Chapter 3 of this Code shall not utilize the provisions of this Article but shall comply with the provisions of Chapter 3 of this Code as amended.

CHAPTER 823. INSURANCE HOLDING COMPANY SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

CHAPTER 823. INSURANCE HOLDING COMPANY SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 823.001. FINDINGS AND PURPOSE. (a) It is consistent with the public interest and the interest of policyholders to permit insurers to:

(1) engage in activities that would enable the insurers to make better use of management skills and facilities;

(2) have free access to capital markets that could provide funds for insurers to use in diversification programs;

(3) implement sound tax planning conclusions; and

(4) serve the changing needs of the public and adapt to changing conditions of the social, economic, and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

(b) The public interest and the interests of policyholders are adversely affected if:

(1) control of an insurer is sought by persons who

would use the control adversely to the interest of policyholders;

(2) acquisition of control of an insurer substantially lessens competition or creates a monopoly in the insurance business in this state;

(3) an insurer that is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms that are not fair and reasonable; or

(4) an insurer pays dividends to shareholders that jeopardize the financial condition of the insurer.

(c) The purpose of this article is to promote the public interest by:

(1) facilitating the achievement of the objectives described by Subsection (a);

(2) requiring disclosure of pertinent information relating to and approval of changes in control of an insurer;

(3) requiring disclosure and approval of material transactions and relationships between the insurer and the insurer's affiliates, including certain dividends to shareholders paid by the insurer; and

(4) providing standards governing material transactions between the insurer and the insurer's affiliates.

(d) It is desirable to prevent unnecessary multiple and conflicting regulation of insurers. In accordance with this purpose and except as provided by this chapter, this state shall exercise regulatory authority under this chapter only with respect to domestic insurers. (V.T.I.C. Art. 21.49-1, Sec. 1.)

Source Law

Art. 21.49-1

Sec. 1. (a) It is hereby found and declared that it is consistent with the public interest and the interest of policyholders to permit insurers to:

(1) engage in activities which would enable them to make better use of management skills and facilities;

(2) have free access to capital markets which could

provide funds for insurers to use in diversification programs;

(3) implement sound tax planning conclusions; and

(4) serve the changing needs of the public and adapt to changing conditions of the social, economic, and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

(b) It is further found and declared that the public interest and the interests of policyholders are adversely affected when:

(1) control of an insurer is sought by persons who would utilize such control adversely to the interest of policyholders;

(2) acquisition of control of an insurer would substantially lessen competition or create a monopoly in the insurance business in this State;

(3) an insurer which is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms which are not fair and reasonable; or

(4) an insurer pays dividends to shareholders which jeopardize the financial condition of such insurer.

(c) It is hereby declared that the policies and purposes of this article are to promote the public interest by:

(1) facilitating the achievement of the objectives enumerated in Subsection (a);

(2) requiring disclosure of pertinent information relating to and approval of changes in control of an insurer;

(3) requiring disclosure and approval of material transactions and relationships between the insurer and its affiliates, including certain dividends to shareholders paid by the insurer; and

(4) providing standards governing material transactions between the insurer and its affiliates.

(d) it is further declared that it is desirable to prevent unnecessary multiple and conflicting regulation of insurers.

Therefore, this State shall exercise regulatory authority over domestic insurers and, unless otherwise provided in this article, not over non-domestic insurers, with respect to the matters contained herein.

Revised Law

Sec. 823.002. DEFINITIONS. In this chapter:

(1) "Acquiring person" means the person who is acquiring control of a domestic insurer or on whose behalf control of a domestic insurer is being acquired.

(2) "Controlled insurer" means an insurer that is controlled directly or indirectly by a holding company.

(3) "Controlled person" means a person, other than a controlled insurer, who is controlled directly or indirectly by a holding company.

(4) "Domestic insurer" includes a commercially domiciled insurer described by Section 823.004.

(5) "Holding company" means a person who directly or indirectly controls an insurer. The term does not include the United States, a state or a political subdivision, agency, or other instrumentality of a state, or a corporation that is wholly owned directly or indirectly by the United States, a state, or an instrumentality of a state.

(6) "Insurer" means any insurance company organized under the laws of this state, a commercially domiciled insurer, or an insurer authorized to engage in the business of insurance in this state. The term includes a capital stock company, mutual company, farm mutual insurance company, title insurance company, fraternal benefit society, local mutual aid association, statewide mutual assessment company, county mutual insurance company, Lloyd's plan, reciprocal or interinsurance exchange, stipulated premium insurance company, and group hospital service corporation. The term does not include the United States, a state, or an agency, authority, instrumentality, or political subdivision of a state.

(7) "Person" means an individual, corporation,

partnership, association, joint stock company, trust, or unincorporated organization, or a similar entity or a combination of the listed entities acting in concert. The term does not include a securities broker while performing no more than a function that is usual and customary for a securities broker. (V.T.I.C. Art. 21.49-1, Secs. 2(e), (f), (g), (h), (j), (k), (o), 5(b) (part).)

Source Law

Sec. 2. As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(e) Holding Company. The term "holding company" means any person who directly or indirectly controls any insurer.

(f) Controlled Insurer. The term "controlled insurer" means an insurer controlled directly or indirectly by a holding company.

(g) Controlled Person. The term "controlled person" means any person, other than a controlled insurer who is controlled directly or indirectly by a holding company.

(h) Domestic Insurer. The term "domestic insurer" includes a commercially domiciled insurer.

(j) Insurer. The term "insurer" shall include all insurance companies organized or chartered under the laws of this State, commercially domiciled insurers, or insurers licensed to do business in this State, including capital stock companies, mutual companies, farm mutual insurance companies, title insurance companies, fraternal benefit societies, local mutual aid associations, Statewide mutual assessment companies, county mutual insurance companies, Lloyds' Plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of

Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(k) Person. A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(o) Notwithstanding any other provision of this article, the following shall not be deemed holding companies: the United States, a state or any political subdivision, agency, or instrumentality thereof, or any corporation which is wholly owned directly or indirectly by one or more of the foregoing.

Sec. 5. [(a) . . . (1) No person shall (i) acquire . . . any voting security of a domestic insurer . . . or (ii) otherwise acquire control of or exercise any control over a domestic insurer . . . .]

(b) . . . [The statement . . . shall contain the following information:

(1) the name and address of] the person by whom or on whose behalf the acquisition of control referred to in Subsection (a) is to be effected (hereinafter called "acquiring party"), and

. . .

Revisor's Note

(1) Section 2, V.T.I.C. Article 21.49-1, states that the terms have the meanings defined "unless the context shall otherwise require." The revised law omits the quoted language as unnecessary because the defined terms are used consistently in the revision in the context to which the definitions apply.

(2) Section 2(c), V.T.I.C. Article 21.49-1, defines "commissioner" to mean the "Commissioner of Insurance, the commissioner's deputies, or the State Board of Insurance, as

appropriate." The revised law omits the definition as unnecessary. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and Texas Department of Insurance, respectively. Throughout this chapter, references to the board have been omitted or changed to "commissioner" or "department" as appropriate. In addition, V.T.I.C. Article 21.49-1 is drafted to expressly provide authority for the commissioner to delegate a power or duty to a deputy as appropriate under that article, eliminating the need to define "commissioner" artificially to mean the commissioner's deputies. The omitted law reads:

(c) Commissioner. The term "Commissioner" shall mean the Commissioner of Insurance, the commissioner's deputies, or the State Board of Insurance, as appropriate.

(3) Section 2(j), V.T.I.C. Article 21.49-1, refers to insurance companies "organized or chartered" under state law. The revised law omits "chartered" as unnecessary because, in context, "chartered" is included within the meaning of "organized."

(4) Section 2(j), V.T.I.C. Article 21.49-1, refers to "insurers licensed to do business in this State." The revised law substitutes "authorized" for "licensed" and "certificate of authority" for "license" throughout this chapter because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(5) Section 2(j), V.T.I.C. Article 21.49-1, refers to "group hospital service companies," meaning corporations operating under V.T.I.C. Chapter 20, revised as Chapter 842. The term most frequently used to refer to such a corporation is "group hospital service corporation." Consequently, the revised law substitutes "group hospital service corporation" for "group

hospital service companies" to provide for consistent use of terminology in this code.

(6) Section 2(j), V.T.I.C. Article 21.49-1, refers to "agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state." The revised law omits the reference to "agencies, authorities, or instrumentalities of the United States" because those entities are included in the definition of "United States" provided by Section 311.005(9), Government Code (Code Construction Act), applicable to the revised law. The revised law also omits the references to "its possessions and territories," "the Commonwealth of Puerto Rico," and "the District of Columbia" because those terms are included in the definition of "state" provided by Section 311.005(7), Government Code (Code Construction Act), also applicable to the revised law.

Revised Law

Sec. 823.003. CLASSIFICATION AS AFFILIATE OR SUBSIDIARY. (a) A person is an affiliate of another if the person directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the other person.

(b) A person is a subsidiary of another if the person is an affiliate of and is controlled by the other person directly or indirectly through one or more intermediaries.

(c) A subsidiary or holding company of a person is an affiliate of that person. (V.T.I.C. Art. 21.49-1, Secs. 2(a), (m); New.)

Source Law

(a) Affiliate. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(m) Subsidiary. A "subsidiary" of a specified person

is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

Revisor's Note

V.T.I.C. Article 21.49-1 contains numerous references to an insurer's "holding company, subsidiaries, and affiliates" and variations of that phrase. The description of an "affiliate" provided by Section 2(a), V.T.I.C. Article 21.49-1, includes a person who is a subsidiary or holding company of the other person. To avoid redundancy, the revised law adds a new provision that expressly states that a subsidiary or holding company of a person is an affiliate of that person and, throughout this chapter and as appropriate, substitutes the term "affiliate" for the phrase "holding company, subsidiaries, and affiliates" and variations of that phrase.

Revised Law

Sec. 823.004. CLASSIFICATION AS COMMERCIALLY DOMICILED INSURER. (a) For purposes of this chapter, a foreign or alien insurer authorized to engage in the business of insurance in this state is a commercially domiciled insurer if during the period described by Subsection (b) the average of the gross premiums written by the insurer in this state is:

(1) more than the average of the gross premiums written by the insurer in its state of domicile; and

(2) 30 percent or more of the total gross premiums written by the insurer in the United States, as reported in its three most recent annual statements.

(b) The period applicable to Subsection (a) is:

(1) the three most recent fiscal years of the insurer that precede the fiscal year in which the determination under this section is made; or

(2) if the insurer has been authorized to engage in the business of insurance in this state for less than the period described by Subdivision (1), the period for which the insurer has been authorized to engage in the business of insurance in this state. (V.T.I.C. Art. 21.49-1, Sec. 2(b).)

Source Law

(b) Commercially Domiciled Insurer. The term "commercially domiciled insurer" means a foreign or alien insurer authorized to do business in this state that during its three preceding fiscal years taken together, or any lesser period if it has been licensed to transact business in this state only for that lesser period, has written an average of more gross premiums in this state than it has written in its state of domicile during the same period, with those gross premiums constituting 30 percent or more of its total gross premiums everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements.

Revised Law

Sec. 823.005. DESCRIPTION OF CONTROL; DETERMINATION OF CONTROL. (a) For purposes of this chapter, control is the power to direct, or cause the direction of, the management and policies of a person, other than power that results from an official position with or corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(b) For purposes of this chapter, a person controls another if the person possesses the power described by Subsection (a) with regard to the other person.

(c) After providing notice and opportunity for hearing to each person in interest, the commissioner may determine that, notwithstanding the absence of a presumption under Section 823.151, a person controls an authorized insurer if the person, directly or indirectly and alone or under an agreement with one or more other persons, exercises such a controlling influence over the management or policies of the insurer that it is necessary or appropriate in the public interest or for the protection of the insurer's policyholders that the person be considered to control the insurer. The commissioner shall make

specific findings of fact to support a determination under this subsection. (V.T.I.C. Art. 21.49-1, Sec. 2(d) (part).)

Source Law

(d) Control. The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. . . . The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders of the insurer that the person be deemed to control the insurer.

Revisor's Note

Section 2(d), V.T.I.C. Article 21.49-1, attempts to define the terms "control," "controlling," "controlled by," and "under common control with" using a single definition. Obviously, the terms do not have the same meaning. Control is an important concept in this chapter. V.T.I.C. Article 21.49-1 uses a form of the word "control" 87 times, variously as a noun, a verb, and an adjective. In this section, the revised law provides descriptions of "control" as used as a noun and a verb generally in this chapter. Subchapter D of this chapter expressly addresses the issues of presumption, determination, and acquisition of control.

Revised Law

Sec. 823.006. DESCRIPTION OF INSURANCE HOLDING COMPANY SYSTEM. An insurance holding company system consists of two or more affiliates, at least one of which is an insurer. (V.T.I.C. Art. 21.49-1, Sec. 2(i).)

Source Law

(i) Insurance Holding Company System. The term "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

Revised Law

Sec. 823.007. DESCRIPTION OF VOTING SECURITY. For purposes of this chapter, a voting security is a security or an instrument that:

(1) has the power at a meeting of shareholders of a person to vote for or against the election of directors of the person or any other matter involving the direction of the management and policies of the person; or

(2) under rules adopted by the commissioner in the public interest, the commissioner considers to be of similar nature to that described by Subdivision (1) and considers necessary or appropriate to treat as a voting security. (V.T.I.C. Art. 21.49-1, Sec. 2(n).)

Source Law

(n) Voting Security. The term "voting security" means any security or other instrument which has the power to vote at a meeting of shareholders of a person for or against the election of directors or any other matter involving the direction of the management and policies of such person, or any other security or instrument which the State Board of Insurance deems to be of similar nature and considers necessary or appropriate, by which such rules and regulations as it may prescribe in the public interest deems to treat as a voting security.

Revisor's Note

Section 2(n), V.T.I.C. Article 21.49-1, refers to "rules and regulations." In this context throughout this chapter, "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 823.008. STANDARD FOR DETERMINING SURPLUS REASONABLENESS AND ADEQUACY. (a) In determining whether an insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs, the following factors, among others, shall be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the different lines of insurance;

(3) the number and size of risks insured in each line of insurance;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's:

(A) policyholders' surplus; and

(B) investment portfolio;

(8) the policyholders' surplus maintained by comparable insurers;

(9) the adequacy of the insurer's reserves;

(10) the quality and liquidity of investments in subsidiaries made under Subchapter F; and

(11) the quality of the insurer's earnings and the extent to which the insurer's reported earnings include extraordinary items.

(b) The commissioner may treat an investment described by Subsection (a)(10) as a nonadmitted or disallowed asset for purposes of Subsection (a) if in the commissioner's judgment the investment justifies that treatment. (V.T.I.C. Art. 21.49-1, Sec. 4(b).)

Source Law

(b) Adequacy of Surplus. For the purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders and the insurer's investment portfolio;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves;

(10) the quality and liquidity of investments in subsidiaries made pursuant to Section 6. The commissioner may

treat any such investment as a nonadmitted or disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants; and

(11) the quality of the insurer's earnings and the extent to which the insurer's reported earnings include extraordinary items.

Revisor's Note

Section 4(b), V.T.I.C. Article 21.49-1, refers to the "surplus as regards policyholders" of an insurer. The term most commonly used in the insurance industry to refer to that type of surplus is "policyholders' surplus." In this section and throughout this chapter, the revised law substitutes "policyholders' surplus" for "surplus as regards policyholders."

Revised Law

Sec. 823.009. SITUS OF SECURITIES OF DOMESTIC INSURER. For purposes of this chapter, the situs of the ownership of securities of a domestic insurer is considered to be in this state. (V.T.I.C. Art. 21.49-1, Sec. 12(c) (part).)

Source Law

(c) . . . Notwithstanding any other provisions of law, for the purposes of this article the situs of the ownership of the securities of domestic insurers shall be deemed to be in this State.

Revised Law

Sec. 823.010. DISCLAIMER OF AFFILIATION. (a) A disclaimer of affiliation with an authorized insurer may be filed with the commissioner by any person, including the authorized insurer or a member of an insurance holding company system.

(b) The disclaimer must fully disclose:

(1) all material relationships and bases for affiliation between the person and the insurer; and

(2) the basis for disclaiming the affiliation.

(c) After the disclaimer is filed:

(1) the insurer is not required to register or report under Subchapter B because of a duty that arises out of the insurer's relationship with the person unless the commissioner disallows the disclaimer, in which event the duty to register or report begins on the date of the disallowance; and

(2) the person is not required to comply with Sections 823.154, 823.155, 823.159, and 823.160 unless the commissioner disallows the disclaimer.

(d) The commissioner may disallow the disclaimer only after:

(1) providing to each party in interest notice of and the opportunity to be heard on the disallowance; and

(2) making specific findings of fact to support the disallowance. (V.T.I.C. Art. 21.49-1, Sec. 3(j).)

Source Law

(j) Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. Unless disallowed by the commissioner, a disclaimer filed under this subsection relieves a person of the duty to comply with the requirements of Sections 5(a) through (c) of this article. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

Revised Law

Sec. 823.011. CONFIDENTIALITY OF INFORMATION. (a) This section applies only to information, including documents and copies of documents, that is:

(1) reported under Subchapter B; or

(2) obtained by or disclosed to the commissioner or another person in the course of an examination or investigation under Subchapter H.

(b) The information shall be treated confidentially and is not subject to subpoena. Except as provided by Subsections (c) and (d), the information may not be disclosed without the prior written consent of the insurer to which it pertains.

(c) The commissioner may publish all or any part of the information in the manner that the commissioner considers appropriate if the commissioner, after giving the insurer and its affected affiliates notice and an opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication of the information.

(d) The commissioner or another person may disclose the information to any of the following entities functioning in an official capacity:

(1) an insurance department of another state;

(2) an authorized law enforcement official;

(3) a district attorney of this state;

(4) the attorney general; or

(5) a grand jury. (V.T.I.C. Art. 21.49-1, Sec. 10.)

Source Law

Sec. 10. All information, documents, and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 9 and all information reported pursuant to Section 3, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, duly authorized law enforcement officials, any district attorney

of this state, the attorney general, and any grand jury, in the official conduct of the respective duties of those persons, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

Revised Law

Sec. 823.012. RULES; PROCEDURES FOR CONSIDERING CERTAIN DISTRIBUTIONS. (a) The commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement this chapter, including the conducting of business and proceedings under this chapter.

(b) The commissioner by rule shall establish procedures to:

(1) promptly consider the prepayment notices reported under Section 823.053(b);

(2) annually review each reported ordinary dividend paid within the 12 months preceding the date of the report; and

(3) take appropriate actions authorized by this code.

(c) A procedure established under Subsection (b)(1) must include consideration of the factors provided by Section 823.008.

(d) A rule or order under this section must be consistent with this chapter. (V.T.I.C. Art. 21.49-1, Secs. 3(d) (part), 11 (part).)

Source Law

[Sec. 3]

(d) . . . The commissioner shall adopt rules that establish procedures to:

(1) consider the prepayment notices promptly, that shall include the standards set forth under Section 4(b), Article 21.49-1 of this code;

(2) review annually all reported ordinary dividends

paid within the preceding twelve months; and

(3) take such appropriate actions as may be authorized by other provisions of this code.

Sec. 11. The State Board of Insurance may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations, and orders as shall be consistent with and to carry out the provisions of this article and to govern the conduct of its business and proceedings hereunder. . . .

Revisor's Note

(1) Section 3(d), V.T.I.C. Article 21.49-1, refers to "prepayment notices." That term is not used elsewhere in the article. The part of Section 3(d) revised in this section was added by Section 7.12, Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993. That amendment also added the requirement for reporting distributions to shareholders "at least 10 days before the date of payment," and it is most likely that report to which prepayment notice refers. The quoted phrase is revised as a part of Section 823.053(b) of this chapter, and the revised law refers to that provision accordingly.

(2) The revised law omits part of Section 11, V.T.I.C. Article 21.49-1, as unnecessary because it is covered by the requirement in that section that rules "be consistent with . . . this article." The omitted law reads:

Sec. 11. . . . Respecting any other provisions of this article, the board shall not have any power or authority to change the meaning of any provision of this article by rule or regulation or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this article.

Revised Law

Sec. 823.013. MANDAMUS. A person aggrieved by the failure of the commissioner to act, including making a determination, as required by this chapter may petition a district court of Travis

County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to immediately act or make the determination. (V.T.I.C. Art. 21.49-1, Sec. 17(c).)

Source Law

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this article may petition the district court for Travis County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to act or make such determination forthwith.

Revised Law

Sec. 823.014. APPLICABILITY OF CHAPTER TO FOREIGN OR ALIEN INSURER. (a) A foreign insurer that is authorized to engage in the business of insurance in this state and that is domiciled in a jurisdiction that has not adopted, by statute or regulation, controls considered by the commissioner to be substantially similar to those provided by this chapter:

(1) is subject to this chapter to the same extent as a domestic insurer; and

(2) on failure to comply with this chapter, is subject to all remedies, penalties, and sanctions authorized by this code in the same manner as a domestic insurer, including, after notice and hearing, the suspension or revocation of the insurer's certificate of authority to engage in the business of insurance in this state.

(b) If a jurisdiction adopts controls considered by the commissioner to be substantially similar to those provided by this chapter, the commissioner after that adoption may exempt an insurer domiciled in that jurisdiction from the application of this section.

(c) Notwithstanding Subsection (a), a foreign or alien insurer is not subject to this chapter if the commissioner has approved a withdrawal plan for the insurer under Chapter 827. (V.T.I.C. Art. 21.49-1, Sec. 18.)

Source Law

Sec. 18. (a) Each Texas-licensed foreign insurer domiciled in a jurisdiction which has not, by statute or regulation, adopted controls considered by the Commissioner of Insurance of the State of Texas to be substantially similar to those contained in this Article shall be subject to all provisions of Article 21.49-1 of the Insurance Code the same as Texas domestic insurers and is, in the event of non-compliance therewith, subject to all of the remedies, penalties, and sanctions authorized by the Insurance Code, including, but not limited to, after notice and hearing, suspension or revocation of certificate of authority to do business in Texas. If, after the effective date of this Act, any domiciliary jurisdictions adopt controls considered by the Commissioner of Insurance of the State of Texas to be substantially similar to those contained in this Article, the commissioner may thereafter exempt insurers domiciled in said jurisdictions from the provisions of this Section 18 of Article 21.49-1.

(b) A foreign or alien insurer is not subject to the requirements of this Article if the commissioner has approved a withdrawal plan for the insurer under Article 21.49-2C of this code.

Revisor's Note

Section 18, V.T.I.C. Article 21.49-1, refers to remedies, penalties, and sanctions, "including, but not limited to," suspension or revocation of an insurer's certificate of authority. The revised law omits "but not limited to" as unnecessary because Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, provides that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

Revised Law

Sec. 823.015. EXEMPTION FROM CHAPTER. (a) This chapter does not apply to an insurance holding company system if each affiliate in the system is privately owned by not more than five security holders, each of whom is an individual. For purposes of this subsection, a person is a security holder of another if the person owns any security of the other person, including common stock, preferred stock, a debt obligation, and any other security convertible into or evidencing the right to acquire stock or a debt obligation.

(b) The commissioner may exempt from the application of this chapter a commercially domiciled insurer that the commissioner determines has assets physically located in this state or an asset-to-liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. (V.T.I.C. Art. 21.49-1, Secs. 2(l), (r), (s).)

Source Law

(l) Securityholder. A "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(r) Notwithstanding any other provision of this article, this article shall not be applicable to any insurance holding company system in which the insurer, the holding company, if any, the subsidiaries, if any, the affiliates, if any, and each and every other member thereof, if any, is privately owned by not more than five (5) securityholders, each of whom is and must be an individual or a natural person.

(s) The commissioner may exempt from the provisions of this article any commercially domiciled insurer if the commissioner determines that the insurer has assets physically

located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state.

Revisor's Note

Section 2(r), V.T.I.C. Article 21.49-1, refers to "an individual or a natural person." The revised law omits "natural person" because it is synonymous with "individual," and "individual" is more commonly used.

[Sections 823.016-823.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION

Revised Law

Sec. 823.051. REGISTRATION BY INSURER REQUIRED. (a) Each insurer authorized to engage in the business of insurance in this state that is a member of an insurance holding company system shall register with the commissioner. The insurer shall register not later than the 15th day after the date the insurer becomes subject to registration under this subchapter.

(b) The commissioner for good cause shown may extend the period for registration under this section. (V.T.I.C. Art. 21.49-1, Sec. 3(a) (part).)

Source Law

Sec. 3. (a) Registration. Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the commissioner . . . . Any insurer which is subject to registration under this section shall register within 15 days after it becomes subject to registration unless the commissioner for good cause shown extends the time for registration, and then within such extended time. . . .

Revised Law

Sec. 823.052. REQUIRED INFORMATION; REGISTRATION STATEMENT. (a) To register as required by Section 823.051, an insurer must file with the department a registration statement and a copy of the charter or articles of incorporation and bylaws of the insurer's holding company, each of the insurer's subsidiaries, and, if the commissioner considers the information necessary, any of the insurer's other affiliates.

(b) The registration statement must contain current information about:

(1) the identity and relationship of each affiliate in the insurance holding company system of which the insurer is a part;

(2) the capital structure, general financial condition, and ownership and management of the insurer, the insurer's holding company, the insurer's subsidiaries, and, if the commissioner considers the information necessary, any of the insurer's other affiliates; and

(3) any pledge of stock of the insurer or a subsidiary or controlling affiliate of the insurer for a loan made to a member of the insurer's insurance holding company system.

(c) The registration statement must also contain information about:

(1) each outstanding loan the insurer makes to an affiliate of the insurer or an affiliate makes to the insurer;

(2) each purchase, sale, or exchange of securities or other investment between the insurer and an affiliate of the insurer;

(3) each purchase, sale, or exchange of assets between the insurer and an affiliate of the insurer;

(4) each management and service contract or cost-sharing arrangement between the insurer and an affiliate of the insurer;

(5) each reinsurance agreement between the insurer and an affiliate of the insurer that covers one or more lines of insurance of the ceding company;

(6) each agreement between the insurer and an affiliate of the insurer to consolidate federal income tax returns;

(7) each transaction between the insurer and an affiliated financial institution;

(8) each transaction between the insurer and an affiliate of the insurer that is not in the ordinary course of business;

(9) each guarantee or undertaking, other than an insurance contract entered into in the ordinary course of the insurer's business, for the benefit of an affiliate of the insurer that results in a contingent exposure of the insurer's assets to liability;

(10) each dividend or distribution to the insurer's shareholders; and

(11) each transaction between the insurer and an affiliate of the insurer not specified by this subsection that is subject to Section 823.102, 823.103, or 823.104.

(d) The information required by Subsection (c) applies only to agreements in force, relationships subsisting, and transactions outstanding.

(e) The commissioner shall adopt the format of the registration statement. In adopting or revising the format, the commissioner may require information on other matters concerning transactions between a registered insurer and an affiliate of the insurer. (V.T.I.C. Art. 21.49-1, Sec. 3(b).)

Source Law

(b) Information and Form Required. Every insurer subject to registration shall file a registration statement in the format adopted by the commissioner or the board, which shall contain current information about:

(1) the identity and relationship of every affiliate in the insurance holding company system;

(2) the capital structure, general financial condition, ownership and management of the insurer, its holding

company, and the insurer's subsidiaries and, if deemed necessary in the judgment of the commissioner, any of its affiliates;

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its holding company, its subsidiaries, or its affiliates:

(i) loans, other investments, or purchases, sales or exchanges of securities of any of the affiliates by the insurer or of the insurer by any of its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management and service contracts and all cost-sharing arrangements;

(vi) reinsurance agreements covering one or more lines of insurance of the ceding company;

(vii) all dividends and other distributions to shareholders;

(viii) agreements with affiliates to consolidate federal income tax returns; and

(ix) all transactions with affiliated financial institutions;

(4) any transaction with an affiliate not listed in Subdivision (3) of this subsection that is subject to Section 4(d) of this article;

(5) any pledge of an insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of its insurance holding company system;

(6) other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration format adopted or approved by the commissioner or the board; and

(7) such filing shall include a copy of the charter or articles of incorporation and bylaws of such insurer's holding company and such insurer's subsidiaries and, if deemed necessary in the judgment of the commissioner or the board, any of its affiliates.

Revised Law

Sec. 823.053. REPORTING MATERIAL CHANGES. (a) To keep the information required to be disclosed in a registration statement filed under Section 823.052 current, a registered insurer shall report each material change to the information, including the addition of information, not later than the 15th day after the last day of the month in which the insurer learns of the change.

(b) Subject to Section 823.107, each registered insurer shall report each dividend or distribution made to the shareholders not later than the earlier of:

(1) the second business day after the date the dividend or distribution is declared; or

(2) the 11th day before the date of payment.

(c) For purposes of this section, reports are considered to be made when received by the department.

(d) Reports made under this section are for informational purposes only.

(e) An insurer is not required to report under this section a transaction that is approved under Section 823.102 or 823.103. That approval is considered to be an amendment of the registration statement filed under Section 823.052 without being reported under this section. (V.T.I.C. Art. 21.49-1, Secs. 3(d) (part), 4(d)(6).)

Source Law

[Sec. 3]

(d) Amendments to Registration Statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within 15 days after the end of the month in

which it learns of each such change or addition, except that the insurer is not required to report a transaction under this subsection that is authorized under Subsection 4(d) of this section. In addition, subject to Subsection (c) of Section 4, each registered insurer shall report all dividends and other distributions to shareholders within two business days following the declaration thereof and at least 10 days before the date of payment. For purposes of determining compliance with those deadlines, reports are considered to be made when received by the Texas Department of Insurance. Reports under this subsection are for informational purposes only. . . .

[Sec. 4(d)]

(6) The approval of any transaction under this section shall be deemed an amendment under Section 3(d) to an insurer's registration statement without further filing.

Revised Law

Sec. 823.054. MATERIAL INFORMATION. (a) Information about a transaction is not required to be disclosed on a registration statement filed under Section 823.052 or in a report under Section 823.053 unless the transaction is considered to be material under this section.

(b) If the amount of a single transaction or the total amount of all transactions involving sales, purchases, exchanges, loans or other extensions of credit, or investments is more than the lesser of one-half of one percent of an insurer's admitted assets or five percent of an insurer's surplus, as of December 31 of the year preceding the date of the transaction or transactions, the transaction or transactions, respectively, are considered to be material for purposes of this section.

(c) Each dividend or distribution to shareholders is material for the purposes of this section.

(d) The commissioner, by rule or order, may provide a standard that is different from the standard provided by Subsection (b). (V.T.I.C. Art. 21.49-1, Sec. 3(c).)

Source Law

(c) Materiality. No information need be disclosed on the registration statement filed pursuant to Section 3(b), or the amendments thereto pursuant to Section 3(d), if such information is not material for the purposes of this section. Unless the board or commissioner by rule, regulation, or order provides otherwise, either single transactions or the cumulative total of all transactions involving sales, purchases, exchanges, loans or extensions of credit, or investments, which involve either one-half of one percent or less of an insurer's admitted assets, or five percent or less of an insurer's surplus, determined by whichever is the lesser, as of the 31st day of December next preceding, shall not be deemed material for purposes of this section, but any such single transaction or the cumulative total of such transactions in excess of the lesser of such percentages shall be deemed material. Each dividend or distribution to shareholders is material for the purposes of this subsection.

Revised Law

Sec. 823.055. AMENDMENTS; CONSOLIDATION OF AMENDMENTS. (a) In this section, "ultimate controlling person" means the person in an insurance holding company system who is not controlled by another person.

(b) Not later than the 120th day after the last day of each fiscal year of the ultimate controlling person, each registered insurer in the ultimate controlling person's insurance holding company system shall file an amendment to the insurer's registration statement filed under this subchapter to make the registration statement current.

(c) Not later than the 120th day after the last day of each calendar year ending in a five or a zero, each registered insurer in the ultimate controlling person's insurance holding company system shall file a completely restated registration statement that consolidates all amendments to the most recently filed registration statement into that statement and contains all

changes occurring since the last amendment was filed. The consolidated registration statement must be in the format that the commissioner adopts by rule.

(d) A registered insurer is not required to file an amendment under Subsection (b) in the year in which the insurer files a consolidated registration statement under Subsection (c). (V.T.I.C. Art. 21.49-1, Secs. 2(q), 3(e).)

Source Law

[Sec. 2]

(q) Ultimate Controlling Person. The term "ultimate controlling person" means that person who is not controlled by another person.

[Sec. 3]

(e) Registration Statement and Amendment. Not later than the 120th day after the last day of each fiscal year of the ultimate controlling person of the insurance holding company system, the registrant shall file an amendment to the registration statement to make the registration statement current. Not later than the 120th day after the last day of each calendar year ending in a five or a zero, the registrant shall file a completely restated, up-to-date registration statement in the format provided by regulation with any amendments consolidated within the statement. The registrant is not required to file an annual amendment to its registration statement in the year that it files a completely restated, up-to-date registration statement.

Revised Law

Sec. 823.056. TERMINATION OF REGISTRATION. The commissioner shall terminate the registration of an insurer that demonstrates that the insurer has ceased to be a member of an insurance holding company system. (V.T.I.C. Art. 21.49-1, Sec. 3(f).)

Source Law

(f) Termination of Registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

Revised Law

Sec. 823.057. CONSOLIDATED FILING. The commissioner may require or permit two or more insurers that are affiliates of each other and that are required to register under this chapter to file:

(1) a consolidated registration statement; or

(2) a consolidated report amending:

(A) the consolidated registration statement; or

(B) the individual registration statement of each insurer. (V.T.I.C. Art. 21.49-1, Sec. 3(g).)

Source Law

(g) Consolidated Filing. The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

Revised Law

Sec. 823.058. ALTERNATIVE REGISTRATION. The commissioner may permit an insurer authorized to engage in the business of insurance in this state that is a part of an insurance holding company system to:

(1) register on behalf of another insurer that is an affiliate of the insurer and that is required to register under Section 823.051; and

(2) file on behalf of the affiliate all information and material required to be filed under this subchapter. (V.T.I.C. Art. 21.49-1, Sec. 3(h).)

Source Law

(h) Alternative Registration. The commissioner may allow an insurer which is authorized to do business in this State and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under Subsection (a) and to file all information and material required to be filed under this section.

Revised Law

Sec. 823.059. EXEMPTIONS. (a) The registration requirement under Section 823.051 does not apply to a foreign or nondomestic insurer, other than a commercially domiciled insurer, that is subject to disclosure requirements adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to the disclosure requirements provided by this chapter.

(b) The commissioner may require an insurer that is exempt from registration under Subsection (a) to provide a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(c) The commissioner, by rule or order, may exempt an insurer, information, or a transaction from the application of this subchapter. (V.T.I.C. Art. 21.49-1, Secs. 3(a) (part), (i).)

Source Law

(a) . . . except a foreign or non-domestic insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article. The exemption from registration for a foreign insurer does not apply to a commercially domiciled insurer doing business in this state. . . . The commissioner may require any authorized insurer which is a member of an insurance holding company system which is

not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(i) Exemptions. The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

Revisor's Note

Section 3(a), V.T.I.C. Article 21.49-1, refers to a commercially domiciled insurer "doing business in this state." The revised law omits the quoted language as unnecessary because under Section 2(b) of that article, revised as Section 823.004 of this chapter, an insurer is classified as a commercially domiciled insurer only if the insurer is conducting business in this state.

Revised Law

Sec. 823.060. VIOLATION OF SUBCHAPTER. The failure to file a registration statement or an amendment to a registration statement within the time specified for filing the statement or amendment, as required by this subchapter, is a violation of this subchapter. (V.T.I.C. Art. 21.49-1, Sec. 3(k).)

Source Law

(k) Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

[Sections 823.061-823.100 reserved for expansion]

SUBCHAPTER C. TRANSACTIONS OF REGISTERED INSURER

Revised Law

Sec. 823.101. STANDARDS FOR TRANSACTION WITH AFFILIATE. (a) This section applies only to a material transaction between a registered insurer and an affiliate of the insurer.

(b) The terms of the transaction shall be fair and equitable.

(c) The charges or fees for services performed shall be reasonable.

(d) The books, accounts, and records of each party to the transaction shall be maintained so that the precise nature and details of the transaction are clearly and accurately disclosed.

(e) The expenses incurred and payments received relating to the transaction shall be allocated to the registered insurer on an equitable basis in conformity with customary insurance accounting principles consistently applied.

(f) After a registered insurer pays a dividend or makes a distribution to a holding company or shareholder affiliate of the insurer, the insurer's policyholders' surplus shall be reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs. (V.T.I.C. Art. 21.49-1, Sec. 4(a).)

Source Law

Sec. 4. (a) Transactions with Affiliates. Material transactions by registered insurers with their holding companies, subsidiaries, or affiliates shall be subject to the following standards:

(1) the terms shall be fair and equitable;

(2) charges or fees for services performed shall be reasonable;

(3) the books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions;

(4) expenses incurred and payments received shall be

allocated to the insurer on an equitable basis in conformity with customary insurance accounting principles consistently applied; and

(5) the insurer's surplus as regards policyholders following any dividends or distributions to the holding company or shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Revised Law

Sec. 823.102. NOTICE OF AND COMMISSIONER'S DECISION ON CERTAIN LARGE TRANSACTIONS. (a) This section applies only to a sale, purchase, exchange, loan or other extension of credit, or investment between a domestic insurer and any person in the insurer's insurance holding company system that involves more than the lesser of 5 percent of the insurer's admitted assets or 25 percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs.

(b) A person may not enter into a transaction to which this section applies before the date on which the transaction is approved under Subsection (c).

(c) A domestic insurer shall notify the commissioner of a transaction to which this section applies. The commissioner shall approve or disapprove the transaction in writing not later than the 90th day after the date of the notification. If the commissioner fails to act as required by this subsection, the transaction is considered approved. (V.T.I.C. Art. 21.49-1, Sec. 4(d)(1).)

Source Law

(d) Commissioner's Approval Required. (1) The prior written approval of the commissioner shall be required for the following transactions between a domestic insurer and any person in its holding company system: sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than either five percent of the insurer's admitted assets or 25

percent of the insurer's surplus, whichever is the lesser, as of the 31st of December next preceding; provided, however, that the commissioner must give his decision of either approval or disapproval within 90 days after notification by the insurer and his failure to so act within such 90 days shall constitute approval of the transaction.

Revised Law

Sec. 823.103. NOTICE OF AND COMMISSIONER'S DECISION ON SPECIFIED TRANSACTIONS. (a) This section applies only to:

(1) a sale, purchase, exchange, loan or other extension of credit, or investment between a domestic insurer and any person in the insurer's insurance holding company system:

(A) that involves more than the lesser of one-half of one percent of the insurer's admitted assets or five percent of the insurer's surplus, as of December 31 of the year preceding the year in which the transaction occurs; and

(B) the approval of which is not required under Section 823.102;

(2) a reinsurance agreement, including a reinsurance treaty, between a domestic insurer and any person in the insurer's holding company system or a modification of such an agreement;

(3) a rendering of services between a domestic insurer and any person in the insurer's holding company system on a regular or systematic basis; or

(4) any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or of the public.

(b) Subsection (a)(2) includes a reinsurance agreement that requires as consideration a transfer of assets from an insurer to a nonaffiliate and in relation to which the insurer and nonaffiliate agree that any part of the transferred assets are to be transferred to one or more affiliates of the insurer.

(c) A domestic insurer shall give to the commissioner written notice of the insurer's intent to enter into a transaction to which this section applies before the 30th day preceding the date of the proposed transaction. The commissioner may authorize a shorter period of notice under this subsection.

(d) A domestic insurer may not enter into a transaction for which the insurer gives notice under Subsection (c) if the commissioner disapproves the proposed transaction during the period for notice. (V.T.I.C. Art. 21.49-1, Sec. 4(d)(2).)

Source Law

(2) The following transactions between a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into any such transaction at least 30 days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:

(i) sales, purchases, exchanges, loans or extensions of credit, or investments, involving either more than one-half of one percent but less than five percent of the insurer's admitted assets, or more than five percent but less than 25 percent of the insurer's surplus, whichever is the lesser, as of the 31st day of December next preceding;

(ii) reinsurance treaties or agreements or modifications to those treaties or agreements, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(iii) rendering of services on a regular or systematic basis; or

(iv) any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders or of the public.

Revisor's Note

(1) Section 4(d)(2)(i), V.T.I.C. Article 21.49-1, requires notice to the commissioner of certain proposed transactions "involving either more than one-half of one percent but less than five percent of the insurer's admitted assets, or more than five percent but less than 25 percent of the insurer's surplus, whichever is the lesser." The reference to the lesser of two ranges of values is awkward, and the clear purpose of Paragraph (i) is to impose a less stringent notice requirement for certain transactions the amounts of which are significant but not great enough to require approval under Section 4(d)(1), revised as Section 823.102. To achieve the desired results, the revised law refers to the lesser of the two amounts at the low ends of the ranges provided by Section 4(d)(2)(i) and excludes transactions for which approval is required under Section 823.102.

(2) Section 4(d)(2)(iv), V.T.I.C. Article 21.49-1, refers to a "regulation." The revised law substitutes "rule" for "regulation" because that is the term more commonly used and is the term used by Chapter 2001, Government Code, the administrative procedure law. Also, under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 823.104. PROHIBITION OF ACTION TO AVOID APPLICATION OF SUBCHAPTER. (a) A domestic insurer may not enter into transactions with persons in the insurer's insurance holding company system if:

(1) the transactions are part of a plan or series of similar transactions; and

(2) the purpose of entering into the transactions is to avoid a threshold amount provided by Section 823.102 or 823.103.

(b) If the commissioner determines that over any 12-month period a domestic insurer enters into transactions that violate Subsection (a), the commissioner may:

(1) consider the cumulative effect of the transactions; and

(2) apply:

(A) Section 823.102 or 823.103; or

(B) sanctions under this code. (V.T.I.C. Art. 21.49-1, Sec. 4(d)(3).)

Source Law

(3) A domestic insurer may not enter into transactions that are part of a plan or series of similar transactions with persons within the holding company system to avoid the statutory threshold amount and thus avoid review. If the commissioner determines that the transactions were entered into over any 12-month period for that purpose, the commissioner may consider the series of transactions with regard to their cumulative effect and may apply the applicable statutory thresholds or the commissioner may apply sanctions under this code.

Revised Law

Sec. 823.105. TYPE OF AUTHORITY PROVIDED. Nothing in Section 823.102, 823.103, or 823.104 authorizes a transaction that would violate law that is applicable to an insurer that is not subject to this subchapter. (V.T.I.C. Art. 21.49-1, Sec. 4(d)(4).)

Source Law

(4) Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of a non-controlled insurer, would be otherwise contrary to law.

Revised Law

Sec. 823.106. STANDARDS OF REVIEW; REASONS FOR DISAPPROVAL. (a) In reviewing a transaction under this subchapter, the commissioner shall consider whether the transaction:

(1) complies with the standards provided by Section 823.101; and

(2) may adversely affect the interest of the insurer's policyholders.

(b) The commissioner shall set forth the specific reasons for the disapproval of a transaction reviewed under Subsection (a). (V.T.I.C. Art. 21.49-1, Sec. 4(d)(5).)

Source Law

(5) The commissioner, in reviewing transactions hereunder, shall consider whether the transactions comply with the standards set forth in Subdivision (a) hereof and whether they may adversely affect the interest of policyholders. Any disapproval by the commissioner of any such transactions shall set forth the specific reasons for such disapproval.

Revised Law

Sec. 823.107. EXTRAORDINARY DIVIDENDS OR DISTRIBUTIONS. (a) Except as provided by Subsection (b), for purposes of this section, an extraordinary dividend or distribution includes the payment of a dividend or distribution of cash or other property, the fair market value of which combined with the fair market value of each other dividend or distribution made in the preceding 12 months exceeds the greater of:

(1) 10 percent, or 20 percent if the insurer is a title insurer, of the insurer's policyholders' surplus, as of December 31 of the year preceding the year in which the fair market value is being determined; or

(2) the net gain from operations of the insurer, if the insurer is a life or title insurer, or the net income, if the insurer is another type of insurer, for the calendar year preceding the year in which the fair market value is being determined.

(b) For purposes of this section, an extraordinary dividend or distribution does not include pro rata distributions of any class of securities of the insurer.

(c) An insurer that is required to register under Subchapter B shall give the commissioner notice of the insurer's

intent to make an extraordinary dividend or distribution to shareholders, before the 30th day preceding the date of the proposed dividend or distribution. The commissioner may authorize a shorter period of notice under this subsection.

(d) An insurer may not make an extraordinary dividend or distribution for which the insurer gives notice if the commissioner disapproves the dividend or distribution during the period for the notice.

(e) A registered insurer may declare an extraordinary dividend or distribution that is conditional on its approval by the commissioner. The declaration does not confer any rights on shareholders before the dividend or distribution may be made under Subsection (d). (V.T.I.C. Art. 21.49-1, Sec. 4(c).)

Source Law

(c) Dividends and Other Distributions. (1) No insurer subject to registration under Section 3 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the commissioner shall have approved such payment within such 30-day period.

(2) For purposes of this section an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (i) 10 percent (20 percent if such insurer is a title insurer) of such insurer's surplus as regards policyholders as of the 31st day of December next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life or title insurer, or the net income, if such insurer is not a life or title insurer, for the 12-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until (i) the commissioner has approved the payment of such dividend or distribution or (ii) the commissioner has not disapproved such payment within the 30-day period referred to above.

[Sections 823.108-823.150 reserved for expansion]

SUBCHAPTER D. CONTROL OF DOMESTIC INSURER; ACQUISITION OR MERGER

Revised Law

Sec. 823.151. PRESUMPTION OF CONTROL. (a) Control of an entity is presumed if:

(1) a person or a person and members of the person's immediate family, directly or indirectly, own, control, or hold with the power to vote 10 percent or more of the voting securities or authority of the entity; or

(2) a person who is not a corporate officer or director of the entity holds proxies representing 10 percent or more of the voting securities or authority of the entity.

(b) Control of a Lloyd's plan is presumed if a person is designated as an attorney-in-fact for the insurer under Chapter 941.

(c) Control of a reciprocal or interinsurance exchange is presumed if a person is designated as an attorney-in-fact for the exchange under Chapter 942.

(d) A presumption under this section may be rebutted by a showing made in the manner provided by Section 823.010 that control does not exist in fact and that the person rebutting the presumption is complying with Sections 823.154, 823.155, 823.159, and 823.160.

(e) For purposes of this section, the members of a person's immediate family are:

(1) the person's spouse, father, mother, children, brothers, sisters, and grandchildren;

(2) the father, mother, brothers, and sisters of the person's spouse; and

(3) the spouse of the person's child, brother, sister, mother, father, or grandparent. (V.T.I.C. Art. 21.49-1, Secs. 2(d) (part), (p).)

Source Law

(d) . . . Control shall be presumed to exist if any person, directly or indirectly, or with members of the person's immediate family, owns, controls, or holds with the power to vote, or if any person other than a corporate officer or director of a person holds proxies representing, 10 percent or more of the voting securities or authority of any other person, or if any person by contract or agreement is designated as an attorney-in-fact for a Lloyd's Plan insurer under Article 18.02 of this code or for a reciprocal or interinsurance exchange under Articles 19.02 and 19.10 of this code. This presumption may be rebutted by a showing made in the manner provided by Section 3(j) that control does not exist in fact and that the person rebutting the presumption is in compliance with Sections 5(a) through (c) of this article. . . .

(p) Immediate Family. The term "immediate family" means a person's spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers, and sisters of the person's spouse, and the spouse of the person's child, brother or sister, mother, father, or grandparent.

Revisor's Note

Section 2(d), V.T.I.C. Article 21.49-1, refers to the designation of an attorney-in-fact "by contract or agreement" under Article 18.02, Insurance Code, revised as part of Chapter 941, or under Articles 19.02 and 19.10, Insurance Code, revised as part of Chapter 942. The revised law omits the quoted

language as unnecessary because the designation under those provisions is by contract or agreement.

Revised Law

Sec. 823.152. EMPLOYMENT OF EXPERTS. (a) The commissioner may employ an attorney, actuary, accountant, or other expert who is not a member of the commissioner's staff and who is reasonably necessary to assist in analyzing a merger or acquisition of control proposed under Section 823.154.

(b) The acquiring person shall pay all reasonable expenses incurred in connection with the employment of a person under this section. (V.T.I.C. Art. 21.49-1, Sec. 5(c)(3).)

Source Law

(3) The commissioner may retain any attorney, actuary, accountant, or other expert not otherwise a member of the commissioner's staff as may be reasonably necessary to assist in analyzing any merger or acquisition of control proposed under this section. All reasonable expenses incurred in connection herewith shall be borne by the acquiring party.

Revised Law

Sec. 823.153. CONTROLLER OF DOMESTIC INSURER CONSIDERED DOMESTIC INSURER. For purposes of this subchapter, any person who controls a domestic insurer is considered to be a domestic insurer unless:

(1) the assets of all insurance subsidiaries of the person are equal to less than 20 percent of the person's consolidated assets;

(2) the gross revenues, including investment income, of all insurance subsidiaries of the person are equal to less than 20 percent of the person's consolidated gross revenues; and

(3) the shareholders' equity of all insurance subsidiaries of the person is equal to less than 20 percent of the person's consolidated shareholders' equity. (V.T.I.C. Art. 21.49-1, Sec. 5(a)(2).)

Source Law

(2) For purposes of this section, a "domestic insurer" includes any person controlling a domestic insurer unless such person is either directly or through its affiliates primarily engaged in business other than the business of insurance. A person controlling a domestic insurer shall not be considered primarily engaged in the business of insurance only if that person meets each of the following tests, regardless of whether any line of noninsurance business is a primary business of the person:

(i) the assets of all insurance subsidiaries constitute less than 20 percent of such person's consolidated assets;

(ii) the gross revenues including investment income of all insurance subsidiaries constitute less than 20 percent of such person's consolidated gross revenues; and

(iii) the stockholders' equity of all insurance subsidiaries constitutes less than 20 percent of such person's consolidated stockholders' equity.

Revisor's Note

Section 5(a)(2), V.T.I.C. Article 21.49-1, provides a general rule that the term "domestic insurer" includes a person controlling a domestic insurer. The effect is that a person controlling a domestic insurer is treated as if the person were a domestic insurer. Section 5(a)(2) then takes a two-step approach to provide an exception to that rule. The first step is that the controlling person is excepted if the person is primarily engaged in business other than the business of insurance. The second step is that a controlling person is considered primarily engaged in business other than the business of insurance only if all of the listed requirements are satisfied. For clarity, the revised law consolidates the two steps.

Revised Law

Sec. 823.154. REQUIREMENTS FOR ACQUISITION OR EXERCISE OF CONTROL OF DOMESTIC INSURER. (a) Before a person who directly or indirectly controls, or after the acquisition would directly or indirectly control, a domestic insurer may in any manner acquire a voting security of a domestic insurer or before a person may otherwise acquire control of a domestic insurer or exercise any control over a domestic insurer:

(1) the person shall file with the commissioner a statement that satisfies the requirements of Subchapter E; and

(2) the acquisition of control must be approved by the commissioner in accordance with this subchapter.

(b) The acquiring person shall send a copy of the statement filed under this section to the domestic insurer.

(c) A statement filed under this section is subject to public inspection at the office of the commissioner. (V.T.I.C. Art. 21.49-1, Sec. 5(a)(1).)

Source Law

Sec. 5. (a) Filing Requirements. (1) No person shall (i) acquire in any manner any voting security of a domestic insurer if such person is, or after such acquisition would be, directly or indirectly, in control of a domestic insurer or (ii) otherwise acquire control of or exercise any control over a domestic insurer, until and unless such person has filed with the commissioner a statement containing the information required by Subsection (b) of this section and such acquisition of control has been approved by the commissioner in the manner hereinafter prescribed. The statement filed under this Subsection (a) shall be subject to public inspection at the office of the commissioner, and a copy thereof shall be sent by the acquiring party to the domestic insurer.

Revised Law

Sec. 823.155. AMENDMENT OF STATEMENT. If a material change occurs in the facts contained in a statement filed under Section

823.154, the person required to file the statement shall, not later than the second business day after the date the person learns of the change, file with the commissioner and send to the domestic insurer an amendment stating the change and a copy of each document and other material relevant to the change. (V.T.I.C. Art. 21.49-1, Sec. 5(b) (part).)

Source Law

(b) . . . If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to the domestic insurer within two business days after the person learns of such change.

Revised Law

Sec. 823.156. NOTICE EXPENSES. (a) A person who files a statement under Section 823.154 shall pay the expenses of mailing each related notice required by the commissioner.

(b) As security for the payment of the expenses, the person, at the request of the commissioner or the domestic insurer, shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner. (V.T.I.C. Art. 21.49-1, Sec. 5(d).)

Source Law

(d) Notices; Payment of Expenses. The expenses of mailing any notices required by the commissioner shall be borne by the person making the filing. As security for the payment of such expenses, such person shall at the request of the commissioner or the domestic insurer file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

Revised Law

Sec. 823.157. APPROVAL OF ACQUISITION OF CONTROL. The commissioner shall approve an acquisition of control for which a statement is filed under Section 823.154 unless, after a hearing, the commissioner finds that:

(1) immediately on the change of control the domestic insurer would not be able to satisfy the requirements for the issuance of a new certificate of authority to write the line or lines of insurance for which the insurer holds a certificate of authority;

(2) the effect of the acquisition of control would be substantially to lessen competition in a line or subclassification lines of insurance in this state or tend to create a monopoly in a line or subclassification lines of insurance in this state;

(3) the financial condition of the acquiring person may jeopardize the financial stability of the domestic insurer or prejudice the interest of the domestic insurer's policyholders;

(4) the acquiring person has a plan or proposal to liquidate the domestic insurer or cause the insurer to declare dividends or make distributions, sell any of its assets, consolidate or merge with any person, make a material change in its business or corporate structure or management, or enter into a material agreement, arrangement, or transaction of any kind with any person, and that the plan or proposal is unfair, prejudicial, hazardous, or unreasonable to the insurer's policyholders and not in the public interest;

(5) due to a lack of competence, trustworthiness, experience, and integrity of the persons who would control the operation of the domestic insurer, the merger or acquisition of control would not be in the interest of the insurer's policyholders and the public; or

(6) the merger or acquisition of control would violate the law of this or another state or the United States. (V.T.I.C. Art. 21.49-1, Sec. 5(c)(1).)

Source Law

(c) Approval by Commissioner. (1) The commissioner shall approve any acquisition of control referred to in Subsection (a) unless, after a public hearing thereon, he finds that:

(i) immediately upon the change of control the domestic insurer referred to in Subsection (a) would not be able to satisfy the requirements for the issuance of a new certificate of authority or a license to write the line or lines of insurance for which it is presently licensed;

(ii) the effect of such acquisition of control would be substantially to lessen competition in any line or subclassification lines of insurance in this State or tend to create a monopoly therein;

(iii) the financial condition of the acquiring party is such as might jeopardize the financial stability of the domestic insurer, or prejudice the interest of its policyholders;

(iv) the plans or proposals which the acquiring party has to liquidate the domestic insurer, cause it to declare dividends or make other distributions, sell any of its assets, consolidate or merge it with any person, make any material change in its business or corporate structure or management, or cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party, are unfair, prejudicial, hazardous, or unreasonable to policyholders of the insurer and not in the public interest;

(v) the competence, trustworthiness, experience, and integrity of those persons who would control the operation of the domestic insurer are such that it would not be in the interest of policyholders of the domestic insurer and of the public to permit the merger or acquisition of control; or

(vi) the acquisition of control or merger would violate any law of this State, any other state, or the United States.

Revised Law

Sec. 823.158. PLACEMENT ON PREHEARING DOCKET. At any time after the submission or resubmission to the commissioner of a statement under Section 823.154, regardless of whether the statement is complete and accurate, the matter may be placed on the contested case docket for any prehearing matters and motions permitted under Chapter 2001, Government Code. (V.T.I.C. Art. 21.49-1, Sec. 5(c)(2) (part).)

Source Law

(2) . . . At any time after the submission or resubmission to the commissioner of a statement filed under Subsection (a) of this section, regardless of whether the statement is complete and accurate, the matter may be placed on the commissioner's contested case docket to hear any pre-hearing matters and motions permitted under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Revisor's Note

Section 5(c)(2), V.T.I.C. Article 21.49-1, refers to the "Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes)." The relevant parts of that statute were codified in 1993 as Chapter 2001, Government Code. The revised law is drafted accordingly.

Revised Law

Sec. 823.159. HEARING; TIME OF DETERMINATION. (a) A hearing under Section 823.157 shall be held not later than the 45th day after the date the statement is filed under Section 823.154.

(b) Not later than the 21st day before the date of the hearing, the commissioner shall give notice of the hearing to the person who filed the statement and to the domestic insurer unless the person and the domestic insurer waive notice.

(c) The person who filed the statement and the domestic insurer shall provide notice of the hearing in the time and

manner specified by the commissioner to each person designated by the commissioner.

(d) The acquiring person has the burden of providing sufficient competent evidence for the commissioner to make the findings required under Section 823.158.

(e) The commissioner shall make a determination on the acquisition of control not later than the 60th day after the date the record of the hearing is closed. (V.T.I.C. Art. 21.49-1, Sec. 5(c)(2) (part).)

Source Law

(2) The public hearing referred to in Clause (1) hereof shall be held within 45 days after the statement required by Subsection (a) is filed, and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement and to the domestic insurer unless such person and the domestic insurer waive such notice. The person filing the statement and the domestic insurer shall furnish notice of the public hearing to such other persons as may be designated by the commissioner within the time and manner specified by the commissioner. The acquiring party shall have the burden of providing sufficient competent evidence for the commissioner to make the determinations required under Subsection (c)(1). The commissioner shall make a determination within 60 days after the record of such hearing is closed. . . .

Revised Law

Sec. 823.160. DEADLINE FOR COMPLETION OF ACQUISITION. (a) An acquisition of control of a domestic insurer must be completed not later than the 90th day after the date of the commissioner's order approving the acquisition unless the commissioner on a showing of good cause for the delay grants an extension in writing.

(b) An increase in a company's capital and surplus required under this code because of the change of control of a domestic insurer must be completed not later than the 90th day after the

date of the commissioner's order approving the change of control and before the insurance company writes any new insurance business.

(c) If a deadline under Subsection (a) or (b) is not met, the person seeking to acquire control of the domestic insurer shall resubmit the statement required by Section 823.154 and the commissioner may reconsider approval of acquisition of control under this subchapter. (V.T.I.C. Art. 21.49-1, Secs. 5(c)(4), (5).)

Source Law

(4) Any acquisition of control of a domestic insurer must be completed not later than the 90th day after the date of the commissioner's order approving the acquisition under this subsection unless the commissioner grants an extension in writing on a showing of good cause for the delay. Any increase in a company's capital and surplus required under this code as a result of the change of control of a domestic insurer must be completed not later than the 90th day after the date of the commissioner's order approving the change of control and before the insurance company writes any new insurance business.

(5) If the deadlines for completion in Subdivision (4) of this subsection are not met, the person seeking to acquire control of the domestic insurer must resubmit the statement required by Subsection (a) of this section, and the commissioner may reconsider approval of acquisition of control under this subsection.

Revised Law

Sec. 823.161. INSURER'S DUTY TO NOTIFY. (a) Not later than the 30th day after the date an event requiring notice under this subchapter occurs, an insurer authorized to engage in the business of insurance in this state shall notify the commissioner in writing of the identity of any person who the insurer knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control

of the insurer.

(b) This section does not apply to a foreign insurer that is subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of the insurer's domicile that are substantially similar to the requirements and standards provided by this chapter. (V.T.I.C. Art. 21.49-1, Sec. 5(g).)

Source Law

(g) Duty of Insurer. Each insurer authorized to do business in this State shall, within 30 days after any event requiring notice pursuant to this section, notify the commissioner in writing of the identity of any person whom the insurer then knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer. However, the provisions of this subsection shall not apply to any foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article.

Revised Law

Sec. 823.162. PROHIBITION ON CERTAIN ACTIONS RELATED TO ACQUISITION OF CONTROL OR MERGER. A person may not effect or attempt to effect an acquisition of control of or merger with a domestic insurer unless the commissioner has approved the acquisition or merger. (V.T.I.C. Art. 21.49-1, Sec. 5(h) (part).)

Source Law

(h) Violations. The following shall be violations of this section:

. . .

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

Revised Law

Sec. 823.163. RETENTION OF CONTROL. (a) This section applies only to a domestic insurer that is a controlled insurer, regardless of when that control was acquired.

(b) A person violates this section if:

(1) the person is a domestic insurer, a person who controls the domestic insurer, including the insurer's holding company, or an officer or director of the insurer or controlling person who violates this chapter or otherwise demonstrates untrustworthiness affecting the domestic insurer;

(2) the person is a domestic insurer that violates Chapter 15, Business & Commerce Code, or another antitrust law of this state; or

(3) the person is a domestic insurer's affiliate that violates Chapter 15, Business & Commerce Code, or another antitrust law of this state and whose violation affects the domestic insurer.

(c) If, after notice and an opportunity for a hearing, the commissioner determines that a person violates this section, the commissioner shall issue written findings and an order based on those findings that directs the person to take appropriate action to cure the violation. The commissioner shall serve the order and findings on the person and the affected domestic insurer.

(d) In addition to this chapter, Subchapter C, Chapter 801, applies to a person who fails to comply with an order under this section.

(e) The commissioner may require the submission of any information the commissioner considers necessary to determine whether retention of control complies with this chapter and may require, as a condition of approval of the retention of control, that all or any part of that information be disclosed to the domestic insurer's shareholders. (V.T.I.C. Art. 21.49-1, Sec. 5(f).)

Source Law

(f) Retention of Control. (1) The following conditions affecting any controlled domestic insurer, regardless of when such control has been acquired, are violations of this article: (i) the violation of this article, or other demonstration of untrustworthiness, by the domestic insurer, its holding company or any controlling person, or any of the officers or directors of either; or (ii) the violation of any provision of Chapter 15, Business and Commerce Code, or any other antitrust law of this State by the domestic insurer, the holding company or any affiliate. If, after notice and an opportunity to be heard the commissioner determines that any of the foregoing violations exists, he shall reduce his findings to writing and shall issue an order based thereon and cause the same to be served upon the domestic insurer and upon all persons affected thereby directing any person found to be in violation hereof to take appropriate action to cure such violation. Upon the failure of any such person to comply with such order, Section 3 of Article 1.14 of this code shall become applicable to such person, as well as any other provisions of this article.

(2) The commissioner may require the submission of such information as the commissioner deems necessary to determine whether any retention of control complies with this article and may require, as a condition of approval of such retention of control, that all or any portion of such information be disclosed to the domestic insurer's stockholders.

Revised Law

Sec. 823.164. EXEMPTIONS FROM SUBCHAPTER. (a) This subchapter does not apply to a transaction that is subject to:

(1) Subchapter K or L, Chapter 882; or

(2) Section 887.065 or Subchapter J or K, Chapter 887.

(b) This subchapter does not apply to a transaction that is subject to and complies with:

(1) Chapter 828; or

(2) Subchapter L, Chapter 884.

(c) This subchapter does not apply to a transaction that is subject to and complies with Sections 824.101 and 824.102 and Subchapters A and B, Chapter 824, relating to the merger or consolidation of two or more insurers, until the plan of merger or consolidation is filed by the domestic insurer with the commissioner under that chapter. After the plan is filed, the transaction is subject to this subchapter. The commissioner may exempt the transaction from this subchapter, other than the approval provisions of Sections 823.157-823.160, if the commissioner finds that the materials provided to shareholders and security holders in connection with the merger or consolidation, including the notice and proxy statement, contained reasonable and adequate information, including factual and financial disclosures and material, relating to that transaction.

(d) This subchapter does not apply to a transaction that is subject to Subchapter K, Chapter 884, if the agreement to which the transaction relates is a total direct reinsurance agreement.

(e) This subchapter does not apply to an acquisition of any voting security that, immediately before consummation of the acquisition, is not issued and outstanding by a person who is a broker-dealer under state or federal securities law if:

(1) the acquisition is solely for resale under a plan approved by the commissioner;

(2) the resale will not reasonably result in an acquisition of control; and

(3) before the resale a positive act of control relating to those shares is not committed.

(f) This subchapter does not apply to an acquisition of a voting security of a domestic insurer by a person who:

(1) controls the insurer if, after the acquisition, the person directly or indirectly owns or controls less than 50 percent of the issued and outstanding voting securities of the insurer; or

(2) before the acquisition, directly or indirectly

owns or controls more than 50 percent of the issued and outstanding voting securities of the insurer.

(g) This subchapter does not apply to an acquisition of a voting security of a domestic insurer by a person who, before the acquisition, directly or indirectly owns or controls at least 10 percent but less than 50 percent of the issued and outstanding voting securities of the insurer and who, after the acquisition, directly or indirectly owns or controls 50 percent or more of the issued and outstanding voting securities of the insurer if:

(1) the person has applied in writing for the exemption; and

(2) the commissioner by order has determined that the acquisition:

(A) will not jeopardize the financial stability of the insurer;

(B) will not prejudice the interests of the insurer's policyholders; and

(C) will not adversely affect the public interest.

(h) The commissioner by order may exempt from the application of this subchapter an offer, request, invitation, agreement, or acquisition that:

(1) is not made or entered into to change or influence the control of a domestic insurer and does not have the effect of changing or influencing that control; or

(2) is not comprehended as within the purposes of this subchapter. (V.T.I.C. Art. 21.49-1, Sec. 5(e).)

Source Law

(e) Exemptions. The provisions of this section shall not apply to:

(1) any acquisition by a person who is a broker-dealer under state or federal securities laws of any voting security which, immediately prior to consummation of such acquisition, was not issued and outstanding and which acquisition is solely for resale under a plan approved by the commissioner that will not

reasonably result in an acquisition of control on resale and where during the period prior to resale no actual positive act of control by virtue of those shares is committed;

(2) any transaction which is subject to the provisions of: (i) Article 21.25, Sections 1 through 5, of this code, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article until the plan of merger or consolidation has been filed by the domestic insurer with the Commissioner of Insurance in accordance with such Article 21.25. After the filing of such plan of merger or consolidation the transaction shall be subject to the approval provisions of Subsection (c) of Section 5 of this article, but the Commissioner may exempt such transaction from any or all of the other provisions and requirements of Section 5 of this article if the commissioner finds that the notice, proxy statement, and other materials furnished to shareholders and security holders in connection with such merger or consolidation contained reasonable and adequate factual and financial disclosure, material and information relating to such transaction, (ii) Article 11.20 of this code, (iii) Article 11.21 of this code, (iv) Article 14.13 of this code, (v) Article 14.61 of this code, (vi) Article 14.63 of this code, (vii) Article 21.26 of this code, provided that the requirements of said article are fully complied with, (viii) Article 22.15 of this code, provided that the requirements of said article are fully complied with, and (ix) Article 22.19 of this code, provided that the reinsurance is a total direct reinsurance agreement;

(3) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section;

(4) any acquisition of a voting security of a domestic insurer by a person in control of such domestic insurer if, after such acquisition, such person, directly or indirectly, owns or

controls less than 50 percent of the then issued and outstanding voting securities of such domestic insurer;

(5) any acquisition of a voting security of a domestic insurer by a person that, directly or indirectly, owns or controls as much as 10 percent but less than 50 percent of the then issued and outstanding voting securities of such domestic insurer, and such person would, after such acquisition, directly or indirectly, own or control 50 percent or more of the then issued and outstanding voting securities of such domestic insurer, provided such person has made written application for such exemption and the commissioner by order has determined that such acquisition will not jeopardize the financial stability of the domestic insurer, prejudice the interests of its policyholders, or adversely affect the public interest; or

(6) any acquisition of a voting security of a domestic insurer by a person that, prior thereto, directly or indirectly, owns or controls more than 50 percent of the then issued and outstanding voting securities of such domestic insurer.

Revised Law

Sec. 823.165. VIOLATION OF SUBCHAPTER. The failure to file a statement, amendment, or other material required to be filed under this subchapter is a violation of this subchapter. (V.T.I.C. Art. 21.49-1, Sec. 5(h) (part).)

Source Law

(h) Violations. The following shall be violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed pursuant to this section; or

. . .

[Sections 823.166-823.200 reserved for expansion]

SUBCHAPTER E. ACQUISITION STATEMENT

Revised Law

Sec. 823.201. ACQUIRING PERSON. (a) A statement required under Section 823.154 must contain the name and address of the acquiring person.

(b) If the acquiring person is an individual, the statement must contain:

(1) the acquiring person's principal occupation or employment;

(2) each material occupation, employment, office, or position held by the acquiring person during the preceding five-year period; and

(3) any criminal conviction of the acquiring person, other than a conviction of a minor traffic violation, during the preceding 10-year period.

(c) If the acquiring person is not an individual, the statement must contain:

(1) a report of the nature of the acquiring person's business operations during the preceding five-year period or, if the acquiring person and any predecessors of the acquiring person have been in existence for less than five years, during that shorter period;

(2) a description, complete in all material respects, of any business the acquiring person intends to begin; and

(3) a list that contains:

(A) the name of each director or executive officer of the acquiring person, or individual who performs or who is to perform, functions appropriate to that position; and

(B) for each individual listed under Paragraph (A), the information required for an individual under Subsection (b). (V.T.I.C. Art. 21.49-1, Sec. 5(b) (part).)

Source Law

(b) Content of Statement. The statement . . . shall contain the following information:

(1) the name and address of [the person by whom or on whose behalf the acquisition of control . . . and]

(i) if such person is an individual, his principal occupation or employment and all material occupations, employments, offices, and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; and

(ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof have been in existence; a description, complete in all material respects, of any business such person intends to commence; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by Paragraph (i) of this subsection;

. . .

Revised Law

Sec. 823.202. CONSIDERATION FOR ACQUISITION. (a) A statement required under Section 823.154 must contain:

(1) the source, nature, and amount of consideration for the acquisition of control;

(2) a description of any transaction from which the consideration for the acquisition of control is obtained; and

(3) the identity of each person providing the consideration.

(b) On request of the person filing the statement, the identity of a commercial lender who in the ordinary course of business provides consideration for the acquisition is confidential. (V.T.I.C. Art. 21.49-1, Sec. 5(b) (part).)

Source Law

(b) . . . The statement . . . shall contain the following information:

. . .

(2) the source, nature, and amount of funds or other consideration used or to be used in effecting the acquisition of control, a description of any transaction wherein funds or other consideration were or are to be obtained for such purpose, and the identity of persons furnishing such funds or other consideration, provided, however, that where a source of such funds or other consideration is provided by a commercial lender in the ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests; . . . .

Revisor's Note

Section 5(b)(2), V.T.I.C. Article 21.49-1, refers to "funds or other consideration." The revised law omits the references to "funds" because, in context, its meaning is included in the meaning of "other consideration."

Revised Law

Sec. 823.203. FINANCIAL INFORMATION ABOUT ACQUIRING PERSON. (a) A statement required under Section 823.154 must contain:

(1) fully audited financial information about the earnings and financial condition of the acquiring person for the preceding three fiscal years or, if the acquiring person and any predecessors of the acquiring person have been in existence for less than three fiscal years, for that shorter period; and

(2) similar unaudited financial information about the earnings and financial condition of the acquiring person as of a date not earlier than the 120th day preceding the date the statement is filed.

(b) The statement must be accompanied by an affidavit or certification of the chief financial officer of the acquiring

person stating that:

(1) the unaudited financial information provided under Subsection (a) is true and correct, as of its date; and

(2) a material change in financial condition, as determined under Section 823.054, did not occur during the period beginning on the date of that information and ending on the date of the affidavit or certification.

(c) If an acquiring person is an individual, the acquiring person shall provide the personal unaudited financial information required by the commissioner.

(d) If an acquiring person is an insurer authorized to engage in the business of insurance in this state and actively engaging in the business of insurance, the acquiring person may provide financial statements that conform to the requirements of:

(1) the annual statements of the insurer filed with the insurance department of the insurer's state of domicile; and

(2) insurance or other accounting principles prescribed by or authorized under the law and regulations of the state of domicile.

(e) A statement required under Section 823.154 must contain additional financial information in the form or substance required by the commissioner that is material to a finding under Section 823.157(3).

(f) The commissioner may waive any financial information required under this section that the commissioner does not consider to be material. (V.T.I.C. Art. 21.49-1, Sec. 5(b) (part).)

Source Law

(b) . . . The statement . . . shall contain the following information:

. . .

(3)(i) fully audited financial information as to the earnings and financial condition of the acquiring party for the preceding three fiscal years (or for such lesser period as the acquiring party and any predecessors thereof shall have been in

existence), and similar unaudited financial information as of a date not earlier than 120 days prior to the filing of the statement, accompanied by affidavit or certification of the chief financial officer of the acquiring party that (A) such unaudited financial statement is true and correct, as of its date, and (B) there has been no material change in financial condition, as defined by Section 3 of this article, from the date of the financial statement to the date of the affidavit or certification. Provided, however, if such acquiring party is an individual person, such person shall provide such personal unaudited financial information as required by the commissioner;

(ii) if an acquiring party is an insurer actively engaged in the business of insurance and licensed to do business in this State, it may provide financial statements which conform to the annual statements of the insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of the domiciliary state;

(iii) additional financial information in the form or substance as required by the commissioner which is material to the finding required by Subsection (c)(1)(iii); and

(iv) any financial information required under this Subsection (b)(3) may be waived by the commissioner if such information is not deemed material;

. . .

Revised Law

Sec. 823.204. PLAN FOR FUTURE OF INSURER. A statement required under Section 823.154 must contain:

(1) any plan or proposal of the acquiring person to:

(A) cause the insurer to pay dividends or make distributions;

(B) liquidate the insurer;

(C) sell any of the insurer's assets;

(D) merge or consolidate the insurer with any

person;

(E) make any other material change in the insurer's business or corporate structure or management; or

(F) cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any person; and

(2) any oral or written arrangement or agreement between the acquiring person or an affiliate of the acquiring person and the domestic insurer entered into during the 12 months preceding the date of the statement. (V.T.I.C. Art. 21.49-1, Sec. 5(b) (part).)

Source Law

(b) . . . The statement . . . shall contain the following information:

. . .

(4)(i) any plans or proposals which the acquiring party may have to cause the insurer to pay dividends or make other distributions, to liquidate such insurer, to sell any of its assets, to merge or consolidate it with any person, to make any other material change in its business or corporate structure or management, or to cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party; and

(ii) any other arrangement or agreement, oral or written, entered into by an acquiring party or any of its affiliates and the domestic insurer during the immediately preceding 12 months;

. . .

Revised Law

Sec. 823.205. VOTING SECURITIES. (a) In this section, "voting security" means a voting security of a domestic insurer the acquisition of which requires the filing of a statement under Section 823.154 as a condition precedent.

(b) A statement required under Section 823.154 must

contain:

(1) the number of shares of a voting security that the acquiring person or an affiliate of the acquiring person proposes to acquire and the terms of the acquisition;

(2) the amount of each class of a voting security that is beneficially owned by the acquiring person and by each affiliate of the acquiring person;

(3) the amount of each class of a voting security the beneficial ownership of which the acquiring person or an affiliate of the acquiring person has a right to acquire;

(4) a copy of any written or confirmed description of any oral agreement, arrangement, or understanding relating to a voting security and in which the acquiring person or an affiliate of the acquiring person is involved, including an agreement, arrangement, or understanding relating to the transfer of any of the voting securities, joint ventures, loan or option agreements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies;

(5) a description of each purchase of a voting security, including the date of purchase, name of the purchaser, and consideration for the purchase, made during the 12 calendar months preceding the date of the filing of the statement by:

(A) the acquiring person; or

(B) an affiliate, director, or executive officer of the acquiring person;

(6) a copy of any written, or a confirmed description of any oral, recommendation to purchase a voting security made during the 12 calendar months preceding the date of the filing of the statement by:

(A) the acquiring person;

(B) an affiliate of the acquiring person; or

(C) a person based on an interview with, or at the suggestion of, the acquiring person or an affiliate of the acquiring person;

(7) a copy of each tender offer for, request or

invitation for tender of, exchange offer for, or agreement to acquire or exchange a voting security and any additional distributed soliciting material relating to that offer, request, invitation, or agreement;

(8) a copy of any written, or a confirmed description of any oral, agreement, arrangement, or understanding made with a broker-dealer relating to the solicitation of a voting security for tender, and the amount of any compensation, including fees and commissions, to be paid to a broker-dealer with regard to the solicitation; and

(9) any additional information the commissioner by rule prescribes as necessary or appropriate to protect:

(A) policyholders of the insurer whose voting securities are to be acquired; or

(B) the public. (V.T.I.C. Art. 21.49-1, Sec. 5(b) (part).)

Source Law

(b) . . . The statement . . . shall contain the following information:

. . .

(5) the number of shares of any voting security referred to in Subsection (a), which the acquiring party or any of its affiliates proposes to acquire, and the terms of the acquisition referred to in Subsection (a);

(6) the amount of each class of any voting security referred to in Subsection (a) which is beneficially owned or of which the acquiring party or any of its affiliates has a right to acquire beneficial ownership;

(7) a copy of any written or confirmed description of any oral agreements, arrangements, or understandings with respect to any voting security referred to in Subsection (a) in which the acquiring party or any of its affiliates is involved, including without limitation any such agreement, arrangement, or understanding relating to transfer of any of the voting securities, joint ventures, loan or option agreements, puts or

calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies;

(8) a description of the purchase of any voting security referred to in Subsection (a) made during the 12 calendar months preceding the filing of the statement by the acquiring party, any of its affiliates, or any of the acquiring party's directors or executive officers, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a copy of any written or confirmed description of any oral recommendations to purchase any voting security referred to in Subsection (a) made during the 12 calendar months preceding the filing of the statement by the acquiring party or any of its affiliates, or by anyone based upon interviews with or at the suggestion of the acquiring party or any of its affiliates;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities referred to in Subsection (a), and (if distributed) of additional soliciting material relating thereto;

(11) a copy of any written or confirmed description of any oral agreement, arrangement, or understanding made with any broker-dealer as to the solicitation of voting securities referred to in Subsection (a) for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto;

(12) such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate to the protection of policyholders of the insurer or in the public interest.

Revisor's Note

Section 5(b)(7), V.T.I.C. Article 21.49-1, refers to agreements relating to a voting security "including without

limitation" certain agreements listed in that provision. The revised law omits "without limitation" for the reason stated in the revisor's note to Section 823.014.

Revised Law

Sec. 823.206. ADDITIONAL INFORMATION ABOUT ACQUIRING ORGANIZATION. (a) If the person required to file the statement under Section 823.154 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information required for an individual under this subchapter be given with respect to:

(1) each person who is a partner of the partnership or limited partnership or a member of the syndicate or group; and

(2) each person who controls a person described by Subdivision (1).

(b) If the person required to file the statement under Section 823.154 or the person with respect to whom information is required under Subsection (a) is a corporation, the commissioner may require that:

(1) the information required under this subchapter be given with respect to that corporation; and

(2) the information required for an individual under this subchapter be given with respect to:

(A) each executive officer and director of that corporation; and

(B) each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of that corporation. (V.T.I.C. Art. 21.49-1, Sec. 5(b) (part).)

Source Law

(b) . . .

If the person required to file the statement referred to in Subsection (a) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by Clauses (1) through (12) for an individual person shall be given with respect to each partner of such partnership

or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in Subsection (a) is a corporation, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to such corporation, and the information for an individual person required therein with respect thereto of each executive officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of such corporation.

. . .

Revised Law

Sec. 823.207. OATH OR AFFIRMATION REQUIRED. A statement required under Section 823.154 must be made under oath or affirmation. (V.T.I.C. Art. 21.49-1, Sec. 5(b) (part).)

Source Law

(b) . . . The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and . . . .

[Sections 823.208-823.250 reserved for expansion]

SUBCHAPTER F. INSURER'S LOANS TO OR INVESTMENT IN AFFILIATE

Revised Law

Sec. 823.251. DEFINITION. In this subchapter, "securities" includes common stock, preferred stock, and debt obligations. (New.)

Revisor's Note

The revised law adds a definition of "securities" for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 823.252. GENERAL AUTHORITY RELATING TO AFFILIATES. A domestic insurer, by itself or in cooperation with one or more other persons, may organize, acquire, invest in, or make loans to one or more subsidiaries, and may loan to or invest in affiliates, as permitted by the provisions of this code governing investments. (V.T.I.C. Art. 21.49-1, Sec. 6(a).)

Source Law

Sec. 6. (a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize, acquire, invest in or make loans to one or more subsidiaries, and may loan to or invest in affiliates, as permitted by the investment provisions of the Insurance Code.

Revised Law

Sec. 823.253. GENERAL STANDARD FOR INVESTMENT IN AFFILIATE. (a) A domestic insurer may invest in the securities of one or more of the insurer's affiliates organized for any lawful purpose if:

(1) the amounts invested under this subsection in the aggregate do not exceed the lesser of:

(A) 10 percent of the insurer's assets; or

(B) 50 percent of the insurer's policyholders' surplus; and

(2) after investment under this subsection, the insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs.

(b) For purposes of computing the amount of the investments under this section:

(1) investments in domestic or foreign insurance subsidiaries are excluded; and

(2) the following amounts are included:

(A) the total net amount spent and the amount of obligations assumed to acquire or form a subsidiary, including

all organizational expenses and contributions to capital and surplus of the subsidiary regardless of whether represented by the purchase of capital stock or issuance of other securities; and

(B) all amounts spent to acquire additional securities and all contributions to the capital or surplus of a subsidiary made after the acquisition or formation of the subsidiary. (V.T.I.C. Art. 21.49-1, Sec. 6(b) (part).)

Source Law

(b) . . . a domestic insurer may also:

(1) invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose amounts which in the aggregate do not exceed the lesser of 10 percent of the insurer's assets or 50 percent of the insurer's surplus as regards policyholders, but after such investments the insurer's surplus as regards policyholders must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments:

(A) investments in domestic or foreign insurance subsidiaries are excluded; and

(B) the following are included:

(i) total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

. . .

Revised Law

Sec. 823.254. STANDARD FOR INVESTMENT IN AFFILIATE BY INSURER WITH LOW TOTAL LIABILITIES. If a domestic insurer's total liabilities, as computed for National Association of Insurance Commissioners annual statement purposes, are less than 10 percent of the insurer's assets, the insurer may invest any amount in the securities of one or more affiliates organized for any lawful purpose if after the investment, treating the investment as if it were a nonadmitted asset, the insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. (V.T.I.C. Art. 21.49-1, Sec. 6(b) (part).)

Source Law

(b) . . . a domestic insurer may also:

. . .

(2) if the insurer's total liabilities, as calculated for National Association of Insurance Commissioners annual statement purposes, are less than 10 percent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, but after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a nonadmitted asset, must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

. . .

Revised Law

Sec. 823.255. AGREEMENT OF AFFILIATE TO LIMIT CERTAIN INVESTMENTS. (a) A domestic insurer may invest any amount in the securities of one or more affiliates organized for any lawful purpose if each affiliate agrees to limit its investments in any particular asset so that the investments will not cause the amount of the total investment of the insurer to exceed the amount the insurer could have directly invested in that asset.

(b) To compute the amount of the total investment of an insurer in an asset for purposes of Subsection (a), the following amounts are included:

(1) any direct investment by the insurer in that asset; and

(2) the insurer's proportionate share of investment in that asset by any affiliate of the insurer.

(c) To compute the insurer's proportionate share of investment under Subsection (b)(2), the amount of the affiliate's investment in the asset is multiplied by the percentage of the insurer's ownership of that affiliate. (V.T.I.C. Art. 21.49-1, Sec. 6(b) (part).)

Source Law

(b) . . . a domestic insurer may also:

. . .

(3) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, provided that such subsidiary or affiliate agrees to limit its investments in any particular asset so that such investments will not cause the amount of the total investment of the insurer to exceed the amount the insurer could have directly invested in such asset. For the purpose of this clause, "the total investment of the insurer" will include (i) any direct investment by the insurer in an asset and (ii) the insurer's proportionate share of any investment in such asset by any subsidiary or affiliate of the insurer, which must be calculated by multiplying the amount of the subsidiary's or affiliate's investment by the percentage of the insurer's ownership of such subsidiary or affiliate; and

. . .

Revised Law

Sec. 823.256. COMMISSIONER'S APPROVAL OF INVESTMENT. With the prior approval of the commissioner, a domestic insurer may

invest any amount in the securities of one or more affiliates if after the investment the insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. (V.T.I.C. Art. 21.49-1, Sec. 6(b) (part).)

Source Law

(b) . . . a domestic insurer may also:

. . .

(4) with the prior approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries and affiliates, but after such investment the insurer's surplus as regards policyholders must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Revised Law

Sec. 823.257. DETERMINATION REQUIRED BEFORE INVESTMENT. (a) Whether an investment meets an applicable requirement of this subchapter shall be determined before the investment is made by applying that requirement as if the investment had been made.

(b) In making the determination under Subsection (a):

(1) the amount to be used for the total of previous investments in debt obligations is the principal balance outstanding on all of those obligations at the time of the determination;

(2) the amount to be used for previous investments in equity securities is the sum of values of each previous investment as of the day the previous investment was made; and

(3) any return of capital invested, not including dividends, shall be subtracted. (V.T.I.C. Art. 21.49-1, Sec. 6(d).)

Source Law

(d) Qualification of Investment. Whether any investment under Subsection (b) hereof meets the applicable requirements thereof is to be determined before the investment is made by computing the applicable investment limitations as though the investment has already been made, taking into account the principal balance outstanding at the time of the computation on all previous investments in debt obligations and the value of all previous investments in equity securities as of the day the previous investments were made, net of any return of capital invested, not including dividends.

Revised Law

Sec. 823.258. DISPOSITION OF INVESTMENT IN SUBSIDIARY AFTER CESSATION OF CONTROL. (a) An insurer that ceases to control a subsidiary shall dispose of any investment in the subsidiary made under this subchapter before the third anniversary of the date the insurer ceases to control the subsidiary, unless:

(1) at any time after the investment is made the investment qualifies for investment under another provision of this code; and

(2) the insurer notifies the commissioner of that qualification.

(b) The commissioner may extend the period under Subsection (a) during which disposition is required. (V.T.I.C. Art. 21.49-1, Sec. 6(e).)

Source Law

(e) Cessation of Control. If an insurer ceases to control a subsidiary, it must dispose of any investment therein made under Subsection (b) within three years from the time of the cessation of control or within such further time as the commissioner may prescribe and approve, unless at any time after the investment is made the investment otherwise meets the requirements of and qualifies for investment under any other

section of this code, and the insurer has notified the commissioner thereof.

Revised Law

Sec. 823.259. EXEMPTION FROM CERTAIN LIMITATIONS; INVESTMENT AUTHORITY CUMULATIVE OF OTHER LAW. (a) An investment made under this subchapter is not subject to the restrictions and prohibitions relating to investments contained in this code other than those provided by Subchapter C.

(b) Investments authorized by this subchapter are in addition to other investments permitted under this code for a domestic insurer. (V.T.I.C. Art. 21.49-1, Secs. 6(b) (part), (c).)

Source Law

(b) Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of the Insurance Code, [a domestic insurer may also:]

. . .

(c) Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries and affiliates made under Subsection (b) hereof are not subject to any of the otherwise applicable restrictions or prohibitions contained in this code applicable to such investment of a company subject to this code, but such investments are subject to all of the provisions of Section 4 of this Act.

[Sections 823.260-823.300 reserved for expansion]

SUBCHAPTER G. VALUATION OF INVESTMENT FOR FINANCIAL STATEMENT

Revised Law

Sec. 823.301. SCOPE OF SUBCHAPTER. (a) This subchapter applies only to the determination of the valuation for a financial statement of an investment by an insurer in an

affiliate that is not an insurer.

(b) This subchapter does not apply for determining the amount invested under Section 823.253. (V.T.I.C. Art. 21.49-1, Sec. 6A(a) (part).)

Source Law

Sec. 6A. (a) For financial statement valuation purposes only, and not to determine the amount invested in accordance with Section 6(b)(1) of this article, valuation of an investment by an insurer in a subsidiary or affiliate of an insurer, which is not itself an insurer . . . .

Revised Law

Sec. 823.302. BASES FOR DETERMINING VALUATION. Subject to this subchapter, the valuation of an investment to which this subchapter applies is the greater of:

(1) the net shareholder equity value that the insurer owns in the affiliate adjusted, if the affiliate is a subsidiary, to include the value of only those assets of the subsidiary that would constitute lawful investments for the insurer if the assets were acquired or held directly by the insurer; or

(2) the amount determined using one of the following methods that is applicable for the affiliate in which the investment is made:

(A) the net worth of the affiliate determined at the end of the affiliate's most recent fiscal year in accordance with generally accepted accounting principles and reported in the financial statements of the affiliate for that fiscal year that were audited by an independent certified public accountant in accordance with generally accepted auditing standards;

(B) the value equal to the cost of the stock of the affiliate, determined and adjusted to reflect subsequent operating results in accordance with generally accepted accounting principles;

(C) the market value of the stock of the affiliate, if the stock is listed on a national securities

exchange;

(D) the value, if any, placed on the stock of the affiliate by the National Association of Insurance Commissioners; or

(E) an amount that the insurer can substantiate to the satisfaction of the commissioner as being a reasonable value of that investment. (V.T.I.C. Art. 21.49-1, Sec. 6A(a) (part).)

Source Law

(a) . . . an investment . . . shall be valued, subject to the additional provisions of this section, on the basis of the greater of:

(1) the net stockholder equity value owned by the insurer in the subsidiary or affiliate, adjusted to include the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer; or

(2) one of the following bases appropriate to each type of subsidiary or affiliate owned by it . . . :

(i) the net worth of the subsidiary or affiliate determined in accordance with generally accepted accounting principles as of the end of its most recent fiscal year, provided, subject to the other provisions of this section, that the financial statements of the subsidiary or affiliate for its most recent fiscal year have been audited by an independent certified public accountant in accordance with generally accepted auditing standards; or

(ii) a value equal to the cost of the stock of the subsidiary or affiliate, provided such value is determined and adjusted to reflect subsequent operating results in accordance with generally accepted accounting principles; or

(iii) the market value of the stock of the subsidiary or affiliate, if the stock is listed on a national securities exchange; or

(iv) the value, if any, placed on the stock of

such subsidiary or affiliate by the National Association of Insurance Commissioners; or

(v) any other value which the insurer can substantiate to the satisfaction of the commissioner as being a reasonable value.

Revised Law

Sec. 823.303. ADJUSTMENT TO DETERMINATION. If an affiliate is valued using a method other than the method provided by Section 823.302(2)(C), the valuation of the investment is computed by subtracting from the determined value an amount equal to the value claimed for any of the affiliate's assets that would not be admitted assets for the insurer if held directly by the insurer and that:

(1) are held by the affiliate but are used, including use under a lease agreement, significantly in the conduct of the insurer's business; or

(2) were acquired from or purchased for the benefit or use of the insurer by the affiliate under specific circumstances that, in the commissioner's opinion, support a reasonable finding that the primary purpose of the acquisition or purchase was to evade or avoid application of this code. (V.T.I.C. Art. 21.49-1, Sec. 6A(e).)

Source Law

(e) If any subsidiary or affiliate, which is not itself an insurance company, is valued other than on a basis of market value as defined in Subsection (a)(2)(iii), there shall be deducted from otherwise determined value a sum equal to the value claimed for any of its assets which would not constitute admitted assets for the insurer if held directly by the insurer, if such assets

(1) are held by the subsidiary or affiliate but used, under a lease agreement or otherwise, significantly in the conduct of the insurer's business; or

(2) were acquired from or purchased for the benefit or

use of the insurer by the subsidiary or affiliate under specific circumstances that, in the opinion of the commissioner, support a reasonable finding that the primary purpose of such acquisition or purchase was the evasion or avoidance of the Insurance Code.

Revised Law

Sec. 823.304. USE OF DIFFERENT BASES. An insurer is not required to value the stock of all of its affiliates on the same basis. (V.T.I.C. Art. 21.49-1, Sec. 6A(a) (part).)

Source Law

(a) . . .

(2) . . . provided, however, that an insurer shall not be required to value the stock of all its subsidiaries or affiliates on the same basis:

. . .

Revised Law

Sec. 823.305. VALUATING ACQUIRED AFFILIATE. (a) Not later than the 30th day after the date an insurer acquires an affiliate that is not an insurer, the insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of the affiliate and the basis of valuation under Section 823.302 used for that affiliate.

(b) After filing the information under Subsection (a), the insurer shall use the specified basis of valuation for that affiliate unless a change is substantiated as reasonable to and is approved in writing by the commissioner. (V.T.I.C. Art. 21.49-1, Secs. 6A(b), (c).)

Source Law

(b) Within 30 days after the acquisition of a noninsurer subsidiary or affiliate, an insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of and the basis of valuation used in accordance with the provisions of Subsection (a) for such

subsidiary or affiliate.

(c) A valuation basis used for a subsidiary or affiliate shall thereafter be consistently used unless a change is substantiated as reasonable and on that basis is approved in writing by the commissioner.

Revised Law

Sec. 823.306. USE OF UNAUDITED INFORMATION. If an affiliate is valued using the basis provided by Section 823.302(2)(A) and the books of the affiliate are not audited at the time the valuation is included in the insurer's annual statement, the insurer, as soon as possible after an audit of those books, shall report and explain any difference between the value of the affiliate reported in the insurer's annual statement and the value determined by the audit. (V.T.I.C. Art. 21.49-1, Sec. 6A(d).)

Source Law

(d) If a subsidiary or affiliate is valued on the basis of Subsection (a)(2)(i) and the books of the subsidiary or affiliate are not audited at the time the valuation is included in the insurer's annual statement, the insurer shall thereafter report and explain the difference, if any, between the value of the subsidiary or affiliate as reported in the annual statement and the value as determined by audit. Such report and explanation shall be made as soon as possible following such audit.

Revised Law

Sec. 823.307. MODIFICATION BY COMMISSIONER. After notice and opportunity for a hearing, the commissioner may:

(1) determine that the basis used for valuation of the stock of an affiliate does not, under the specific circumstances, reflect the value of the affiliate; and

(2) order an adjustment in the valuation or the use of another basis of valuation provided by this subchapter. (V.T.I.C. Art. 21.49-1, Sec. 6A(f).)

Source Law

(f) The commissioner may, after notice and opportunity to be heard, determine that the basis used for valuation of the stock of any subsidiary or affiliate does not, under the specific circumstances of the case, reflect the value of the subsidiary or affiliate and may order either an adjustment in valuation or the use of one of the other specified bases of valuation.

[Sections 823.308-823.350 reserved for expansion]

SUBCHAPTER H. EXAMINATIONS

Revised Law

Sec. 823.351. EXAMINATION OF INSURER. (a) Subject to Section 823.352, the commissioner may order an insurer registered under Subchapter B to produce records, books, or other information papers in the possession of the insurer or an affiliate of the insurer that are necessary to ascertain the financial condition or legality of conduct of the insurer.

(b) If an insurer fails to comply with an order under Subsection (a), the commissioner by order may require the examination of each holding company of the insurer and each controlled person or affiliate in the insurer's insurance holding company system if the commissioner has cause to believe that:

(1) the operations of that person may materially affect the operations, management, or financial condition of any controlled insurer in that system; and

(2) the commissioner is unable to obtain relevant information from the controlled insurer.

(c) The commissioner shall specify in an order under Subsection (b) the grounds for the examination. An examination under Subsection (b) shall be confined to matters specified in the order.

(d) Only the person sought to be examined under Subsection (b) is entitled to seek judicial review of an order under that subsection. (V.T.I.C. Art. 21.49-1, Sec. 9(a) (part).)

Source Law

Sec. 9. (a) Power of the Commissioner. Subject to the limitation contained in this section and . . . the commissioner shall also have the power to order any insurer registered under Section 3 to produce such records, books, or other information papers in the possession of the insurer, its holding company, its subsidiaries, or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, every holding company, every controlled person, subsidiary, or affiliate within the insurance holding company system shall be subject to examination by order of the commissioner if he has cause to believe that the operations of such persons may materially affect the operations, management, or financial condition of any controlled insurer within the system and that he is unable to obtain relevant information from such controlled insurer. The grounds relied upon by the commissioner for such examination shall be stated in his order, which order shall be subject to judicial review only at the instance of the person sought to be examined. Such examination shall be confined to matters specified in the order. . . .

Revised Law

Sec. 823.352. LIMITATION ON POWER. The commissioner may exercise power under Section 823.351 only if:

(1) examination of the insurer under another provision of this code is inadequate; or

(2) the interests of the insurer's policyholders may be adversely affected. (V.T.I.C. Art. 21.49-1, Sec. 9(b).)

Source Law

(b) Purpose and Limitation of Examination. The commissioner shall exercise his power under Subsection (a) above only if the examination of the insurer under other sections of this code is inadequate or the interests of the policyholders of

such insurer may be adversely affected.

Revised Law

Sec. 823.353. PAYMENT OF EXAMINATION COSTS. (a) Each registered insurer that complies with an order under Section 823.351(a) shall pay the expense of the examination in accordance with Article 1.16.

(b) The commissioner shall assess the cost of an examination under Section 823.351(b) against the person examined. The controlled insurer may not directly or indirectly reimburse that person for any part of the cost. (V.T.I.C. Art. 21.49-1, Secs. 9(a) (part), (d).)

Source Law

(a) . . . The cost of such examination shall be assessed against the person examined and no portion thereof shall thereafter be reimbursed to it directly or indirectly by the controlled insurer.

(d) Expenses. Each registered insurer complying with the commissioner's order and producing for examination records, books, and papers pursuant to Subsection (a) above shall be liable for and shall pay the expense of such examination in accordance with Article 1.16 of this code.

Revised Law

Sec. 823.354. USE OF ADVISORS. (a) The commissioner may employ at the registered insurer's expense attorneys, actuaries, accountants, and other experts that are not a part of the commissioner's staff and that are reasonably necessary to assist in the conduct of an examination under Section 823.351.

(b) A person employed under this section is under the direction and control of the commissioner and may act only as an advisor. (V.T.I.C. Art. 21.49-1, Sec. 9(c).)

Source Law

(c) Use of Consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under Subsection (a) above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

Revised Law

Sec. 823.355. CUMULATIVE AUTHORITY. The authority provided by this subchapter is in addition to other powers relating to the examination of insurers given to the commissioner under this code. (V.T.I.C. Art. 21.49-1, Sec. 9(a) (part).)

Source Law

(a) . . . in addition to the powers which the commissioner has under other articles of this code relating to the examination of insurers . . . .

[Sections 823.356-823.400 reserved for expansion]

SUBCHAPTER I. LIMITATIONS RELATING TO CONTROLLED INSURERS

Revised Law

Sec. 823.401. PROHIBITION OF INDIRECT ACTION FOR CONTROLLED INSURER. (a) A holding company or controlled person may not directly or indirectly do or cause to be done for or on behalf of a controlled insurer any act intended to affect, influence, change, or alter the insurance operations of the insurer that would violate this code if done by the insurer alone.

(b) This section does not limit or prohibit a holding company or a person in the insurance holding company system from conducting on behalf of the person any type of business that would be normal and natural to the person if the person were not in the holding company system. (V.T.I.C. Art. 21.49-1, Sec. 8.)

Source Law

Sec. 8. No holding company or controlled person shall directly or indirectly or through another person do or cause to be done for or on behalf of the controlled insurer any act intended to affect, influence, change, or alter the insurance operations of the insurer which, if done by the insurer acting alone, would violate this code. Provided, however, this section shall not limit or prohibit such holding company or person within the holding company system from doing any type of business that would be normal and natural to such person if it were not within the holding company system so long as such business is conducted on behalf of such person.

Revised Law

Sec. 823.402. PROHIBITION ON VOTING CERTAIN SECURITIES. (a) A security that is the subject of an agreement or arrangement regarding an acquisition or that is acquired or to be acquired in violation of this chapter or a rule or order under this chapter may not be voted at a shareholders' meeting or counted for quorum purposes. An action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the security was not outstanding.

(b) An action taken at a shareholders' meeting is not invalidated by the voting of a security to which Subsection (a) applies unless:

(1) the action would materially affect control of the insurer; or

(2) a court of this state invalidates the action.

(V.T.I.C. Art. 21.49-1, Sec. 12(b) (part).)

Source Law

(b) Voting of Securities; When Prohibited. No security which is the subject of any agreement or arrangement regarding an acquisition, or which is acquired or to be acquired in contravention of the provisions of this article or of any rule,

regulation, or order issued by the State Board of Insurance or the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the courts of this State have so ordered. . . .

Revised Law

Sec. 823.403. MANAGEMENT OF CONTROLLED INSURER. (a) The control of an authorized insurer by another person does not relieve an officer or director of the insurer of any obligation or liability to which the officer or director is subject by law. The insurer shall be managed to assure the insurer's separate operating identity consistent with this code.

(b) This section does not preclude an authorized insurer from having a common management or joint use of personnel, property, or services with one or more other persons under an arrangement that meets the standards of Section 823.101(e). (V.T.I.C. Art. 21.49-1, Sec. 7.)

Source Law

Sec. 7. (a) Notwithstanding the control of an authorized insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this code.

(b) Nothing herein shall preclude an authorized insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of Paragraph (4) of Section 4(a) hereof.

Revisor's Note

Section 7(b), V.T.I.C. Article 21.49-1, refers to common management and "cooperative or joint use" of people, property, or services. The revised law omits "cooperative" as redundant because, in this context, its meaning is included in the meaning of "joint."

[Sections 823.404-823.450 reserved for expansion]

SUBCHAPTER J. CIVIL REMEDIES AND SANCTIONS

Revised Law

Sec. 823.451. RECEIVERSHIP. If it appears to the commissioner that a person's violation of this chapter so impairs the financial condition of a domestic insurer as to threaten the insurer's insolvency or make the further transaction of the insurer's business hazardous to the insurer's policyholders or creditors or the public, the commissioner may proceed under Articles 21.28 and 21.28-A to take possession of the insurer's property and conduct the business of the insurer. (V.T.I.C. Art. 21.49-1, Sec. 14.)

Source Law

Sec. 14. Whenever it appears to the commissioner that any person has committed a violation of this article which so impairs the financial condition of a domestic insurer as to threaten its insolvency or make the further transaction of its business hazardous to its policyholders or creditors or the public, then the commissioner may proceed as provided in Articles 21.28 and 21.28-A of this code to take possession of the property of such domestic insurer and to conduct the business thereof.

Revised Law

Sec. 823.452. REVOCATION, SUSPENSION, OR NONRENEWAL OF INSURER'S AUTHORITY. (a) If it appears to the commissioner that a person's violation of this chapter makes the continued operation of an insurer contrary to the interest of policyholders or the public, the commissioner, after notice and opportunity for a hearing, may suspend, revoke, or refuse to renew the insurer's

certificate of authority to engage in the business of insurance in this state for the period the commissioner finds is required for the protection of policyholders or the public.

(b) The commissioner shall provide specific findings of fact and conclusions of law to accompany a determination under this section. (V.T.I.C. Art. 21.49-1, Sec. 15.)

Source Law

Sec. 15. Whenever it appears to the commissioner that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interest of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusion of law.

Revised Law

Sec. 823.453. VOIDING UNAUTHORIZED ACTION. If it appears to the commissioner that a person has entered into a transaction or performed an act before complying with the applicable provisions of this chapter or has obtained the commissioner's approval of or acquiescence in a transaction or act that is subject to this chapter based on a material fraudulent misrepresentation, misstatement, or omission, the commissioner, after notice and opportunity for a hearing, by order may void the transaction or act and return the parties to the position they would have occupied if the transaction or act had not occurred. (V.T.I.C. Art. 21.49-1, Sec. 16.)

Source Law

Sec. 16. Whenever it appears to the commissioner that any person has entered into any transaction or act without having first complied with the provisions of this article applicable to

such transaction or act, and in violation hereof, or has obtained his approval of or acquiescence in a transaction or act subject to this article based upon a material fraudulent misrepresentation, misstatement, or omission, the commissioner may, after giving notice and an opportunity to be heard, determine and order that such transaction or act be set aside, rescinded, revoked, reversed, and rendered void and of no force or effect, and that the parties to such transaction or act shall be returned to the position they would have occupied had not such transaction or act occurred in violation of this article.

Revisor's Note

Section 16, V.T.I.C. Article 21.49-1, provides the authority for a transaction or act to be "set aside, rescinded, revoked, reversed, and rendered void and of no force or effect." The revised law substitutes "void" for the quoted language because, in context, the term "void" is synonymous with the phrase "set aside, rescinded, revoked, reversed, and rendered void" and it is not necessary to state that a void transaction or act has "no force or effect."

Revised Law

Sec. 823.454. ADMINISTRATIVE PENALTY. (a) A director or officer of an insurer or insurance holding company system that is subject to this chapter is subject to an administrative penalty under Chapter 84 if the director or officer knowingly and wilfully:

(1) participates in or assents to a transaction or an investment that has not been properly reported or submitted under this chapter;

(2) permits an officer, agent, or employee of the insurer or holding company system, as appropriate, to engage in a transaction or make an investment that has not been properly reported or submitted under this chapter; or

(3) violates this chapter.

(b) The amount of an administrative penalty under this section may not exceed $10,000 for each violation. (V.T.I.C.

Art. 21.49-1, Sec. 5(k).)

Source Law

(k) Additional Violations. Each director or officer of an insurance company subject to this article, or of an insurance holding company system subject to this article, who knowingly and wilfully violates, participates in, or assents to or who knowingly and wilfully permits any of the officers, agents, or employees of the insurer or holding company system to engage in transactions or make investments that have not been properly reported or submitted under this article or that knowingly and wilfully violate this article is subject to an administrative penalty under Article 1.10E of this code of not more than $10,000 for each violation.

Revised Law

Sec. 823.455. EQUITABLE RELIEF. (a) If it appears to the commissioner that an insurer or a director, officer, employee, or agent of an insurer has committed or is about to commit a violation of this chapter or a rule or order under this chapter, the commissioner may apply to a district court of Travis County for an order enjoining the violation and for other equitable relief that the nature of the case and the interest of the insurer's policyholders or creditors or the public requires.

(b) If an insurer or the commissioner has reason to believe that a security of the insurer was or is about to be acquired in violation of this chapter or a rule or order under this chapter, the insurer or the commissioner may apply to a district court of Travis County or of the county in which the insurer has its principal place of business to:

(1) enjoin any offer, request, invitation, agreement, or acquisition made in violation of Subchapter D or a rule or order under that subchapter;

(2) enjoin the voting of a security acquired in violation of Subchapter D or a rule or order under that subchapter; or

(3) void a vote of the security that was cast at any shareholders' meeting.

(c) In a suit filed under Subsection (b), the insurer or the commissioner may also apply for other equitable relief that the nature of the case and the interests of the insurer's policyholders or creditors or the public requires. (V.T.I.C. Art. 21.49-1, Secs. 12(a), (b) (part).)

Source Law

Sec. 12. (a) Injunctions. Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed or is about to commit a violation of this article or of any rule, regulation, or order issued by the State Board of Insurance or by the commissioner hereunder, the commissioner may apply to the district court for Travis County for an order enjoining such insurer or such director, officer, employee, or agent thereof from violating or continuing to violate this article or any such rule, regulation, or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders or creditors or the public may require.

(b) . . . If an insurer or the commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this article or of any rule, regulation, or order issued by the State Board of Insurance or the commissioner hereunder, the insurer or the commissioner may apply to the district court for Travis County or to the district court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of Section 5 or any rule, regulation, or order issued by the commissioner thereunder to enjoin the voting of any such security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders or creditors or the public may require.

Revised Law

Sec. 823.456. SEIZURE OR SEQUESTRATION OF VOTING SECURITIES. If a person acquires or is proposing to acquire a voting security in violation of this chapter or a rule or order under this chapter, a district court of Travis County or of the county in which the insurer has its principal place of business, on application of the insurer or the commissioner and notice that the court considers appropriate, may seize or sequester any voting securities of the insurer that are owned directly or indirectly by that person and may issue an order relating to those securities that is appropriate to implement this chapter. (V.T.I.C. Art. 21.49-1, Sec. 12(c) (part).)

Source Law

(c) Sequestration of Voting Securities. In any case where a person has acquired or is proposing to acquire any voting securities in violation of this article or any rule, regulation or order issued by the State Board of Insurance or the commissioner hereunder the district court for Travis County or the district court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this article. . . .

Revised Law

Sec. 823.457. LONG ARM JURISDICTION; SERVICE OF PROCESS. (a) The courts of this state have jurisdiction over a person who is not a resident of, domiciled in, or authorized to engage in business in this state and files a statement with the commissioner under Subchapter D, and over the actions involving that person that arise out of a violation of this chapter.

(b) A person described by Subsection (a) is considered to have appointed the commissioner as the person's agent for service

of process in any action, suit, or proceeding arising out of a violation of this chapter.

(c) The commissioner shall forward by registered or certified mail to the person's last known address copies of all processes that are served on the commissioner under Subsection (b).

(d) Additional procedures and fees for service of process are provided by Subchapter C, Chapter 804. (V.T.I.C. Art. 1.36, Sec. 7(e); Art. 21.49-1, Sec. 5(i).)

Source Law

[Art. 1.36]
[Sec. 7]

(e) The courts of this state have jurisdiction over any person defined by Subsection (i) of Section 2 of Article 21.49-1 of this code, who is not resident, domiciled, or authorized to do business in this state and who files a statement with the commissioner under Article 21.49-1 of this code and over actions involving any person defined by Subsection (i) of Section 2 of Article 21.49-1 of this code arising out of violations of that article. Any person defined by Subsection (i) of Section 2 of Article 21.49-1 of this code is considered to have performed acts equivalent to and constituting an appointment of the commissioner by that person to be his lawful attorney on whom process in any action, suit, or proceeding arising out of violations of Article 21.49-1 of this code may be served. Copies of process shall be served on the commissioner and transmitted by the commissioner by registered or certified mail to that person at his last known address. Procedures and fees for service of process are governed by Section 3 of this article.

[Art. 21.49-1]
[Sec. 5]

(i) Jurisdiction; Consent to Service of Process. The courts of this State are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do

business in this State who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

Revisor's Note

(1) Section 7(e), V.T.I.C. Article 1.36, refers to "any person defined by Subsection (i) of Section 2 of Article 21.49-1 of this code." Section 2(i), V.T.I.C. Article 21.49-1, does not define the term "person," but rather provides a definition for "insurance holding company system." At the time Section 7(e), V.T.I.C. Article 1.36, was enacted, the term "person" was defined by "Subsection (i) of Section 2 of Article 21.49-1." See Chapter 46, Acts of the 70th Legislature, Regular Session, 1987. Subsequent to that enactment, Section 2, V.T.I.C. Article 21.49-1, was amended, resulting in a relettering of the definitions in that section, including the relettering of the definition of "person" from Subsection (i) to Subsection (k). See Section 20.08, Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993. However, the cross-reference to "Subsection (i) of Section 2 of Article 21.49-1" was not correspondingly amended to reflect the relettering of the definitions. The term "person" is now defined by Section 2(k), V.T.I.C. Article 21.49-1, and the revised law is drafted accordingly.

(2) Section 7(e), V.T.I.C. Article 1.36, and Section 5(i), V.T.I.C. Article 21.49-1, refer to appointment of the commissioner as a person's "lawful attorney" for service of process. The revised law substitutes "agent" for "lawful

attorney" for consistency and because "agent" is more commonly used to describe the person described in the source law. It is clear from the context of the source law that the person to receive service of process does not need to be licensed to practice law (the more common understanding of the term "attorney").

Revised Law

Sec. 823.458. SANCTIONS. An entity that holds a certificate of authority issued by the department and that violates this code is subject to sanctions under Chapter 82. (V.T.I.C. Art. 21.49-1, Section 5(j).)

Source Law

(j) Additional Sanctions. An entity that holds a certificate of authority granted by the State Board of Insurance or the commissioner and that violates this code is subject to the sanctions authorized under Section 7, Article 1.10, of this code.

Revisor's Note
(End of Subchapter)

Section 17(a), V.T.I.C. Article 21.49-1, provides authority for the judicial review of an action of the commissioner. The revised law omits that subsection because the provision is redundant of the authority provided under Subchapter D, Chapter 36, Insurance Code, which was formerly Article 1.04, Insurance Code. The omitted law reads:

Sec. 17. (a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action of the commissioner pursuant to this article may appeal therefrom under the procedures provided in Article 1.04 of this code.

[Sections 823.459-823.500 reserved for expansion]

SUBCHAPTER K. CRIMINAL PENALTIES

Revised Law

Sec. 823.501. OFFENSE OF VIOLATING CHAPTER. (a) A person commits an offense if the person is an insurer or individual and wilfully violates this chapter.

(b) If the person is an insurer, an offense under Subsection (a) is a misdemeanor punishable by a fine not to exceed $50,000 for each violation.

(c) If the person is an individual, an offense under Subsection (a) is a misdemeanor punishable by a fine not to exceed $10,000 for each violation except as provided by Subsection (d) and Section 823.502.

(d) An offense under Subsection (a) is a felony if the person is an individual and the violation involves the deliberate perpetration of a fraud on the department, an insurer, an insurer's subsidiary, or policyholders. The felony is punishable by:

(1) imprisonment for a term not to exceed five years;

(2) a fine not to exceed $10,000 for each violation; or

(3) both fine and imprisonment under this subsection.

(e) A fine under this section is in addition to any civil or administrative penalty.

(f) An individual on whom a fine is imposed under this section shall pay the fine in that person's individual capacity. (V.T.I.C. Art. 21.49-1, Sec. 13(a) (part).)

Source Law

(a) . . . Any insurer which wilfully violates this article may be fined not more than $50,000 per violation, in addition to any civil or administrative penalty. Any individual who wilfully violates this article may be fined, in that person's individual capacity, not more than $10,000 per violation, in addition to any civil or administrative penalty, or, if such wilful violation involves the deliberate perpetration of a fraud upon the

department, an insurer, any subsidiary or policyholders, that individual may be imprisoned not more than five years or both.

Revised Law

Sec. 823.502. OFFENSE OF SUBSCRIBING TO OR MAKING FALSE STATEMENT. (a) A person commits an offense if the person is an officer, director, or employee of a domestic insurer or the insurer's insurance holding company system and wilfully and knowingly subscribes to or makes or causes to be made a false statement on a written instrument required to be filed with the commissioner.

(b) An offense under Subsection (a) is a felony punishable by:

(1) imprisonment for a term of not less than two years;

(2) a fine not to exceed $10,000 for each violation; or

(3) both fine and imprisonment under this subsection.

(c) A person on whom a fine is imposed under this section shall pay the fine in that person's individual capacity. (V.T.I.C. Art. 21.49-1, Sec. 13(b).)

Source Law

(b) Any officer, director, or employee of a domestic insurer or its holding company system who wilfully and knowingly subscribes to or makes or causes to be made any false statements on any written instrument required to be made to or filed with the board or the commissioner may be fined not more than $10,000 per violation, imprisoned, or both or made subject to the penalties provided by Article 21.47 of this code, whichever penalties are greater. Any fine imposed shall be paid by the officer, director, or employee in that person's individual capacity.

Revisor's Note

Section 13(b), V.T.I.C. Article 21.49-1, provides that a person who engages in certain conduct is subject to a fine of "not more than $10,000 per violation," imprisonment, or both the fine and imprisonment or is "subject to the penalties provided by Article 21.47 of this code, whichever penalties are greater." V.T.I.C. Article 21.47 provides that a violation of that article is a felony of the third degree, under which an individual shall be punished by imprisonment for a term of not more than 10 years or less than 2 years and may also be punished by a fine not to exceed $10,000. Comparing the terms of the penalty expressed by Section 13 with those of a third degree felony to determine the greater, Section 13 sets the maximum fine at $10,000 per violation, while Article 21.47 limits the total fine to $10,000. Section 13 sets no upper or lower limit on the term of imprisonment, while Article 21.47 sets the upper limit for imprisonment at 10 years and the lower at 2 years. The revised law expressly states the greater penalties at imprisonment for not less than two years, a fine not to exceed $10,000 for each violation, or both the fine and imprisonment. The revised law then omits the reference to Article 21.47 as unnecessary.

Revised Law

Sec. 823.503. BEGINNING CRIMINAL PROCEEDINGS. If it appears to the commissioner that an insurer or a director, officer, employee, or agent of an insurer has wilfully violated this chapter, the commissioner may cause criminal proceedings to be instituted against that person by the district attorney for the county in which the principal office of the insurer is located or, if the insurer does not have a principal office in this state, the district attorney of Travis County. (V.T.I.C. Art. 21.49-1, Sec. 13(a) (part).)

Source Law

Sec. 13. (a) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a wilful violation of this article, the

commissioner may cause criminal proceedings to be instituted by the district attorney for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district attorney of Travis County against such insurer, or the responsible director, officer, employee, or agent thereof. . . .

CHAPTER 824. MERGER AND CONSOLIDATION OF STOCK INSURANCE CORPORATIONS

SUBCHAPTER A. AUTHORITY AND PROCEDURES

[Sections 824.006-824.050 reserved for expansion]

SUBCHAPTER B. EFFECTIVE DATE OF MERGER OR CONSOLIDATION

[Sections 824.054-824.100 reserved for expansion]

SUBCHAPTER C. EFFECT OF MERGER OR CONSOLIDATION

[Sections 824.105-824.150 reserved for expansion]

CHAPTER 824. MERGER AND CONSOLIDATION OF STOCK INSURANCE CORPORATIONS

SUBCHAPTER A. AUTHORITY AND PROCEDURES

Revised Law

Sec. 824.001. AUTHORITY TO MERGE OR CONSOLIDATE. Two or more insurance corporations that engage in a similar line of the business of insurance may merge or consolidate under this chapter. (V.T.I.C. Art. 21.25, Sec. 1 (part).)

Source Law

Sec. 1. Any two (2) or more insurance corporations doing a similar line of business, may merge or consolidate. . . .

Revised Law

Sec. 824.002. PROCEDURES; APPLICABILITY OF TEXAS BUSINESS CORPORATION ACT. (a) To the extent that the provisions of the Texas Business Corporation Act are not inconsistent with the provisions of this code, the Texas Business Corporation Act governs:

(1) the procedures for a merger or consolidation under this chapter;

(2) the effect of a merger or consolidation under this chapter; and

(3) the rights and duties of creditors, shareholders, and the corporations that are involved in a merger or consolidation under this chapter.

(b) To the extent that the Texas Business Corporation Act applies under this chapter to insurance corporations, the commissioner shall perform each duty, exercise each power, and perform each act vested in, required of, or to be performed by

the secretary of state under the Texas Business Corporation Act. (V.T.I.C. Art. 21.25, Sec. 1 (part).)

Source Law

Sec. 1. . . . The procedure for, the effect of, and the rights and duties of creditors, shareholders, and the corporations involved in such merger or consolidation shall be governed by applicable provisions of the "Texas Business Corporation Act," as amended, insofar as the same are not inconsistent with the provisions of this Act, and the Insurance Code of the State of Texas. Wherever in said "Texas Business Corporation Act" some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the Secretary of State such is to be vested in, required of, or performed by the Commissioner of Insurance insofar as such Act is applicable to insurance corporations under the provisions hereof.

Revisor's Note

(1) Section 1, V.T.I.C. Article 21.25, refers to the Texas Business Corporation Act "as amended." The revised law omits the reference to "as amended" because it is unnecessary. Under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute. That section applies to the revised law.

(2) Section 1, V.T.I.C. Article 21.25, refers to the "duty, responsibility, power, [or] authority" vested in the secretary of state. The revised law omits the reference to "responsibility" because, in context, "responsibility" is included within the meaning of "duty." The revised law omits the reference to "authority" because, in context, "authority" is included within the meaning of "power."

Revised Law

Sec. 824.003. PROPOSED PLAN OF MERGER OR CONSOLIDATION; APPROVAL OF DIRECTORS AND SHAREHOLDERS. (a) A proposed plan of merger or consolidation must be approved by the boards of

directors of the corporations that are parties to the merger or consolidation.

(b) After approval by the boards of directors, the proposed plan shall be submitted for approval to the shareholders of each corporation that is a party to the plan at a separate regular or special meeting of the shareholders called in the manner provided by the bylaws of the respective corporations.

(c) A plan is approved on the affirmative vote of the holders of two-thirds of the shares of the capital stock of each corporation that is a party to the plan. (V.T.I.C. Art. 21.25, Sec. 2.)

Source Law

Sec. 2. Before any such proposed plan of merger or consolidation is submitted to the shareholders for their approval, as provided under the "Texas Business Corporation Act," it shall first be approved by the Boards of Directors of the two or more corporations planning to merge or consolidate; and thereafter such plan shall be submitted to the shareholders of each of the corporations which are parties to the plan at separate regular or special meetings of the shareholders of the corporations, called in the manner provided by the By-Laws of the respective corporations and may be approved by the affirmative vote of the holders of two-thirds (2/3) of the shares of the capital stock of each of such corporations.

Revisor's Note

Section 2, V.T.I.C. Article 21.25, refers to submission of a proposed plan to shareholders "as provided under the Texas Business Corporation Act." The revised law omits the reference as unnecessary. The application of the Texas Business Corporation Act to a merger or consolidation under this chapter is established under Section 824.002.

Revised Law

Sec. 824.004. FILING OF PROPOSED PLAN WITH COMMISSIONER. After a proposed plan of merger or consolidation has been approved as provided by Section 824.003, the plan shall be filed with the commissioner. (V.T.I.C. Art. 21.25, Sec. 3 (part).)

Source Law

Sec. 3. After such plan has been approved as provided in Section 2 hereof, it shall then be filed with the Commissioner of Insurance. . . .

Revised Law

Sec. 824.005. COMMISSIONER ACTION ON PLAN. (a) The commissioner shall hold a hearing on a proposed plan of merger or consolidation not later than the 15th day after the date on which the plan is filed with the commissioner as required by Section 824.004.

(b) Not later than the 15th day after the hearing date, the commissioner shall:

(1) give written approval of the plan to each insurance corporation that is a party to the proposed merger or consolidation; or

(2) disapprove the plan if the commissioner determines that the plan:

(A) is contrary to law; or

(B) would not be in the best interests of the policyholders affected by the plan and would substantially reduce the security of and service to be rendered to policyholders of the insurance corporation in this state or elsewhere.

(c) The commissioner may extend the period during which the commissioner may affirmatively approve or disapprove the proposed plan if representatives of the applicants for the proposed merger or consolidation concur in that extension.

(d) If the commissioner disapproves a proposed plan, the commissioner shall specify in detail the reasons for that disapproval. (V.T.I.C. Art. 21.25, Sec. 3 (part).)

Source Law

Sec. 3. . . . The Commissioner shall hold a hearing within fifteen (15) days of filing the plan and shall then give approval in writing to each insurer involved within fifteen (15) days after the hearing unless he finds the plan contrary to law or that it would not be in the best interests of the policyholders affected by the plan and would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere. The Commissioner of Insurance may extend the fifteen (15) day period within which he may affirmatively approve or disapprove such plan when such action is concurred in by representatives of applicants to the merger or consolidation. In the event of disapproval of the plan, he shall specify in detail his reasons therefor. . . .

[Sections 824.006-824.050 reserved for expansion]

SUBCHAPTER B. EFFECTIVE DATE OF MERGER OR CONSOLIDATION

Revised Law

Sec. 824.051. EFFECTIVE DATE OF MERGER. A merger takes effect on the date specified in the proposed plan of merger. (V.T.I.C. Art. 21.25, Sec. 3 (part).)

Source Law

Sec. 3. . . . The merger shall be effective upon the date specified in the proposed plan of merger; or . . .

Revised Law

Sec. 824.052. EFFECTIVE DATE OF CONSOLIDATION. (a) A new insurance corporation resulting from a plan of consolidation shall be issued a charter and a certificate of authority on:

(1) submission of proper articles of incorporation to the commissioner;

(2) approval by the commissioner in accordance with the procedures required for the issuance of a new charter; and

(3) submission of proof that the new corporation has capital and surplus at least equal to that of the corporation that is a party to the consolidation and has the largest capital and surplus.

(b) A consolidation takes effect on the date of issuance of the charter and certificate of authority under Subsection (a). (V.T.I.C. Art. 21.25, Sec. 3 (part).)

Source Law

Sec. 3. . . . where consolidation results, the new corporation shall be issued a charter and license upon submission of proper articles of incorporation to the Commissioner of Insurance, and upon his approval together with approval of the Attorney General in accordance with the procedure now required for the issuance of a new charter, and proof that it has capital and surplus of not less than the capital and surplus of the corporation involved in such consolidation having the largest capital and surplus, and it shall be effective upon such date of issuance. . . .

Revisor's Note

(1) Section 3, V.T.I.C. Article 21.25, refers to issuance of a license to an insurance corporation. The revised law substitutes "certificate of authority" for "license" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(2) Section 3, V.T.I.C. Article 21.25, refers to approval of the attorney general "in accordance with the procedure now required for the issuance of a new charter." Under V.T.I.C. Article 2.07, revised as part of Chapter 822, the approval of the attorney general had been required before issuance of a new charter to an insurance company. Article 2.07 was amended by Chapter 6, Acts of the 70th Legislature, Regular Session, 1987; under that article as amended, the approval of the attorney general is no longer required. The revised law is drafted accordingly.

Revised Law

Sec. 824.053. APPROVAL OF MERGER OR CONSOLIDATION AFFECTING FOREIGN CORPORATION; EFFECTIVE DATE. Notwithstanding Section 824.051 or 824.052, a merger or consolidation involving a corporation organized under the laws of another state does not take effect until the merger or consolidation is approved by the proper official of the domiciliary state, if that approval is required. (V.T.I.C. Art. 21.25, Sec. 3 (part).)

Source Law

Sec. 3. . . . A merger or consolidation involving a corporation organized under the laws of another state shall not be effective until the merger or consolidation has been approved by the proper official of the domiciliary state of the out-of-state corporation, when such approval is required under the laws of such domiciliary state.

[Sections 824.054-824.100 reserved for expansion]

SUBCHAPTER C. EFFECT OF MERGER OR CONSOLIDATION

Revised Law

Sec. 824.101. EFFECT OF MERGER OR CONSOLIDATION ON OUTSTANDING INSURANCE POLICIES. (a) A new or surviving corporation resulting from a merger or consolidation shall assume each insurance policy outstanding against each insurance corporation that merges or consolidates on the same terms and under the same conditions as if the policy had continued in force through the original corporation.

(b) The new or surviving insurance corporation shall implement the terms of the policy.

(c) The new or surviving insurance corporation is entitled to:

(1) all rights and privileges under the policy; and

(2) all reserves that accumulated on the policy before the merger or consolidation. (V.T.I.C. Art. 21.25, Sec. 4.)

Source Law

Sec. 4. All policies of insurance outstanding against any corporation so merged or consolidated shall be assumed by the new or surviving corporation on the same terms under the same conditions as if such policies had continued in force in the original corporation, and such insurer shall carry out the terms of such policy and be entitled to all the rights and privileges thereof and the reserves accumulating on such policy prior to such merger or consolidation.

Revised Law

Sec. 824.102. EFFECT OF MERGER OR CONSOLIDATION ON CERTAIN INVESTMENTS. (a) This section applies to each investment of an affected corporation, including an investment in real property, that:

(1) was authorized as a proper asset, as of the date on which the investment was made and under the laws of the state in which the insurance corporation was organized, for investment of funds of an insurance corporation; and

(2) is taken over by the new or surviving corporation under the terms of the merger or consolidation.

(b) On the merger or consolidation of two or more insurance corporations under this chapter, an investment of the affected corporations described by Subsection (a) is a proper asset under the laws of this state of the new or surviving corporation if the investment is:

(1) approved by the commissioner; and

(2) taken over on terms satisfactory to the commissioner.

(c) A new or surviving corporation that acquires, under the terms of the merger or consolidation, real property that exceeds the amount of real property permitted by the applicable sections of this code relating to owning or holding real property must sell and dispose of the excess real property:

(1) within the period specified by those sections; or

(2) within a longer period if the corporation obtains a certificate from the commissioner:

(A) stating that the interests of the corporation will materially suffer by the forced sale of the affected real property; and

(B) specifying the longer period for the sale of the excess real property.

(d) This section does not preclude the designation and use of the acquired excess real property as branch offices in accordance with this code. (V.T.I.C. Art. 21.25, Sec. 5.)

Source Law

Sec. 5. In the event of the merger or consolidation of any two or more insurance corporations under the provisions of this Act, all investments of such corporations so absorbed, that were authorized when made by the laws of the state in which such insurance corporations were organized, as proper securities or assets, including real property, for investment of funds of an insurance corporation and which are taken over by such new or surviving corporation by virtue of a merger or consolidation under the provisions of the Act, shall be, under the laws of this state, considered as valid securities or assets, including real property, of such new or surviving corporation by virtue of a merger or consolidation under the provisions of this Act, provided such investments are approved by the Commissioner of Insurance in this state, and the same are taken over on terms satisfactory to said Commissioner; provided, however, that in the event the new or surviving corporation acquires by virtue of such merger or consolidation real estate or property beyond or in excess of that permitted by the applicable Articles pertaining to owning or holding real estate, such new or surviving corporation shall sell and dispose of all such excess real estate within the time specified in such applicable Articles; provided that the new or surviving corporation shall not hold such property for a longer period unless it shall procure a certificate from said Commissioner that its interests will materially suffer by the

forced sale thereof; in which event the time for the sale thereof may be extended to such time as the Commissioner shall direct in such certificate. Provided further, that this Section will not preclude the designation and use of such acquired excess real estate as branch offices in accordance with the applicable provisions of this Code.

Revisor's Note

Section 5, V.T.I.C. Article 21.25, refers to "proper securities or assets" of insurance corporations. The revised law omits the reference to "security" because, in context, "security" is included within the meaning of "asset."

Revised Law

Sec. 824.103. RETIREMENT AND CANCELLATION OF TREASURY SHARES. (a) After a merger or consolidation is completed, any shares of the new or surviving corporation acquired by that corporation as a result of distribution of shares to the shareholders of another corporation that is merged or consolidated or as a result of purchase of shares of dissenting shareholders, may be held as treasury shares until the first anniversary of the date on which the merger or consolidation takes effect.

(b) After the period during which shares described by Subsection (a) are held as treasury shares, the corporation shall retire and cancel those shares by proper amendments to its charter if the shares have not previously been reissued. (V.T.I.C. Art. 21.25, Sec. 6.)

Source Law

Sec. 6. If, after any merger or consolidation is completed, the new or surviving corporation acquires its own shares as a result of distribution of shares to the shareholders of the other corporation or corporations which are being merged or consolidated, or acquires its own stock as a result of purchase of stock of the dissenting shareholders, such stock may be held as treasury stock for a period of one (1) year, after which time

such corporation shall retire and cancel such stock by proper charter amendment, if the same has not previously been reissued.

Revisor's Note

Section 6, V.T.I.C. Article 21.25, refers to acquisition of "stock" that is held as "treasury stock." The revised law substitutes "shares" for "stock" and "treasury shares" for "treasury stock" to conform to the terminology used in the Texas Business Corporation Act. See Article 1.02, Texas Business Corporation Act.

Revised Law

Sec. 824.104. EFFECT ON ANTITRUST LAWS. This chapter does not affect in any manner the antitrust laws of this state. (V.T.I.C. Art. 21.25, Sec. 8.)

Source Law

Sec. 8. Nothing herein shall be construed as affecting, modifying, amending or repealing in any manner the Anti-Trust Statutes of this state.

Revisor's Note

Section 8, V.T.I.C. Article 21.25, refers to "affecting, modifying, amending or repealing in any manner" certain antitrust laws. The revised law omits the references to "modifying, amending or repealing" because, in context, those terms are included within the meaning of "affecting."

[Sections 824.105-824.150 reserved for expansion]

SUBCHAPTER D. MERGER OR CONSOLIDATION OF LIFE INSURANCE CORPORATIONS

Revised Law

Sec. 824.151. PURCHASE OF OUTSTANDING SHARES BY LIFE INSURANCE CORPORATION. (a) A life insurance corporation may purchase or contract to purchase all or part of the outstanding shares of another life insurance corporation for purposes of merger or consolidation.

(b) Except as provided by Section 824.152, the provisions

of Article 3.39 that limit investments in the corporate stock of another corporation do not apply to a purchase made under this section. (V.T.I.C. Art. 21.25, Sec. 7 (part).)

Source Law

Sec. 7. One life insurance corporation may purchase or contract to purchase all or part of the outstanding stock of another life insurance corporation for purposes of merger or consolidation. The provisions contained in Article 3.39 of the Insurance Code which limit investments in the corporate stock of another corporation shall not apply provided that . . . .

Revised Law

Sec. 824.152. LIMITATIONS ON PURCHASE OF OUTSTANDING SHARES BY LIFE INSURANCE CORPORATION. (a) A purchase or contract to purchase under Section 824.151 is subject to this section.

(b) The intention to merge or consolidate must be evidenced by a resolution adopted by the board of directors of the purchasing corporation on or before the purchase of the shares or the execution of a contract to purchase the shares.

(c) The purchasing corporation shall obtain or seek to obtain at least the number of shares of the other insurance corporation necessary to vote an approval of the merger or consolidation under the laws of the state in which the other insurance corporation is organized, by one or more of the following means:

(1) initially purchasing or contracting to purchase the shares; or

(2) offering to purchase, making a tender offer for, requesting or inviting tenders of, or otherwise seeking to acquire the shares in the open market or otherwise.

(d) A purchase, offer to purchase, tender offer, request to purchase, or invitation to purchase shares in excess of the limits imposed under Article 3.39 may not be made until it is filed with and approved by the commissioner in accordance with Chapter 823.

(e) Following the earlier of the date of the contract to purchase the shares or the date of the commissioner's approval of the purchase, offer to purchase, tender offer, or request or an invitation to purchase the shares, the corporation the shares of which are being purchased may not purchase or contract to purchase any of its own shares as treasury shares, issue or contract to issue any of its authorized but unissued shares, or make any investments in or loans to the purchasing corporation or any of its affiliates unless the investment or loan is otherwise authorized and approved in advance by the commissioner under Chapter 823.

(f) The merger or consolidation must take effect on or before December 31 of the second year after the earlier of the year in which the initial purchase of the shares is made or the year in which the initial contract to purchase is executed unless the commissioner for good cause shown extends that period.

(g) If the merger or consolidation does not take effect within the period finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of the purchased shares that exceed the investment limitations imposed under Article 3.39 within six months of the final effective date.

(h) Amounts actually paid by the purchasing corporation for the purchase of shares acquired or obtained under this subchapter may not include the minimum capital, minimum surplus, and policy reserves required by law for the purchasing corporation.
(V.T.I.C. Art. 21.25, Sec. 7 (part).)

Source Law

Sec. 7. . . . such purchase or contract to purchase shall be subject to the following conditions or limitations:

(a) The intention to merge or consolidate is evidenced by a resolution adopted by the Board of Directors of the purchasing corporation at or prior to the purchase of such stock or the execution of a contract to purchase such stock; and

(b) The purchasing corporation shall either (1) initially

purchase or contract to purchase at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market or otherwise, at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of shares of stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized; and

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49-1 of this code; and

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49-1, as amended, of the Insurance Code; and

(e) The merger or consolidation shall become effective on or before December 31st in the second year following the year in

which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the merger or consolidation; and

(f) If the merger or consolidation fails to become effective within such time as may be finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

Revisor's Note

Section 7(d), V.T.I.C. Article 21.25, refers to Article 21.49-1, Insurance Code, "as amended." The revised law omits the reference to "as amended" for the reason stated in Revisor's Note (1) to Section 824.002.

CHAPTER 825. CONVERSION OF STOCK INSURANCE COMPANY TO MUTUAL INSURANCE COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 825.003-825.050 reserved for expansion]

SUBCHAPTER B. STOCK ACQUISITION PLAN

[Sections 825.057-825.100 reserved for expansion]

CHAPTER 825. CONVERSION OF STOCK INSURANCE COMPANY TO MUTUAL INSURANCE COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 825.001. DEFINITIONS. In this chapter:

(1) "Converting company" means a stock insurance company that converts to a mutual insurance company under this chapter.

(2) "Resulting company" means a mutual insurance company to which a stock insurance company converts under this chapter.

(3) "Stock acquisition plan" means a converting company's plan for the acquisition of shares of its capital stock. (New.)

Revisor's Note

The definitions of "converting company," "resulting company," and "stock acquisition plan" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definitions.

Revised Law

Sec. 825.002. AUTHORITY TO CONVERT TO MUTUAL INSURANCE COMPANY. (a) A domestic stock insurance company, as defined by law, may convert to a mutual insurance company.

(b) To convert to a mutual insurance company, a stock insurance company must implement a plan for the acquisition of shares of its capital stock.

(c) In implementing a stock acquisition plan under this chapter, a converting company may acquire shares of its stock by gift, bequest, or purchase. (V.T.I.C. Art. 21.27, Secs. 1

(part), 2 (part).)

Source Law

Art. 21.27

Sec. 1. Any stock insurance company which is a domestic company, as defined by law, may become a mutual company owned and controlled by its policyholders, and to that end may carry out a plan for the acquisition of shares of its capital stock; . . . .

Sec. 2. If any insurance corporation shall determine to become a mutual insurance corporation in accordance with the provisions of Section 1 of this article, it may, in carrying out any plan to that end under such provisions, acquire any shares of its own stock by gift, bequest or purchase; . . . .

Revisor's Note

Section 1, V.T.I.C. Article 21.27, provides that a domestic stock insurance company "may become a mutual company owned and controlled by its policyholders." The revised law omits the reference to "owned and controlled by its policyholders" because those concepts are inherent in the definition of a mutual insurance company.

[Sections 825.003-825.050 reserved for expansion]

SUBCHAPTER B. STOCK ACQUISITION PLAN

Revised Law

Sec. 825.051. CONTENTS OF STOCK ACQUISITION PLAN. (a) A stock acquisition plan must:

(1) be adopted by a vote of a majority of the directors of the corporation at a directors' meeting called for that purpose;

(2) be approved by a vote of shareholders representing a majority of the capital stock at a meeting of shareholders called for that purpose;

(3) enable each shareholder to dispose of the same proportion of the shareholder's holdings at the same price per share and on the same terms as any other shareholder;

(4) be approved by a vote of the majority of the

policyholders eligible under Section 825.054 to participate at a meeting of the policyholders called for that purpose; and

(5) be submitted to the commissioner and approved by the commissioner in writing.

(b) If the purchase price for the company's acquisition of shares of its capital stock is not set by the stock acquisition plan, each payment for those shares is subject to the commissioner's approval. (V.T.I.C. Art. 21.27, Sec. 1 (part).)

Source Law

Sec. 1. . . . provided, however, that such plan:

(1) Shall enable each stockholder to dispose of the same proportion of his holdings at the same price per share and on the same terms;

(2) Shall have been adopted by a vote of a majority of the directors of such corporation;

(3) Shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose;

(4) Shall have been approved by a majority vote of the policyholders voting at a meeting, called for the purpose of policyholders, . . . unless and until the plan shall first have been approved and adopted by a majority of the directors of such corporation and approved and adopted by its stockholders representing at least a majority of the capital stock of the corporation at meetings of the directors and stockholders, respectively, duly called and held for the purpose of considering the adoption of such plan, . . .

(5) Shall have been submitted to the Chairman of the Board of Insurance Commissioners and shall have been approved by him in writing, provided that every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the Chairman of the Board of Insurance Commissioners and . . . .

Revisor's Note

V.T.I.C. Article 21.27 refers to the "Board of Insurance Commissioners." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance as appropriate. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners have been changed appropriately.

Revised Law

Sec. 825.052. SUFFICIENT ASSETS REQUIRED. The commissioner may not approve a stock acquisition plan or a payment for stock under Section 825.051(b) unless, at the time of the approval, the company has assets equal to at least $500,000 more than the entire liability of the company, including the net values of its outstanding contracts computed as required by law, and all funds and contingent reserves, after deducting:

(1) the aggregate amount allocated by the plan for the acquisition of any part or all of its capital stock, to be paid in cash or other assets of the company; and

(2) the amount of any payment not set by the plan and subject to separate approval by the commissioner after the approval of the plan. (V.T.I.C. Art. 21.27, Sec. 1 (part).)

Source Law

Sec. 1. . . .

(5) . . . provided that neither such plan, nor any such payment, shall be approved by the Chairman of the Board of Insurance Commissioners, unless at the time of such approvals respectively the corporation, after deducting the aggregate sum

appropriated by such plan, to be paid in cash or other assets of the corporation, for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to separate approval as aforesaid after the approval of such plan, after deducting also the amount of such payment, shall be possessed of assets sufficient to equal the entire liability of the corporation, including the net values of its outstanding contracts computed as required by law, and also all funds, contingent reserves, and a surplus over and above all liabilities of not less than Five Hundred Thousand ($500,000.00) Dollars.

Revised Law

Sec. 825.053. STOCK ACQUISITION PLAN APPROVAL. A policyholders' meeting for approval of a stock acquisition plan may not be called until Sections 825.051(a)(1) and (2) are satisfied. (V.T.I.C. Art. 21.27, Sec. 1 (part).)

Source Law

Sec. 1. . . .

(4) . . . but no such meeting shall be called for such purpose nor shall such plan be submitted to the policyholders unless and until the plan shall first have been [approved and adopted by a majority of the directors of such corporation and approved and adopted by its stockholders representing at least a majority of the capital stock of the corporation at meetings of the directors and stockholders, respectively, duly called and held for the purpose of considering the adoption of such plan] . . . .

Revised Law

Sec. 825.054. POLICYHOLDER ELIGIBILITY. To be eligible to participate in a policyholders' meeting held to approve a stock acquisition plan, a policyholder must have insurance coverage issued by the converting company that:

(1) is in the amount of at least $1,000;

(2) is in force on the date of the policyholders' meeting; and

(3) has been in force for at least one year before the date of the policyholders' meeting. (V.T.I.C. Art. 21.27, Sec. 1 (part).)

Source Law

Sec. 1. . . .

(4) . . . each insured in at least One Thousand ($1,000.00) Dollars and whose insurance shall then be in force and shall have been in force for at least one (1) year prior to such meeting; . . . .

Revised Law

Sec. 825.055. POLICYHOLDERS' MEETING. (a) A converting company shall give notice of the policyholders' meeting to each eligible policyholder.

(b) The notice must be mailed from the home office of the converting company not later than the 31st day before the scheduled date of the meeting in a sealed envelope, postage prepaid, to the policyholder at the policyholder's last known mailing address.

(c) The policyholders' meeting shall be conducted in the manner provided by the stock acquisition plan.

(d) The commissioner shall supervise and direct the procedure of the policyholders' meeting. The converting company shall pay all necessary expenses incurred by the commissioner as certified by the commissioner. (V.T.I.C. Art. 21.27, Sec. 1 (part).)

Source Law

Sec. 1. . . .

(4) . . . notice of such meeting shall be given by mailing such notice from the home office of such corporation at least thirty days prior to such meeting in a sealed envelope, postage prepaid, addressed to such policyholders at their last

known postoffice addresses, and such meeting shall be otherwise provided for and conducted in such manner as shall be provided in such plan; . . . the Chairman of the Board of Insurance Commissioners shall supervise and direct the methods and procedure of said meeting and . . . that all necessary expenses incurred by the Chairman of the Board of Insurance Commissioners shall be paid by the corporation as certified to by him; and . . . .

Revisor's Note

Section 1, V.T.I.C. Article 21.27, refers to the "methods and procedure" of the policyholders' meeting. The revised law omits the reference to "methods" because, in context, "methods" is included within the meaning of "procedure."

Revised Law

Sec. 825.056. POLICYHOLDER VOTING. (a) A policyholder may vote in person, by proxy, or by mail. All votes must be cast by ballot.

(b) The commissioner shall appoint an adequate number of inspectors to conduct the voting at the policyholders' meeting.

(c) The inspectors determine all questions concerning the verification of the ballots, the validity of the ballots, the qualification of the voters, and the canvass of the vote and shall certify the results to the commissioner and the converting company.

(d) An inspector shall act under rules prescribed by the commissioner. (V.T.I.C. Art. 21.27, Sec. 1 (part).)

Source Law

Sec. 1. . . .

(4) . . . provided, however, that policyholders may vote in person, by proxy or by mail; that all votes shall be cast by ballot and [the Chairman of the Board of Insurance Commissioners shall] . . . appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of

the ballots, the ascertainment of the validity thereof, the qualification of the voters, and the canvass of the vote, and who shall certify to the Chairman of the Board of Insurance Commissioners and to the corporation the result thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the Chairman of the Board of Insurance Commissioners; . . . .

Revisor's Note

Section 1, V.T.I.C. Article 21.27, refers to "such rules and regulations as shall be prescribed by the Chairman of the Board of Insurance Commissioners." The reference to "regulations" is omitted from the revised law because under Section 311.005, Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

[Sections 825.057-825.100 reserved for expansion]

SUBCHAPTER C. ACQUISITION OF SHARES

Revised Law

Sec. 825.101. ISSUANCE OF ANNUITY BONDS IN PAYMENT OF STOCK. (a) A stock acquisition plan may provide that all or part of the purchase price of any part or all of the shares of stock of a converting company that are acquired by the company under the plan may be paid by the company through the issuance of annuity bonds payable in annual amounts and for the term provided by the plan.

(b) Each annuity bond issued under Subsection (a) must expressly provide, on the face of the bond, that the bond is payable only out of the surplus of the converting company remaining after all liabilities, including reserves, are provided for and is not otherwise a liability or claim against the converting company or any of its assets, as provided by Section 882.253.

(c) Not more than three-fourths of the net earnings of the converting company during any calendar year may be used or applied to the payment of the annuity bonds.

(d) On the approval of the commissioner, the company issuing the annuity bonds or any life insurance company may invest its funds in the annuity bonds. The investment in the annuity bonds may not at any time exceed 10 percent of the company's total admitted assets. (V.T.I.C. Art. 21.27, Sec. 3.)

Source Law

Sec. 3. The plan provided for in Section 1 of this article may provide that part or all of the purchase price of any part or all of the shares of stock of the corporation acquired by the corporation under the provisions of such plan may be paid by the corporation issuing its annuity bonds to be payable in such annual amounts, and to run for such number of years as may be provided for in said plan, provided that such annuity bonds issued by any such company shall expressly provide, on the face thereof, that they shall be payable only out of the surplus of the company remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets, as is provided by Article 11.16 of this code with respect to advances made to mutual life insurance companies; and provided that not more than three-fourths (3/4) of the net earnings of the corporation during any calendar year shall be used or applied to the payment of such annuities.

With the approval of the Chairman of the Board of Insurance Commissioners, the corporation issuing such annuity bonds, or any life insurance company may invest its funds in such annuity bonds, provided that no such company shall have so invested at any one time an amount in excess of ten (10%) per cent of its total admitted assets.

Revised Law

Sec. 825.102. ACQUISITION IN TRUST. (a) Until all of the shares of a converting company are acquired, any shares acquired under the stock acquisition plan shall be held in trust for the policyholders of the converting company by three trustees

appointed as provided by the stock acquisition plan.

(b) Each appointee must file with the converting company a verified acceptance of the appointment and a declaration that the appointee will faithfully discharge the appointee's duties.

(c) The shares shall be assigned and transferred on the books of the converting company to the trustees. The trustees shall vote the shares at each meeting at which shareholders are entitled to vote, until all the capital stock of the converting company is canceled under Section 825.104.

(d) After paying the necessary expenses of executing the trust, the trustees shall immediately pay all dividends and other amounts received on the shares of stock acquired under Section 825.101 to the converting company for the benefit of those who are or become policyholders of the resulting company entitled to participate in the profits of the resulting company.

(e) All amounts received by the converting company under Subsection (d) shall be added to the surplus earned by the resulting company and accordingly are apportionable as a part of the surplus among the resulting company's policyholders.

(f) A vacancy among the trustees shall be filled as provided by the stock acquisition plan. (V.T.I.C. Art. 21.27, Sec. 2 (part).)

Source Law

Sec. 2. . . . and until all of such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to three trustees and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote, [until all the capital stock of such corporation is acquired, and the purchase price therefor, including all annuity bonds issued on account thereof shall be fully paid off,] . . . . Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under Section 1 of this article. Said trustees shall file with the

corporation a verified acceptance of their appointments and declaration that they will faithfully discharge their duty as such trustees. All dividends and other sums received on said shares of stock so acquired, after paying the necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are, or may become, policyholders of said corporation, and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation and be apportionable accordingly, as a part of said surplus among said policyholders.

Revised Law

Sec. 825.103. DISTRIBUTION OF DIVIDENDS. After conversion, the converting company shall annually distribute among its policyholders, under terms approved by the commissioner, dividends or earnings accruing to the converting company as the result of the acquisition of shares of the converting company's stock under this chapter. (V.T.I.C. Art. 21.27, Sec. 4.)

Source Law

Sec. 4. All dividends or earnings accruing to the corporation as the result of the acquisition of any or all of the shares of its stock under the provisions of this article, shall be annually distributed among the policyholders of the corporation under terms and conditions to be approved by the Chairman of the Board of Insurance Commissioners.

Revisor's Note

Section 4, V.T.I.C. Article 21.27, refers to "terms and conditions" approved by the commissioner. The revised law omits "conditions" because "conditions" is included within the meaning of "terms."

Revised Law

Sec. 825.104. CONVERSION COMPLETE ON CANCELLATION OF STOCK; APPLICATION OF CERTAIN LAWS. (a) When the converting company acquires all of its capital stock and the purchase price for that

stock, including any annuity bond issued for the purchase of the stock, is paid in full, the stock shall be canceled.

(b) On cancellation of the stock, the converting company becomes a mutual insurance company without capital stock and is subject to the laws of this state governing mutual insurance companies. (V.T.I.C. Art. 21.27, Sec. 2 (part).)

Source Law

Sec. 2. . . . until all the capital stock of such corporation is acquired, and the purchase price therefor, including all annuity bonds issued on account thereof shall be fully paid off, whereupon the entire capital stock shall be retired and cancelled, and thereupon the corporation shall be and become a mutual insurance corporation without capital stock, and shall thereafter be controlled by the laws of Texas governing such mutual companies. . . .

Revisor's Note

Section 2, V.T.I.C. Article 21.27, refers to "retired and cancelled" capital stock. The revised law omits the reference to "retired" because, in context, "retired" is included within the meaning of "cancelled."

CHAPTER 826. CONVERSION OF MUTUAL INSURANCE COMPANY TO STOCK INSURANCE COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 826.006-826.050 reserved for expansion]

CHAPTER 826. CONVERSION OF MUTUAL INSURANCE COMPANY TO STOCK INSURANCE COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 826.001. DEFINITIONS. In this chapter:

(1) "Conversion plan" means a plan adopted under this chapter to convert a mutual insurance company into a stock insurance company.

(2) "Converting company" means a domestic mutual insurance company that is converting under this chapter into a domestic stock insurance company.

(3) "Eligible member" means a member of a converting company whose policy is in force on the date that the company's board of directors adopts a conversion plan. The term does not include a person insured under a group policy.

(4) "Mutual insurance company" means a domestic mutual insurance company.

(5) "Participating policy" means a policy issued by a mutual insurance company that grants a holder the right to

receive declared dividends.

(6) "Resulting company" means a domestic stock insurance company that has converted under this chapter from a domestic mutual insurance company. (V.T.I.C. Art. 15.22, Secs. 1(1), (2), (3), (4), (5); New.)

Source Law

Art. 15.22

Sec. 1. In this article:

(1) "Conversion plan" means a plan adopted under this article by the board of directors of a mutual insurance company to convert the mutual insurance company into a stock company.

(2) "Converted stock company" means a domestic stock insurance company that has converted under this article from a domestic mutual insurance company.

(3) "Eligible member" means a member of a mutual insurance company whose policy is in force on the date that the mutual insurance company's board of directors adopts a conversion plan. The term does not include a person:

(A) insured under a group policy; or

(B) whose policy becomes effective after the date that the board of directors adopts the conversion plan but before the conversion plan's effective date.

(4) "Mutual insurance company" means a domestic mutual insurance company.

(5) "Participating policy" means a policy that grants a holder the right to receive dividends if, as, and when declared by the mutual insurance company.

Revisor's Note

The definitions of "converting company" and "resulting company" are added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 826.002. AUTHORITY TO CONVERT TO STOCK INSURANCE COMPANY. (a) A mutual insurance company may convert to a stock insurance company.

(b) A converting company may not engage in the business of insurance as a stock insurance company until it complies with the requirements of this chapter. (V.T.I.C. Art. 15.22, Sec. 2(a) (part); New.)

Source Law

Sec. 2. (a) . . . A mutual insurance company may not engage in the business of insurance as a stock company until it complies with the requirements of this article.

Revisor's Note

V.T.I.C. Article 15.22 specifies the requirements with which a mutual insurance company must comply before it can convert to a stock insurance company. The revised law clarifies that a mutual insurance company has the authority to engage in such a conversion.

Revised Law

Sec. 826.003. RIGHTS AND PRIVILEGES OF RESULTING COMPANY; LAWS APPLICABLE. Except as provided by this chapter, a resulting company:

(1) may exercise only the rights and privileges of a stock insurance company; and

(2) is subject to:

(A) all of the requirements and rules imposed on stock insurance companies organized under this code; and

(B) the laws of this state relating to the regulation or supervision of insurance companies. (V.T.I.C. Art. 15.22, Secs. 1(6), 22(b).)

Source Law

[Sec. 1]

(6) "Stock company" means a stock insurance company

that meets all of the requirements for admission to do business as a domestic insurer in this state.

[Sec. 22]

(b) Except as otherwise specified in this article, a stock company converted under this article has all of the rights and privileges and is subject to all of the requirements and regulations imposed on stock companies formed under this code and any other laws of this state relating to the regulation and supervision of insurance companies but may not exercise rights or privileges that other stock insurance companies may not exercise.

Revised Law

Sec. 826.004. CERTAIN CONVERSIONS PROHIBITED. A mutual insurance company may not convert to a stock insurance company under this chapter if, as a direct result of the conversion, any affiliate or other person acquires control of the resulting company, unless that affiliate or person complies with Section 823.154. (V.T.I.C. Art. 15.22, Sec. 22(a).)

Source Law

Sec. 22. (a) A mutual insurance company may not be permitted to convert under this article if, as a direct result of the conversion, any person or any affiliate acquires control of the converted stock company, unless that person or the affiliate complies with the requirements of Section 5, Article 21.49-1 of this code.

Revised Law

Sec. 826.005. CORPORATE EXISTENCE. (a) On the effective date of a conversion under this chapter:

(1) the corporate existence of the converting company continues in the resulting company;

(2) all assets, rights, franchises, and interests of the converting company in and to property and any accompanying thing in action are vested in the resulting company without a

deed or transfer; and

(3) the resulting company assumes all the obligations and liabilities of the converting company.

(b) Except as otherwise specified by the conversion plan, the directors and officers of the converting company serving on the effective date of the conversion serve as directors and officers of the resulting company until new directors and officers are elected under the articles of incorporation and bylaws of the resulting company. (V.T.I.C. Art. 15.22, Sec. 17.)

Source Law

Sec. 17. (a) On the effective date of the conversion:

(1) the corporate existence of the mutual insurance company continues in the converted stock company; and

(2) all assets, rights, franchises, and interests of the mutual insurance company in and to property, real, personal, or mixed, and any accompanying things in action, are vested in the converted stock company, without a deed or transfer, and the converted stock company assumes all the obligations and liabilities of the mutual insurance company.

(b) Unless otherwise specified in the conversion plan, the directors and officers of the mutual insurance company serving on the effective date of the conversion serve as directors and officers of the converted stock company until new directors and officers of the converted stock company are elected under the articles of incorporation and bylaws of the converted stock company.

Revisor's Note

Section 17(a)(2), V.T.I.C. Article 15.22, refers to "property, real, personal, or mixed." The revised law omits the reference to "real, personal, or mixed" property because, in context, those terms are included in the general meaning of "property," and because, under Section 311.005, Government Code (Code Construction Act), "property" means real and personal property. That definition applies to the revised law.

[Sections 826.006-826.050 reserved for expansion]

SUBCHAPTER B. CONVERSION PLAN ADOPTION AND REQUIREMENTS

Revised Law

Sec. 826.051. PLAN ADOPTION. (a) To convert to a stock insurance company a mutual insurance company must adopt, by the affirmative vote of at least two-thirds of the members of its board of directors, a conversion plan consistent with this chapter.

(b) For a conversion plan to take effect:

(1) the commissioner must approve the conversion plan; and

(2) the eligible members must approve the conversion plan and adopt the amended or restated articles of incorporation of the resulting company. (V.T.I.C. Art. 15.22, Secs. 2(a) (part), 15(a).)

Source Law

Sec. 2. (a) A mutual insurance company that seeks to convert to a stock company must adopt, by the affirmative vote of not less than two-thirds of the members of its board of directors, a conversion plan consistent with the requirements of this article. . . .

Sec. 15. (a) For a conversion plan to take effect:

(1) the commissioner must approve the conversion plan; and

(2) the eligible members must approve the conversion plan and adopt the amended or restated articles of incorporation.

Revised Law

Sec. 826.052. GENERAL REQUIREMENTS; EFFECT OF CONVERSION ON POLICIES. (a) Each conversion plan must include the provisions required by this chapter.

(b) Each policy in effect on the effective date of the conversion remains in effect under the terms of that policy, except that the following rights, to the extent they existed in

the converting company, are extinguished on the effective date of the conversion:

(1) any voting rights of policyholders;

(2) except as provided by Subsection (c), a right to share in the surplus or profits of the converting company; and

(3) any assessment provisions.

(c) The holder of a participating policy in effect on the effective date of the conversion continues to have a right to receive dividends as provided by the participating policy.

(d) On the renewal date of a participating policy, the resulting company may issue to the insured a nonparticipating policy as a substitute for the participating policy, unless the participating policy is:

(1) a guaranteed renewable accident and health policy; or

(2) a guaranteed renewable, noncancellable accident and health policy.

(e) All the costs and expenses connected with a conversion plan shall be paid or reimbursed by the converting company or the resulting company. (V.T.I.C. Art. 15.22, Secs. 8, 18(b).)

Source Law

Sec. 8. (a) Each conversion plan must include the provisions required by this article.

(b) Each policy in effect on the effective date of the conversion remains in effect under the terms of that policy, except that the following rights, to the extent they existed in the mutual insurance company, are extinguished on the effective date of the conversion:

(1) any voting rights of policyholders provided under the policy;

(2) except as provided in Subsection (c) of this section, a right to share in the surplus or profits of the mutual insurance company; and

(3) any assessment provisions provided under the policy.

(c) The holder of a participating policy in effect on the date of the conversion continues to have a right to receive dividends as provided by the participating policy.

(d) Except for the mutual insurance company's guaranteed renewable accident and health policies and guaranteed renewable, noncancellable accident and health policies, on the renewal date of a participating policy, the converted stock company may issue the insured a nonparticipating policy as a substitute for the participating policy.

[Sec. 18]

(b) All the costs and expenses connected with a conversion plan shall be paid for or reimbursed by the mutual insurance company or the converted stock company.

Revised Law

Sec. 826.053. SALE OF CAPITAL STOCK. A conversion plan must provide that shares of capital stock of the resulting company shall be sold in a private placement, public offering, or an alternative method approved by the commissioner unless the shares are:

(1) sold or distributed to a holder of surplus notes of the converting company; or

(2) subscribed to by:

(A) a tax-qualified employee benefit plan under Section 826.059;

(B) a director or officer under Section 826.056(b); or

(C) an eligible member exercising subscription rights under Section 826.058. (V.T.I.C. Art. 15.22, Sec. 10(a).)

Source Law

Sec. 10. (a) The conversion plan must provide that any shares of capital stock not sold or distributed to holders of surplus notes, subscribed to by a tax-qualified employee benefit plan, as permitted under Section 13(c) of this article,

subscribed to by directors and officers, as permitted under Section 13(a) of this article, or subscribed to by eligible members exercising subscription rights under Section 9 of this article shall be sold in a private placement, public offering, or other alternative method approved by the commissioner.

Revised Law

Sec. 826.054. PURCHASE PRICE OF CAPITAL STOCK. (a) A conversion plan must set the total price of the capital stock in an amount equal to the estimated pro forma market value of the resulting company based on an independent valuation by a qualified expert, giving consideration to the amount of capital that the board of directors considers necessary to be raised by the company. The pro forma market value may be the value estimated to be necessary to attract full subscription for the shares, as indicated by the independent valuation, and may be stated as a range of values.

(b) The conversion plan may set the purchase price for a share of capital stock at any reasonable amount. The price per share is not required to be the same for each class of purchaser. However, eligible members purchasing stock under subscription rights received under Section 826.058 may purchase shares at the lowest available price under the plan. (V.T.I.C. Art. 15.22, Secs. 10(b), (c).)

Source Law

(b) The conversion plan must set the total price of the capital stock in an amount equal to the estimated pro forma market value of the converted stock company based on an independent valuation by a qualified expert, giving consideration to the amount of capital deemed necessary by the board of directors to be raised by the company. The pro forma market value may be the value estimated to be necessary to attract full subscription for the shares, as indicated by the independent valuation, and may be stated as a range of values.

(c) The conversion plan shall set the purchase price per

share of capital stock at any reasonable amount. The purchase price per share need not be the same for each class of purchaser; provided, however, that eligible members purchasing stock pursuant to subscription rights received under Section 9 of this article shall have the right to purchase shares at the lowest available purchase price under the plan.

Revised Law

Sec. 826.055. LIMITATION ON ACQUISITION OF CAPITAL STOCK. (a) The conversion plan must provide that a person or group of persons acting in concert may not acquire, in the public or private offering or through the exercise of subscription rights, more than 10 percent of the capital stock of the resulting company except with the approval of the commissioner.

(b) This section does not apply to an entity that purchases 100 percent of the capital stock of the resulting company as part of the conversion plan approved by the commissioner. (V.T.I.C. Art. 15.22, Sec. 10(d).)

Source Law

(d) The conversion plan must provide that a person or group of persons acting in concert may not acquire, in the public or private offering or through the exercise of subscription rights, more than 10 percent of the capital stock of the converted stock company except with the approval of the commissioner. This limitation does not apply to an entity that purchases 100 percent of the capital stock of the converted stock company as part of the conversion plan approved by the commissioner.

Revised Law

Sec. 826.056. DIRECTORS AND OFFICERS. (a) Except as otherwise provided by this section, the conversion plan must provide that a director or officer of the converting company, or a person acting in concert with a director or officer, may not acquire, without the permission of the commissioner, any capital stock of the resulting company or the stock of another

corporation that is participating in the conversion plan before the third anniversary of the effective date of the conversion. This subsection does not prohibit a director or officer from:

(1) acquiring capital stock through a broker-dealer;

(2) making purchases through the exercise of subscription rights received under the conversion plan; or

(3) participating in a stock benefit plan permitted by Section 826.059 or approved by the eligible members under Section 826.107.

(b) A conversion plan may provide that the directors and officers of the converting company may receive, without payment, nontransferable subscription rights to purchase capital stock of the resulting company or the stock of another corporation that is participating in the conversion plan.

(c) The aggregate number of shares that may be purchased by directors and officers under Subsection (b) may not exceed:

(1) 35 percent of the total number of shares to be issued for the resulting company if the total assets of the converting company are less than $50 million; or

(2) 25 percent of the total number of shares to be issued for the resulting company if the total assets of the converting company are more than $500 million.

(d) For converting companies with total assets between $50 million and $500 million, inclusive, the maximum percentage of the total number of shares that may be purchased shall be interpolated from amounts provided under Subsection (c).

(e) A conversion plan must provide that a director or officer of the converting company may not sell stock purchased under the conversion plan before the first anniversary of the effective date of the conversion.

(f) Notwithstanding Subsection (e), a conversion plan may provide for the purchase or redemption of stock in the event that a director or officer is no longer associated with the resulting company during the period described by Subsection (e). (V.T.I.C. Art. 15.22, Secs. 10(e); 11; 13(a), (b).)

Source Law

[Sec. 10]

(e) Except as otherwise provided in this article, the conversion plan must provide that a director or officer of the mutual insurance company, or a person acting in concert with a director or officer, may not acquire, without the permission of the commissioner, any capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan before the third anniversary of the effective date of the conversion, except through a broker-dealer. This subsection does not prohibit a director or officer from:

(1) making purchases through the exercise of subscription rights received under the conversion plan; or

(2) participating in a stock benefit plan permitted by Section 13(c) of this article or approved by the eligible members pursuant to Section 6 of this article.

Sec. 11. The conversion plan must provide that a director or officer may not sell stock purchased pursuant to the conversion plan before the first anniversary of the effective date of the conversion; provided, however, the conversion plan may provide for the purchase or redemption of stock in the event that a director or officer is no longer associated with the converted stock company during such period.

Sec. 13. (a) The conversion plan may provide that the directors and officers of the mutual insurance company may receive, without payment, nontransferable subscription rights to purchase capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan.

(b) The aggregate number of shares that may be purchased by directors and officers of the mutual insurance company in their capacity under Subsection (a) of this section may not exceed 35 percent of the total number of shares to be issued for the company if total assets of the mutual insurance company are less

than $50 million, or 25 percent of the total number of shares to be issued for the company if total assets of the mutual insurance company are more than $500 million. For mutual insurance companies with total assets of or between $50 million and $500 million, the maximum percentage of the total number of shares that may be purchased shall be interpolated.

Revised Law

Sec. 826.057. RIGHTS OF HOLDER OF SURPLUS NOTES. A conversion plan must provide that any rights of a holder of a surplus note to participate in the conversion are governed by the terms of the surplus note. (V.T.I.C. Art. 15.22, Sec. 12.)

Source Law

Sec. 12. The conversion plan must provide that the rights of a holder of a surplus note to participate in the conversion, if any, are governed by the terms of the surplus note.

Revised Law

Sec. 826.058. SUBSCRIPTION RIGHTS; GENERAL PROVISIONS. (a) Except for an alternate conversion plan adopted under Section 826.061, each conversion plan must specify the subscription rights of eligible members.

(b) The conversion plan must provide that:

(1) each eligible member is to receive, without payment by the member, nontransferable subscription rights to purchase a portion of the capital stock of the resulting company; and

(2) in the aggregate, all eligible members have the right, before the right of any other party, to purchase 100 percent of the capital stock of the resulting company after provision for:

(A) capital stock required to be sold or distributed to the holders of surplus notes, if any;

(B) capital stock purchased by a stock benefit plan as permitted by Section 826.059; and

(C) capital stock acquired by the directors and officers, as permitted by Section 826.056(b).

(c) As an alternative to subscription rights in the resulting company, the conversion plan may provide that each eligible member is to receive, without payment by the member, nontransferable subscription rights to purchase a portion of the capital stock of:

(1) a corporation organized for the purpose of purchasing and holding all the stock of the resulting company;

(2) a stock insurance company owned by the converting company into which the converting company is to be merged; or

(3) an unaffiliated stock insurance company or other corporation that is to purchase all the stock of the resulting company.

(d) The conversion plan must provide that the subscription rights are allocated in whole shares among the eligible members using a fair and equitable formula. The formula may consider that the different classes of policies of the eligible members contributed to the surplus of the converting company or any other factors that may be fair or equitable as determined by the board of directors.

(e) The conversion plan must provide a fair and equitable method for allocating shares of capital stock in the event of an oversubscription to shares by eligible members exercising subscription rights under this section. (V.T.I.C. Art. 15.22, Sec. 9.)

Source Law

Sec. 9. (a) Except for an alternative plan under Section 14 of this article, each conversion plan must specify the subscription rights of eligible members.

(b) The plan must include a provision that:

(1) each eligible member is to receive, without payment by the member, nontransferable subscription rights to purchase a portion of the capital stock of the converted stock company; and

(2) in the aggregate, all eligible members have the right, before the right of any other party, to purchase 100 percent of the capital stock of the converted company after provision for:

(A) capital stock required to be sold or distributed to the holders of surplus notes, if any;

(B) capital stock purchased by the company's tax-qualified employee stock benefit plan as permitted by Section 13(c) of this article; and

(C) capital stock acquired by the mutual insurance company's directors and officers, as permitted by Section 13(a) of this article.

(c) As an alternative to subscription rights in the converted stock company, the conversion plan may provide that each eligible member is to receive, without payment by the member, nontransferable subscription rights to purchase a portion of the capital stock of one of the following:

(1) a corporation organized for the purpose of purchasing and holding all the stock of the converted stock company;

(2) a stock insurance company owned by the mutual insurance company into which the mutual insurance company is to be merged; or

(3) an unaffiliated stock insurance company or other corporation that is to purchase all the stock of the converted stock company.

(d) The conversion plan must provide that the subscription rights are allocated in whole shares among the eligible members using a fair and equitable formula. The formula may consider, but is not required to consider, how the different classes of policies of the eligible members contributed to the surplus of the mutual insurance company or any other factors that may be fair or equitable as determined by the board of directors.

(e) The conversion plan must provide a fair and equitable means for allocating shares of capital stock in the event of an oversubscription to shares by eligible members exercising

subscription rights under this section.

Revised Law

Sec. 826.059. SUBSCRIPTION RIGHTS; TAX-QUALIFIED EMPLOYEE BENEFIT PLAN. The conversion plan may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase not more than 10 percent of the capital stock of the resulting company. (V.T.I.C. Art. 15.22, Sec. 13(c).)

Source Law

(c) The conversion plan may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase not more than 10 percent of the capital stock of the converted stock company.

Revised Law

Sec. 826.060. LIQUIDATION ACCOUNT. (a) The conversion plan may provide for the creation of a liquidation account for the benefit of members in the event of a voluntary liquidation after the conversion.

(b) The liquidation account must be in an amount equal to the surplus of the converting company, exclusive of the principal amount of any surplus note, on the last day of the quarter preceding the date the conversion plan is adopted. (V.T.I.C. Art. 15.22, Sec. 13(d).)

Source Law

(d) The conversion plan may provide for the creation of a liquidation account for the benefit of members in the event of voluntary liquidation after conversion in an amount equal to the surplus of the mutual insurance company, exclusive of the principal amount of any surplus note, on the last day of the quarter immediately preceding the date of adoption of the conversion plan.

Revisor's Note

V.T.I.C. Article 15.22, Sec. 13(d), refers to "the quarter immediately preceding the date of adoption of the conversion plan." The revised law omits "immediately" as unnecessary. "The quarter preceding" means "the quarter immediately preceding."

Revised Law

Sec. 826.061. ALTERNATE CONVERSION PLAN. (a) The board of directors may adopt a conversion plan that does not rely in whole or in part on the issuance of nontransferable subscription rights to members to purchase stock of the resulting company if the commissioner determines that the plan:

(1) complies with this chapter;

(2) is fair and equitable; and

(3) permits the resulting company to satisfy the requirements in effect on the date of the determination for a certificate of authority applicable to a domestic stock insurance company.

(b) The conversion plan may:

(1) include the merger of a domestic mutual insurance company with a domestic or foreign stock insurance company;

(2) provide for issuing stock, cash, or other consideration to members instead of subscription rights;

(3) provide for the formation of a mutual holding company under Subchapter E; or

(4) establish another plan containing other provisions approved by the commissioner.

(c) The commissioner may retain, at the converting company's expense, a qualified expert who is not a member of the commissioner's staff to assist in reviewing whether the conversion plan meets the requirements for approval by the commissioner. (V.T.I.C. Art. 15.22, Sec. 14.)

Source Law

Sec. 14. (a) The board of directors may adopt a conversion plan that does not rely wholly or partially on issuing nontransferable subscription rights to members to purchase stock

of the converted stock company if the commissioner finds that the alternative conversion plan:

(1) complies with this article;

(2) is fair and equitable; and

(3) permits the converted stock company to satisfy the current requirements applicable to a domestic stock company for a certificate of authority.

(b) An alternative conversion plan may:

(1) include the merger of a domestic mutual insurance company into a domestic or foreign stock insurance company;

(2) provide for issuing stock, cash, or other consideration to members instead of subscription rights;

(3) provide for the formation of a mutual holding company pursuant to Section 24 of this article; or

(4) set forth another plan containing any other provisions approved by the commissioner.

(c) The commissioner may retain, at the mutual insurance company's expense, a qualified expert not otherwise a part of the commissioner's staff to assist in reviewing whether the alternative conversion plan may be approved by the commissioner.

[Sections 826.062-826.100 reserved for expansion]

SUBCHAPTER C. ADOPTION OF CONVERSION PLAN

Revised Law

Sec. 826.101. PLAN INFORMATION FILED WITH COMMISSIONER; COMMISSIONER POWERS AND DUTIES. Not later than the 90th day after the date on which a converting company's board of directors adopts a conversion plan, the company shall file with the commissioner:

(1) a copy of the documents relating to the conversion plan, including the valuation required by Section 826.054(a);

(2) the form of notice required by Section 826.104;

(3) the form of proxy to be solicited from eligible members under Section 826.107(a);

(4) the form of notice required by Section 826.151 to

persons whose policies are issued after adoption of the conversion plan but before the effective date of the conversion plan;

(5) the proposed amended or restated articles of incorporation of the resulting company;

(6) a statement regarding acquisition of control, if applicable, as required by Chapter 823; and

(7) any other information requested by the commissioner. (V.T.I.C. Art. 15.22, Sec. 3(a).)

Source Law

Sec. 3. (a) Not later than the 90th day after the date on which a mutual insurance company's board of directors adopts a conversion plan, the company shall file with the commissioner:

(1) a copy of the documents relating to the conversion plan, including the independent evaluation of pro forma market value required by Section 10(b) of this article;

(2) the form of notice required by Section 5 of this article;

(3) the form of proxy to be solicited from eligible members under Section 6(b) of this article;

(4) the form of notice required by Section 16 of this article to persons whose policies are issued after adoption of the conversion plan but before the effective date of the conversion plan;

(5) the proposed amended or restated articles of incorporation of the converted stock company;

(6) a statement regarding acquisition of control, if applicable, as required by Article 21.49-1 of this code; and

(7) any other information requested by the commissioner.

Revised Law

Sec. 826.102. APPROVAL OF PLAN BY COMMISSIONER. (a) The commissioner shall approve a conversion plan if the commissioner determines that:

(1) the plan complies with this chapter;

(2) the plan's method of allocating subscription rights or other value is fair and equitable; and

(3) the resulting company would satisfy the requirements applicable to a domestic stock insurance company for a certificate of authority on the date of the determination.

(b) Except as otherwise provided by this section, the commissioner shall approve or disapprove a conversion plan not later than the 60th day after the first day on which all the documents required under Section 826.101 are filed with the commissioner.

(c) The commissioner may extend the time for decision by an additional 30 days on written notice to the converting company. Except as provided under Subsection (e), the commissioner may not extend the time for decision beyond that 30-day period.

(d) The commissioner shall immediately give written notice to the converting company of the commissioner's decision and, if the commissioner disapproves the plan, a detailed statement of the reasons for the disapproval.

(e) The commissioner may retain, at the mutual insurance company's expense, a qualified expert who is not a member of the commissioner's staff to assist the commissioner in reviewing the conversion plan and the valuation required under Section 826.054(a). If the commissioner retains a qualified expert under this subsection, the commissioner may extend the period for decision by an additional 60 days beyond the initial 60-day period.

(f) After giving written notice to the converting company and other interested persons, the commissioner may hold a hearing on whether the conversion plan complies with this chapter. The company and any other interested person have the right to appear at the hearing. Notice to interested persons who have not filed an appearance in the matter may be made through publication in the Texas Register. (V.T.I.C. Art. 15.22, Secs. 3(b), (c), (d), (e).)

(b) Except as otherwise provided by this subsection, the commissioner shall approve or disapprove a conversion plan not later than the 60th day after the first day on which all the documents required under Subsection (a) of this section are filed with the commissioner. The commissioner may extend the time for approval or disapproval by an additional 30 days on written notice to the mutual insurance company. The commissioner may not extend the time for approval or disapproval beyond this time period unless he finds it necessary to retain a qualified expert pursuant to Subsection (d) of this section, in which case he may extend the time for review for an additional 60 days beyond the initial 60-day period. The commissioner shall immediately give written notice to the mutual insurance company of the commissioner's decision and, in the event of disapproval, a detailed statement of the reasons for the adverse decision.

(c) The commissioner shall approve a conversion plan if the commissioner finds that:

(1) the conversion plan complies with this article;

(2) the conversion plan's method of allocating subscription rights or other value is fair and equitable; and

(3) the converted stock company would satisfy the current requirements applicable to a domestic stock company for a certificate of authority.

(d) The commissioner may retain, at the mutual insurance company's expense, a qualified expert not otherwise a part of the commissioner's staff to assist the commissioner in reviewing the conversion plan and the independent evaluation of the pro forma market value required under Section 10(b) of this article.

(e) The commissioner may hold a hearing on whether the terms of the conversion plan comply with this article after giving written notice to the mutual insurance company and other interested persons, all of whom have the right to appear at the hearing. Notice to interested persons who have not filed an appearance in the matter may be made through publication in the

Texas Register.

Revised Law

Sec. 826.103. AMENDMENTS; WITHDRAWAL OF PLAN. Before a conversion plan takes effect, a converting company may amend or withdraw the plan by the affirmative vote of at least two-thirds of the members of its board of directors. (V.T.I.C. Art. 15.22, Sec. 4.)

Source Law

Sec. 4. At any time before the conversion plan becomes effective, the mutual insurance company, by the affirmative vote of not less than two-thirds of the members of its board of directors, may amend or withdraw the conversion plan.

Revised Law

Sec. 826.104. NOTICE TO ELIGIBLE MEMBERS; COMMENTS. (a) Not later than the 10th business day after the date of filing with the commissioner the documents required under Section 826.101, the converting company shall send to each eligible member a notice advising the member of:

(1) the adoption and filing of the conversion plan; and

(2) the member's right to comment on the plan to the commissioner and the converting company.

(b) The notice must include a description of the procedure to be used in making comments. An eligible member who elects to make comments must make the comments in writing not later than the 30th day after the date on which the notice is sent.

(c) Not later than the 60th day after the date of the commissioner's approval of the plan, the converting company shall send to each eligible member notice of the members' meeting to vote on the conversion plan. The notice must be sent to the member's last known address, as shown on the converting company's records, before the 30th day preceding the date set for the meeting. The notice must:

(1) briefly but fairly describe the proposed conversion plan; and

(2) inform the member of the member's right to vote on the conversion plan.

(d) If the meeting to vote on the conversion plan is held during the converting company's annual meeting of policyholders, a combined meeting notice satisfies the requirements of this section. (V.T.I.C. Art. 15.22, Sec. 5.)

Source Law

Sec. 5. (a) Within 10 business days after filing the documents required under Section 3(a) of this article with the commissioner, the mutual insurance company shall send to each eligible member a notice advising the eligible member of the adoption and filing of the conversion plan and of the member's right to provide to the commissioner and the mutual insurance company comments on the plan. The notice must include a description of the procedure to be used in making comments.

(b) An eligible member who elects to make comments must make the comments in writing not later than the 30th day after the date on which the notice is sent.

(c) Within 60 days after the commissioner's approval of the plan, the mutual insurance company also shall send to each eligible member notice of the members' meeting to vote on the conversion plan. The notice must be sent to the member's last known address, as shown on the mutual insurance company's records, before the 30th day preceding the date set for the meeting. The notice must:

(1) briefly but fairly describe the proposed conversion plan; and

(2) inform the member of the member's right to vote on the conversion plan.

(d) If the meeting to vote on the conversion plan is held during the mutual insurance company's annual meeting of policyholders, only a combined meeting notice is required.

Revised Law

Sec. 826.105. SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENTS. If the converting company in good faith substantially complies with the notice requirements of this chapter, the company's failure to send a member the required notice does not impair the validity of an action taken under this chapter. (V.T.I.C. Art. 15.22, Sec. 19.)

Source Law

Sec. 19. If the mutual insurance company complies substantially and in good faith with the notice requirements of this article, the mutual insurance company's failure to send a member the required notice does not impair the validity of any action taken under this article.

Revised Law

Sec. 826.106. INSOLVENT CONVERTING COMPANY; NOTICE REQUIREMENTS. If a converting company is insolvent or, in the judgment of the commissioner, is in hazardous financial condition, its board of directors, by a majority vote, may request in its submission to the commissioner a waiver of the requirements for notice to and approval of the proposed conversion by eligible members. The request must specify:

(1) the method and basis for the issuance of the resulting company's shares of its capital stock to an independent party in connection with an investment by the independent party in an amount sufficient to restore the resulting company to a sound financial condition; and

(2) that the conversion is to be accomplished without payment of consideration to past, present, or future policyholders if the commissioner determines that the value of the converting company is insufficient to justify that payment. (V.T.I.C. Art. 15.22, Sec. 21.)

Source Law

Sec. 21. If a mutual insurance company is insolvent or, in the judgment of the commissioner, is in hazardous financial condition, its board of directors, by a majority vote, may request in its petition that the commissioner waive the requirements imposing notice to and policyholder approval of the planned conversion. The petition must specify:

(1) the method and basis for the issuance of the converted stock company's shares of its capital stock to an independent party in connection with an investment by the independent party in an amount sufficient to restore the converted stock company to a sound financial condition; and

(2) that the conversion is to be accomplished without payment of consideration to past, present, or future policyholders, if the commissioner finds that the value of the mutual insurance company is insufficient to warrant that consideration.

Revised Law

Sec. 826.107. ELECTION; APPROVAL OF PLAN; ADOPTION OF AMENDED OR RESTATED ARTICLES OF INCORPORATION. (a) At a meeting convened to consider the conversion plan, an eligible member entitled to vote on the proposed conversion plan may vote in person or by proxy. The number of votes each eligible member may cast is determined by the converting company's bylaws. If the bylaws do not contain an applicable provision, each member may cast one vote. Before the eligible members may vote on approval of a conversion plan, the converting company must comply with Sections 826.101 and 826.102.

(b) At the meeting held to vote on the conversion plan, the eligible members shall also consider the adoption of amended or restated articles of incorporation.

(c) Adoption of the conversion plan or adoption of amended articles of incorporation requires the affirmative vote of at least two-thirds of the votes cast by eligible members.

(V.T.I.C. Art. 15.22, Secs. 2(b), 6.)

Source Law

[Sec. 2]

(b) Before the eligible members of a mutual insurance company may vote on approval of a conversion plan, the mutual insurance company must comply with Section 3 of this article.

Sec. 6. (a) A conversion plan is adopted on receiving the affirmative vote of at least two-thirds of the votes cast by eligible members at a duly convened meeting to consider the plan of conversion.

(b) Members entitled to vote on the proposed conversion plan may vote in person or by proxy. The number of votes each eligible member may cast shall be determined by the mutual insurance company's bylaws. If the bylaws are silent, each eligible member may cast one vote.

(c) At the meeting held to vote on the conversion plan, the members shall also consider the adoption of amended or restated articles of incorporation. Adoption of the amended articles requires the affirmative vote of at least two-thirds of the votes cast by eligible members.

Revised Law

Sec. 826.108. FILING OF MINUTES, ARTICLES OF INCORPORATION, AND BYLAWS; EFFECTIVE DATE OF CONVERSION. (a) Not later than the 30th day after the date on which the eligible members approve the conversion plan, the converting company shall file with the commissioner:

(1) the minutes of the meeting at which the plan was approved; and

(2) the amended or restated articles of incorporation and bylaws of the resulting company.

(b) A conversion plan takes effect on the date that the amended or restated articles of incorporation are filed with the commissioner. (V.T.I.C. Art. 15.22, Secs. 7, 15(b).)

Source Law

Sec. 7. Not later than the 30th day after the date on which the eligible members adopt the conversion plan at a duly convened meeting, the converted stock company shall file with the commissioner:

(1) the minutes of the meeting of the eligible members at which the conversion plan was adopted; and

(2) the amended or restated articles of incorporation and bylaws of the converted stock company.

[Sec. 15]

(b) A conversion plan takes effect when the amended or restated articles of incorporation are filed with the commissioner.

Revised Law

Sec. 826.109. CONFLICT OF INTEREST. (a) Except as provided by a conversion plan approved by the commissioner or this section, a director, officer, agent, or employee of a converting company may not receive a fee, commission, or other consideration, other than that person's usual salary or compensation, for aiding, promoting, or assisting in a conversion under this chapter.

(b) This section does not prohibit the payment of reasonable fees and compensation to an attorney, accountant, or actuary for professional services performed by that person, even if the person is also a director or officer of the converting company. (V.T.I.C. Art. 15.22, Sec. 18(a).)

Source Law

Sec. 18. (a) A director, officer, agent, or employee of the mutual insurance company may not receive a fee, commission, or other consideration, other than that person's usual salary or compensation, for aiding, promoting, or assisting in a conversion under this article, except as provided by the conversion plan

approved by the commissioner. This subsection does not prohibit the payment of reasonable fees and compensation to an attorney, accountant, or actuary for professional services performed by that person, even if the attorney, accountant, or actuary is also a director or officer of the mutual insurance company.

Revised Law

Sec. 826.110. LIMITATION ON ACTIONS. An action challenging the validity of or arising out of acts taken or proposed to be taken regarding a conversion plan under this chapter must be commenced not later than the 30th day after the effective date of the conversion plan. (V.T.I.C. Art. 15.22, Sec. 20.)

Source Law

Sec. 20. An action challenging the validity of or arising out of acts taken or proposed to be taken regarding a conversion plan under this article must be commenced not later than the 30th day after the effective date of that conversion plan.

[Sections 826.111-826.150 reserved for expansion]

SUBCHAPTER D. RIGHTS OF MEMBERS ON CONVERSION

Revised Law

Sec. 826.151. RIGHTS OF MEMBERS WHOSE POLICIES ARE ISSUED AFTER ADOPTION OF CONVERSION PLAN BUT BEFORE EFFECTIVE DATE. (a) On issuance of a policy after a conversion plan has been adopted by the board of directors but before the effective date of the conversion plan, the converting company shall send to each member to whom a policy is issued a written notice regarding the conversion plan.

(b) Except as provided by Subsection (d), a member of an accident and health insurance company entitled to notice under Subsection (a) is entitled to rescind the member's policy and receive a full refund of any amount paid for the policy not later than the 10th day after the date on which the notice is received.

(c) Except as provided by Subsection (d), each member

insured under a property or casualty insurance policy is entitled to notice under Subsection (a) and shall be advised of the member's right to:

(1) cancel the policy; and

(2) receive a pro rata refund of unearned premiums.

(d) A member who has made or filed a claim under the insurance policy is not entitled to a refund under Subsection (b) or (c). A member who has exercised a right provided by Subsection (b) or (c) may not make or file a claim under the insurance policy. (V.T.I.C. Art. 15.22, Sec. 16.)

Source Law

Sec. 16. (a) On issuance of a policy after a conversion plan has been adopted by the board of directors but before the effective date of the conversion plan, the mutual insurance company shall send to the member to whom the policy is issued a written notice regarding the conversion plan.

(b) Except as provided by Subsection (d) of this section, a member of an accident and health insurance company entitled to receive the notice described by Subsection (a) of this section is entitled to rescind the member's policy and receive a full refund of any amount paid for the policy not later than the 10th day after the date on which the member receives the notice.

(c) Except as provided by Subsection (d) of this section, each member who is insured under a property or casualty insurance policy is entitled to receive the notice described by Subsection (a) of this section and shall be advised of the member's right to:

(1) cancel the policy; and

(2) receive a pro rata refund of unearned premiums.

(d) A member who has made or filed a claim under the insurance policy is not entitled to a right to receive a refund under Subsection (b) or (c) of this section. A person who has exercised the rights provided by Subsection (b) or (c) of this section is not entitled to make or file a claim under the insurance policy.

Revised Law

Sec. 826.152. AMENDMENT OF POLICIES. A converting company, by endorsement or rider approved by the commissioner and sent to the policyholder, may simultaneously with or at any time after the adoption of a conversion plan amend an insurance policy in effect to terminate a right of the holder of the policy to share in the surplus or profits of the converting company. The amendment is void if the conversion plan does not take effect. (V.T.I.C. Art. 15.22, Sec. 23.)

Source Law

Sec. 23. A mutual insurance company, by endorsement or rider approved by the commissioner and sent to the policyholder, may simultaneously with or at any time after the adoption of a conversion plan amend any outstanding insurance policy to extinguish the right, if any, of the holder of the policy to share in the surplus or profits of the mutual insurance company. However, such an amendment is void if the conversion plan does not take effect.

[Sections 826.153-826.200 reserved for expansion]

SUBCHAPTER E. CONVERSION THROUGH MUTUAL HOLDING COMPANY

Revised Law

Sec. 826.201. CONVERSION THROUGH CREATION OF HOLDING COMPANY. (a) A converting company, on approval by the commissioner, may reorganize by forming a holding company based on a mutual plan and continuing the corporate existence of the converting company as a stock insurance company.

(b) A mutual holding company is considered an insurer subject to this chapter and Chapter 883. A mutual holding company is automatically a party to an administrative proceeding under this code involving an insurance company that, as a result of a reorganization under this subchapter, is a subsidiary of the mutual holding company. In any proceeding involving the resulting company, the assets of the mutual holding company are

considered assets of the resulting company for purposes of satisfying the claims of the resulting company's policyholders.

(c) A mutual holding company may not dissolve or liquidate without the approval of the commissioner.

(d) A mutual holding company may convert to a stock holding company under this chapter as if the mutual holding company were a mutual insurance company. (V.T.I.C. Art. 15.22, Secs. 24(a)(1) (part), (d), (h).)

Source Law

Sec. 24. (a)(1) Pursuant to this section, a mutual insurance company, on approval by the commissioner, may reorganize by forming an insurance holding company based on a mutual plan and continuing the corporate existence of the reorganizing insurance company as a stock insurance company. . . .

(d) A mutual holding company is deemed to be an insurer subject to this chapter and shall automatically be a party to any administrative proceeding under this code involving an insurance company which, as a result of a reorganization pursuant to this section, is a subsidiary of the mutual holding company. In any proceeding involving the reorganized insurance company, the assets of the mutual holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual holding company shall not dissolve or liquidate without the approval of the commissioner.

(h) A mutual holding company may convert to a stock holding company pursuant to the provisions of this article as if such mutual holding company were a mutual insurance company.

Revisor's Note

Section 24(d), V.T.I.C. Article 15.22, states that a mutual holding company is considered an insurer "subject to this

chapter." The "chapter" to which the provision refers is Chapter 15, Vernon's Texas Insurance Code. Article 15.22 of Chapter 15, Vernon's Texas Insurance Code, is revised as this chapter, Chapter 826. The remainder of Chapter 15, Vernon's Texas Insurance Code, is revised as Chapter 883. The revised law accordingly includes a reference to Chapter 883.

Revised Law

Sec. 826.202. COMMISSIONER POWERS AND DUTIES; APPROVAL. (a) The commissioner shall review the proposed plan of reorganization as an alternate conversion plan under Section 826.061. The commissioner may require as a condition of approval modifications of the proposed plan of reorganization that the commissioner determines necessary to protect the members' interests.

(b) The commissioner may retain a qualified expert as provided by Section 826.102(e).

(c) The commissioner has jurisdiction over a mutual holding company organized under this subchapter to ensure that member interests are protected. (V.T.I.C. Art. 15.22, Sec. 24(a)(1) (part).)

Source Law

Sec. 24. (a)(1) . . . The commissioner, if satisfied that the requirements of Section 14 of this article are met, shall approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the commissioner finds necessary for the protection of the members' interests. The commissioner may retain a qualified expert as provided in Section 3(d) of this article. The commissioner shall retain jurisdiction over a mutual holding company organized pursuant to this section to assure that member interests are protected.

Revised Law

Sec. 826.203. APPLICABILITY OF CERTAIN LAWS; INCORPORATION. A mutual holding company that results from the reorganization of a domestic mutual insurance company organized under Chapter 883

must be organized under Sections 883.051, 883.052, 883.054, and 883.056. The articles of incorporation, and any amendments to those articles, of the mutual holding company are subject to approval of the commissioner in the same manner as those of a mutual insurance company. (V.T.I.C. Art. 15.22, Sec. 24(c).)

Source Law

(c) A mutual holding company resulting from the reorganization of a domestic mutual insurance company organized under this chapter shall be incorporated pursuant to Article 15.02 of this code and the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). The articles of incorporation, and any amendments to such articles, of the mutual holding company shall be subject to approval of the commissioner in the same manner as those of a mutual insurance company.

Revisor's Note

Section 24(c), V.T.I.C. Article 15.22, states that a mutual holding company must be incorporated "pursuant to Article 15.02 of this code and the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes)." The revised law omits the specific reference to the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) because V.T.I.C. Article 15.05-A, revised in pertinent part as Section 883.003, includes incorporation as a nonprofit corporation as a requirement for incorporation under V.T.I.C. Article 15.02, revised as Sections 883.051, 883.052, 883.054, and 883.056.

Revised Law

Sec. 826.204. MEMBERSHIP INTERESTS. (a) The membership interests of the policyholders of the resulting company become membership interests in the mutual holding company. Eligible members of the converting company become members of the mutual holding company in accordance with the articles of incorporation and bylaws of the mutual holding company.

(b) A membership interest in a mutual holding company does not constitute a security as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes). (V.T.I.C. Art. 15.22, Secs. 24(a)(2) (part), (e).)

Source Law

[(a)](2) . . . The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual holding company. Eligible members of the reorganized insurance company shall be members of the mutual holding company in accordance with the articles of incorporation and bylaws of the mutual holding company. . . .

(e) A membership interest in a mutual holding company shall not constitute a security as defined in Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).

Revised Law

Sec. 826.205. CAPITAL STOCK HELD BY MUTUAL HOLDING COMPANY. (a) In this section:

(1) "Intermediate holding company" means a holding company that:

(A) is a subsidiary of a mutual holding company formed to reorganize a mutual insurance company; and

(B) directly or through a subsidiary intermediate holding company, owns the resulting company.

(2) "Majority of the voting shares of the capital stock" means shares of the capital stock of a company that carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the company on all matters submitted to a vote of the shareholders of the company.

(b) All of the initial shares of the capital stock of the resulting company shall be issued to the mutual holding company.

(c) The mutual holding company shall at all times own a majority of the voting shares of the capital stock of the

resulting company or of an intermediate holding company established to hold the voting shares of the resulting company. The requirements of this subsection may be satisfied by indirect ownership through one or more intermediate holding companies in a corporate structure approved by the commissioner.

(d) The mutual holding company or intermediate holding company may not convey, transfer, assign, pledge, subject to a security interest or lien, encumber, or otherwise hypothecate or alienate the majority of the voting shares of the capital stock that is required to be owned under Subsection (c).

(e) A violation of Subsection (d) is void in inverse chronological order from the date of the conveyance or activity as to the shares necessary to constitute a majority of the voting shares of the capital stock. (V.T.I.C. Art. 15.22, Secs. 24(a)(2) (part), (f), (g).)

Source Law

[(a)](2) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual holding company. . . . The mutual holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company or of an intermediate holding company established to hold the voting shares of the reorganized insurance company.

(f) The majority of the voting shares of the capital stock of the reorganized insurance company, which is required by this section to be at all times owned by a mutual holding company, shall not be conveyed, transferred, assigned, pledged, subjected to a security interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual holding company or intermediate holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in, or on the majority of the voting shares of the reorganized insurance company which is required by this section to be at all times owned by a mutual

holding company is in violation of this section and shall be void in inverse chronological order from the date of such conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation as to the shares necessary to constitute a majority of such voting shares.

(g) As used in this section, "majority of the voting shares of the capital stock of the reorganized insurance company" means shares of the capital stock of the reorganized insurance company which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurance company for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurance company. The ownership of a majority of the voting shares of the capital stock of the reorganized insurance company which are required by this section to be at all times owned by a parent mutual holding company includes indirect ownership through one or more intermediate holding companies in a corporate structure approved by the commissioner. However, indirect ownership through one or more intermediate holding companies shall not result in the mutual holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurance company. As used in this section, "intermediate holding company" means a holding company which is a subsidiary of a mutual holding company and which either directly or through a subsidiary intermediate holding company owns a subsidiary reorganized insurance company of which a majority of the voting shares of the capital stock would otherwise have been required by this section to be at all times owned by the mutual holding company.

Revisor's Note

Section 24(g), V.T.I.C. Article 15.22, defines the "majority of the voting shares of the capital stock of the reorganized insurance company" as the shares "entitled to be cast . . . for the election of directors and on all other matters submitted to a

vote of the shareholders of the reorganized insurance company." The revised law omits the reference to "the election of directors" as unnecessary. A vote for the directors is included in the "matters" submitted for the vote of the shareholders. The revised law is drafted accordingly.

Revised Law

Sec. 826.206. CONVERSION OF FOREIGN MUTUAL INSURANCE COMPANY. (a) On the approval of the commissioner, a foreign mutual insurance company may reorganize in compliance with the requirements of any law or regulation applicable to the foreign mutual insurance company by:

(1) transferring its members' membership interests into a mutual holding company formed under a procedure analogous to that described by this subchapter; and

(2) continuing the corporate existence of the reorganizing foreign mutual insurance company as a foreign stock insurance company subsidiary of the mutual holding company.

(b) The reorganizing foreign mutual insurance company may remain a foreign company and may be admitted to do business in this state. A foreign mutual insurance company may also redomesticate in this state by complying with the applicable requirements of Chapter 983. (V.T.I.C. Art. 15.22, Sec. 24(b).)

Source Law

(b) A foreign mutual insurance company may reorganize on approval by the commissioner and in compliance with the requirements of any law or regulation which is applicable to the foreign mutual insurance company by transferring its members' membership interests into a mutual holding company formed under a procedure similar to that described in Subsection (a) of this section and continuing the corporate existence of the reorganizing foreign mutual insurance company as a foreign stock insurance company subsidiary of the mutual holding company. The reorganizing foreign mutual insurance company may remain a foreign company and may be admitted to do business in this state. A foreign mutual insurance company may at the same time

redomesticate in this state by complying with the applicable requirements of Article 1.38 of this code.

CHAPTER 827. WITHDRAWAL AND RESTRICTION PLANS

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Revised Law

Sec. 827.001. DEFINITION. In this chapter, "rating territory" means a rating territory established by the department. (V.T.I.C. Art. 21.49-2C, Sec. (a)(3).)

Source Law

(3) "Rating territory" means a rating territory established by the Texas Department of Insurance.

Revised Law

Sec. 827.002. EXEMPTION. This chapter does not apply to a transfer of business from an insurer to a company that:

(1) is under common ownership with the insurer; and

(2) is authorized to engage in the business of insurance in this state. (V.T.I.C. Art. 21.49-2C, Sec. (b).)

Source Law

(b) This article does not apply to the transfer of the business from an insurer to a company under common ownership

admitted to do business in this state.

Revised Law

Sec. 827.003. WITHDRAWAL PLAN REQUIRED. An authorized insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes to:

(1) withdraw from writing a line of insurance in this state or reduce the insurer's total annual premium volume by 75 percent or more; or

(2) reduce, in a rating territory, the insurer's total annual premium volume in a personal line of motor vehicle comprehensive or residential property insurance by 50 percent or more. (V.T.I.C. Art. 21.49-2C, Sec. (a)(1) (part).)

Source Law

Art. 21.49-2C. (a)(1) An authorized insurer shall file with the commissioner a plan for orderly withdrawal if the insurer proposes to withdraw from writing a line of insurance in this state or to reduce its total annual premium volume by 75 percent or more or proposes, in a personal line of motor vehicle comprehensive or residential property insurance, to reduce its total annual premium volume in a rating territory by 50 percent or more. . . .

Revised Law

Sec. 827.004. PROVISIONS OF WITHDRAWAL PLAN. A withdrawal plan filed under Section 827.003 must:

(1) be constructed to protect the interests of the people of this state;

(2) indicate the dates on which the insurer intends to begin and to complete the plan; and

(3) provide for:

(A) meeting the insurer's contractual obligations;

(B) providing service to the insurer's policyholders and claimants in this state; and

(C) meeting any applicable statutory obligations, such as payment of assessments to the guaranty fund and participation in an assigned risk plan or joint underwriting arrangement. (V.T.I.C. Art. 21.49-2C, Sec. (a)(1) (part).)

Source Law

(1) . . . The insurer's plan shall be constructed to protect the interests of the people of this state and shall indicate the date it intends to begin and complete its withdrawal plan and must contain provisions for:

(A) meeting the insurer's contractual obligations;

(B) providing service to its Texas policyholders and claimants; and

(C) meeting any applicable statutory obligations, such as the payment of assessments to the guaranty fund and participation in any assigned risk plans or joint underwriting arrangements.

Revised Law

Sec. 827.005. APPROVAL OF WITHDRAWAL PLAN. (a) The commissioner shall approve a withdrawal plan that adequately provides for meeting the requirements prescribed by Section 827.004(3).

(b) A withdrawal plan is deemed approved if the commissioner:

(1) does not hold a hearing on the plan before the 31st day after the date the plan is filed with the commissioner; or

(2) does not deny approval before the 31st day after the date a hearing on the plan is held. (V.T.I.C. Art. 21.49-2C, Secs. (e), (f) (part).)

Source Law

(e) The commissioner shall approve the plan if it adequately provides for:

(1) meeting the insurer's contractual obligations;

(2) providing service to its Texas policyholders and claimants; and

(3) meeting any applicable statutory obligations, such as the payment of assessments to the guaranty fund and participation in any assigned risk plans or joint underwriting arrangements.

(f) The withdrawal plan shall be deemed approved if the commissioner has not held a hearing within 30 days after the plan is filed with the commissioner or has not denied approval within 30 days after the hearing. . . .

Revised Law

Sec. 827.006. RESUMPTION OF WRITING INSURANCE AFTER COMPLETE WITHDRAWAL. An insurer that withdraws from writing all lines of insurance in this state may not, without the approval of the commissioner, resume writing insurance in this state before the fifth anniversary of the date of withdrawal. (V.T.I.C. Art. 21.49-2C, Sec. (d).)

Source Law

(d) An insurer that withdraws from writing all lines of insurance in this state may not resume writing insurance in this state for five years without the approval of the commissioner.

Revised Law

Sec. 827.007. PENALTIES. The commissioner may impose the civil penalties under Chapter 82 on an insurer that fails to obtain the commissioner's approval before the insurer:

(1) withdraws from writing a line of insurance in this state; or

(2) reduces the insurer's total annual premium volume by 75 percent or more in any year. (V.T.I.C. Art. 21.49-2C, Sec. (f) (part).)

Source Law

(f) . . . An insurer that withdraws from writing insurance in this state or that reduces its total annual premium volume by 75 percent or more in any year without receiving the commissioner's approval is subject to the civil penalties under Article 1.10 of this code.

Revisor's Note

Section (f), V.T.I.C. Article 21.49-2C, refers to penalties under V.T.I.C. Article 1.10. Section 7, Article 1.10, which authorizes the commissioner to impose certain sanctions, was codified in 1999 as Chapter 82 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 827.008. RESTRICTION PLAN. (a) Before an insurer, in response to a catastrophic natural event that occurred during the preceding six months, may restrict writing new business in a rating territory in a personal line of comprehensive motor vehicle or residential property insurance, the insurer must file a proposed restriction plan with the commissioner for the commissioner's review and comment.

(b) The commissioner's approval of a restriction plan filed under Subsection (a) is not required. An insurer that files a restriction plan may institute the plan on or after the 15th day after the date the plan is filed.

(c) Notwithstanding Subsection (b), a withdrawal plan must be filed and approved under Sections 827.003 and 827.004 if an insurer's decision not to accept new business in a personal line of comprehensive motor vehicle or residential property insurance results in a reduction of the insurer's total annual premium volume by 50 percent or more. (V.T.I.C. Art. 21.49-2C, Sec. (a)(2).)

Source Law

(2) If within six months after a catastrophic event of natural origin an insurer, in response to such catastrophic event, wishes to restrict its writing of new business in a personal line of comprehensive motor vehicle or residential property insurance in a rating territory, it shall prepare and file a plan as to such proposed plan of restriction with the commissioner for the commissioner's review and comment. Approval of such plan is not required and the insurer may institute such plan 15 days after filing. However, in the event of a conflict between Subsections (a)(1) and (a)(2), where not accepting new business may result in a withdrawal as defined in Subsection (a)(1), Subsection (a)(1) controls.

Revisor's Note

Section (a)(2), V.T.I.C. Article 21.49-2C, states that an insurer must "prepare and file" a plan under that section. The revised law omits "prepare" as unnecessary because a plan must be prepared before it can be filed.

Revised Law

Sec. 827.009. DEPOSIT OF SECURITIES. Under this chapter, the commissioner may require the deposit of securities in this state in trust in the name of the commissioner if the commissioner determines, after notice and hearing, that there is reasonable cause to conclude that the interests of the people of this state are best served by the deposit. (V.T.I.C. Art. 21.49-2C, Sec. (c).)

Source Law

(c) The commissioner may require the deposit of securities in this state in trust in the name of the commissioner upon a finding, after notice and hearing, that there is reasonable cause to conclude that the interests of the people of this state are best served by such deposit.

Revised Law

Sec. 827.010. MORATORIUM. (a) The commissioner may impose a moratorium of not longer than two years on:

(1) the approval of withdrawal plans; or

(2) the implementation of plans to restrict the writing of new business described by Section 827.008.

(b) A moratorium under this section may be imposed on plans implemented after the commissioner has published notice of intention to impose a moratorium on plans under Subsection (a)(2).

(c) The commissioner may annually renew a moratorium imposed under this section.

(d) To impose or renew a moratorium under this section, the commissioner must determine, after notice and hearing, that a catastrophic event has occurred and that as a result of that event a particular line of insurance is not reasonably expected to be available to a substantial number of policyholders or potential policyholders in this state or, in the case of personal lines of motor vehicle comprehensive or residential property insurance, in a rating territory.

(e) The provisions of Chapter 2001, Government Code, relating to contested cases apply to the notice and hearing.

(f) The commissioner by rule shall establish reasonable criteria for applying the standards for determining whether to impose a moratorium under this section.

(g) The commissioner may limit a moratorium on withdrawal from or restriction of writing business in personal lines insurance to certain geographical areas of the state. (V.T.I.C. Art. 21.49-2C, Sec. (g).)

Source Law

(g) The commissioner may impose a moratorium of up to two years on the approval of plans for withdrawal or implementation of plans to restrict the writing of new business pursuant to Subsection (a)(2) of this section, including those such plans implemented subsequent to the commissioner's publishing of notice

of intention to impose a moratorium regarding the catastrophic event related to such plans, and may renew the moratorium annually. To impose or renew a moratorium, the commissioner must find after notice and public hearing that a catastrophic event has occurred and that as a result of the event, the relevant line of insurance is not reasonably expected to be available to a substantial number of policyholders or potential policyholders in this state, or in the case of personal lines of motor vehicle comprehensive or residential property insurance, in a rating territory. Such notice and hearing shall be governed by provisions of Chapter 2001, Government Code, related to contested cases and of Subsection (b), Article 1.33B, Insurance Code. The commissioner shall, by rule, establish reasonable criteria for applying the above set forth standards for determining whether to impose a moratorium. The commissioner may limit a moratorium on withdrawal from or reduction in personal lines insurance to certain geographical areas of this state.

Revisor's Note

(1) Section (g), V.T.I.C. Article 21.29-2C, refers to a "public hearing." Throughout this chapter, the revised law omits "public" as unnecessary. In context, "hearing" means a hearing open to the public.

(2) Section (g), V.T.I.C. Article 21.49-2C, refers to Subsection (b), V.T.I.C. Article 1.33B. The revised law omits the reference to that subsection, codified in 1999 as part of Sections 40.001-40.003 of this code, as unnecessary because those sections apply to the revised law under Section 40.003.

Revised Law

Sec. 827.011. RULES. The commissioner shall adopt rules as necessary to enforce this chapter. (V.T.I.C. Art. 21.49-2C, Sec. (h).)

Source Law

(h) The board shall adopt such rules as may be necessary to enforce the provisions of this article.

CHAPTER 828. PURCHASE OF STOCK FOR TOTAL ASSUMPTION REINSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 828.004-828.050 reserved for expansion]

SUBCHAPTER B. EXCEPTION TO INVESTMENT LIMITATION

CHAPTER 828. PURCHASE OF STOCK FOR TOTAL ASSUMPTION REINSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 828.001. AUTHORITY TO PURCHASE STOCK FOR TOTAL ASSUMPTION REINSURANCE. This code does not affect the right of a life insurance company organized or operating under Chapter 841, 882, or 982 to purchase or contract to purchase all or part of the outstanding shares of another domestic or foreign life insurance company that engages in a similar line of business in order to:

(1) reinsure all of the other company's business;

(2) assume all of the other company's liabilities; and

(3) take over all of the other company's assets.

(V.T.I.C. Art. 21.26, Sec. 1 (part).)

Source Law

Art. 21.26

Sec. 1. Nothing in this Act or in the Insurance Code shall be construed as in any way affecting or limiting the right of a life insurance corporation organized or operating under Chapter Three (3) or Chapter Eleven (11) of the Insurance Code of the State of Texas to purchase or to contract to purchase all or part of the outstanding shares of another life insurance corporation, domestic or foreign, doing a similar line of business for the purpose of reinsuring all of the business of such other insurance corporation and assuming all of the liabilities and taking over all of the assets of such other corporation. . . .

Revisor's Note

(1) Section 1, V.T.I.C. Article 21.26, provides that the Insurance Code may not be construed as "affecting or limiting" the right of certain insurers to purchase the shares of certain other insurers. The revised law omits as unnecessary the reference to "limiting" because "limiting" is included in the meaning of "affecting."

(2) Section 1, V.T.I.C. Article 21.26, refers to a "life insurance corporation." The revised law substitutes "company" for "corporation" to ensure consistent terminology throughout this code.

(3) Section 1, V.T.I.C. Article 21.26, refers to Chapters 3 and 11 of the Insurance Code. The pertinent portions of Chapter 3, relating to authorization of life insurance companies, are revised in Chapters 841 and 982 of this code. Chapter 11 is revised as Chapter 882 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 828.002. EFFECT ON ANTITRUST LAWS. This chapter does not affect in any manner the antitrust laws of this state. (V.T.I.C. Art. 21.26, Sec. 3.)

Source Law

Sec. 3. Nothing herein shall be construed as affecting, modifying, amending or repealing in any manner the Anti-Trust Statutes of this state.

Revisor's Note

Section 3, V.T.I.C. Article 21.26, provides that the article may not be construed as "affecting, modifying, amending or repealing" the state's antitrust statutes. The revised law omits as unnecessary the references to "modifying, amending or repealing" because, in context, those terms are included in the meaning of "affecting."

Revised Law

Sec. 828.003. INVESTMENTS OF REINSURED COMPANY. The investments of a company reinsured under this chapter are subject to Section 824.102 as if the company had been merged or consolidated. (V.T.I.C. Art. 21.26, Sec. 2.)

Source Law

Sec. 2. All investments of such reinsured corporation shall be subject to Section 5 of Article 21.25 hereof, as if such corporation had been merged or consolidated.

[Sections 828.004-828.050 reserved for expansion]

SUBCHAPTER B. EXCEPTION TO INVESTMENT LIMITATION

Revised Law

Sec. 828.051. EXCEPTION TO LIMITATION ON PURCHASING SHARES OF OTHER COMPANY. Articles 3.33 and 3.39 do not apply to a purchase or contract described by Section 828.001 if all requirements of this subchapter are met. (V.T.I.C. Art. 21.26, Sec. 1 (part).)

Source Law

Sec. 1. . . . The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:

. . . .

Revised Law

Sec. 828.052. RESOLUTION OF INTENTION TO REINSURE. The intention to reinsure must be evidenced by a resolution adopted by the board of directors of the purchasing company on or before the purchase of the shares or the execution of a contract to purchase the shares. (V.T.I.C. Art. 21.26, Sec. 1 (part).)

Source Law

Sec. 1. . . . [The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:]

(a) The intention to reinsure is evidenced by a resolution adopted by the Board of Directors of the reinsuring corporation at or prior to the purchase of such stock or the execution of a contract to purchase such stock; and

. . . .

Revisor's Note

V.T.I.C. Article 21.26 refers to the "reinsuring corporation" and the "purchasing corporation," in both cases meaning a company that is purchasing shares of another company to reinsure all of the other company's business, as described by the portion of Section 1, V.T.I.C. Article 21.26, revised as Section 828.001 of this chapter. Throughout this chapter, the revised law uses the phrase "purchasing company" for consistency of terminology.

Revised Law

Sec. 828.053. MINIMUM STOCK ACQUISITION. The purchasing company shall obtain or seek to obtain at least the number of shares of the other insurance company necessary to vote an approval of the total assumption reinsurance agreement under the laws of the state in which the other insurance company is organized by one or more of the following means:

(1) initially purchasing or contracting to purchase the shares; or

(2) offering to purchase, making a tender offer for, requesting or inviting tenders of, or otherwise seeking to acquire the shares in the open market or otherwise. (V.T.I.C. Art. 21.26, Sec. 1 (part).)

Source Law

Sec. 1. . . . [The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:]

. . .

(b) The reinsuring corporation shall either (1) initially purchase or contract to purchase the number of shares of the stock of the other insurance corporation necessary to vote an approval of a total assumption reinsurance agreement under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of shares of stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other insurance corporation was organized; and

. . . .

Revised Law

Sec. 828.054. APPROVAL REQUIRED. A purchase, offer to purchase, tender offer, request to purchase, or invitation to purchase shares in excess of the limits imposed under Article 3.33 or 3.39 may not be made until it is filed with and approved by the commissioner in accordance with Chapter 823. (V.T.I.C. Art. 21.26, Sec. 1 (part).)

Source Law

Sec. 1. . . . [The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:]

. . .

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49-1 of this code; and

. . . .

Revised Law

Sec. 828.055. RESTRICTIONS ON REINSURED COMPANY. Following the earlier of the date of the contract to purchase the shares or the date of the commissioner's approval of the purchase, offer to purchase, tender offer, request to purchase, or invitation to purchase the shares, the company the shares of which are being purchased may not purchase or contract to purchase any of its own shares as treasury shares, issue or contract to issue any of its authorized but unissued shares, or make any investments in or loans to the purchasing company or an affiliate of the purchasing company unless the investment or loan is otherwise authorized and

approved in advance by the commissioner under Chapter 823. (V.T.I.C. Art. 21.26, Sec. 1 (part).)

Source Law

Sec. 1. . . . [The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:]

. . .

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49-1, as amended, of the Insurance Code; and

. . . .

Revisor's Note

Section 1(d), V.T.I.C. Article 21.26, refers to "Article 21.49-1, as amended, of the Insurance Code." The revised law omits the reference to "as amended" as unnecessary because Section 311.027, Government Code (Code Construction Act), applicable to the revised law, provides that unless expressly provided otherwise, a reference to any portion of a statute applies to all reenactments, revisions, or amendments of the statute.

Revised Law

Sec. 828.056. REQUIRED EFFECTIVE DATE OF REINSURANCE AGREEMENT; EFFECT OF FAILURE TO MEET REQUIRED EFFECTIVE DATE. (a) The reinsurance agreement must take effect on or before December

31 of the second year after the earlier of the year in which the initial purchase of shares is made or the year in which the initial contract to purchase is executed unless the commissioner for good cause shown extends that period.

(b) If the reinsurance agreement does not take effect within the period finally determined and extended by the commissioner, the purchasing company shall sell or otherwise dispose of the purchased shares that exceed the investment limitations imposed under Article 3.33 or 3.39 within six months of the final effective date. (V.T.I.C. Art. 21.26, Sec. 1 (part).)

Source Law

Sec. 1. . . . [The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:]

. . .

(e) The reinsurance agreement shall become effective on or before December 31st in the second year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the reinsurance agreement; and

(f) If the reinsurance agreement fails to become effective within such time as may be finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

. . . .

Revisor's Note

Section 1, V.T.I.C. Article 21.26, which has not been amended since 1977, refers to the investment limitations of

V.T.I.C. Article 3.39. In 1985, V.T.I.C. Article 3.33 was enacted to govern investments of most types of insurers. Section 1 of Article 3.33 states that Article 3.39 is applicable only to specified types of insurers listed by that section. Accordingly, the revised law includes a reference to Article 3.33.

Revised Law

Sec. 828.057. PROHIBITION ON USE OF PURCHASING COMPANY'S CAPITAL, SURPLUS, OR RESERVES. Amounts actually paid by the purchasing company for the purchase of shares acquired or obtained under this subchapter may not include the minimum capital, minimum surplus, and policy reserves required by law for the purchasing company. (V.T.I.C. Art. 21.26, Sec. 1 (part).)

Source Law

Sec. 1. . . . [The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:]

. . .

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

[Chapters 829-840 reserved for expansion]

SUBTITLE C. LIFE, HEALTH, AND ACCIDENT INSURERS AND RELATED ENTITIES

CHAPTER 841. LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 841.005-841.050 reserved for expansion]

CHAPTER 841. LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 841.001. DEFINITIONS. (1) "Accident insurance company" means a corporation authorized under a charter to engage in business involving the payment of money or another thing of value in the event of an injury to or the disablement or death of an individual as a result of travel or a general accident by land or water.

(2) "Alien company" means a life, accident, or health insurance company organized under the laws of a foreign country.

(3) "Beneficiary" is the person to whom an insurance policy is payable.

(4) "Domestic insurance company," in this chapter and another law described by Section 841.002, means an insurance company organized under the laws of this state as:

(A) a life insurance company;

(B) an accident insurance company;

(C) a life and accident insurance company;

(D) a health and accident insurance company; or

(E) a life, health, and accident insurance company.

(5) "Foreign company" means a life, accident, or health insurance company organized under the laws of another state.

(6) "Health insurance company" means a corporation authorized under a charter to engage in business involving the payment of money or another thing of value in the event of loss resulting from disability incurred as a result of sickness or ill health.

(7) "Home office," with respect to an insurance company, means the principal office of the company in the state or country under whose laws the company is organized.

(8) "Insurance company" and "company" include all corporations engaged as a principal in the business of life, accident, or health insurance.

(9) "Life insurance company" means a corporation authorized under a charter to engage in business involving the payment of money or another thing of value conditioned on the continuance or cessation of human life or involving an insurance, guaranty, or contract for the payment of an endowment or annuity.

(10) "Policyholder" and "insured" mean the individual on whose life an insurance policy is effected.

(11) "Profits," with respect to an insurance company, means the portion of the company's funds that are not:

(A) required for the payment of losses and expenses; or

(B) set aside for any other purpose required by law.

(12) "United States branch" means:

(A) the business unit through which business is transacted within the United States by an alien company;

(B) the assets and liabilities of the company within the United States pertaining to the business;

(C) the management powers pertaining to the business and to the assets and liabilities; or

(D) any combination of the items described by Paragraphs (A)-(C).

(13) The definitions of "company" and "insurance company" apply to this chapter and another law described by Section 841.002 unless a different meaning is plainly required by the context in which the term appears. (V.T.I.C. Art. 3.01, Secs. 1, 2, 3, 4, 5, 6, 7, 7A, 8, 9, 11, 13.)

Source Law

Art. 3.01

Sec. 1. A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned on the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities.

Sec. 2. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water.

Sec. 3. A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value, conditioned upon loss by reason of disability due to sickness or ill-health.

Sec. 4. When consistent with the context and not obviously used in a different sense, the term "company," or "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident or health insurance.

Sec. 5. The term "domestic" company, as used herein, designates those life, accident or life and accident, health and accident, or life, health and accident insurance companies incorporated and formed in this State.

Sec. 6. The term "foreign company" means any life, accident or health insurance company organized under the laws of any other state or territory of the United States.

Sec. 7. The term "home office" of a company means its

principal office within the state or country in which it is incorporated and formed.

Sec. 7A. The term "alien company" means any life, accident, or health insurance company organized under the laws of any foreign country.

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

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

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

Sec. 13. The "United States branch" means:

(a) the business unit through which business is transacted within the United States by an alien insurer;

(b) the assets and liabilities of the insurer within the United States pertaining to such business;

(c) the management powers pertaining to such business and to the assets and liabilities; or

(d) any combination of the foregoing.

Revisor's Note

(1) Section 1, V.T.I.C. Article 3.01, defines "life insurance company" to include a corporation doing business involving an "insurance, guaranty, contract or pledge" for payment of an endowment or annuity. The revised law omits "pledge" as unnecessary because it is included within the meaning of "guaranty."

(2) Sections 5 and 7, V.T.I.C. Article 3.01, refer to insurance companies "incorporated and formed" in this state and to the state or country in which a company is "incorporated and formed." The revised law substitutes "organized" for "incorporated and formed" for consistency with terminology used in other chapters of this code.

(3) Section 6, V.T.I.C. Article 3.01, refers to "any other state or territory of the United States." The revised law omits "territory" as unnecessary because Section 311.005, Government Code (Code Construction Act), which applies to the revised law, provides that "state," when referring to a part of the United States, includes any state or territory of the United States.

Revised Law

Sec. 841.002. APPLICABILITY OF CHAPTER AND OTHER LAW. Except as otherwise expressly provided by this code, each insurance company incorporated or engaging in business in this state as a life insurance company, an accident insurance company, a life and accident insurance company, a health and accident insurance company, or a life, health, and accident insurance company is subject to:

(1) this chapter;

(2) Chapter 3; and

(3) Title 7. (V.T.I.C. Art. 3.02, Sec. 3.)

Source Law

Sec. 3. Every life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company incorporated or transacting such business in this State is subject to the capital and surplus requirements imposed by this article and is subject to the other provisions of this chapter unless otherwise expressly provided by this Code.

Revisor's Note

(1) Section 3, V.T.I.C. Article 3.02, provides that certain companies are subject to "the capital and surplus requirements" imposed by Article 3.02 and to "the other provisions of this chapter." The revised law omits the reference to "the capital and surplus requirements" as unnecessary because "the capital and surplus requirements" are included within the meaning of "provisions of this chapter."

(2) Section 3, V.T.I.C. Article 3.02, refers to "the other

provisions of this chapter," meaning Chapter 3, Insurance Code, portions of which are revised as this chapter. This chapter contains primarily portions of V.T.I.C. Chapter 3 that are derived from law originally derived from Chapter 108, General Laws, Acts of the 31st Legislature, Regular Session, 1909. V.T.I.C. Chapter 3 also contains law that is derived from law that was added to the Revised Statutes after 1909, but before the enactment of the Insurance Code of 1951, and provisions added to Chapter 3 after 1951. In addition, V.T.I.C. Chapter 3 includes provisions of law that are published by the publishing company as part of Chapter 3, but which were never formally added to the Insurance Code by the legislature.

Portions of Chapter 3 of the Insurance Code of 1951 remain as a part of Chapter 3. It is appropriate, therefore, to state in this section that the companies described by this section are subject to Chapter 3.

Portions of V.T.I.C. Chapter 3 are revised as part of Title 7 of this code. While portions of Title 7 are not derived from Chapter 3 of the Insurance Code of 1951, those provisions either apply to the insurance companies described by this section by their own terms or cannot be interpreted to apply to these companies. It is appropriate, therefore, to state in this section that the companies described by this section are subject to Title 7.

Portions of Chapter 3 of the Insurance Code of 1951 are revised as part of Chapter 982 of this code. The provisions of Chapter 982 that are derived from Chapter 3 clearly state the scope of their applicability and it is not necessary to repeat that applicability in this section.

Portions of V.T.I.C. Chapter 3 are revised in Subtitle H of Title 8 of this code. To the extent that the provisions of Subtitle H, Title 8, that are derived from Chapter 3 of the Insurance Code of 1951 apply to companies described by this section, those provisions clearly state the scope of their applicability and it is not necessary to repeat that applicability in this section. The revised law is drafted

accordingly.

Revised Law

Sec. 841.003. APPLICABILITY OF LAW GOVERNING CORPORATIONS. An insurance company operating under this chapter is subject to the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and any other law of this state that governs corporations in general to the extent those laws are not inconsistent with this chapter or another law described by Section 841.002. (V.T.I.C. Art. 3.69.)

Source Law

Art. 3.69. The laws governing corporations in general shall apply to and govern insurance companies organized or operating under this Chapter 3 in so far as same are not inconsistent with the provisions of this chapter.

Revisor's Note

(1) V.T.I.C. Article 3.69 refers to "laws governing corporations in general." For the convenience of the reader, the revised law adds references to the Texas Business Corporation Act and the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), which are laws that govern corporations in general.

(2) V.T.I.C. Article 3.69 refers to "insurance companies organized or operating under" this chapter. Throughout this chapter, the revised law refers only to a company "operating" under this chapter because a company "organized" under this chapter is also "operating" under this chapter.

Revised Law

Sec. 841.004. NET ASSETS DEFINED; RULES. (a) A company's "net assets" consist of the company's funds that are available for the payment of a company's obligations in this state, including:

(1) uncollected premiums that are not more than three months past due and deferred premiums on policies actually in

force, after the deduction of:

(A) all unpaid losses and claims;

(B) all claims for losses; and

(C) all other debts, exclusive of capital stock; and

(2) if the total value of the equipment exceeds $2,000, the value of all electronic machines that comprise a data processing system or systems and of all other office equipment, furniture, machines, and labor-saving devices purchased for and used in connection with the business of the insurance company to the extent that the total actual cash market value of those assets is less than 10 percent of the other admitted assets of the company.

(b) The commissioner may adopt rules defining electronic machines and systems, office equipment, furniture, machines, and labor-saving devices described by Subsection (a) and stating the maximum period for which each class of equipment may be amortized. (V.T.I.C. Art. 3.01, Sec. 10 (part).)

Source Law

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

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

(b) All electronic machines, constituting a data-processing system or systems, and all other office equipment, furniture, machines and labor-saving devices heretofore or hereafter purchased for and used in connection with the business of an insurance company to the extent that the total actual cash market value of all of such systems, equipment, furniture, machines and devices constitute not more than ten percent (10%) of the otherwise admitted assets of such company;

and provided further, that the total value of all such property of a company must exceed Two Thousand Dollars ($2,000), to qualify hereunder.

(c) The Commissioner of Insurance may adopt regulations defining electronic machines and systems, office equipment, furniture, machines and labor-saving devices as used in subsection (b), and provide for the maximum period for which each such class of equipment may be amortized.

Revisor's Note

Section 10(c), V.T.I.C. Article 3.01, refers to the authority of the commissioner of insurance to adopt "regulations" defining certain equipment. Throughout this chapter, the revised law substitutes "rules" for "regulations" because, in this context, the terms are synonymous and because under Section 311.005, Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

[Sections 841.005-841.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF DOMESTIC COMPANIES

Revised Law

Sec. 841.051. FORMATION OF COMPANY. (a) Three or more residents of this state may form:

(1) a life insurance company;

(2) an accident insurance company;

(3) a life and accident insurance company;

(4) a health and accident insurance company; or

(5) a life, health, and accident insurance company.

(b) To form a domestic insurance company:

(1) each incorporator must sign and acknowledge the articles of incorporation of the company; and

(2) the incorporators must file the articles of incorporation with the department. (V.T.I.C. Art. 3.02, Sec. 1(a) (part).)

Source Law

Art. 3.02

Sec. 1. (a) Any three or more citizens of this State may associate themselves for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company. . . . In order to form such a company, the incorporators shall sign and acknowledge its articles of incorporation and file the same in the office of the State Board of Insurance. . . .

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 3.02, refers to "citizens of this State." The revised law substitutes "resident" for "citizen" because, in context, "citizen" and "resident" are synonymous, and "resident" is more commonly used.

(2) Section 1(a), V.T.I.C. Article 3.02, refers to "such a company," meaning a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company formed in accordance with V.T.I.C. Article 3.02. The revised law substitutes the term "domestic insurance company" because that is the defined term that describes a company organized under this chapter. Similar changes are made throughout this chapter, as appropriate.

(3) Section 1(a), V.T.I.C. Article 3.02, refers to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the board have been changed appropriately.

Revised Law

Sec. 841.052. ARTICLES OF INCORPORATION. (a) Articles of incorporation of a proposed domestic insurance company must state:

(1) the name of the company;

(2) the location of the company's home office;

(3) the kinds of insurance business in which the company proposes to engage;

(4) the name and place of residence of each incorporator;

(5) the amount of the company's capital stock;

(6) the number of shares of the company's capital stock;

(7) the amount of the company's surplus; and

(8) the period of the company's duration, which may be perpetual.

(b) The incorporators of a domestic insurance company may include in the articles of incorporation other provisions that are not inconsistent with law. (V.T.I.C. Art. 3.02, Sec. 1(a) (part).)

Source Law

(a) . . . Such articles shall specify:

1. The name and place of residence of each of the incorporators;

2. The name of the proposed company . . .;

3. The location of its home office;

4. The kind or kinds of insurance business it proposes to transact;

5. The amount of its capital stock and its surplus . . . ;

6. The period of time it is to exist, which may be perpetual;

7. The number of shares of such capital stock;

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

Revised Law

Sec. 841.053. COMPANY NAME. (a) The name of a domestic insurance company must contain the words "Insurance Company."

(b) A domestic insurance company's name may not be so similar to the name of another domestic insurance company as to likely mislead the public. (V.T.I.C. Art. 3.02, Sec. 1(a) (part).)

Source Law

(a) . . . [Such articles shall specify:]

. . .

2. The name of the proposed company, which shall contain the words "Insurance Company" as a part thereof, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public;

. . .

Revised Law

Sec. 841.054. CAPITAL STOCK AND SURPLUS REQUIREMENTS. (a) A domestic insurance company must have capital stock in an amount of at least $700,000 and surplus in an amount of at least $700,000.

(b) All of the capital stock required by Subsection (a) must be fully subscribed and paid up and delivered to the incorporators before the articles of incorporation are filed.

(c) At the time of incorporation, the required capital and surplus shall consist only of:

(1) United States currency;

(2) bonds of the United States, this state, or a county or municipality of this state; or

(3) government insured mortgage loans that are authorized by this chapter or Chapter 3, with not more than 50 percent of the required capital invested in first mortgage real property loans. (V.T.I.C. Art. 3.02, Sec. 1(a) (part).)

Source Law

(a) . . . [Such articles shall specify:]

. . .

5. The amount of its capital stock and its surplus, that in no case may be less than Seven Hundred Thousand ($700,000.00) Dollars capital and Seven Hundred Thousand ($700,000.00) Dollars surplus; all of which capital stock must be fully subscribed and fully paid up and in the hands of the incorporators before said articles of incorporation are filed. Such minimum capital and surplus shall, at the time of incorporation, consist only of lawful money of the United States or bonds of the United States or of this State or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this chapter, and shall not include any real estate; provided, however, that fifty (50%) per cent of the minimum capital may be invested in first mortgage real estate loans. . . .

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 3.02, refers to an "incorporated municipality" of this state. The revised law omits "incorporated" because under the Local Government Code all municipalities must be incorporated.

(2) Section 1(a), V.T.I.C. Article 3.02, refers to "government insured mortgage loans . . . authorized by this chapter." The revised law includes a reference to Chapter 3, Insurance Code, which contains provisions applicable to investments of insurance companies that are not revised in this chapter.

(3) Section 1(a), V.T.I.C. Article 3.02, provides that the minimum capital and surplus "shall not include any real estate." The revised law omits the quoted language as unnecessary because the revised law expressly sets out all of the forms that capital and surplus may take, which do not include real property.

Revised Law

Sec. 841.055. SHARES OF STOCK. (a) The shares of stock of an insurance company operating under this chapter may be divided or converted into shares of stock with a par value or shares of stock without par value or into a combination of shares with or without par value.

(b) Each issued share of stock must be fully paid for and nonassessable.

(c) The insurance company by an amendment to its charter may increase or decrease the total number of shares of stock the company is authorized to issue if:

(1) shares representing at least 50 percent of the total par value of the authorized shares with a par value, if any, have been in good faith subscribed and fully paid for; and

(2) shares representing at least 50 percent of the total number of the authorized shares without a par value, if any, have been in good faith subscribed and fully paid for.

(d) Authorized but unissued shares of stock of an insurance company are not considered capital, stock, or capital stock of the company.

(e) This section and Sections 841.056 and 841.057 do not impair the charter rights of an insurance company authorized to issue shares of stock with or without a par value before September 6, 1955. (V.T.I.C. Art. 3.02a, Subsecs. (a) (part), (d).)

Source Law

Art. 3.02a. (a) The shares of any life, health or accident insurance company organized or operating under the provisions of this Chapter may be divided or converted into shares of either par value or no par value, or some of each, and all issued shares shall be fully paid and nonassessable. . . . The aggregate number of shares which the company has authority to issue may be increased or decreased from time to time by lawful charter amendment so long as at least fifty per cent (50%) of the aggregate number of the authorized shares to be issued without

nominal or par value is in good faith subscribed and paid for and so long as shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal or par value has been in good faith subscribed and paid for in full; provided that authorized but unissued shares shall not constitute capital or stock or capital stock of such company.

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

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 3.02a, provides for a change in the number of authorized shares by "lawful charter amendment." The revised law omits "lawful" as unnecessary because it does not add to the clear meaning of the law.

(2) Subsection (a), V.T.I.C. Article 3.02a, refers to shares with a "nominal or par value." The revised law omits "nominal" because, in context, the terms are synonymous, and "par value" is more commonly used.

(3) Subsection (d), V.T.I.C. Article 3.02a, refers to the effect of that article on charter rights of companies "heretofore" authorized to issue stock with or without a par value. That article was enacted by Chapter 363, Acts of the 54th Legislature, Regular Session, 1955, which took effect after midnight of September 5, 1955 (90 days after June 7, 1955). The revised law substitutes "before September 6, 1955," for "heretofore."

Revised Law

Sec. 841.056. REQUIREMENTS FOR SHARES OF STOCK WITH PAR VALUE. (a) The shares of stock of an insurance company operating under this chapter that are divided or converted into par value shares, if any, must have a par value of not less than $1 or more than $100.

(b) Each par value share of stock must be fully paid for

before issuance in an amount that is not less than the share's par value.

(c) When an application for charter or an amendment to the charter authorizing the issuance of shares of stock with a par value is filed, the insurance company shall file with the department a statement under oath stating:

(1) the total number of par value shares subscribed; and

(2) the actual total consideration the company received for those shares.

(d) The shareholders of an insurance company authorizing par value shares of stock must in good faith subscribe and fully pay for shares representing at least 50 percent of the total par value of the authorized shares with a par value before the company:

(1) is granted a charter; or

(2) amends its charter to authorize the issuance of par value shares.

(e) If all of the authorized par value shares of stock are not subscribed and paid for when the charter is granted or the amendment is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors stating the total number of par value shares issued and the actual total consideration received for those shares. The company shall file the certificate not later than the 90th day after the date of issuance of those remaining shares. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company.

(f) The actual consideration received by an insurance company for a par value share constitutes capital to the extent of its par value and the remainder, if any, constitutes surplus. (V.T.I.C. Art. 3.02a, Subsecs. (a) (part), (b) (part), (c) (part).)

Source Law

(a) . . . If divided or converted into shares of par value, each share shall be for not less than One Dollar ($1) nor more than One Hundred Dollars ($100) and the stockholders of any such company authorizing the issuance of its stock with a nominal or par value shall be required in good faith to subscribe and fully pay for shares representing at least fifty per cent (50%) of the aggregate par value of the shares authorized to be issued with a nominal par value before said company shall be chartered or have its charter amended so as to authorize the issuance of shares with a nominal or par value. At the time of filing of an original charter or any amendment of an existing charter authorizing the issuance of stock with a nominal or par value, the company shall file a statement under oath with the State Board of Insurance setting forth the aggregate number of shares with a nominal or par value subscribed and the actual aggregate consideration received by the company for such shares. . . .

(b) . . . The consideration received for shares with a nominal or par value shall constitute capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus. . . . All shares with a nominal or par value issued by the company shall be fully paid for prior to issuance at a rate of not less than the par value thereof. In no event shall the capital or surplus be less than the minimum required by this Chapter.

(c) . . . In the event all of the shares with a nominal or par value, authorized by the original charter or any amendment, are not subscribed and paid for at the time the original charter is granted, or the amendment is filed, then when such remaining shares with a nominal or par value are sold and issued, the company shall file with the Board, within ninety (90) days after the issuance of such shares, a certificate authenticated by a majority of the directors setting forth the aggregate number of shares so issued and the actual aggregate consideration received by the company for such shares. In the case of the issuance by a

company of any of its authorized shares having a nominal or par value, the consideration received therefor shall constitute capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute surplus. . . . All shares with a nominal or par value issued by the company shall be fully paid for prior to issuance at a rate of not less than the par value thereof. No further action on the part of the company and no charter amendment shall be necessary to effect the increase in capital or surplus, or both, of the company.

Revisor's Note

(1) Subsections (a), (b), and (c), V.T.I.C. Article 3.02a, refer to shares with a "nominal or par value." The revised law omits "nominal" for the reason stated in Revisor's Note (2) to Section 841.055.

(2) Subsection (b), V.T.I.C. Article 3.02a, provides that "[i]n no event shall the capital or surplus be less than the minimum required by this Chapter." The revised law omits the quoted language as unnecessary because it duplicates the minimum capital and surplus requirements of Section 1(a), V.T.I.C. Article 3.02, revised in relevant part as Section 841.054.

Revised Law

Sec. 841.057. REQUIREMENTS FOR SHARES OF STOCK WITHOUT PAR VALUE. (a) The shares of stock of an insurance company operating under this chapter that are divided or converted into shares without par value, if any, must be equal in all respects.

(b) An insurance company may issue and dispose of authorized shares without par value for money or for notes, mortgages, and stocks in the form authorized by law for capital stock of insurance companies. Each share of stock without par value must be fully paid before issuance. After the company receives payment for a share of stock issued under this section, the share is not subject to additional call or assessment, and the subscriber or holder of the share is not required to make an additional payment with respect to the share.

(c) The shareholders of an insurance company authorizing shares of stock without par value must in good faith subscribe and pay for shares representing at least 50 percent of the authorized shares without par value before the company is granted a charter or has its charter amended to authorize the issuance of shares without par value. The total amount paid for the shares must be at least $250,000.

(d) When an application for charter or an amendment to the charter authorizing the issuance of shares without par value is filed, the insurance company shall file with the department a statement under oath stating:

(1) the number of shares without par value subscribed; and

(2) the actual consideration the company received for those shares.

(e) If all of the authorized shares of stock without par value are not subscribed and paid for when the charter is granted or the amendment is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors stating the number of shares without par value issued and the consideration received for those shares.

(f) The insurance company shall file the certificate required by Subsection (e) not later than the 90th day after the date of issuance of those remaining shares. The portion of the consideration received for shares without par value that is designated as capital by the company's directors, or by the company's shareholders if the charter or articles of incorporation reserve the right to make that determination to the shareholders, constitutes capital and the remainder, if any, constitutes surplus. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company. (V.T.I.C. Art. 3.02a, Subsecs. (a) (part), (b) (part), (c) (part).)

Source Law

(a) . . . If divided or converted into shares of no par value, every such share shall be equal in all respects to every other such share. At the time of filing of an original charter or any amendment of an existing charter authorizing the issuance of stock with no par value, the company shall file a statement under oath with the State Board of Insurance setting forth the number of shares without par value subscribed and the actual consideration received by the company for such shares. Provided, however, that the stockholders of any such company authorizing the issuance of its stock without nominal or par value, shall be required in good faith to subscribe and pay for at least fifty per cent (50%) of the authorized shares to be issued without nominal or par value, before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without nominal or par value; and provided further, that in no event shall the amount so paid be less than Two Hundred Fifty Thousand Dollars ($250,000). . . .

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

(c) In the event all of the shares without nominal or par value, authorized by the original charter or any amendment, are

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

Revised Law

Sec. 841.058. APPLICATION FOR CHARTER. (a) To obtain a charter for a domestic insurance company, the incorporators must pay to the department the charter fee in an amount determined under Article 4.07 and file with the department:

(1) an application for charter on the form and containing the information prescribed by the commissioner;

(2) the company's articles of incorporation; and

(3) an affidavit made by two or more of the incorporators that states that:

(A) the minimum capital and surplus requirements of Section 841.054 are satisfied;

(B) the capital and surplus are the bona fide property of the company; and

(C) the information in the articles of incorporation is true and correct.

(b) The commissioner may require that the incorporators provide at their expense additional evidence of a matter required

in the affidavit before the commissioner takes further action on the application for charter. (V.T.I.C. Art. 3.04, Sec. 1.)

Source Law

Art. 3.04

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

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

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

3. An affidavit made by two (2) or more of its incorporators that all of the stock has been subscribed in good faith and fully paid for, as required by law, in the amount as required by law, in addition to its capital; which affidavit shall state that the facts set forth in the application and the articles of incorporation are true and correct and that the capital and surplus is the bona fide property of such company. The State Board of Insurance may, in its discretion, at the expense of the incorporators, require other and additional satisfactory evidence of the matters required to be set forth in said affidavit before it shall be required to file the articles of incorporation, application for charter or follow the procedure hereinafter set forth;

4. A charter fee prescribed by law.

Revisor's Note

Section 1, V.T.I.C. Article 3.04, provides that a domestic insurance company must deposit with the Texas Department of Insurance "[a] charter fee prescribed by law" when it files an application to obtain a charter. V.T.I.C. Article 4.07 is a comprehensive fee provision that authorizes the Texas Department of Insurance to set the amounts of various fees, including a charter fee, subject to statutorily specified limits.

Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

Revised Law

Sec. 841.059. ACTION BY COMMISSIONER AND DEPARTMENT AFTER FILING. (a) After the charter fee is paid and all items required for a charter under Section 841.058 are filed with the department:

(1) the commissioner may set a date for a hearing on the application; and

(2) the department shall make or cause to be made a full and thorough examination of the domestic insurance company before the hearing.

(b) The domestic insurance company shall pay for the examination under Subsection (a)(2). (V.T.I.C. Art. 3.04, Sec. 2 (part); Art. 3.06 (part).)

Source Law

[Art. 3.04]

Sec. 2. When such application for charter, articles of incorporation, affidavit, and charter fee are filed with the State Board of Insurance, the Board may set a date for a public hearing of the same, ...

Art. 3.06. When the application for charter, articles of incorporation, affidavit, and charter fee are filed with the State Board of Insurance and before the hearing required by Article 3.04 of this Code, the Board shall make, or cause to be made, at the expense of the company, a full and thorough examination thereof. . . .

Revisor's Note

Section 2, V.T.I.C. Article 3.04, refers to a "public hearing" of the former State Board of Insurance. Throughout this chapter, the revised law omits "public" as unnecessary. In context, "hearing" means a hearing open to the public.

Revised Law

Sec. 841.060. APPLICATION PROCESS. (a) The date for a hearing on an application for charter may not be before the 11th day or later than the 30th day after the date notice is provided under Subsection (b).

(b) The commissioner shall:

(1) provide written notice of the date of a hearing to:

(A) the person or persons who filed the application; and

(B) any interested party, including any other party who had previously requested a copy of the notice; and

(2) publish, at the expense of the incorporators, a copy of the notice in a newspaper of general circulation in the county in which the domestic insurance company's home office is proposed to be located.

(c) The department shall make a record of the proceedings of a hearing under this section.

(d) An interested party is entitled to oppose or support the granting or denial of the application and may intervene and participate fully and in all respects in any hearing or other proceeding on the application. An intervenor has the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel. (V.T.I.C. Art. 3.04, Sec. 2 (part).)

Source Law

Sec. 2. . . . the Board may set a date for a public hearing . . ., which date shall be not less than ten (10) nor more than thirty (30) days after the date of notice thereof. The Board shall notify in writing the person or persons submitting such application of the date for such hearing and shall furnish a copy of such notice to all interested parties including any parties who have theretofore requested a copy of such notice. The Board shall, at the expense of the incorporators, publish a copy of such notice in any newspaper of general circulation in the county

of the proposed home office of said company. In all such public hearings on such applications, a record shall be made of such proceedings, and . . . . Any interested party shall have the right to oppose or support the granting or denial of such application and may intervene and participate fully and in all respects in any hearing or other proceeding had on any such application. Any such intervenor shall have and enjoy all the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

Revised Law

Sec. 841.061. ACTION ON APPLICATION. (a) In considering the application, the commissioner, not later than the 30th day after the date a hearing under Section 841.060 is completed, shall determine if:

(1) the minimum capital and surplus required by Section 841.054 are the bona fide property of the domestic insurance company;

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

(3) the applicants are acting in good faith.

(b) If the commissioner determines by an affirmative finding any of the issues under Subsection (a) adversely to the applicants, the commissioner shall reject the application in writing, giving the reason for the rejection. An application may not be granted unless it is adequately supported by competent evidence.

(c) If the commissioner does not reject the application under Subsection (b), the commissioner shall approve the application. On approval of an application, the department shall record the information required by Section 841.058 in records maintained for that purpose. On receipt of a fee in the amount determined under Article 4.07, the commissioner shall provide to

the incorporators a certified copy of the application, articles of incorporation, and submitted affidavit. (V.T.I.C. Art. 3.04, Secs. 2 (part), 3, 4 (part).)

Source Law

Sec. 2. . . . no such application shall be granted except when same is adequately supported by competent evidence. . . .

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

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

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

(c) The applicants are acting in good faith.

Sec. 4. If the Board shall determine by an affirmative finding any of the above issues adversely to the applicants, it shall reject the application in writing giving the reason therefor. Otherwise, the Board shall approve the application, whereupon all such documents shall be deposited with the Board. The Board shall record the documents in a log kept for that purpose; and upon receipt of the prescribed fee, it shall furnish a certified copy of the same to the incorporators, . . .

Revisor's Note

Section 4, V.T.I.C. Article 3.04, refers to "receipt of the prescribed fee" for providing a certified copy of the application, articles of incorporation, and affidavit to the incorporators. V.T.I.C. Article 4.07 is a comprehensive fee provision that authorizes the Texas Department of Insurance to set the amounts of various fees, including a fee for making copies of any paper or record in the Texas Department of Insurance. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

Revised Law

Sec. 841.062. BEGINNING OF CORPORATE EXISTENCE. On receipt of the certified copy of documents under Section 841.061(c), the domestic insurance company becomes a body politic and corporate, and the incorporators may complete organization of the company under Section 841.063. (V.T.I.C. Art. 3.04, Sec. 4 (part).)

Source Law

Sec. 4. . . . [whereupon all such documents shall be deposited with the Board. The Board shall . . . furnish a certified copy of the same to the incorporators,] upon which they shall become a body politic and corporate and may proceed to complete the organization of the company, ...

Revised Law

Sec. 841.063. ORGANIZATION MEETING. (a) After receipt of the certified copy of documents under Section 841.061(c), the incorporators shall promptly call a meeting of the domestic insurance company's shareholders. The shareholders shall:

(1) adopt bylaws to govern the company; and

(2) elect the company's initial board of directors.

(b) The directors elected under this section serve until directors are first elected under Section 841.153. (V.T.I.C. Art. 3.04, Sec. 4 (part).)

Source Law

Sec. 4. [. . . the incorporators . . . may proceed to complete the organization of the company,] for which purpose they shall forthwith call a meeting of the stockholders who shall adopt bylaws for the government of the company, and elect a board of directors . . . . The board of directors so elected shall serve until the fourth Tuesday in April thereafter, ...

[Sections 841.064-841.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 841.101. CERTIFICATE OF AUTHORITY REQUIRED. A domestic insurance company may not engage in the business of insurance in this state, except for the lending of money, without first obtaining from the commissioner a certificate of authority that:

(1) shows that the company has fully complied with the laws of this state; and

(2) authorizes the company to engage in the business of insurance in this state. (V.T.I.C. Art. 3.57 (part).)

Source Law

Art. 3.57. No . . . domestic insurance company shall transact any insurance business in this State, other than the lending of money, unless it shall first procure from the Board of Insurance Commissioners a certificate of authority, stating that the laws of this State have been fully complied with by it, and authorizing it to do business in this State. . . .

Revised Law

Sec. 841.102. SCHEDULE OF ASSETS. Two or more officers of the domestic insurance company shall execute and file with the department:

(1) a sworn schedule of each of the assets of the company exhibited to the department during the examination under Section 841.059 showing the value of the assets; and

(2) a sworn statement that the assets are the bona fide, unconditional, and unencumbered property of the company and are worth the amount stated in the schedule. (V.T.I.C. Art. 3.06 (part).)

Source Law

Art. 3.06. . . . not less than two (2) officers of such company shall execute and file with the State Board of Insurance a sworn schedule of all the assets of the company exhibited to the Board upon such examination showing the value thereof,

together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company, and are worth the amount stated in such schedule.

Revised Law

Sec. 841.103. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) If the commissioner makes a determination favorable to the applicants on all issues under Section 841.061(a), the commissioner, on compliance with the requirements of Section 841.102, shall issue to the domestic insurance company a certificate of authority authorizing the company to engage in the kinds of business authorized by the company's charter.

(b) On written request of a domestic insurance company, the commissioner shall provide a certified copy of the company's certificate of authority to the company for each of the company's agents in this state. (V.T.I.C. Arts. 3.06 (part), 3.09.)

Source Law

Art. 3.06. . . . After the hearing under Article 3.04 of this Code, if the Board finds that all of the capital of the company, as required by law, has been fully paid up and that the capital and surplus is in the custody of the officers, in cash or securities of the class authorized by Article 3.02 of this Code as amended, and if the Board makes the other findings required by Section 3 of Article 3.04 of this Code favorably to the applicant, on compliance with the other requirements of this article and Article 3.04 of this Code, the Board shall issue to such company a certificate of authority to transact such kind or kinds of insurance business within this State as such officers may apply for and as may be authorized by its charter. Before such certificate is issued, . . . [officers of such company shall . . . file with the State Board of Insurance a sworn schedule of all the assets of the company . . . together with a sworn statement . . . .]

Art. 3.09. Any such company organized under the laws of this

State, having received authority from the Board of Insurance Commissioners to transact business in this State, shall receive from such Board, upon written request therefor, a certified copy of its certificate of authority for each of its agents in this State.

Revisor's Note
(End of Subchapter)

V.T.I.C. Article 3.08 provides a procedure for obtaining a renewal certificate of authority, and V.T.I.C. Article 3.57 refers to the expiration and annual renewal of a certificate of authority. The revised law omits these provisions as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in relevant part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . including . . . [Articles] 3.08, 3.57 . . . to the extent that they require periodic renewal of certificates of authority." The omitted law reads:

Art. 3.08. Whenever any such company, transacting insurance business in this State, shall have filed its annual statement in accordance with the preceding article, showing a condition which entitles it to transact business in this State in accordance with the provisions of this chapter, the State Board of Insurance shall, upon a receipt of the prescribed fee, issue a renewal certificate of authority to such company for a period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance, on which date such certificate shall expire by its terms unless revoked or suspended according to law.

Art. 3.57. . . . Such certificate of authority shall expire on the day fixed by the Board under Articles 3.06 and 3.08 of this code and shall be renewed annually so long as the company

shall continue to comply with the laws of the State, such renewals to be granted upon the same terms and considerations as the original certificate.

[Sections 841.104-841.150 reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF COMPANY

Revised Law

Sec. 841.151. CONDUCTING SHAREHOLDERS' MEETING. (a) At a meeting of a domestic insurance company's shareholders, each shareholder is entitled to one vote for each fully paid up share of stock appearing in the shareholder's name on the company's books, except to the extent that the articles of incorporation increase, limit, or deny voting rights to the holders of the shares of a class of stock as authorized by the Texas Business Corporation Act.

(b) A shareholder may vote in person or by written proxy.

(c) At a shareholders' meeting, a quorum is any number of shareholders whose cumulative stock ownership in the domestic insurance company represents a majority of the company's paid up capital stock. (V.T.I.C. Art. 3.04, Sec. 4 (part).)

Source Law

Sec. 4. . . . At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, except to the extent that the voting rights of the shares of any class or classes of stock are increased, limited or denied by the articles of incorporation as authorized or permitted by the Texas Business Corporation Act, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum.

Revised Law

Sec. 841.152. BOARD OF DIRECTORS. (a) Subject to the bylaws of the domestic insurance company, as adopted or amended by the shareholders or directors, the board of directors has full

management and control of the company.

(b) The board consists of not fewer than five directors. A director is not required to be a shareholder unless such a qualification is required by the articles of incorporation or bylaws of the company.

(c) The directors shall keep a full and correct record of the board's transactions. The shareholders may inspect those records during business hours.

(d) The directors shall fill a vacancy that occurs on the board or in any office of the company.

(e) A majority of the board is a quorum. (V.T.I.C. Art. 3.04, Sec. 4 (part).)

Source Law

Sec. 4. . . . [elect a board of directors] of not less than five (5) members; which board shall have full control and management of the affairs of the corporation, subject to the bylaws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this state. . . . Neither directors [nor officers] need be stockholders unless the articles of incorporation or bylaws so require. . . . The directors shall keep a full and correct record of their transactions to be open during business hours to the inspection of stockholders. The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of such business. . . .

Revisor's Note

(1) Section 4, V.T.I.C. Article 3.04, provides that the board's control of a company is subject "to the laws of this state." The revised law omits that provision as unnecessary because the provisions of state law require compliance without an express statement to that effect.

(2) Section 4, V.T.I.C. Article 3.04, provides that a majority of the board is a quorum "for the transaction of such

business." The revised law omits the quoted phrase as unnecessary. "Quorum" means the number of persons or votes necessary for a body to act.

Revised Law

Sec. 841.153. ELECTION OF DIRECTORS. (a) After a domestic insurance company completes the organization of the company under Section 841.063, the company shall hold an annual meeting of the company's shareholders on the fourth Tuesday in April at the home office of the company to elect the company's board of directors.

(b) After the directors are first elected under this section, the annual meeting must be before May 1 of each year as established by the company's bylaws. The directors serve one-year terms beginning immediately after the election, except as provided by Section 841.154.

(c) If the shareholders do not elect directors at an annual meeting, the shareholders may elect the directors at a special shareholders' meeting called for that purpose. (V.T.I.C. Art. 3.04, Sec. 4 (part).)

Source Law

Sec. 4. . . . [The board of directors so elected shall serve until the fourth Tuesday in April thereafter,] on which date, there shall be held a meeting of the stockholders at the home office, and a board of directors elected for the ensuing year; provided, however, that . . . Annual meetings of the stockholders, after the first meeting, shall be held at the home office of the company on or before April 30 of each year as may be prescribed in the bylaws of the corporation. If the stockholders fail to elect directors at any annual meeting, directors may be elected at a special meeting of the stockholders called for that purpose. . . .

Revised Law

Sec. 841.154. STAGGERED TERMS FOR LARGE BOARD OF DIRECTORS. (a) This section applies only to a domestic insurance company whose board of directors consists of at least nine members.

(b) The bylaws of a domestic insurance company may provide that the company's directors, other than initial directors, may be elected to serve staggered terms as provided by this section.

(c) The company's directors shall be divided into two or three classes, with each class consisting of an equal number of directors to the extent possible. After the directors are divided into classes:

(1) the terms of the directors in the first class expire on the first annual meeting date after their initial election;

(2) the terms of the directors in the second class expire on the second annual meeting date after their initial election; and

(3) the terms of the directors in the third class, if any, expire on the third annual meeting date after their initial election.

(d) At each annual meeting after the directors are first elected, the shareholders shall elect the number of directors whose terms expire on that date. Directors are elected for:

(1) staggered two-year terms, if the board is divided into two classes; or

(2) staggered three-year terms, if the board is divided into three classes. (V.T.I.C. Art. 3.04, Sec. 4 (part).)

Source Law

Sec. 4. . . . when the board of directors shall consist of nine (9) or more members, in lieu of electing the whole number of directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the terms of office of directors of the first class to expire at the first annual meeting of stockholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal

to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of stockholders. . . .

Revised Law

Sec. 841.155. OFFICERS. (a) A domestic insurance company's directors shall choose one of the directors to serve as the company's president.

(b) Other officers of the domestic insurance company shall be chosen in accordance with the company's bylaws. An officer is not required to be a shareholder unless such a qualification is required by the company's articles of incorporation or bylaws. An officer other than the president is not required to be a director unless such a qualification is required by the company's bylaws.

(c) The duties and compensation of a domestic insurance company's officers are as stated in the company's bylaws. If the bylaws do not state the duties or compensation of the officers, the directors shall establish the duties or compensation.
(V.T.I.C. Art. 3.04, Sec. 4 (part).)

Source Law

Sec. 4. . . . Neither [directors] nor officers need be stockholders unless the articles of incorporation or bylaws so require. The directors shall choose a president from their own number, and all other officers shall be chosen in accordance with the bylaws of the company, and none of such other officers need be a director except as required by the bylaws of such company. The duties and compensation of officers of such company shall be in accordance with the bylaws of the company, or, to the extent of the absence of provisions governing the same in the bylaws, then the duties and compensation of officers shall be defined and fixed by the directors. . . .

Revised Law

Sec. 841.156. AMENDMENT OF CHARTER OR ARTICLES. (a) The shareholders of a domestic insurance company by resolution may amend the company's charter or articles of incorporation at any shareholders' meeting.

(b) The amendment and a copy of the resolution certified by the president and secretary of the domestic insurance company shall be filed and recorded in the same manner as the charter.

(c) An amendment of the charter or articles takes effect when it is recorded. (V.T.I.C. Art. 3.05, Subsec. (a) (part).)

Source Law

Art. 3.05. (a) At any regular or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the president and secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. . . .

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 3.05, authorizes any "lawful" amendment to a charter or to articles of incorporation. The revised law omits "lawful" for the reason stated in Revisor's Note (1) to Section 841.055.

(2) Subsection (a), V.T.I.C. Article 3.05, provides for the amendment of a company's charter or articles at "any regular or called meeting." The revised law omits "regular or called" as unnecessary because a meeting is either "regular" or "called."

[Sections 841.157-841.200 reserved for expansion]

SUBCHAPTER E. CAPITAL AND SURPLUS

Revised Law

Sec. 841.201. FORM OF REQUIRED CAPITAL AND SURPLUS. Notwithstanding any other provision of this code, after a charter is granted under this chapter, the domestic insurance company:

(1) shall maintain the company's minimum capital at

all times in a form described by Section 841.054(c); and

(2) may invest the company's surplus as provided by this code. (V.T.I.C. Art. 3.02, Sec. 1(a) (part).)

Source Law

(a) . . .

5. . . . After the granting of charter the surplus may be invested as otherwise provided in this Code. Notwithstanding any other provisions of this Code, such minimum capital shall at all times be maintained in cash or in the classes of investments described in this article;

. . .

Revised Law

Sec. 841.202. AUTHORIZED SHARES. (a) At any shareholders' meeting, shareholders of a domestic insurance company whose cumulative stock ownership represents a majority of the capital stock of the company by resolution may increase or decrease the amount of the company's capital stock, subject to this section.

(b) Capital stock may never be decreased to an amount that is less than the minimum amount of paid-up stock required by Section 841.054.

(c) Two officers of the domestic insurance company must sign and acknowledge a statement of the increase or decrease. The acknowledged statement and a certified copy of the resolution shall be filed and recorded in the same manner as the charter.

(d) For an increase or decrease of capital stock, the domestic insurance company may require the return of the original certificates evidencing the stock in exchange for new certificates. An issuance of new certificates that results in a transfer of stock is subject to Section 841.254. (V.T.I.C. Art. 3.05, Subsec. (a) (part).)

Source Law

[(a) At any regular or called meeting of the stockholders, they may, by resolution, provide for . . . .] Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock shall in no case be reduced to less than the minimum amount of fully paid up capital stock required by applicable provisions of law. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidence of stock in exchange for new certificates issued in lieu thereof. . . .

Revisor's Note

The part of Subsection (a), V.T.I.C. Article 3.05, that follows the part of the law revised in this section is revised as Section 841.254 of this code. The revised law adds a cross-reference to Section 841.254 for the reader's convenience.

Revised Law

Sec. 841.203. COMPANY'S REPURCHASE OF STOCK. (a) A legal reserve life insurance company may purchase in the name of the company outstanding shares of the company's capital stock as provided by the Texas Business Corporation Act.

(b) A purchase of stock under this section is not considered an investment and does not violate the provisions of this code relating to eligible investments for a legal reserve life insurance company.

(c) A legal reserve life insurance company that purchases stock under this section shall file with the department not later than the 10th day after the date of the purchase a statement that contains:

(1) the name of each shareholder from whom the shares

were purchased; and

(2) the sum of money paid for those shares. (V.T.I.C. Art. 3.05, Subsec. (b).)

Source Law

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

Revised Law

Sec. 841.204. EXEMPTION FROM REQUIRED INCREASE OF CAPITAL AND SURPLUS. (a) Except as otherwise provided by this chapter, a domestic insurance company that after September 1, 1991, had less than the minimum amount of capital and surplus required for a newly incorporated company under Section 841.054 may continue to transact the kinds of business for which it holds a certificate of authority.

(b) The insurance company shall immediately increase the amount of its capital to the required amount of capital under Section 841.054 if there is:

(1) a change in the control of at least 50 percent of the voting securities of the insurance company;

(2) a change in the control of at least 50 percent of the voting securities of a holding company controlling the insurance company; or

(3) a change in control of at least 50 percent by any other method of control if the insurance company or holding

company is not controlled by voting securities.

(c) For purposes of Subsection (b), a transfer of ownership that occurs because of death, regardless of whether the decedent died testate or intestate, may not be considered a change in the control of an insurance company or holding company if ownership is transferred solely to one or more individuals, each of whom would be an heir of the decedent if the decedent had died intestate. (V.T.I.C. Art. 3.02, Sec. 2(a).)

Source Law

Sec. 2. (a) If an insurance company subject to this chapter and doing business in this state as an authorized insurer has less than the minimum capital and surplus required for a newly incorporated company under Section 1 of this article, it may continue to transact the kind or kinds of insurance business for which it holds a Texas certificate of authority. However, the insurance company must increase its capital to at least the minimum required by Section 1 of this article immediately after any change of control of the insurance company or any holding company controlling the insurance company if, after September 1, 1991, there has been a change of control of at least 50 percent of the voting securities of the insurance company or holding company or other means of control if the insurance company or holding company is not controlled by voting securities. The insurance company is not required to increase its surplus. For the purposes of this section, a transfer of ownership that occurs because of death, regardless of whether the decedent died testate or intestate, may not be considered a change of control of an insurance company or change of control of a holding company, if ownership is transferred solely to one or more natural persons, each of whom would be an heir of the decedent if the decedent had died intestate.

Revisor's Note

Section 2(a), V.T.I.C. Article 3.02, refers to "an insurance company subject to this chapter and doing business in this state

as an authorized insurer." The revised law substitutes "domestic insurance company" for the quoted phrase because the applicability of these capital and surplus requirements to foreign and alien insurance companies, the other insurance companies that are engaging in business in this state as authorized insurers, is established clearly under V.T.I.C. Article 3.22, revised as part of Chapter 982. Similar changes in this context have been made throughout this chapter.

Revised Law

Sec. 841.205. COMMISSIONER MAY REQUIRE LARGER CAPITAL AND SURPLUS AMOUNTS. (a) The commissioner by rule or guideline may require a domestic insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or a combination of these policies, in an amount that exceeds $10,000, to maintain capital and surplus in amounts that exceed the minimum amounts required by this chapter because of:

(1) the nature and kind of risks the company underwrites or reinsures;

(2) the premium volume of risks the company underwrites or reinsures;

(3) the composition, quality, duration, or liquidity of the company's investment portfolio;

(4) fluctuations in the market value of securities the company holds; or

(5) the adequacy of the company's reserves.

(b) A rule adopted under Subsection (a) must be designed to ensure the financial solvency of an insurance company for the protection of policyholders but may not require that the total admitted assets of a company exceed 106 percent of its total liabilities.

(c) A fraternal benefit society operating under Chapter 885 and a mutual life insurance company operating under Chapter 882 are subject to a rule adopted under this section. (V.T.I.C. Art. 3.02, Secs. 2A(a)(part), (b); 3A.)

Source Law

Sec. 2A. (a) In addition to the requirements for capital and surplus provided by this article, the board may adopt rules, regulations, and guidelines requiring any company subject to this chapter . . . that writes or assumes life insurance, annuity contracts or liability on, or indemnifies any one person for, any risk under a health, accident, sickness, or hospitalization policy, or any combination of those policies, in an amount in excess of $10,000, to maintain capital and surplus levels in excess of the minimum levels required by either Section 1 or Section 2 of this article for that company based upon any of the following factors:

1. the nature and type of risks a company underwrites or reinsures;

2. the premium volume of risks a company underwrites or reinsures;

3. the composition, quality, duration, or liquidity of a company's investment portfolio;

4. fluctuations in the market value of securities a company holds; or

5. the adequacy of a company's reserves.

(b) The rules adopted under this section shall be designed to ensure the financial solvency of companies for the protection of policyholders, but may not, according to the dates specified below, require that the total admitted assets of a company exceed the following percentages of its total liabilities:

1. as of December 31, 1992, 103 percent;

2. as of December 31, 1993, 103 percent;

3. as of December 31, 1994, 103 percent;

4. as of December 31, 1995, 104 percent;

5. as of December 31, 1996, 105 percent; and

6. as of December 31, 1997, 106 percent.

Sec. 3A. Fraternal benefit societies organized or operating under the provisions of Chapter 10 of this code and mutual life

insurance companies organized or operating under the provisions of Chapter 11 of this code shall be subject to the risk capital rules and regulations adopted by the board under Section 2A of this article.

Revisor's Note

(1) Section 2A(a), V.T.I.C. Article 3.02, refers to the application of that subsection to "any alien or foreign company." The revised law omits the quoted language as unnecessary because the applicability of these capital and surplus requirements to foreign and alien insurance companies is established clearly under V.T.I.C. Article 3.22, revised as part of Chapter 982. The omitted law reads:

. . . or any alien or foreign company admitted in this state to do the types of business authorized by this chapter, ...

(2) Section 2A(a), V.T.I.C. Article 3.02, refers to a "health, accident, sickness, or hospitalization policy." Throughout this code, the term "accident and health insurance policy" is used when referring to that type of policy, and that term has been substituted for "health, accident, sickness, or hospitalization policy" throughout this chapter.

(3) Section 2A(b), V.T.I.C. Article 3.02, provides a series of limits for admitted assets based on percentages of liabilities for the years 1992 to 1997. The revised law omits the series as executed.

Revised Law

Sec. 841.206. IMPAIRMENT OF CAPITAL AND SURPLUS. (a) A domestic insurance company 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.

(b) If the commissioner determines that an insurance company's capital or surplus is impaired in violation of this

section, the commissioner shall:

(1) order the company to immediately reduce the level of impairment to an acceptable level of impairment as specified by the commissioner or prohibit the company from engaging in the business of insurance in this state; and

(2) begin proceedings as necessary to determine any further actions with respect to the impairment. (V.T.I.C. Art. 3.60.)

Source Law

Art. 3.60. No impairment of capital shall be permitted for companies either incorporated or authorized to do the lines of business authorized in this chapter. No impairment of more than 90 percent of the statutory minimum surplus required of a company under Article 3.02 of this code shall be permitted, and no impairment of a company's surplus required by the board promulgated risk-based capital and surplus regulations shall be permitted. If the commissioner determines that either the capital is impaired or the surplus of a company is impaired in excess of such permissible amount, the commissioner shall order the company to immediately reduce the impairment to acceptable levels specified by the commissioner or to cease to do business within this state. The commissioner shall thereupon institute such proceedings as may be necessary to determine what further actions shall be taken in the matter.

Revisor's Note

V.T.I.C. Article 3.60 refers to impairment of a company's surplus "required by the board promulgated risk-based capital and surplus regulations." The revised law substitutes for the quoted language a reference to the surplus "required under Section 841.205" for the convenience of the reader. The quoted language refers to the provisions of Section 2A(a), V.T.I.C. Article 3.02, giving the Texas Department of Insurance the authority to require capital and surplus amounts after taking into account certain risks. The relevant parts of Section 2A are revised in Section

841.205.

Revised Law

Sec. 841.207. ACTIONS OF COMMISSIONER WHEN CAPITAL AND SURPLUS REQUIREMENTS NOT SATISFIED. If an insurance company does not comply with the capital and surplus requirements of this chapter, the commissioner may order the insurance company to cease writing new business and may:

(1) place the insurance company under state supervision or conservatorship;

(2) declare the insurance company to be in a hazardous condition as provided by Article 1.32;

(3) declare the insurance company to be impaired as provided by Section 841.206; or

(4) apply to the insurance company any other applicable sanction provided by this code. (V.T.I.C. Art. 3.02, Sec. 1(b).)

Source Law

(b) The commissioner may order an insurer subject to the minimum capital and surplus requirements of this article that fails to comply with those requirements to cease writing new business, and the commissioner may also:

1. place the insurer under state supervision or conservatorship;

2. determine the insurer to be in a hazardous condition as provided by Article 1.32 of this Code;

3. determine the insurer to be impaired as provided by Article 3.60 of this Code; or

4. make the insurer subject to any other applicable sanctions provided by this Code.

[Sections 841.208-841.250 reserved for expansion]

SUBCHAPTER F. GENERAL POWERS, DUTIES, AND LIMITATIONS

Revised Law

Sec. 841.251. EVIDENCE OF EXPENDITURES. (a) A domestic insurance company may not make an expenditure of $100 or more unless the expenditure is evidenced by a voucher that:

(1) is signed by or on behalf of the individual, firm, or corporation that receives the money; and

(2) describes the consideration received for the payment correctly.

(b) For an expenditure for both services and disbursements, the voucher must state the services rendered and disbursement made.

(c) For an expenditure related to a matter pending before a legislature or public body or a department or officer of a state or government, the voucher must describe both the nature of the matter and the interest of the company in the matter correctly.

(d) If the domestic insurance company cannot obtain a voucher as required by this section, the expenditure must be evidenced by:

(1) a paid check; or

(2) an affidavit that:

(A) describes the nature and purpose of the expenditure; and

(B) states the reason the voucher was not obtained. (V.T.I.C. Art. 3.13.)

Source Law

Art. 3.13. No "domestic" company shall make any disbursement of One Hundred ($100.00) Dollars or more, unless the same be evidenced by a voucher signed by, or on behalf of, the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements, the voucher shall set forth the service rendered and statement of the disbursement made. If the expenditure be in connection with any matter pending before any

legislature or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained, the expenditure shall be evidenced by a paid check or an affidavit describing the character and object of the expenditure, and stating the reason for not obtaining such voucher.

Revised Law

Sec. 841.252. PAYMENTS TO OFFICERS, DIRECTORS, AND EMPLOYEES. (a) Unless first authorized by a vote of a domestic insurance company's board of directors or a committee of the board that has the duty to authorize the payments, the company may not pay any compensation or emolument in an amount that, when added to any compensation or emolument paid to the person by an affiliated domestic insurance company, exceeds $100,000 in any year to an individual, firm, or corporation, including an officer or director of the company.

(b) Subsection (a) does not prevent a domestic insurance company from contracting with its agents for the payment of renewal commissions.

(c) The shareholders of a domestic insurance company may authorize the creation of one or more plans for the payment of pensions, retirement benefits, or group insurance for the company's officers and employees. The shareholders may delegate to the company's board of directors the power and duty to prepare, effect, finally approve, administer, and amend a plan.

(d) A mutual insurance company, acting through the company's policyholders, may exercise the same discretion, and has the same powers, privileges, and rights, as are conferred on a domestic insurance company under Subsection (c). (V.T.I.C. Art. 3.12.)

Source Law

Art. 3.12. (a) A "domestic" company may not pay any salary, compensation or emolument which, together with any salary,

compensation or emolument from an affiliated "domestic" company, amounts in any year to more than $100,000 to any officer, trustee or director of the "domestic" company, or to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. The limitation as to time contained in this article does not prevent a "domestic" company from entering into contracts with its agents for the payment of renewal commissions.

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

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

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 3.12, refers to "salary, compensation or emolument." The references to "salary" are omitted from the revised law because "salary" is included within the meaning of "compensation."

(2) Subsection (a), V.T.I.C. Article 3.12, refers to a company's "trustee." A domestic insurance company is governed by directors rather than trustees. The revised law omits the reference as unnecessary.

(3) Subsection (b), V.T.I.C. Article 3.12, refers to "the preparation, inauguration, putting into effect, final approval and administration of any such plan or plans." The revised law omits the reference to "inauguration" because in this context it is included in the action of "putting into effect."

Revised Law

Sec. 841.253. LIFE INSURANCE COMPANY'S PAYMENT OF DIVIDENDS. (a) A life insurance company may declare or pay a dividend to its:

(1) policyholders only from the expense loading and profits made by the company; and

(2) shareholders only from the company's earned surplus, as defined by the commissioner.

(b) A life insurance company that is not showing a profit may pay a dividend on its participating policies from the expense loading on those policies.

(c) A life insurance company may not discriminate between policyholders in paying a dividend from the expense loading under this section. (V.T.I.C. Art. 3.11 (part).)

Source Law

Art. 3.11. No life insurance company shall declare or pay any dividends to its policyholders, except from the expense loading and profits made by such company; provided, however, any such company not showing a profit may pay dividends on its participating policies from the expense loading on such policies; and provided further, that any payment of dividends from the expense loading shall not be discriminatory as between policyholders. . . . No such company shall declare or pay any dividends to its stockholders, except from the company's earned surplus as defined by the State Board of Insurance. . . .

Revised Law

Sec. 841.254. TRANSFER OF STOCK. (a) A domestic insurance company's shares of stock are transferrable on the company's books, in accordance with law and the bylaws of the company, by the owner or the owner's authorized agent.

(b) Each person who becomes a shareholder by a transfer of shares succeeds to all rights of the former holder of those shares, by reason of that ownership. (V.T.I.C. Art. 3.05, Subsec. (a) (part).)

Source Law

(a) . . . The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership.

Revised Law

Sec. 841.255. ANNUAL STATEMENT; FILING FEE. (a) Not later than March 1 of each year, a domestic insurance company shall:

(1) prepare a statement showing the condition of the company on December 31 of the preceding year; and

(2) deliver the statement to the department accompanied by a filing fee in the amount determined under Article 4.07.

(b) The statement must be under oath of two of the domestic insurance company's officers and show in detail:

(1) the character of the company's assets and liabilities on December 31 of the preceding year;

(2) the amount and character of business transacted and money received during the preceding year;

(3) how money was spent during the preceding year;

(4) the number and amount of the company's policies in force in this state on that date; and

(5) the total amount of the company's policies in force on that date. (V.T.I.C. Art. 3.07.)

Source Law

Art. 3.07. Each "domestic" company shall, after the first day of January of each year and before the first day of March following, and before the renewal of its certificate of authority to transact business, prepare, under oath of two of its officers, and deposit in the office of the State Board of Insurance, a statement, accompanied with the prescribed fee for filing annual

statements, showing the condition of the company on the thirty-first day of December the next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, moneys received and how expended during the year, and the number and amount of its policies in force on that date in Texas, and the total amount of its policies in force.

Revisor's Note

(1) V.T.I.C. Article 3.07 requires a domestic insurance company to file an annual statement "before the renewal of its certificate of authority." The revised law omits the reference to the renewal of a certificate for the reason stated in the revisor's note at the end of Subchapter C.

(2) V.T.I.C. Article 3.07 refers to "the prescribed fee for filing annual statements." V.T.I.C. Article 4.07 is a comprehensive provision that authorizes the Texas Department of Insurance to set the amount of various fees, including fees for annual statements. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

(3) V.T.I.C. Article 3.07 refers to "the next preceding" December 31. The revised law omits "next" as unnecessary because "the preceding" means "the next preceding."

Revised Law

Sec. 841.256. BUSINESS IN SEPARATE DEPARTMENTS OF DOMESTIC INSURANCE COMPANY. A domestic insurance company may not transact more than one of the kinds of insurance business described by Section 841.051(a) unless the company establishes separate departments to transact each kind of business. (V.T.I.C. Art. 3.02, Sec. 1(a) (part).)

Source Law

(a) . . . [for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance

company.] No such company shall transact more than one of the foregoing classes of business except in separate and distinct departments. . . .

Revisor's Note

Section 1(a), V.T.I.C. Article 3.02, refers to "separate and distinct" departments of an insurance company. The revised law omits "distinct" as unnecessary because, in context, "distinct" is included within the meaning of "separate."

Revised Law

Sec. 841.257. KINDS OF BUSINESS LIMITED. An insurance company authorized to engage in the business of insurance under this chapter 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. (V.T.I.C. Art. 3.54.)

Source Law

Art. 3.54. It shall be unlawful for any insurance company incorporated or licensed under the provisions of this chapter to take any kind of risks or issue any policies of insurance, except those of life, accident or health or those risks reinsured under Article 5.75-1 or 5.75-3 of this code; nor shall the business of life insurance in this State be in anywise conducted or transacted by any company which, in this or any other State or country, is engaged or concerned in writing any kinds of insurance other than life, health and accident insurance, reinsurance under Article 5.75-1 of this code by a life insurance company authorized to do business in this State, or reinsurance under Article 5.75-3 of this code by a domestic company as defined in Section 5 of Article 3.01 of this code.

Revisor's Note

V.T.I.C. Article 3.54 refers to an insurance company "licensed" under V.T.I.C. Chapter 3. The revised law substitutes "authorized to engage in the business of insurance" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 841.258. AGENTS FOR COMPANY THAT CEASES WRITING NEW BUSINESS. 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. (V.T.I.C. Art. 3.58.)

Source Law

Art. 3.58. Any company which shall fail to renew its certificate of authority or continue to write new business in this State, shall, nevertheless, have the right to maintain agents in Texas for the purpose of collecting renewal premiums on outstanding business written by it under certificate of authority, and also for the purpose of making investments as provided by this chapter.

Revisor's Note

(1) V.T.I.C. Article 3.58 addresses in part a company that fails to "renew its certificate of authority." The revised law omits the reference to the renewal of a certificate of authority for the reason stated in the revisor's note at the end of Subchapter C.

(2) V.T.I.C. Article 3.58 provides that certain insurance companies may maintain agents in this state "for the purpose of making investments as provided by this chapter." The revised law omits the quoted language because the provisions of V.T.I.C. Chapter 3 to which it refers have been repealed. Article 3.58 is derived from Section 9, Chapter 122, General Laws, Acts of the

31st Legislature, Regular Session, 1909, which established requirements for life insurance companies to maintain investments in Texas securities (see former V.T.I.C. Article 3.34). The requirements relating to investments of insurance companies in Texas securities were repealed by Chapter 31, Acts of the 68th Legislature, 2nd Called Session, 1984, and investments of insurance companies are now governed by V.T.I.C. Articles 3.33, 3.39, and 3.40-1.

Revised Law

Sec. 841.259. ACTIVITIES OF DIRECTORS AND OFFICERS. (a) A director or officer of an insurance company may not:

(1) receive money or another valuable thing for negotiating, procuring, recommending, or aiding in a purchase or sale of property by or a loan from the company; or

(2) have a pecuniary interest, as a principal, coprincipal, agent, or beneficiary, in a purchase, sale, or loan described by Subdivision (1).

(b) This section does not prohibit:

(1) a life insurance company from making a loan to a policyholder in an amount that is not greater than the reserve value of the policy; or

(2) a transaction, purchase, sale, or loan approved by the commissioner under Subchapter A of Chapter 805 or Chapter 823. (V.T.I.C. Art. 3.67.)

Source Law

Art. 3.67. No director or officer of any insurance company transacting business in or organized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan. Nothing in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. Provided, however, that

nothing in this article shall prevent any transaction, purchase, sale or loan which is approved by the commissioner of insurance under the provisions of either Article 1.29 or Article 21.49-1 of this code, as amended.

Revisor's Note

V.T.I.C. Article 3.67 refers to "Article 1.29 or Article 21.49-1 of this code, as amended." V.T.I.C. Articles 1.29 and 21.49-1 are revised as Chapters 805 and 823, respectively, and the revised law is drafted accordingly. The revised law omits the reference to "as amended" as unnecessary because Section 311.027, Government Code (Code Construction Act), applicable to the revised law, provides that unless expressly provided otherwise, a reference to any portion of a statute applies to all reenactments, revisions, or amendments of the statute.

Revised Law

Sec. 841.260. PROHIBITED COMMISSIONS. (a) In this section, "contingent compensation" means a commission or other compensation an insurance company pays to a person that is contingent on:

(1) the writing or procurement of an insurance policy in the company;

(2) the procurement of an application for an insurance policy in the company;

(3) the payment of a renewal premium; or

(4) the assumption of an insurance risk by the company.

(b) A life insurance company that engages in the business of insurance in this state may not, directly or indirectly, pay or contract to pay a contingent compensation to:

(1) the president, vice president, secretary, or treasurer of the company;

(2) any other officer of the company, other than an agent or solicitor;

(3) an actuary of the company; or

(4) a medical director or other physician of the

company whose duty is to examine risks or applications for insurance for the company.

(c) This section does not prohibit a plan of compensation to a marketing officer according to the total amount of insurance the insurance company writes or to the total amount of insurance in force with the insurance company during a specified period if:

(1) the commissioner approves the plan under Subchapter A, Chapter 805;

(2) the marketing officer is not responsible for underwriting, rating, or otherwise approving the acceptability of insurance risks; and

(3) the plan does not compensate the marketing officer according to commissions on individual sales of any insurance product. (V.T.I.C. Art. 3.68 (part).)

Source Law

Art. 3.68. No life insurance company transacting business in this State shall pay, or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, actuary, medical director or other physician charged with the duty of examining risks or applications for insurance or to any officer of the company other than an agent or solicitor, any commission or other compensation contingent upon the writing or procuring of any policy of insurance in such company, or procuring an application therefor by any person whomsoever, or contingent upon the payment of any renewal premium, or upon the assumption of any insurance risk by such company. . . . Provided, however, that nothing in this article shall prevent any plan of compensation to a marketing officer based on the aggregate amount of insurance that is issued by or that is in force with the company during any specified period, which is approved under the provisions of Article 1.29 of this code, as amended, so long as such officer is not responsible for underwriting, rating, or otherwise approving the acceptability of insurance risks. Further provided, this exception shall not allow such a plan of compensation to be based on commissions for individual sales of insurance products.

Revisor's Note

(1) V.T.I.C. Article 3.68 provides that an insurance company may have its certificate of authority revoked for a violation of the article. The revised law omits the provision because it duplicates V.T.I.C. Article 3.55, revised as Section 841.701, which provides for revocation of a certificate of authority for any violation of V.T.I.C. Chapter 3. The omitted law reads:

Art. 3.68. . . . Should any company violate any provision of this article, the Board may revoke its certificate of authority to transact business in this State. . . .

(2) V.T.I.C. Article 3.68 refers to "Article 1.29 of this code, as amended." The revised law omits the reference to "as amended" for the reason stated in the revisor's note to Section 841.259.

Revised Law

Sec. 841.261. CAUSES OF ACTION. (a) A domestic insurance company may bring an action against any person, including a policyholder or shareholder of the company, for any cause related to the company's business.

(b) A policyholder or an heir or legal representative of a policyholder may bring an action against a domestic insurance company for a loss that accrues on a policy.

(c) An action enjoining, restraining, or interfering with the prosecution of a domestic insurance company's business may be brought only by the department. (V.T.I.C. Art. 3.63.)

Source Law

Art. 3.63. Actions may be maintained by a company organized under the laws of this State against any of its policyholders, stockholders, or other person for any cause relating to the business of such company. Suits may also be prosecuted and maintained by any policyholder or his heirs or his legal representatives against the company for losses which accrue on any policy. No action shall be brought or maintained by any

person other than the Board of Insurance Commissioners for the enjoining, restraining or interfering with the prosecution of the business of the company.

[Sections 841.262-841.300 reserved for expansion]

SUBCHAPTER G. PROHIBITIONS AND RESTRICTIONS ON ISSUANCE OF POLICIES

Revised Law

Sec. 841.301. LIMITS ON AMOUNT OF ACCIDENT AND HEALTH INSURANCE POLICIES. (a) A domestic insurance company may not assume liability on or indemnify one person for any risk under one or more accident, health, or hospitalization insurance policies, or a combination of those policies, in an amount that exceeds $10,000, unless the amount of the issued, outstanding, and stated capital of the company is at least equal to the minimum amount of capital required for a newly incorporated company under Section 841.054.

(b) A domestic insurance company that before January 1, 2002, ceases to write or assume liability on, or indemnify any risk under, a policy described by Subsection (a) in the amount specified by Subsection (a) and notifies the commissioner of that action is exempt from the requirements of Subsection (a) until the date the company resumes writing those policies. A company that resumes assuming liability on or indemnifying risks under those policies shall comply with Subsections (a) and (c).

(c) A domestic insurance company that is exempt under Subsection (b) shall maintain its issued, outstanding, and stated capital in an amount that is at least $100,000 and is at least:

(1) the amount of capital held by the company on December 31, 1991, plus 10 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1993;

(2) the amount of capital held by the company on

December 31, 1991, plus 20 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1994;

(3) the amount of capital held by the company on December 31, 1991, plus 30 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1995;

(4) the amount of capital held by the company on December 31, 1991, plus 40 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1996;

(5) the amount of capital held by the company on December 31, 1991, plus 50 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1997;

(6) the amount of capital held by the company on December 31, 1991, plus 60 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1998;

(7) the amount of capital held by the company on December 31, 1991, plus 70 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1999;

(8) the amount of capital held by the company on

December 31, 1991, plus 80 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 2000; and

(9) the amount of capital held by the company on December 31, 1991, plus 90 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 2001. (V.T.I.C. Art. 3.02, Secs. 2(c), (d).)

Source Law

[(a) If an insurance company subject to this chapter and doing business in this state as an authorized insurer . . . .]

(c) In addition to increases under Subsection (a) of this section, after December 31, 1991, an insurance company subject to this chapter may not assume risk of liability on, or indemnify any one person for, any risk under any health, accident, sickness, or hospitalization policy, or any combination of those policies, in an amount in excess of $10,000, unless the issued, outstanding, and stated capital of the insurer is at least $100,000 as of December 31, 1991, and:

1. not later than December 31, 1992, the company's capital must have increased by at least 10 percent of the difference between the minimum capital level established by Section 1 of this article for a newly incorporated company and the company's capital on December 31, 1991;

2. not later than December 31, 1993, the company's capital must have increased by at least 20 percent of the difference between the minimum capital level established by Section 1 of this article for a newly incorporated company and the company's capital on December 31, 1991;

3. not later than December 31, 1994, the company's

capital must have increased by at least 30 percent of the difference between the minimum capital level established by Section 1 of this article for a newly incorporated company and the company's capital on December 31, 1991;

4. not later than December 31, 1995, the company's capital must have increased by at least 40 percent of the difference between the minimum capital level established by Section 1 of this article for a newly incorporated company and the company's capital on December 31, 1991;

5. not later than December 31, 1996, the company's capital must have increased by at least 50 percent of the difference between the minimum capital level established by Section 1 of this article for a newly incorporated company and the company's capital on December 31, 1991;

6. not later than December 31, 1997, the company's capital must have increased by at least 60 percent of the difference between the minimum capital level established by Section 1 of this article for a newly incorporated company and the company's capital on December 31, 1991;

7. not later than December 31, 1998, the company's capital must have increased by at least 70 percent of the difference between the minimum capital level established by Section 1 of this article for a newly incorporated company and the company's capital on December 31, 1991;

8. not later than December 31, 1999, the company's capital must have increased by at least 80 percent of the difference between the minimum capital level established by Section 1 of this article for a newly incorporated company and the company's capital on December 31, 1991;

9. not later than December 31, 2000, the company's capital must have increased by at least 90 percent of the difference between the minimum capital level established by Section 1 of this article for a newly incorporated company and the company's capital on December 31, 1991; and

10. not later than December 31, 2001, and thereafter, the company must have capital of at least the minimum capital

level established by Section 1 of this article for a newly incorporated company.

(d) If an insurer subject to Subsection (c) of this section ceases to write or assume risk of liability on, or to indemnify any one person for, any risk under any health, accident, sickness, or hospitalization policy in an amount in excess of $10,000, and so notifies the Commissioner, the insurer is not thereafter required to meet the requirements of Subsection (c) of this section relating to increase in minimum capital. If the insurer should thereafter resume writing or assuming such risk of liability on, or indemnifies any one person for, any risk under any health, accident, sickness, or hospitalization policy in an amount in excess of $10,000, the insurer shall be subject to and comply with Subsection (c) of this section at the amount of capital required as of the date of such resumed writing or assumption of such risks.

Revised Law

Sec. 841.302. LIMITS ON LIFE OR ACCIDENTAL DEATH INSURANCE. (a) Until the amount of the capital and surplus of a domestic insurance company is at least $100,000, the company may not insure any one life for more than $20,000 in the event of death from natural causes or more than $40,000 in the event of death from accidental causes.

(b) If the net capital and surplus of a domestic insurance company is at least $75,001 but less than $100,000, the company, for any policy issued by the company, shall reinsure the amount of the benefit that exceeds $4,000 in the event of death from natural causes and the amount of the benefit that exceeds $8,000 in the event of death from accidental causes.

(c) If the net capital and surplus of a domestic insurance company is at least $50,001 but less than $75,001, the company, for any policy issued by the company, shall reinsure the amount of the benefit that exceeds $3,000 in the event of death from natural causes and the amount of the benefit that exceeds $6,000 in the event of death from accidental causes.

(d) If the net capital and surplus of a domestic insurance company is at least $35,001 but less than $50,001, the company, for any policy issued by the company, shall reinsure the amount of the benefit that exceeds $2,000 in the event of death from natural causes and the amount of the benefit that exceeds $4,000 in the event of death from accidental causes.

(e) If the net capital and surplus of a domestic insurance company is $35,000 or less, the company, for any policy issued by the company, shall reinsure the amount of the benefit that exceeds $1,000 in the event of death from natural causes and the amount of the benefit that exceeds $2,000 in the event of death from accidental causes.

(f) Benefits under this section must be reinsured with a legal reserve company that is authorized to engage in the business of insurance in this state. (V.T.I.C. Art. 3.02, Sec. 2(b).)

Source Law

(b) Until the capital and surplus of such company is at least One Hundred Thousand ($100,000.00) Dollars, no such company shall insure any life for more than Twenty Thousand ($20,000.00) Dollars in the event of death from natural causes nor more than Forty Thousand ($40,000.00) Dollars in the event of death from accidental causes. Provided, however, that when the net capital and surplus of any such company is not more than Thirty-five Thousand ($35,000.00) Dollars, the excess over One Thousand ($1,000.00) Dollars natural death benefit and Two Thousand ($2,000.00) Dollars accidental death benefit under any policy issued by it shall be reinsured in some legal reserve company licensed in Texas; that when the net capital and surplus is Thirty-five Thousand and One ($35,001.00) Dollars to Fifty Thousand ($50,000.00) Dollars, the natural death benefit over Two Thousand ($2,000.00) Dollars and accidental death benefit over Four Thousand ($4,000.00) Dollars shall be so reinsured; that when the net capital and surplus is Fifty Thousand and One ($50,001.00) Dollars to Seventy-five Thousand ($75,000.00)

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

Revisor's Note

Section 2(b), V.T.I.C. Article 3.02, refers to a legal reserve company "licensed" in Texas. The revised law substitutes "authorized to engage in the business of insurance" for "licensed" for the reason stated in the revisor's note to Section 841.257.

[Sections 841.303-841.350 reserved for expansion]

SUBCHAPTER H. DEPOSIT OF SECURITIES

Revised Law

Sec. 841.351. DEPOSIT WITH COMPTROLLER. (a) A domestic insurance company may, at its option, deposit with the comptroller either:

(1) securities in which the company's capital stock is invested; or

(2) securities in an amount equal to the amount of the company's capital stock.

(b) Securities deposited under Subsection (a) must be securities of a class authorized by the laws of this state for investments of a domestic insurance company's capital stock.

(c) A domestic insurance company may, at its option, withdraw a deposit made under Subsection (a), or any portion of the deposit, after substituting a deposit of securities of a like class and of an amount and value equal to the withdrawn deposit or portion of deposit.

(d) The commissioner must first approve any securities deposited or being substituted under this section. (V.T.I.C. Art. 3.15, Subsec. (a) (part).)

Source Law

Art. 3.15. (a) Any "domestic" company may, at its option, deposit with the comptroller, securities in which its capital stock is invested, or securities equal in amount to its capital stock, of the class in which the law of this State permits such insurance companies to invest their capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited with the comptroller, in lieu thereof, other securities of like class and equal amount and value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Board of Insurance Commissioners. . . .

Revised Law

Sec. 841.352. ISSUANCE OF RECEIPT FOR DEPOSIT. When a domestic insurance company deposits securities under this subchapter, the comptroller shall issue to the company a receipt that:

(1) describes the deposit in a manner that identifies the securities; and

(2) states that the securities are held on deposit as capital stock investments of the company. (V.T.I.C. Art. 3.15, Subsec. (a) (part).)

Source Law

(a) . . . When any such deposit is made, the comptroller shall execute to the company making such deposit a receipt therefor, giving such description of said stock or securities as will identify the same, and stating that the same are held on deposit as the capital stock investments of such company; and . . . .

Revised Law

Sec. 841.353. ADVERTISEMENT OF DEPOSIT. A domestic insurance company that makes a deposit under this subchapter may:

(1) advertise the fact that a deposit has been made; or

(2) print a copy of the receipt for the deposit on any policy the company issues. (V.T.I.C. Art. 3.15, Subsec. (a) (part).)

Source Law

(a) . . . such company shall have the right to advertise such fact or print a copy of the comptroller's receipt on the policies it may issue; and . . . .

Revised Law

Sec. 841.354. ACCESS TO DEPOSIT. In accordance with reasonable rules adopted by the comptroller and the commissioner, the proper officer or agent of a domestic insurance company making a deposit of securities under this subchapter may at a reasonable time:

(1) examine the deposit;

(2) detach coupons from the securities; and

(3) collect interest on the deposit. (V.T.I.C. Art. 3.15, Subsec. (a) (part).)

Source Law

(a) . . . the proper officer or agent of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the comptroller and the Board of Insurance Commissioners. . . .

Revised Law

Sec. 841.355. WITHDRAWAL OF DEPOSIT AFTER MERGER, CONSOLIDATION, OR TOTAL REINSURANCE. (a) When two or more domestic insurance companies that have two or more deposits of securities under this subchapter merge, consolidate, or enter into a total reinsurance contract by which the ceding company is

dissolved and its assets and liabilities are acquired or assumed by the surviving company, the new, surviving, or reinsuring insurance company, on approval of the commissioner, may withdraw all of the deposits, except for the deposit of the greatest amount and value. The new, surviving, or reinsuring insurance company must demonstrate to the commissioner that the company is the owner of the deposited securities before the commissioner approves the withdrawal of those securities.

(b) In accordance with an order of the commissioner approving a withdrawal of securities under this section, the comptroller shall release, transfer, and deliver the withdrawn securities to their owner. (V.T.I.C. Art. 3.15, Subsec. (b).)

Source Law

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

Revisor's Note

Subsection (b), V.T.I.C. Article 3.15, refers to "Article 3.15 of the Texas Insurance Code, as amended." The revised law omits "as amended" for the reason stated in the revisor's note to Section 841.259.

Revised Law

Sec. 841.356. SITUS OF DEPOSIT FOR TAX PURPOSES. For purposes of state, county, or municipal taxation, the situs of deposited securities is the municipality and county in which the depositing company's home office is located. (V.T.I.C. Art. 3.15,

Subsec. (a) (part).)

Source Law

(a) . . . For the purpose of state, county and municipal taxation, the situs of securities deposited with the comptroller by domestic insurance companies shall be in the city and county where the principal business office of such company is fixed by its charter.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 3.15, refers to the "city" where a company's business office is located. The revised law substitutes "municipality" for "city" because that is the term used in the Local Government Code.

(2) Subsection (a), V.T.I.C. Article 3.15, refers to an insurance company's "principal business office." The revised law substitutes "home office" for the quoted term for consistency of terminology used in this chapter. Section 7, V.T.I.C. Article 3.01, revised as Section 841.001(7), defines "home office" to mean "the principal office" of a company.

Revised Law

Sec. 841.357. MAINTENANCE OF DEPOSIT. A domestic insurance company must maintain a deposit of securities under this subchapter as long as the company has outstanding any liability to a policyholder in this state. (V.T.I.C. Art. 3.15, Subsec. (a) (part).)

Source Law

(a) . . . The deposit herein provided for, when made by any company, shall thereafter be maintained so long as said company shall have outstanding any liability to its policyholders in this State. . . .

[Sections 841.358-841.700 reserved for expansion]

SUBCHAPTER O. ENFORCEMENT AND INTERVENTION

Revised Law

Sec. 841.701. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) If the commissioner determines that an insurance company that holds a certificate of authority does not comply with this chapter or another law described by Section 841.002, the commissioner shall notify the company that the commissioner intends to revoke its certificate of authority on the expiration of the 30-day period after the date actual notice is delivered or mailed under this section.

(b) Notice under this section must:

(1) be in writing; and

(2) be delivered to an executive officer of the company by personal service or by registered mail.

(c) If an insurance company receiving notice under this section does not fully comply before the expiration of the period prescribed by Subsection (a), the commissioner shall revoke the company's certificate of authority.

(d) An insurance company whose certificate of authority is revoked under this section is not entitled to receive another certificate of authority for a period of one year and until the company has fully and in good faith complied with this chapter. (V.T.I.C. Art. 3.55 (part).)

Source Law

Art. 3.55. If any such insurance company, while holding a certificate of authority to transact business in this State, shall fail or refuse to comply with any of the provisions or requirements of this chapter, the Board of Insurance Commissioners upon ascertaining such fact, shall notify such company by actual notice in writing delivered to an executive officer of such company, of its intention to revoke its certificate of authority to transact business in this State at the expiration of thirty (30) days after the mailing of such registered letter, or the date upon which such actual notice is

served. If such provisions or requirements are not fully complied with upon the expiration of said thirty (30) days, it shall be the duty of said Board to revoke the certificate of authority of such company. In case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one (1) year, and until it shall have fully and in good faith complied with all such provisions and requirements of this chapter. . . .

Revisor's Note

V.T.I.C. Article 3.55 refers to the "Board of Insurance Commissioners." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners and the State Board of Insurance have been changed appropriately.

Revised Law

Sec. 841.702. APPEAL OF DETERMINATION TO REVOKE CERTIFICATE. 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. (V.T.I.C. Art. 3.55 (part).)

Source Law

Art. 3.55. . . . Any company feeling itself aggrieved by the action of the Board in revoking its certificate of authority to do business in this State may bring suit against said Board in

Travis County to annul and vacate the order revoking such certificate.

Revisor's Note

V.T.I.C. Article 3.55 provides that a suit may be brought to "annul and vacate" certain orders of the commissioner. The revised law omits the reference to "annul" because, in context, "annul" is included within the meaning of "vacate."

Revised Law

Sec. 841.703. CERTIFICATE OF AUTHORITY VOID ON FAILURE TO SATISFY JUDGMENT. (a) If an officer holding an execution issued on a final judgment rendered against an insurance company demands payment of the judgment from an officer or attorney of record of the company and the company does not fully satisfy the judgment before the 31st day after the date the demand is made, the officer shall certify the demand and failure to the commissioner, regardless of whether the demand is made in this state.

(b) On receipt of a certification under Subsection (a), the commissioner shall declare void the certificate of authority issued to the company under this chapter.

(c) An insurance company whose certificate of authority is declared void under this section may not engage in the business of insurance in this state until:

(1) the judgment is fully satisfied and discharged; and

(2) the commissioner renews the company's certificate of authority. (V.T.I.C. Art. 3.61.)

Source Law

Art. 3.61. If any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company fails to pay off and satisfy any execution that may lawfully issue on any final judgment against said company within thirty (30) days after the officer holding such execution has demanded payment thereof from any officer or attorney of record of such company, in this State, or out of it,

such officer shall immediately certify such demand and failure to the Board of Insurance Commissioners; and thereupon the Board shall forthwith declare null and void the certificate of authority of such company; and such company shall be prohibited from transacting any business in this State until such execution shall be fully satisfied and discharged, and until such Board shall renew its certificate of authority to such company.

Revisor's Note

(1) V.T.I.C. Article 3.61 provides for voiding a certificate of authority of a company that fails "to pay off and satisfy" an execution. The revised law omits "to pay off" as unnecessary because, in context, "pay off" is included within the meaning of "satisfy."

(2) V.T.I.C. Article 3.61 refers to an execution issued "lawfully." The revised law omits "lawfully" as unnecessary because the authority to issue the execution on a judgment is sufficient to make the issuance lawful.

(3) V.T.I.C. Article 3.61 provides that under certain circumstances a company's certificate of authority shall be declared "null and void." The revised law omits "null" as unnecessary because it is included within the meaning of "void."

Revised Law

Sec. 841.704. FALSE STATEMENT, REPORT, OR OTHER DOCUMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person executes or causes to be executed a statement, report, or other document required by law to be filed with the commissioner that contains a material statement or fact that the person knows to be false.

(b) A person commits an offense if the person is an officer of an insurance company that is not organized under the laws of this state and the person files a statement, report, or other document required by law to be filed with the commissioner that contains a material statement or fact that the person knows to be false.

(c) An offense under this section is punishable by

imprisonment in the institutional division of the Texas Department of Criminal Justice for a term of not less than one year. (V.T.I.C. Art. 3.56-1.)

Source Law

Art. 3.56-1. Any officer of any insurance company not organized under the laws of this State, who shall file with the Commissioner of Insurance any statement, report or other paper required or provided for by law to be so filed, which shall contain any material statement or fact known to be false by the person filing the same, or any person who shall execute or cause to be executed any such false statement, report or other paper to be so filed, shall be imprisoned in the penitentiary for a term of not less than one year.

Revisor's Note

V.T.I.C. Article 3.56-1 refers to imprisonment in the "penitentiary." The revised law substitutes "institutional division of the Texas Department of Criminal Justice" for "penitentiary" to conform to the changes in law made by Chapter 785, Acts of the 71st Legislature, Regular Session, 1989, which transferred to that division the powers and duties that were previously those of the Texas Department of Corrections, the state agency with jurisdiction over penitentiaries in this state.

CHAPTER 842. GROUP HOSPITAL SERVICE CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 842.004-842.050 reserved for expansion]

CHAPTER 842. GROUP HOSPITAL SERVICE CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 842.001. DEFINITIONS. In this chapter:

(1) "Group hospital service corporation" means a corporation organized under this chapter to establish and operate a nonprofit hospital service plan, under which hospital care may be provided by the corporation through one or more hospitals and sanitariums with which the corporation has contracted for the provision of that care.

(2) "Health care provider" means a person, association, partnership, corporation, or other entity that provides a service or supplies to prevent, alleviate, cure, or heal human illness or injury. (V.T.I.C. Arts. 20.01 (part); 20.11 (part).)

Source Law

[Art. 20.01. Any seven (7) or more persons, a majority of whom are superintendents of hospitals or physicians or surgeons licensed by the State Board of Medical Examiners, upon

application to the Secretary of State of the State of Texas for a corporate charter may be incorporated] for the purpose of establishing, maintaining and operating a nonprofit hospital service plan, whereby hospital care may be provided by said corporation through an established hospital or hospitals, and sanitariums with which it has contracted for such care, as is hereinafter defined.

[Art. 20.11]

. . . Health care provider means any person, association, partnership, corporation, or other entity furnishing or providing any services or supplies for the purpose of preventing, alleviating, curing, or healing human illness or injury.

Revisor's Note

(1) V.T.I.C. Article 20.01 refers to "establishing, maintaining and operating" a nonprofit hospital service plan. The revised law omits the reference to "maintaining" because, in context, "maintaining" is included within the meaning of "operating."

(2) V.T.I.C. Article 20.11 refers to "furnishing or providing" any services or supplies. The revised law omits the reference to "furnishing" because, in context, "furnishing" is included within the meaning of "providing."

Revised Law

Sec. 842.002. APPLICABILITY OF OTHER LAWS. (a) Except as otherwise required by this chapter, a state agency may not require a group hospital service corporation to post a bond or place a deposit with the agency or another agency of this state to begin or maintain operations authorized under this chapter.

(b) The group hospital service corporation is exempt from a provision of this code that is not expressly made applicable to the corporation. (V.T.I.C. Art. 20.09.)

Source Law

Art. 20.09. Such corporations organized and operated under the provisions of this chapter shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this chapter, except as may be otherwise required in this chapter, and the provisions of the other chapters of this code which are not expressly made applicable to corporations organized and operating under this chapter are hereby declared inapplicable.

Revised Law

Sec. 842.003. CORPORATION SUBJECT TO REGULATION BY COMMISSIONER AND DEPARTMENT. Each group hospital service corporation is subject to regulation by the department and the commissioner. (V.T.I.C. Art. 20.02 (part).)

Source Law

Art. 20.02. All corporations organized under the provisions of this chapter shall be under the direct supervision of the Board of Insurance Commissioners of the State of Texas, and . . . .

Revisor's Note

(1) V.T.I.C. Article 20.02 refers to the "direct supervision" of the former Board of Insurance Commissioners. The revised law substitutes "regulation" for "direct supervision" because the terms are synonymous and the use of "regulation" in this context is consistent with terminology used throughout this code.

(2) V.T.I.C. Article 20.02 refers to the "Board of Insurance Commissioners of the State of Texas." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance.

Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners and the State Board of Insurance have been changed appropriately.

[Sections 842.004-842.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF GROUP HOSPITAL SERVICE CORPORATION

Revised Law

Sec. 842.051. APPLICATION FOR CORPORATE CHARTER; NONPROFIT STATUS REQUIRED. (a) Seven or more persons, a majority of whom are superintendents of hospitals or physicians licensed by the Texas State Board of Medical Examiners, may apply to the secretary of state for a corporate charter to operate a group hospital service corporation.

(b) A group hospital service corporation must be governed and operated as a nonprofit organization. (V.T.I.C. Arts. 20.01 (part); 20.10 (part).)

Source Law

Art. 20.01. Any seven (7) or more persons, a majority of whom are superintendents of hospitals or physicians or surgeons licensed by the State Board of Medical Examiners, upon application to the Secretary of State of the State of Texas for a corporate charter may be incorporated . . . .

Art. 20.10. Such corporations shall be governed and conducted as nonprofit organizations; and provided that . . . .

Revisor's Note

(1) V.T.I.C. Article 20.01 refers to "physicians or surgeons" licensed by the State Board of Medical Examiners. Section 151.002(12), Occupations Code, defines a person licensed to practice medicine in this state as a "physician." Section 151.002(b), Occupations Code, provides that the terms "physician" and "surgeon" are synonyms. The revised law omits the use of the term "surgeon" because a surgeon is covered by the use of the term "physician."

(2) V.T.I.C. Article 20.01 refers to the "Secretary of State of the State of Texas." The revised law substitutes the term "secretary of state" because, under Chapter 405, Government Code, that is the official title of that officer.

Revised Law

Sec. 842.052. MINIMUM MEMBERSHIP REQUIREMENTS. (a) Before a group hospital service corporation may be incorporated, the corporation must have collected in advance from at least 500 applicants for membership:

(1) the application fee; and

(2) an amount at least equal to the amount charged by the corporation for one month's premium for coverage.

(b) A group hospital service corporation must maintain a membership of at least 500 as a condition of continued operation. (V.T.I.C. Art. 20.02 (part).)

Source Law

. . .

(a) Upon incorporation, and as a condition thereof, they shall have collected in advance from at least five hundred (500) applicants the application fee and at least one (1) month's payment for insurance. It shall be a condition of continued operation that a minimum membership of five hundred (500) be maintained;

. . . .

[Sections 842.053-842.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 842.101. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The department shall issue to a group hospital service corporation a certificate of authority that authorizes the corporation to engage in the business of a group hospital service corporation if the corporation:

(1) files a statement acceptable to the department showing solvency; and

(2) complies with this chapter.

(b) The department shall charge the fee prescribed by law for the issuance of the certificate of authority. (V.T.I.C. Arts. 20.02 (part); 20.08 (part).)

Source Law

[Art. 20.02. . . .]

(d) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the Board shall issue it a certificate authorizing it to transact business . . . .

Art. 20.08. The State Board of Insurance shall charge the fee prescribed by law for . . . the issuance of each certificate of authority to such corporation.

Revisor's Note

V.T.I.C. Article 20.02(d) refers to the term of a certificate of authority issued under that article. The revised law omits this reference as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in relevant part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, Insurance Code, provided that Article 20.02 was repealed "to the extent that [it requires] periodic renewal of certificates of authority." The omitted law reads:

[(d) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the Board shall issue it a certificate authorizing it to transact business] for a period of not more than fifteen (15) months, and not extending beyond May 31, next following the date of said certificate;

. . .

[Sections 842.102-842.150 reserved for expansion]

SUBCHAPTER D. BOARD OF DIRECTORS; PERSONNEL

Revised Law

Sec. 842.151. BOARD OF DIRECTORS. (a) Each group hospital service corporation is governed by a board of directors that has full control over its management affairs.

(b) A board of directors must be composed of at least 12 but not more than 20 directors. A majority of the directors must be persons who:

(1) are not health care providers or employees of health care providers; and

(2) do not have a financial interest in a health care provider. (V.T.I.C. Art. 20.13.)

Source Law

Art. 20.13. Such corporation shall have not fewer than 12 nor more than 20 directors who shall have full control over its management affairs. A majority of the directors shall not be health care providers or employees of or have a financial interest in a health care provider as defined in this chapter.

Revised Law

Sec. 842.152. COMPENSATION OF DIRECTORS. A director of a group hospital service corporation may not receive compensation for the director's services but is entitled to receive reimbursement for reasonable and necessary expenses incurred in attending a meeting called to manage or direct the affairs of the

corporation. (V.T.I.C. Art. 20.20 (part).)

Source Law

Art. 20.20. No director of any corporation created under this chapter shall receive any salary, wages or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of said corporation. . . .

Revisor's Note

V.T.I.C. Article 20.20 refers to the "salary, wages or compensation" of a director. The revised law omits the references to salary and wages because, in context, salary and wages are included within the meaning of "compensation."

Revised Law

Sec. 842.153. BOARD MEETINGS. The board of directors of a group hospital service corporation may not meet more frequently than once a month. A meeting may not last more than five days. (V.T.I.C. Art. 20.20 (part).)

Source Law

. . . Provided, however, that the directors may not have more than one (1) meeting per month, which meeting shall not last more than five (5) days.

Revised Law

Sec. 842.154. BOND REQUIREMENTS FOR CERTAIN OFFICERS AND EMPLOYEES. (a) Each group hospital service corporation shall post a bond for the officer or employee responsible for the handling of the corporation's money. The bond must be:

(1) issued by a surety company licensed by the department to do business in this state; and

(2) at all times in an amount at least equal to $25,000.

(b) In addition to the bond required under Subsection (a), the corporation shall post a separate bond or a blanket bond for

all employees who have access to the money of the corporation. The bond must be in a reasonable amount set by the commissioner in the amount of at least $500, not to exceed $10,000.

(c) A bond required by this section must be payable to the commissioner for the use and benefit of the corporation. (V.T.I.C. Art. 20.04.)

Source Law

Art. 20.04. Each such corporation shall furnish a bond for the officer or employee responsible for the handling of the funds, the bond to be in some Surety company licensed by the Board of Insurance Commissioners to do business in Texas, and the bond to be in a minimum amount of One Thousand ($1,000.00) Dollars, to be at all times at least equal to the assets on hand, with a maximum bond of Twenty-five Thousand ($25,000.00) Dollars. In addition, it shall furnish on all employees who have access to any of its funds, separate bonds, or a blanket bond, in amounts to be reasonably fixed by the Board, with a minimum of Five Hundred ($500.00) Dollars, and a maximum of Ten Thousand ($10,000.00) Dollars. All such bonds shall be made payable to the Board of Insurance Commissioners for the use and benefit of the corporation.

Revisor's Note

V.T.I.C. Article 20.04 requires a bond equal to the "assets on hand," in a minimum amount of $1,000 and a maximum amount of $25,000. Under V.T.I.C. Article 20.15, revised as Section 842.206, a group hospital service corporation must maintain a surplus of at least $100,000. As a result, the amount of assets on hand for the corporation must always exceed $25,000. The revised law is drafted accordingly.

Revised Law

Sec. 842.155. TREASURER'S BOND. The treasurer of each group hospital service corporation shall post a fidelity bond with a corporation surety. The bond must be in the amount determined by the officers of the corporation as necessary to secure the

faithful handling of the corporation's money. (V.T.I.C. Art. 20.17 (part).)

Source Law

Art. 20.17. The treasurer of such corporation shall be required to give a fidelity bond with corporation surety in such sum as may be determined by the officers of said corporation for the faithful handling of the funds of said corporation and . . . .

Revised Law

Sec. 842.156. COMPENSATION OF CERTAIN OFFICERS AND EMPLOYEES. A paid officer or employee of a group hospital service corporation may not receive more than $20,000 annually as compensation for the officer's or employee's services unless a higher amount is first authorized by a vote of:

(1) the board of directors of the corporation; or

(2) a committee of the board of directors that is charged with the duty of authorizing that compensation. (V.T.I.C. Art. 20.10 (part).)

Source Law

. . . no paid officer or employee of said corporations shall receive more than Twenty Thousand Dollars ($20,000.00) per annum for his services, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. . . .

[Sections 842.157-842.200 reserved for expansion]

SUBCHAPTER E. REGULATION OF GROUP HOSPITAL SERVICE CORPORATIONS

Revised Law

Sec. 842.201. ANNUAL STATEMENT; FILING FEE. (a) Not later than March 1 of each year, each group hospital service

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

(b) The statement must be in the form prescribed by and provide the information required by the commissioner.

(c) The department shall charge a fee in an amount determined under Article 4.07 for filing the statement.

(V.T.I.C. Arts. 20.02 (part); 20.08 (part).)

Source Law

[Art. 20.02. . . .]

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

. . .

Art. 20.08. The State Board of Insurance shall charge the fee prescribed by law for filing the annual statement of each corporation operating under this chapter, and for . . . .

Revisor's Note

V.T.I.C. Article 20.08 provides that the former State Board of Insurance must charge "the charter fee prescribed by law" for filing an annual statement. Article 4.07 is a comprehensive fee provision that authorizes the Texas Department of Insurance to set the amounts of various fees, including the fee for an annual statement. Accordingly, the revised law substitutes a general reference to a fee in the amount determined under V.T.I.C. Article 4.07.

Revised Law

Sec. 842.202. RESERVE REQUIREMENTS. (a) Each group hospital service corporation shall maintain reserves sufficient to cover liability for claims incurred but not yet paid and the expenses incurred in settling those claims.

(b) A group hospital service corporation shall estimate the

amount necessary to satisfy the reserve requirements using a method submitted to the commissioner for approval. The estimate method used by the corporation is considered approved on the 30th day after the date filed with the commissioner unless the commissioner affirmatively approves or disapproves the method before that date. (V.T.I.C. Art. 20.02 (part).)

Source Law

. . .

(c) They shall maintain reserves to cover the liability for claims incurred but not yet paid and for the expenses of settlement on those claims; provided that the reserves shall be estimated using a method which has been submitted to the Commissioner of Insurance for approval; and provided further that the method shall be deemed approved thirty (30) days after filing unless earlier affirmatively approved or disapproved by the Commissioner of Insurance;

. . .

Revised Law

Sec. 842.203. FINAL JUDGMENT DEPOSIT. (a) For each 1,000 members and fraction of 1,000 members, a group hospital service corporation shall deposit $100 with the comptroller through the commissioner. The total deposit required under this subsection may not exceed $2,000.

(b) The deposit required under Subsection (a) shall be used to pay any judgment entered against the group hospital service corporation and is subject to garnishment after a final judgment is entered.

(c) The group hospital service corporation shall immediately replenish the amount on deposit if the amount is impounded or impaired. If the amount is not replenished immediately on the demand of the commissioner, the corporation may be regarded as insolvent and treated accordingly. (V.T.I.C. Art. 20.03.)

Source Law

Art. 20.03. Each such corporation shall place with the comptroller through the Board of Insurance Commissioners a deposit equal to One Hundred ($100.00) Dollars for each one thousand (1,000) of its members and fractional part of such number, provided that the maximum deposit shall be Two Thousand ($2,000.00) Dollars. The deposit shall be liable for the payment of all judgments against the corporation and subject to garnishment after final judgment against the corporation. When such deposit becomes impounded or impaired, it shall at once be replenished by the corporation; and if not replenished immediately on demand by the Board, the corporation may be regarded as insolvent and dealt with accordingly.

Revised Law

Sec. 842.204. INVESTMENT LIMITATIONS. The investment limitations that apply to a life, health, and accident insurance company apply to the investments of a group hospital service corporation. (V.T.I.C. Art. 20.10 (part).)

Source Law

. . . Such corporation's investments shall be subject to the limitations applicable to insurance companies operating under the provisions of Chapter 3 of this code. . . .

Revisor's Note

V.T.I.C. Article 20.10 refers to "Chapter 3 of this code," meaning Chapter 3 of the Insurance Code of 1951. That chapter applies only to life, health, and accident insurance companies. The revised law substitutes a reference to those companies for the convenience of the reader.

Revised Law

Sec. 842.205. INCURRED EXPENSES. (a) In this section, "general expenses" means expenses incurred by a group hospital service corporation in the operation of its business other than:

(1) a tax;

(2) a license fee;

(3) a commission; or

(4) an expense incurred in the performance of a contract:

(A) made directly or indirectly with this state or the United States; and

(B) under which the corporation does not assume an insurance risk.

(b) Subject to Subsection (c), a group hospital service corporation may not incur during a calendar year general expenses that exceed 20 percent of the premiums earned in that calendar year.

(c) For a group hospital service corporation earning $500 million or more in premiums in a calendar year, the maximum percentage of general expenses that may be incurred during a calendar year is reduced by one-half percent for each $50 million of premiums earned to a maximum percentage of 15 percent. (V.T.I.C. Art. 20.10 (part).)

Source Law

. . . No corporation operating under this chapter may incur general expenses during a calendar year in excess of twenty percent (20%) of premiums earned in that calendar year; provided further that the maximum expense shall be reduced by one-half percent (1/2%) for each Fifty Million Dollars ($50,000,000) of premium earned to fifteen percent (15%) for corporations earning Five Hundred Million Dollars ($500,000,000) or more of premium in a calendar year. "General expenses" means the expenses incurred by a corporation in the operation of its business except that the term shall not be deemed to include taxes, license fees, commissions, or any expenses incurred in the performance of contracts made directly or indirectly with the government of this state or of the United States under which the corporation does not assume an insurance risk.

Revised Law

Sec. 842.206. MINIMUM SURPLUS REQUIREMENT. Each group hospital service corporation shall maintain a surplus of at least $100,000 to meet adverse contingencies. (V.T.I.C. Art. 20.15.)

Source Law

Art. 20.15. Such corporation shall maintain a surplus of at least $100,000 to meet adverse contingencies.

Revised Law

Sec. 842.207. CONTRACTS; REINSURANCE; OTHER AGREEMENTS. (a) Subject to Subsection (b), a group hospital service corporation may:

(1) contract with another organization similar in character for joint participation through:

(A) a mutualization contract agreement;

(B) a reinsurance treaty; or

(C) another arrangement; and

(2) cede or accept risks from an insurer on all or part of a risk.

(b) Each document used for a purpose described by Subsection (a) must be filed with the department and approved by the commissioner for use in that purpose. (V.T.I.C. Art. 20.19.)

Source Law

Art. 20.19. Such corporations shall be authorized to contract with other organizations similar in character for joint participation through mutualization contract agreements, re-insurance treaties or otherwise and cede or accept risks from any insurance company or insurer upon the whole or any part of any risks, provided that such contract forms, documents, treaties or agreement forms are filed with and approved by the State Board of Insurance for such purposes.

Revisor's Note

V.T.I.C. Article 20.19 refers to "contract forms, documents, treaties or agreement forms." The revised law omits the references to contract forms, treaties, and agreement forms because, in context, those terms are included within the meaning of "document."

Revised Law

Sec. 842.208. BOOKS AND RECORDS. Each group hospital service corporation shall keep complete books and records. (V.T.I.C. Art. 20.21(a).)

Source Law

Art. 20.21. (a) Every Such Corporation Shall Keep Complete Books and Records.

Revised Law

Sec. 842.209. EXAMINATIONS. Articles 1.15 and 1.16 apply to a group hospital service corporation. (V.T.I.C. Art. 20.21(b).)

Source Law

(b) Articles 1.15 and 1.16 of this code apply to corporations regulated under this article.

Revised Law

Sec. 842.210. LIQUIDATION, REHABILITATION, OR CONSERVATION OF GROUP HOSPITAL SERVICE CORPORATION. The dissolution, liquidation, rehabilitation, or conservation of a group hospital service corporation is subject to Articles 21.28 and 21.28-A. (V.T.I.C. Art. 20.06.)

Source Law

Art. 20.06. Any dissolution, liquidation, rehabilitation, or conservation of any such corporation shall be handled as provided in Articles 21.28, 21.28-A, and 21.28-B of this code.

Revisor's Note

V.T.I.C. Article 20.06 refers to "Articles 21.28, 21.28-A, and 21.28-B of this code." The revised law omits the reference to Article 21.28-B because that article was repealed by Chapter 1082, Acts of the 71st Legislature, Regular Session, 1989.

[Sections 842.211-842.250 reserved for expansion]

SUBCHAPTER F. PLAN OF OPERATION; PROVISION OF BENEFITS TO MEMBERS

Revised Law

Sec. 842.251. PLAN OF OPERATION. (a) Before accepting applications for membership in its hospital service plan, a group hospital service corporation must submit to the commissioner a plan of operation. The plan of operation must be accompanied by a schedule of the dues to be charged to members and a statement of the amount of hospital services that the corporation contracts to provide.

(b) The commissioner must approve the plan of operation as fair and reasonable before the corporation may engage in business. (V.T.I.C. Art. 20.14.)

Source Law

Art. 20.14. Every such corporation shall, before accepting applications for membership in said nonprofit hospital service plan, submit to the Board of Insurance Commissioners a plan of operation, together with a schedule of its dues to be charged and the amount of hospital service contracted to be rendered; which plan shall first be approved by the Board as fair and reasonable before said corporation shall engage in business.

Revised Law

Sec. 842.252. MEMBERSHIP CERTIFICATE; CONTRACT. (a) A group hospital service corporation shall issue to each member a membership certificate that states the benefits to which the member is or may become entitled.

(b) The department must approve the form of:

(1) the membership certificate; and

(2) any contract made between the group hospital service corporation and the member's employer or group representative. (V.T.I.C. Art. 20.16.)

Source Law

Art. 20.16. Every such corporation shall issue to its members certificates of membership setting forth the benefits to which they are or may become entitled. Such certificates, and the contracts made between the corporation and the member's employer or group representative shall be in form approved by the State Board of Insurance.

Revised Law

Sec. 842.253. POLICY, CERTIFICATE, AND APPLICATION FORMS. A policy, certificate, or application form used by a group hospital service corporation is subject to Article 3.42. (V.T.I.C. Art. 20.02(e).)

Source Law

(e) Policy, certificate, and application forms shall be subject to the provisions of Article 3.42 of this code, as amended.

Revised Law

Sec. 842.254. DEPOSIT REQUIREMENTS. A group hospital service corporation shall deposit in the account of the corporation in a bank money collected by the corporation from a member or subscriber. The bank must be a state depository. (V.T.I.C. Art. 20.17 (part).)

Source Law

. . . all funds collected from members or subscribers of said corporation shall be deposited to the account of said corporation in a bank, which is a State depository.

Revised Law

Sec. 842.255. ADVANCE PAYMENTS TO HOSPITAL PROHIBITED. A group hospital service corporation may not pay to a hospital any money collected by the corporation from a member or subscriber before the hospital provides necessary care to that member or subscriber. (V.T.I.C. Art. 20.18.)

Source Law

Art. 20.18. Such corporation shall not pay any of the funds collected from members or subscribers to any hospital until after said hospitals shall have rendered the necessary hospital care to such subscriber or member.

Revised Law

Sec. 842.256. CONTRACTS WITH HEALTH CARE PROVIDERS. (a) A group hospital service corporation may contract with health care providers as necessary to ensure to each member or subscriber the provision of services and supplies covered by the membership certificate or policy of the corporation.

(b) A group hospital service corporation may not be required to contract with any particular health care provider.

(c) This section does not authorize a group hospital service corporation to contract with a health care provider in a manner prohibited by a licensing law of this state under which that health care provider operates. (V.T.I.C. Art. 20.11 (part).)

Source Law

Art. 20.11. Such corporations shall have authority to contract with health care providers in such manner as to assure to each person holding a policy or certificate of said corporation the furnishing of such services and supplies as may be agreed upon in the policy, with . . . such corporations shall not be required to contract with any particular health care provider; and provided further that this Article shall not be deemed to authorize such corporation to contract with any health

care provider in any manner which is prohibited by any licensing law of this state under which the health care provider operates. . . .

Revised Law

Sec. 842.257. MAY LIMIT BENEFITS. A policy or certificate issued by a group hospital service corporation may limit the types of disease for which benefits are provided. (V.T.I.C. Art. 20.11 (part).)

Source Law

. . . the right to said corporation to limit in the policy the types of disease for which it shall furnish benefits; provided that . . . .

Revisor's Note

V.T.I.C. Article 20.11 refers to the "policy" of the corporation. Most provisions revised in this chapter refer to a policy or contract. The revised law is drafted accordingly.

Revised Law

Sec. 842.258. LIMITATIONS ON CONTRACTS FOR MEDICAL SERVICES. (a) A group hospital service corporation may not:

(1) contract to provide to a member a physician or any medical services;

(2) contract to practice medicine in any manner;

(3) control or attempt to control the relations existing between a member and the member's physician; or

(4) restrict the right of a patient to obtain the services of any licensed physician.

(b) This section does not prohibit a group hospital service corporation from contracting with:

(1) a health organization certified under Chapter 162, Occupations Code; or

(2) a physician or other health care provider under rules adopted for preferred provider plans. (V.T.I.C. Art. 20.12 (part).)

Source Law

Art. 20.12. Such corporations shall not contract to furnish to the member a physician or any medical services, nor shall said corporation contract to practice medicine in any manner, nor shall said corporation control or attempt to control the relations existing between said member and his or her physician, nor restrict the right of the patient to obtain the services of any licensed doctor of medicine; provided that nothing in this article shall prohibit a corporation from contracting with a health organization certified under Section 5.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), or with physicians or other health care providers under rules promulgated for preferred provider plans. . . .

Revisor's Note

(1) V.T.I.C. Article 20.12 refers to a "licensed doctor of medicine." The revised law substitutes the term "physician" for the reason stated in Revisor's Note (1) to Section 842.051.

(2) V.T.I.C. Article 20.12 refers to Section 5.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). That statute was codified in 1999 as Chapter 162, Occupations Code. The revised law is drafted accordingly.

Revised Law

Sec. 842.259. USE OF INDEMNITY PLAN AUTHORIZED. A group hospital service corporation may provide benefits for medical care, surgical care, or both medical and surgical care on the basis of indemnity payments for incurred expenses. (V.T.I.C. Art. 20.12 (part).)

Source Law

. . . In addition, such corporations are hereby authorized to provide benefits for medical and/or surgical care on the basis of indemnity payments for expenses incurred.

Revised Law

Sec. 842.260. PAYMENT OF CLAIM; PROOF OF CLAIM. (a) After receipt of due proof of claim, a group hospital service corporation shall pay each claim presented under a membership certificate in full not later than the 60th day after the date on which the applicable services prescribed in the certificate have been provided.

(b) Written notice of a claim given to a group hospital service corporation is considered due proof of claim under this section if the corporation does not provide the claimant with the forms usually provided by the corporation for filing a claim before the 16th day after the date notice is received. (V.T.I.C. Art. 20.05 (part).)

Source Law

Art. 20.05. All claims under certificates shall be paid in full within sixty (60) days after the services called for by the particular certificate have been rendered, and after receipt of due proof of claim. Written notice of claim given to the corporation shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the claimant within fifteen (15) days such forms as are usually furnished by it for filing such claims. . . .

[Sections 842.261-842.300 reserved for expansion]

SUBCHAPTER G. DISCIPLINARY PROCEDURES

Revised Law

Sec. 842.301. REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner shall revoke the certificate of authority of a group hospital service corporation that:

(1) is determined to be:

(A) operating fraudulently; or

(B) improperly contesting claims; or

(2) fails to pay valid claims in accordance with this chapter. (V.T.I.C. Art. 20.05 (part).)

Source Law

. . . The Board of Insurance Commissioners shall cancel the certificate of authority of any corporation found to be operating fraudulently or improperly contesting its claims, or which fails to pay its valid claims in accordance with the provisions of this article.

Revisor's Note

V.T.I.C. Article 20.05 states that the former Board of Insurance Commissioners "shall cancel" the certificate of authority of a group hospital service corporation in certain circumstances. The revised law substitutes "revoke" for "cancel" because, in context, the terms are synonymous and "revoke" is more frequently used.

Revisor's Note

(End of Chapter)

V.T.I.C. Article 20.02 contains introductory language that provides that a group hospital service corporation is "subject to the following requirements." The revised law omits the language as unnecessary since the referenced requirements are revised as various sections of this chapter. The omitted law reads as follows:

[Art. 20.02. All corporations organized under the provisions of this chapter . . .] shall be subject to the following requirements:

. . .

CHAPTER 843. HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

[Sections 843.086-843.100 reserved for expansion]

CHAPTER 843. HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 843.001. SHORT TITLE. This chapter may be cited as the Texas Health Maintenance Organization Act. (V.T.I.C. Art. 20A.01.)

Source Law

Art. 20A.01. This Act may be cited as the Texas Health Maintenance Organization Act.

Revised Law

Sec. 843.002. DEFINITIONS. In this chapter:

(1) "Adverse determination" means a determination by a health maintenance organization or a utilization review agent that health care services provided or proposed to be provided to an enrollee are not medically necessary or are not appropriate.

(2) "Basic health care services" means health care services that the commissioner determines an enrolled population might reasonably need to be maintained in good health, including, at a minimum, services designated as basic health services under Section 1302, Title XIII, Public Health Service Act (42 U.S.C. Section 300e-1(1)).

(3) "Blended contract" means a single document that provides a combination of indemnity and health maintenance organization benefits. The term includes a single contract policy, certificate, or evidence of coverage.

(4) "Capitation" means a method of compensating a physician or provider for arranging for or providing a defined set of covered health care services to certain enrollees for a

specified period that is based on a predetermined payment per enrollee for the specified period, without regard to the quantity of services actually provided.

(5) "Complainant" means an enrollee, or a physician, provider, or other person designated to act on behalf of an enrollee, who files a complaint.

(6) "Complaint" means any dissatisfaction expressed orally or in writing by a complainant to a health maintenance organization regarding any aspect of the health maintenance organization's operation. The term includes dissatisfaction relating to plan administration, procedures related to review or appeal of an adverse determination under Section 843.261, the denial, reduction, or termination of a service for reasons not related to medical necessity, the manner in which a service is provided, and a disenrollment decision. The term does not include:

(A) a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the enrollee; or

(B) a provider's or enrollee's oral or written expression of dissatisfaction or disagreement with an adverse determination.

(7) "Emergency care" means health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the individual's condition, sickness, or injury is of such a nature that failure to get immediate medical care could:

(A) place the individual's health in serious jeopardy;

(B) result in serious impairment to bodily functions;

(C) result in serious dysfunction of a bodily

organ or part;

(D) result in serious disfigurement; or

(E) for a pregnant woman, result in serious jeopardy to the health of the fetus.

(8) "Enrollee" means an individual who is enrolled in a health care plan and includes covered dependents.

(9) "Evidence of coverage" means any certificate, agreement, or contract, including a blended contract, that:

(A) is issued to an enrollee; and

(B) states the coverage to which the enrollee is entitled.

(10) "Group hospital service corporation" means a corporation operating under Chapter 842.

(11) "Health care" means prevention, maintenance, rehabilitation, pharmaceutical, and chiropractic services, other than medical care, provided by qualified persons.

(12) "Health care plan" means a plan:

(A) under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of health care services; and

(B) that consists in part of providing or arranging for health care services on a prepaid basis through insurance or otherwise, as distinguished from indemnifying for the cost of health care services.

(13) "Health care services" means services provided to an individual to prevent, alleviate, cure, or heal human illness or injury. The term includes:

(A) pharmaceutical services;

(B) medical, chiropractic, or dental care;

(C) hospitalization;

(D) care or services incidental to the health care services described by Paragraphs (A)-(C); and

(E) services provided under a limited health care service plan or a single health care service plan.

(14) "Health maintenance organization" means a person who arranges for or provides to enrollees on a prepaid basis a

health care plan, a limited health care service plan, or a single health care service plan.

(15) "Health maintenance organization delivery network" means a health care delivery system in which a health maintenance organization arranges for health care services directly or indirectly through contracts and subcontracts with physicians and providers.

(16) "Life-threatening" means a disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(17) "Limited health care service plan" means a plan:

(A) under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of limited health care services; and

(B) that consists in part of providing or arranging for limited health care services on a prepaid basis through insurance or otherwise, as distinguished from indemnifying for the cost of limited health care services.

(18) "Limited health care services" means:

(A) services for mental health, chemical dependency, or mental retardation, or any combination of those services; or

(B) an organized long-term care service delivery system that provides for diagnostic, preventive, therapeutic, rehabilitative, and personal care services required by an individual with a loss in functional capacity on a long-term basis.

(19) "Medical care" means the provision of those services defined as practicing medicine under Section 151.002, Occupations Code.

(20) "Net worth" means the amount by which total liabilities, excluding liability for subordinated debt issued in compliance with Article 1.39, is exceeded by total admitted assets.

(21) "Person" means any natural or artificial person, including an individual, partnership, association, corporation,

organization, trust, hospital district, community mental health center, mental retardation center, mental health and mental retardation center, limited liability company, or limited liability partnership or the statewide rural health care system under Chapter 845.

(22) "Physician" means:

(A) an individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes);

(C) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(D) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(E) another person wholly owned by physicians.

(23) "Prospective enrollee" means:

(A) an individual eligible to enroll in a health maintenance organization purchased through a group of which the individual is a member; or

(B) for an individual who is not a member of a group or whose group has not purchased or does not intend to purchase a health maintenance organization's health care plan, an individual who has expressed an interest in purchasing individual health maintenance organization coverage and is eligible for coverage by a health maintenance organization.

(24) "Provider" means:

(A) a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a chiropractor, registered nurse, pharmacist, optometrist, or registered optician; or

(ii) a pharmacy, hospital, or other

institution or organization;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed or otherwise authorized to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

(25) "Single health care service" means a health care service:

(A) that an enrolled population may reasonably need to be maintained in good health with respect to a particular health care need to prevent, alleviate, cure, or heal human illness or injury of a single specified nature; and

(B) that is provided by one or more persons licensed or otherwise authorized by the state to provide that service.

(26) "Single health care service plan" means a plan:

(A) under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of a single health care service;

(B) that consists in part of providing or arranging for the single health care service on a prepaid basis through insurance or otherwise, as distinguished from indemnifying for the cost of that service; and

(C) that does not include arranging for the provision of more than one health care need of a single specified nature.

(27) "Sponsoring organization" means a person who guarantees the uncovered expenses of a health maintenance organization and who is financially capable, as determined by the commissioner, of meeting the obligations resulting from that guarantee.

(28) "Uncovered expenses" means the estimated amount of administrative expenses and the estimated cost of health care services that are not guaranteed, insured, or assumed by a person other than the health maintenance organization. The term does

not include the cost of health care services if the physician or provider agrees in writing that an enrollee is not liable, assessable, or in any way subject to making payment for the services except as described in the evidence of coverage issued to the enrollee under Article 20A.09. The term includes any amount due on loans in the next calendar year unless the amount is specifically subordinated to uncovered medical and health care expenses or the amount is guaranteed by a sponsoring organization.

(29) "Uncovered liabilities" means obligations resulting from unpaid uncovered expenses, the outstanding indebtedness of loans that are not specifically subordinated to uncovered medical and health care expenses or guaranteed by the sponsoring organization, and all other monetary obligations that are not similarly subordinated or guaranteed. (V.T.I.C. Art. 20A.02, Subdivs. (b); (c); (e); (f); (g); (h); (i); (j); (k) as amended Acts 75th Leg., R.S., Ch. 1023; (k) as amended Acts 75th Leg., R.S., Ch. 1026; (l) as amended Acts 75th Leg., R.S., Ch. 1023; (l) as amended Acts 75th Leg., R.S., Ch. 1026; (m); (n); (o); (p); (q); (r); (s); (t); (u); (v); (w) as amended Acts 75th Leg., R.S., Ch. 1023; (w) as amended Acts 75th Leg., R.S., Ch. 1026; (x); (y); (z); (aa) as added Acts 76th Leg., R.S., Ch. 273; (aa) as added Acts 76th Leg., R.S., Ch. 1380; Art. 20A.12A, Sec. (a)(1).)

Source Law

Art. 20A.02. For the purposes of this Act:

(b) "Basic health care services" means health care services which the commissioner determines an enrolled population might reasonably require in order to be maintained in good health, including, at a minimum, services designated as basic health services under Section 1302, Title XIII, Public Health Service Act (42 U.S.C. Section 300e-1(1)).

(c) "Capitation" means a method of compensation to a physician or provider based on a predetermined payment per

enrollee for a specified period of time for certain enrollees in exchange for arranging for or providing a defined set of covered health care services to such enrollees for a specified period of time, regardless of the amount of services actually provided.

(e) "Complainant" means an enrollee, or a physician, provider, or other person designated to act on behalf of an enrollee, who files a complaint.

(f) "Complaint" means any dissatisfaction expressed by a complainant orally or in writing to the health maintenance organization with any aspect of the health maintenance organization's operation, including but not limited to dissatisfaction with plan administration; procedures related to review or appeal of an adverse determination, as that term is defined by Section 12A of this Act; the denial, reduction, or termination of a service for reasons not related to medical necessity; the way a service is provided; or disenrollment decisions, expressed by a complainant. The term does not include a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the enrollee and does not include a provider's or enrollee's oral or written dissatisfaction or disagreement with an adverse determination.

(g) "Emergency care" means health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including but not limited to severe pain, that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(1) placing the patient's health in serious jeopardy;

(2) serious impairment to bodily functions;

(3) serious dysfunction of any bodily organ or

part;

(4) serious disfigurement; or

(5) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

(h) "Enrollee" means an individual who is enrolled in a health care plan, including covered dependents.

(i) "Evidence of coverage" means any certificate, agreement, or contract, including a blended contract, issued to an enrollee setting out the coverage to which the enrollee is entitled.

(j) "Group hospital service corporation" means a nonprofit corporation organized and operating under Chapter 20 of the Insurance Code.

(k) [as amended Acts 75th Leg., R.S., Ch. 1023] "Limited health care services" means:

(1) services for mental health, chemical dependency, or mental retardation, or any combination of mental health, chemical dependency, or mental retardation; or

(2) an organized long-term care service delivery system that provides for diagnostic, preventive, therapeutic, rehabilitative, and personal care services required by an individual with a loss in functional capacity on a long-term basis.

(k) [as amended Acts 75th Leg., R.S., Ch. 1026] "Health care" means prevention, maintenance, rehabilitation, pharmaceutical, and chiropractic services provided by qualified persons other than medical care.

(l) [as amended Acts 75th Leg., R.S., Ch. 1023] "Limited health care service plan" means a plan under which any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of limited health care services, if a part of the plan consists of arranging for, or the provision of, limited health care services, as distinguished from an indemnification against the cost of those services, on a prepaid basis through insurance or otherwise.

(l) [as amended Acts 75th Leg., R.S., Ch. 1026]

"Health care plan" means any plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services; provided, however, a part of such plan consists of arranging for or the provision of health care services, as distinguished from indemnification against the cost of such service, on a prepaid basis through insurance or otherwise.

(m) "Health care services" means any services, including the furnishing to any individual of pharmaceutical services, medical, chiropractic, or dental care, or hospitalization or incident to the furnishing of such services, care, or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury a limited health care service plan, or a single health care service plan.

(n) "Health maintenance organization" means any person who arranges for or provides a health care plan, a limited health care service plan, or a single health care service plan to enrollees on a prepaid basis.

(o) "Life threatening" means a disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(p) "Medical care" means furnishing those services defined as practicing medicine under Section 1.03(8), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

(q) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, organizations, trusts, hospital districts, community mental health, mental retardation, or mental health and mental retardation centers, limited liability companies, limited liability partnerships, corporations, or the rural community health care system under Chapter 20C, Insurance Code.

(r) "Physician" means:

(1) an individual licensed to practice medicine in this state;

(2) a professional association organized under

the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) or a nonprofit health corporation certified under Section 5.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(3) a medical school or medical and dental unit, as described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(4) another person wholly owned by physicians.

(s) "Prospective enrollee" means:

(1) in the case of an individual who is a member of a group, an individual eligible for enrollment in a health maintenance organization purchased through that individual's group; or

(2) in the case of an individual who is not a member of a group or whose group has not purchased or does not intend to purchase a health maintenance organization plan, an individual who has expressed an interest in purchasing individual health maintenance organization coverage and who is eligible for coverage by the health maintenance organization.

(t) "Provider" means:

(1) any person other than a physician, including a licensed doctor of chiropractic, registered nurse, pharmacist, optometrist, registered optician, pharmacy, hospital, or other institution or organization or person that is licensed or otherwise authorized to provide a health care service in this state;

(2) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed to provide the same health care service; or

(3) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

(u) "Sponsoring organization" means a person who guarantees the uncovered expenses of the health maintenance

organization and who is financially capable, as determined by the commissioner, of meeting the obligations resulting from those guarantees.

(v) "Uncovered expenses" means the estimated administrative expenses and the estimated cost of health care services that are not guaranteed, insured, or assumed by a person other than the health maintenance organization. Health care services may be considered covered if the physician or provider agrees in writing that enrollees shall in no way be liable, assessible, or in any way subject to payment for services except as described in the evidence of coverage issued to the enrollee under Section 9 of this Act. The amount due on loans in the next calendar year will be considered uncovered expenses unless specifically subordinated to uncovered medical and health care expenses or unless guaranteed by the sponsoring organization.

(w) "Health maintenance organization delivery network" means a health care delivery system in which a health maintenance organization arranges for health care services directly or indirectly through contracts and subcontracts with providers and physicians.

(w) "Uncovered liabilities" means obligations resulting from unpaid uncovered expenses, the outstanding indebtedness of loans that are not specifically subordinated to uncovered medical and health care expenses or guaranteed by the sponsoring organization, and all other monetary obligations that are not similarly subordinated or guaranteed.

(x) "Single health care service" means a health care service that an enrolled population may reasonably require in order to be maintained in good health with respect to a particular health care need for the purpose of preventing, alleviating, curing, or healing human illness or injury of a single specified nature and that is to be provided by one or more persons each of whom is licensed by the state to provide that specific health care service.

(y) "Single health care service plan" means a plan under which any person undertakes to provide, arrange for, pay

for, or reimburse any part of the cost of a single health care service, provided that a part of the plan consists of arranging for or the provision of the single health care service, as distinguished from an indemnification against the cost of that service, on a prepaid basis through insurance or otherwise and that no part of that plan consists of arranging for the provision of more than one health care need of a single specified nature.

(z) "Health maintenance organization delivery network" means a health care delivery system in which a health maintenance organization arranges for health care services directly or indirectly through contracts and subcontracts with providers and physicians.

(aa) [as added Acts 76th Leg., R.S., Ch. 273] "Net worth" means the excess of total admitted assets over total liabilities, excluding liability for subordinated debt issued in compliance with Article 1.39, Insurance Code.

(aa) [as added Acts 76th Leg., R.S., Ch. 1380] "Blended contract" means a single document, including a single contract policy, certificate, or evidence of coverage, that provides a combination of indemnity and health maintenance organization benefits.

Art. 20A.12A. (a) In this section:

(1) "Adverse determination" means a determination by a health maintenance organization or a utilization review agent that the health care services furnished or proposed to be furnished to an enrollee are not medically necessary or are not appropriate.

Revisor's Note

(1) Subdivision (a), V.T.I.C. Article 20A.02, defines "adverse determination." The term is defined differently by V.T.I.C. Article 20A.12A, which is revised in pertinent part in this section. The term is used only in Article 20A.12A and in V.T.I.C. Article 20A.02(f), which specifically references the definition contained in Article 20A.12A. As a result, the

revised law omits the definition of "adverse determination" contained in Subdivision (a), V.T.I.C. Article 20A.02 as unnecessary. The omitted law reads:

(a) "Adverse determination" means a determination by a health maintenance organization or a utilization review agent that the health care services furnished or proposed to be furnished to a patient are not medically necessary.

(2) Subdivision (d), V.T.I.C. Article 20A.02, defines "commissioner." The revised law omits the definition as unnecessary because Section 31.001 of this code contains a definition of "commissioner" that is applicable throughout this code and all other insurance laws of this state. The omitted law reads:

(d) "Commissioner" means the commissioner of insurance.

(3) Subdivisions (f) and (g), V.T.I.C. Article 20A.02, refer to dissatisfaction and medical conditions, "including but not limited to" certain types of dissatisfaction and medical conditions. Subdivision (q), V.T.I.C. Article 20A.02, refers to any natural or artificial person, "including, but not limited to," various kinds of persons. Throughout this chapter, the revised law omits "but not limited to" as unnecessary because under Section 311.005(13), Government Code (Code Construction Act), applicable to the revised law, "includes" and "including" are terms of enlargement and not of limitation and use of the terms does not create a presumption that components not expressed are excluded.

(4) Subdivision (p), V.T.I.C. Article 20A.02, refers to "services defined as practicing medicine under Section 1.03(8) [meaning Section 1.03(a)(8)], Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes)." The Medical Practice Act was codified in 1999 as Subtitle B, Title 3, Occupations Code. Immediately before codification, Section 1.03(a)(8) of the Medical Practice Act in fact defined "Open Records Law," and

Section 1.03(a)(12) of the Medical Practice Act defined "practicing medicine." Section 1.03(a)(12) was codified in 1999 as a part of Section 151.002, Occupations Code, and the revised law is drafted accordingly.

(5) Subdivision (q), V.T.I.C. Article 20A.02, defines "person" to include "the rural community health care system under Chapter 20C, Insurance Code," revised in this code as Chapter 845. The revised law substitutes "statewide rural health care system" for "rural community health care system" to provide for consistent use of terminology with Chapter 845.

(6) Subdivision (r), V.T.I.C. Article 20A.02, refers to "a nonprofit health corporation certified under Section 5.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes)." That statute was codified in 1999 as Chapter 162, Occupations Code, and the revised law is drafted accordingly.

(7) Subdivision (t), V.T.I.C. Article 20A.02, refers to a "licensed doctor of chiropractic." The revised law substitutes "chiropractor" for "licensed doctor of chiropractic" because "chiropractor" is the defined term under Chapter 201, Occupations Code, which is the chapter under which chiropractors are regulated. Under Section 201.001 of that code, "chiropractor" is defined as a person licensed to practice chiropractic by the Texas Board of Chiropractic Examiners.

Revised Law

Sec. 843.003. POWERS OF INSURERS AND GROUP HOSPITAL SERVICE CORPORATIONS. (a) An insurer authorized to engage in the business of insurance in this state under Chapter 822, 841, or 883, an accident insurance company, health insurance company, or life insurance company authorized to engage in the business of insurance in this state under Chapter 982, or a group hospital service corporation may, either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization under this chapter.

(b) Any two or more insurers or group hospital service corporations described by Subsection (a), or their subsidiaries or affiliates, may jointly organize and operate a health

maintenance organization under this chapter.

(c) An insurer or group hospital service corporation may contract with a health maintenance organization to provide:

(1) insurance or similar protection against the cost of care provided by the health maintenance organization; and

(2) coverage if the health maintenance organization does not meet its obligations.

(d) The authority of an insurer or group hospital service corporation under a contract described by Subsection (c) may include the authority to make benefit payments to a health maintenance organization for health care services provided by physicians or providers under a health care plan. (V.T.I.C. Art. 20A.16.)

Source Law

Art. 20A.16. (a) An insurance company licensed in this state, pursuant to Chapter 2, 3, or 15 of the Insurance Code, or a group hospital service corporation authorized to do business in this state, may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this Act. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies or group hospital service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization under the provisions of this Act.

(b) Notwithstanding any provision of insurance or group hospital service corporation laws, an insurer or group hospital service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided by a health maintenance organization and to provide coverage in the event of failure of a health maintenance organization to meet its obligations. Among other things, under such contracts, the insurer or group hospital service corporation may make benefit payments to a health maintenance organization for health care services rendered by

physicians or providers pursuant to health care plans.

Revisor's Note

(1) Section (a), V.T.I.C. Article 20A.16, refers to an insurance company "licensed" in this state. Throughout this chapter, the revised law substitutes "authorized" for "licensed" in this context because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(2) Section (a), V.T.I.C. Article 20A.16, refers to Chapter 3 of the Insurance Code. The relevant portions of Chapter 3, relating to organization of entities that may write insurance, are revised in Chapters 841 and 982. The revised law is drafted accordingly.

Revised Law

Sec. 843.004. GOVERNING BODY OF HEALTH MAINTENANCE ORGANIZATION. The governing body of a health maintenance organization may include physicians, providers, or other individuals, or any combination of physicians, providers, and other individuals. (V.T.I.C. Art. 20A.07.)

Source Law

Art. 20A.07. The governing body of any health maintenance organization may include physicians, providers, or other individuals, or any combination of the above.

Revised Law

Sec. 843.005. USE OF INSURANCE-RELATED TERMS BY HEALTH MAINTENANCE ORGANIZATION. A health maintenance organization that is not authorized as an insurer may not use in its name, contracts, or literature the word "insurance," "casualty," "surety," or "mutual," or any other words that are:

(1) descriptive of the insurance, casualty, or surety business; or

(2) deceptively similar to the name or description of an insurer or surety corporation engaging in business in this

state. (V.T.I.C. Art. 20A.14, Sec. (d).)

Source Law

(d) No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

Revised Law

Sec. 843.006. PUBLIC DOCUMENTS. (a) Except as provided by Subsection (b), each application, filing, and report required under this chapter or Chapter 20A is a public document.

(b) An examination report is confidential but may be released if, in the opinion of the commissioner, the release is in the public interest. (V.T.I.C. Art. 20A.27.)

Source Law

Art. 20A.27. All applications, filings, and reports required under this Act shall be treated as public documents, except that examination reports shall be considered confidential documents which may be released if, in the opinion of the commissioner, it is in the public interest.

Revised Law

Sec. 843.007. CONFIDENTIALITY OF MEDICAL AND HEALTH INFORMATION. (a) Any information relating to the diagnosis, treatment, or health of an enrollee or applicant obtained by a health maintenance organization from the enrollee or applicant or from a physician or provider shall be held in confidence and may not be disclosed to any person except:

(1) to the extent necessary to accomplish the purposes of this chapter or Chapter 20A;

(2) with the express consent of the enrollee or applicant;

(3) in compliance with a statute or court order for the production or discovery of evidence; or

(4) in the event of a claim or litigation between the enrollee or applicant and the health maintenance organization in which the information is pertinent.

(b) A health maintenance organization is entitled to claim the statutory privilege against disclosure that the physician or provider who provides the information to the health maintenance organization is entitled to claim. (V.T.I.C. Art. 20A.25.)

Source Law

Art. 20A.25. Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any physician or provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Act; or upon the express consent of the enrollee or applicant; or pursuant to a statute or court order for the production of evidence or to discovery therefor; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. The health maintenance organization shall be entitled to claim such statutory privilege against such disclosure which the physician or provider who furnishes such information to the health maintenance organization is entitled to claim.

Revised Law

Sec. 843.008. COSTS OF ADMINISTERING HEALTH MAINTENANCE ORGANIZATION LAWS. Money collected under this chapter and Article 20A.33 must be sufficient to administer this chapter and Chapter 20A. (V.T.I.C. Art. 20A.03, Sec. (d).)

Source Law

(d) Funds collected under this Act shall be sufficient to administer this Act.

Revised Law

Sec. 843.009. APPEALS; JUDICIAL REVIEW. (a) A person who is affected by a rule, ruling, or decision of the department or the commissioner is entitled to have the rule, ruling, or decision reviewed by the commissioner by applying to the commissioner.

(b) An application must identify:

(1) the applicant;

(2) the rule, ruling, or decision affecting the applicant;

(3) the interest of the applicant in the rule, ruling, or decision;

(4) the grounds of the applicant's objection;

(5) the action sought of the commissioner; and

(6) the reasons and grounds for the commissioner to take the action.

(c) An applicant shall file the original application with the chief clerk of the department with a certification that a true and correct copy of the application has been filed with the commissioner.

(d) Not later than the 30th day after the date the application is filed, and after 10 days' written notice to each party of record, the commissioner shall review the action in a hearing. In the hearing, any evidence and any matter pertinent to the application may be submitted to the commissioner regardless of whether it was included in the application.

(e) After the hearing, the commissioner shall render a decision at the earliest possible date. The application has precedence over all other business of a different nature pending before the commissioner.

(f) The commissioner shall adopt rules, consistent with

this section, relating to applications under this section and consideration of those applications that the commissioner considers advisable.

(g) A person who is affected by a rule, ruling, or decision of the commissioner and is dissatisfied with the rule, ruling, or decision may, after failing to get relief from the commissioner, file a petition seeking judicial review of the rule, ruling, or decision under Subchapter D, Chapter 36. The action has precedence over all other causes on the docket of a different nature. (V.T.I.C. Art. 20A.23, Secs. (a), (b), (c) (part).)

Source Law

Art. 20A.23. (a) Any person who is affected by any rule, ruling, or decision of the Texas Department of Insurance or the commissioner shall have the right to have such rule, ruling, or decision reviewed by the commissioner by making an application to the commissioner. Such application shall state the identities of the person, the rule, ruling, or decision complained of, the interest of the person in such rule, ruling, or decision, the grounds of such objection, the action sought of the commissioner, and the reasons and grounds for such action by the commissioner. The original shall be filed with the chief clerk of the Texas Department of Insurance together with a certification that a true and correct copy of such application has been filed with the commissioner. Within 30 days after the application is filed, and after 10 days' written notice to all parties of record, the commissioner shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter. The commissioner shall make such other rules and regulations with respect to such applications and their consideration as it considers to be advisable, not inconsistent with this Act. Said application shall have precedence over all other business of a different nature pending before said commissioner.

(b) In the public hearing, any and all evidence and matters pertinent to the appeal may be submitted to the commissioner

whether included in the application or not.

(c) If any person who is affected by any rule, ruling, or decision of the commissioner be dissatisfied with any rule, ruling, or decision adopted by the commissioner, that person, after failing to get relief from the commissioner, may file a petition seeking review of the rule, ruling, or decision and . . . . The action shall have precedence over all other causes on the docket of a different nature. The proceedings on appeal shall be tried and determined as provided by Article 1.04, Insurance Code. . . .

Revisor's Note

(1) Section (a), V.T.I.C. Article 20A.23, refers to the "Texas Department of Insurance." In this section and throughout this chapter, the revised law refers to the "department" because Section 31.001 of this code defines "department" to mean the Texas Department of Insurance throughout this code.

(2) V.T.I.C. Article 20A.23 refers to a "public hearing." Throughout this chapter, the revised law omits "public" as unnecessary. In context, "hearing" means a hearing open to the public.

(3) Section (a), V.T.I.C. Article 20A.23, refers to "rules and regulations." Throughout this chapter, the reference to "regulations" is omitted from the revised law in this context because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

(4) Section (c), V.T.I.C. Article 20A.23, provides that Article 1.04, Insurance Code (revised in 1999 as Subchapter D, Chapter 36), applies to the judicial review of a rule, ruling, or decision of the commissioner and then duplicates various provisions covered by that subchapter. The revised law omits the duplicative provisions as unnecessary. The omitted law reads:

(c) . . . [that person . . . may file a petition seeking review of the rule, ruling, or decision and] setting forth the particular objection to such rule, ruling, or decision, or either

or all of them, in a district court of Travis County, Texas, and not elsewhere, against the commissioner as defendant. . . . Either party to the action may appeal to the appellate court having jurisdiction of the cause and the appeal shall at once be returnable to the appellate court having jurisdiction of the cause and the action so appealed shall have precedence in the appellate court over all causes of a different character therein pending. The commissioner is not required to give any appeal bond in any cause arising hereunder.

[Sections 843.010-843.050 reserved for expansion]

SUBCHAPTER B. APPLICABILITY OF AND CONSTRUCTION WITH OTHER LAWS

Revised Law

Sec. 843.051. APPLICABILITY OF INSURANCE AND GROUP HOSPITAL SERVICE CORPORATION LAWS. (a) Except to the extent that the commissioner determines that the nature of health maintenance organizations, health care plans, or evidences of coverage renders a provision of the following laws clearly inappropriate, Articles 21.21, 21.21A, 21.21-2, 21.21-5, and 21.21-6, as added by Chapter 522, Acts of the 74th Legislature, Regular Session, 1995, and the Unauthorized Insurers False Advertising Process Act (Article 21.21-1, Vernon's Texas Insurance Code) apply to:

(1) health maintenance organizations that offer basic, limited, and single health care coverages;

(2) basic, limited, and single health care plans; and

(3) evidences of coverage under basic, limited, and single health care plans.

(b) A health maintenance organization is subject to:

(1) Section 3B, Article 3.51-6;

(2) Chapter 827 and is an authorized insurer for purposes of that chapter; and

(3) Article 21.49-8.

(c) Except as otherwise provided by this chapter or other law, insurance laws and group hospital service corporation laws

do not apply to a health maintenance organization that holds a certificate of authority under this chapter. This subsection applies to an insurer or a group hospital service corporation only with respect to the health maintenance organization activities of the insurer or corporation.

(d) Activities permitted under other chapters of this code are not subject to this chapter.

(e) Except for Articles 21.07-6 and 21.58A, insurance laws and group hospital service corporation laws do not apply to a physician or provider. Notwithstanding this subsection, a physician or provider who conducts a utilization review during the ordinary course of treatment of patients under a joint or delegated review agreement with a health maintenance organization on services provided by the physician or provider is not required to obtain certification under Section 3, Article 21.58A. (V.T.I.C. Art. 20A.14, Sec. (b); Art. 20A.26, Secs. (a), (f)(4), (h) (part), (i).)

Source Law

[Art. 20A.14]

(b) Articles 21.21, 21.21A, 21.21-2, 21.21-3, and 21.21-5, Insurance Code, Article 21.21-6, Insurance Code, as added by Chapter 522, Acts of the 74th Legislature, Regular Session, 1995, and Chapter 122, Acts of the 57th Legislature, Regular Session, 1961 (Article 21.21-1, Vernon's Texas Insurance Code), apply to health maintenance organizations that offer basic, limited, and single health care coverages and to basic, limited, and single health care plans and the evidence of coverage under those plans, except to the extent that the commissioner determines that the nature of health maintenance organizations and health care plans and evidence of coverage renders any provision of those articles clearly inappropriate.

Art. 20A.26. (a) Except as otherwise provided in this Act, provisions of the insurance law and provisions of the group hospital service corporation laws shall not be applicable to any

health maintenance organization granted a certificate of authority under this Act. This provision shall not apply to an insurance company or a group hospital service corporation licensed and regulated pursuant to the insurance laws or the group hospital service corporation laws of this state except with respect to its health maintenance organization's activities authorized and regulated pursuant to this Act.

[(f)]

(4) Except for Articles 21.07-6 and 21.58A, Insurance Code, the insurance laws, including the group hospital service corporation law, do not apply to physicians and providers; however, a physician or provider who conducts utilization review during the ordinary course of treatment of patients pursuant to a joint or delegated review agreement or agreements with a health maintenance organization on services rendered by the physician or provider shall not be required to obtain certification under Section 3, Article 21.58A, Insurance Code.

(h) Activities permitted under authority of Chapter 491, Acts of the 52nd Legislature, 1951, as amended, shall not be considered subject to the provisions of this Act . . . .

(i) A health maintenance organization authorized under this Act is subject to:

(1) Article 21.49-2C, Insurance Code, and is an authorized insurer for the purposes of that article;

(2) Article 21.49-8, Insurance Code; and

(3) Article 3.51-6, Section 3B, Insurance Code.

Revisor's Note

(1) Section (b), V.T.I.C. Article 20A.14, refers to Article 21.21-3, Insurance Code. The revised law omits the reference because Article 21.21-3 was repealed by Chapter 415, Acts of the 74th Legislature, Regular Session, 1995.

(2) Section (a), V.T.I.C. Article 20A.26, provides that the insurance laws and group hospital service corporation laws do not

apply to a health maintenance organization except as provided in the Texas Health Maintenance Organization Act. The revised law states that the insurance laws and group hospital service corporation laws do not apply to a health maintenance organization except as otherwise provided by "this chapter or other law" to reflect the fact that many other insurance laws and group hospital service corporation laws expressly apply to a health maintenance organization.

(3) Section (h), V.T.I.C. Article 20A.26, in part refers to the general inapplicability of Chapter 491, Acts of the 52nd Legislature, 1951 (the Insurance Code of 1951), to health maintenance organizations. The revised law omits the reference as duplicative of Section (a), V.T.I.C. Article 20A.26, revised as Subsection (c) of this section, which provides that the insurance laws are generally inapplicable to health maintenance organizations. The omitted law reads:

(h) . . . nor shall the provisions of Chapter 491, Acts of the 52nd Legislature, 1951, be applicable to organizations permitted under the authority of this Act.

Revised Law

Sec. 843.052. LAWS RELATING TO SOLICITATION OR ADVERTISING. (a) Solicitation of enrollees by a health maintenance organization or its representative or agent does not violate a law relating to solicitation or advertising by a physician or provider.

(b) The provision of factually accurate information by a health maintenance organization or its personnel to prospective enrollees regarding coverage, rates, location and hours of service, and names of affiliated institutions, physicians, and providers does not violate any law relating to solicitation or advertising by a physician or provider. The provision of that information with respect to a physician or provider may not be contrary to or in conflict with any law or ethical provision regulating the practice of a practitioner of any professional service provided through or in connection with the physician or

provider. (V.T.I.C. Art. 20A.26, Secs. (b), (d).)

Source Law

(b) Solicitation of enrollees by health maintenance organizations granted a certificate of authority, or their representatives or agents, shall not be construed to violate any provision of law relating to solicitation or advertising by providers or physicians.

(d) The provision of factually accurate information regarding coverage, rates, location and hours of service, and names of affiliated institutions, physicians, and providers by health maintenance organizations or its personnel to potential enrolled participants shall not be construed to be violative of any provision of law relating to solicitation or advertising by physicians or providers. Such information with respect to providers or physicians shall in no manner be contrary to or in conflict with any law or ethics regulating the practice of practitioners of any professional service rendered through or in connection with such providers or physicians.

Revisor's Note

Section (d), V.T.I.C. Article 20A.26, refers to "potential enrolled participants." The revised law substitutes the equivalent term "prospective enrollee" because that is the defined term used in this chapter.

Revised Law

Sec. 843.053. LAWS RELATING TO RESTRAINT OF TRADE. (a) A health maintenance organization that contracts with a health facility or enters into an independent contractual arrangement with physicians or providers practicing individually or as a group is not, because of the contract or arrangement, considered to have entered into a conspiracy in restraint of trade in violation of Sections 15.01-15.26, Business & Commerce Code.

(b) Notwithstanding any other law, a physician who contracts with one or more physicians in the process of

conducting activities that are permitted by law but that do not require a certificate of authority under this chapter is not, because of the contract, considered to have entered into a conspiracy in restraint of trade in violation of Sections 15.01-15.26, Business & Commerce Code. (V.T.I.C. Art. 20A.26, Secs. (e), (f)(3).)

Source Law

(e) Any health maintenance organization authorized under this Act which contracts with a health facility or enters into an independent contractual arrangement with physicians or providers organized on a group practice or individual practice basis shall not by virtue of any contracts or arrangements be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

[(f)]

(3) Notwithstanding any other law, any physician who conducts activities permitted by law but which do not require a certificate of authority under this Act, and in the process contracts with one or more physicians, shall not, by virtue of such contract or arrangement, be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

Revisor's Note

Sections (e) and (f)(3), V.T.I.C. Article 20A.26, refer to "Sections 15.01 through 15.34 of the Business & Commerce Code." Section 15.27, Business & Commerce Code, is reserved for expansion. Sections 15.28-15.34, Business & Commerce Code, were repealed by Chapter 519, Acts of the 68th Legislature, Regular Session, 1983. The revised law accordingly substitutes a reference to Sections 15.01-15.26, Business & Commerce Code.

Revised Law

Sec. 843.054. LAWS REQUIRING CERTIFICATE OF NEED FOR HEALTH CARE FACILITY OR SERVICE. (a) A health maintenance organization is not exempt from any statute that provides for the regulation and certification of need of health care facility construction, expansion, or other modification, or the institution of a health care service through the issuance of a certificate of need, if at the time of establishment of operation or during the course of operation of the health maintenance organization it becomes subject to the provisions of that statute.

(b) If the proposed plan of operation of a health maintenance organization includes providing a health care facility or service that makes the health maintenance organization subject to a statute described by Subsection (a), the commissioner may not issue a certificate of authority until the commissioner has received a certified copy of the certificate of need granted to the health maintenance organization by the appropriate agency. (V.T.I.C. Art. 20A.26, Sec. (g).)

Source Law

(g)(1) No health maintenance organization shall be exempt from any statute that provides for the regulation and certification of need of health care facility construction, expansion, or other modification, or the institution of a health care service through the issuance of a certificate of need, if at the time of establishment of operation or during the course of operation of the health maintenance organization it becomes subject to the provisions of that statute.

(2) If the proposed plan of operation of the health maintenance organization includes the provision of any facility and/or service that makes the health maintenance organization subject to the statute mentioned in Subdivision (1) of this subsection, the commissioner may not issue a certificate of authority until the commissioner has received a certified copy of the certificate of need granted to the health maintenance organization by the agency responsible for the issuance of the

certificate of need.

Revised Law

Sec. 843.055. LAWS RELATING TO PRACTICE OF MEDICINE. (a) This chapter does not authorize the practice of medicine as defined by state law.

(b) This chapter does not repeal, modify, or amend Section 164.051, 164.052, 164.053, 164.054, or 164.056, Occupations Code, and a health maintenance organization is not exempt from those sections. (V.T.I.C. Art. 20A.26, Sec. (c).)

Source Law

(c) Nothing in this Act shall be construed as permitting the practice of medicine as defined by the laws of this state. Nothing in this Act shall be construed to repeal, modify, or amend Section 3.08, Medical Practice Act (Article 4495b Vernon's Texas Civil Statutes), and no health maintenance organization shall be exempt from same.

Revisor's Note

Section (c), V.T.I.C. Article 20A.26, refers to Section 3.08, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). That statute was codified in 1999 as Sections 164.051, 164.052, 164.053, 164.054, and 164.056, Occupations Code, and the revised law is drafted accordingly.

Revised Law

Sec. 843.056. INAPPLICABILITY OF BANKRUPTCY LAW. By applying for and receiving a certificate of authority to engage in business in this state, a health maintenance organization agrees and admits that it is not subject to and is not eligible to proceed under the United States Bankruptcy Code. (V.T.I.C. Art. 20A.05, Sec. (e).)

Source Law

(e) By applying for and receiving a certificate of authority to do business in this state, the health maintenance

organization agrees and admits that it is not subject to the United States Bankruptcy Code and is not eligible to proceed under the United States Bankruptcy Code.

[Sections 843.057-843.070 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 843.071. CERTIFICATE OF AUTHORITY REQUIRED; USE OF "HEALTH MAINTENANCE ORGANIZATION" OR "HMO". (a) A person may not organize or operate a health maintenance organization in this state, or sell or offer to sell or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization, without obtaining a certificate of authority under this chapter.

(b) A person may not use "health maintenance organization" or "HMO" in the course of operation unless the person:

(1) complies with this chapter and Chapter 20A; and

(2) holds a certificate of authority under this chapter. (V.T.I.C. Art. 20A.03, Sec. (a) (part); Art. 20A.14, Sec. (f).)

Source Law

Art. 20A.03. (a) . . . No person shall establish or operate a health maintenance organization in this state, or sell or offer to sell or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this Act. . . .

[Art. 20A.14]

(f) Only those persons who comply with the provisions of this Act and are issued a certificate of authority by the commissioner may use the phrase "health maintenance organization" or "HMO" in the course of operation.

Revised Law

Sec. 843.072. AUTHORIZATION REQUIRED TO ACT AS HEALTH MAINTENANCE ORGANIZATION. (a) A person, including a physician or provider, may not perform any act of a health maintenance organization except in accordance with the specific authorization of this chapter or other law.

(b) A person, including a physician or provider, who performs an act of a health maintenance organization that requires a certificate of authority under this chapter without first obtaining the certificate is subject to all enforcement processes and procedures available against an unauthorized insurer under Chapter 101 and Subchapter C, Chapter 36.

(c) This section does not apply to an activity exempt from regulation under Section 843.051(e), 843.053, 843.073, or 843.318. (V.T.I.C. Art. 20A.03, Secs. (e), (f), (g).)

Source Law

(e) A person, physician, or provider may not perform any of the acts of a health maintenance organization, as defined in this Act, except as provided by and in accordance with the specific authorization of this Act or other law.

(f) A person, physician, or provider who performs any of the acts of a health maintenance organization that require a certificate of authority under this Act without having first obtained a certificate of authority from the Texas Department of Insurance is subject to all enforcement processes and procedures available against an unauthorized insurer under Articles 1.14-1 and 1.19-1, Insurance Code.

(g) Subsections (e) and (f) of this section do not apply to an activity exempt from regulation under Section 26(f) of this Act.

Revised Law

Sec. 843.073. CERTIFICATE OF AUTHORITY REQUIREMENT: APPLICABILITY TO PHYSICIANS AND PROVIDERS. (a) A person is not required to obtain a certificate of authority under this chapter

to the extent that the person is:

(1) a physician engaged in the delivery of medical care; or

(2) a provider engaged in the delivery of health care services other than medical care as part of a health maintenance organization delivery network.

(b) Except as provided by Section 843.101 or 843.318(a), a physician or provider that employs or enters into a contractual arrangement with a provider or group of providers to provide basic or limited health care services or a single health care service is subject to this chapter and Chapter 20A and is required to obtain a certificate of authority under this chapter. (V.T.I.C. Art. 20A.26, Secs. (f)(1), (2).)

Source Law

(f)(1) This Act shall not be applicable to:

(A) any physician, so long as that physician is engaged in the delivery of care that is within the definition of medical care; or

(B) any provider that is engaged in the delivery of health care services other than medical care as part of a health maintenance organization delivery network.

(2) Except as provided by Section 6(a)(3) of this Act or Subdivision (5) of this subsection, any physician or provider that employs or enters into a contractual arrangement with a provider or group of providers to furnish basic, limited, or single health care services as defined in Section 2 of this Act is subject to the provisions of this Act and shall be required to obtain a certificate of authority from the commissioner.

Revisor's Note

Sections (f)(1) and (2), V.T.I.C. Article 20A.26, state that the Texas Health Maintenance Organization Act does not apply to a physician, as long as the physician is engaged in the delivery of care that is within the definition of medical care, or to a provider that is engaged in the delivery of health care services

other than medical care as part of a health maintenance organization delivery network. The revised law clarifies this provision to reflect the clear intent of the legislature. In context, the purpose of the provision is to exempt physicians and providers providing only certain care and services from the requirement of obtaining a certificate of authority and from application of the regulatory provisions in the Texas Health Maintenance Organization Act that apply to a health maintenance organization. The blanket statement in Section (f)(1) that the act does not apply to such a physician or provider, if read literally, does not reflect the intent of the legislature. Large portions of the act, such as the provisions revised in Subchapter I (concerning relations between a health maintenance organization and physicians and providers) and in Subchapter K (concerning relations between an enrollee and a physician or provider) explicitly apply to physicians and providers.

Revised Law

Sec. 843.074. CERTIFICATE OF AUTHORITY REQUIREMENT: APPLICABILITY TO MEDICAL SCHOOL AND MEDICAL AND DENTAL UNIT. A medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, is not required to obtain a certificate of authority under this chapter to the extent that the medical school or medical and dental unit contracts to deliver medical care within a health maintenance organization delivery network. This chapter is otherwise applicable to the medical school or medical and dental unit. (V.T.I.C. Art. 20A.26, Sec. (j).)

Source Law

(j) This Act applies to a medical school and medical and dental unit as defined by Section 61.003, 61.501, or 74.601, Education Code, except when such a medical school and medical and dental unit contracts to deliver medical care within a health maintenance organization delivery network.

Revisor's Note

Section (j), V.T.I.C. Article 20A.26, states that the Texas Health Maintenance Organization Act applies to a medical school or medical and dental unit except when the medical school or medical and dental unit contracts to deliver medical care within a health maintenance organization delivery network. The revised law clarifies this provision to reflect the clear intent of the legislature. In context, the purpose of the provision is to exempt a medical school or medical and dental unit in the described circumstance from the requirement of obtaining a certificate of authority and from application of the regulatory provisions in the Texas Health Maintenance Organization Act that apply to a health maintenance organization. The blanket statement in Section (j) that a medical school and medical and dental unit are exempted from the act when contracting to deliver medical care within a health maintenance organization delivery network, if read literally, does not reflect the intent of the legislature. A medical school or medical and dental unit that contracts to provide medical care within a health maintenance organization delivery network is a physician as defined by Section 843.002, and consequently the provisions of the act that explicitly apply to a physician will apply to the medical school or medical and dental unit.

Revised Law

Sec. 843.075. CERTIFICATE OF AUTHORITY FOR SINGLE HEALTH CARE SERVICE PLAN. The commissioner may issue a certificate of authority to a health maintenance organization organized and operated solely to provide a single health care service plan. (V.T.I.C. Art. 20A.03, Sec. (c) (part).)

Source Law

(c) Notwithstanding any other law of this state or provision of this Act, a health maintenance organization may be organized, established, operated, and issued a certificate of authority by the commissioner of insurance for the sole purpose of providing a single health care service plan. . . .

Revised Law

Sec. 843.076. APPLICATION. (a) Any person may apply to the commissioner for and obtain a certificate of authority to organize and operate a health maintenance organization.

(b) An application for a certificate of authority must:

(1) be on a form prescribed by rules adopted by the commissioner; and

(2) be verified by the applicant or an officer or other authorized representative of the applicant. (V.T.I.C. Art. 20A.03, Sec. (a) (part); Art. 20A.04, Sec. (a) (part).)

Source Law

Art. 20A.03. (a) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this Act. . . .

Art. 20A.04. (a) Each application for a certificate of authority shall be on a form prescribed by rule of the commissioner and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and . . . .

Revised Law

Sec. 843.077. ELIGIBILITY OF FOREIGN CORPORATION. A foreign corporation may qualify for a certificate of authority under this chapter, including a certificate of authority for a single health care service plan, subject to the corporation's:

(1) registration to engage in business in this state as a foreign corporation under the Texas Business Corporation Act; and

(2) compliance with this chapter and other applicable state laws. (V.T.I.C. Art. 20A.03, Secs. (a) (part), (c) (part).)

Source Law

(a) . . . A foreign corporation may qualify under this Act, subject to its registration to do business in this state as a foreign corporation under the Texas Business Corporation Act and compliance with all provisions of this Act and other applicable Texas statutes.

(c) . . . [a health maintenance organization may be organized, established, operated, and issued a certificate of authority by the commissioner of insurance for the sole purpose of providing a single health care service plan.] A foreign corporation may qualify under this Act, subject to its regulation to do business in the state as a foreign corporation under the Texas Business Corporation Act and in compliance with this Act and other applicable state laws.

Revised Law

Sec. 843.078. CONTENTS OF APPLICATION. (a) An application for a certificate of authority must include:

(1) a copy of the applicant's basic organizational document, if any, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents;

(2) all amendments to the applicant's basic organizational document; and

(3) a copy of the bylaws, rules and regulations, or similar documents, if any, regulating the conduct of the applicant's internal affairs.

(b) An application for a certificate of authority must include a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including:

(1) each member of the board of directors, board of trustees, executive committee, or other governing body or committee;

(2) the principal officer, if the applicant is a corporation; and

(3) each partner or member, if the applicant is a partnership or association.

(c) An application for a certificate of authority must include a copy of any independent contract or other contract made or to be made between the applicant and any physician, provider, or person listed under Subsection (b).

(d) An application for a certificate of authority must include:

(1) a copy of the form of evidence of coverage to be issued to an enrollee;

(2) a copy of the form of the group contract, if any, to be issued to an employer, union, trustee, or other organization; and

(3) a written description of health care plan terms made available to any current or prospective group contract holder or current or prospective enrollee of the health maintenance organization in accordance with Section 843.201.

(e) An application for a certificate of authority must include a financial statement that is current on the date of the application and that includes:

(1) the sources and application of funds;

(2) projected financial statements during the initial period of operations;

(3) a balance sheet reflecting the condition of the applicant on the date operations are expected to start;

(4) a statement of revenue and expenses with expected member months; and

(5) a cash flow statement that states any capital expenditures, purchase and sale of investments, and deposits with the state.

(f) An application for a certificate of authority must include the schedule of charges to be used during the first 12 months of operation.

(g) An application for a certificate of authority must

include a statement acknowledging that lawful process in a legal action or proceeding against the health maintenance organization on a cause of action arising in this state is valid if served in accordance with Chapter 804.

(h) An application for a certificate of authority must include a statement reasonably describing the service area or areas to be served by the applicant.

(i) An application for a certificate of authority must include a description of the complaint procedures the applicant will use.

(j) An application for a certificate of authority must include a description of the procedures and programs to be implemented by the applicant to meet the quality of health care requirements of this chapter and Chapter 20A.

(k) An application for a certificate of authority must include network configuration information, including an explanation of the adequacy of the physician and other provider network configuration. The information provided must:

(1) include the names of physicians, specialty physicians, and other providers by zip code or zip code map; and

(2) indicate whether each physician or other provider is accepting new patients from the health maintenance organization.

(l) An application for a certificate of authority must include a written description of the types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, or capitated risk arrangements, made or to be made with physicians and providers in exchange for the provision of or an arrangement to provide health care services to enrollees, including any financial incentives for physicians and providers. The compensation arrangements are confidential and are not subject to the public information law, Chapter 552, Government Code.

(m) An application for a certificate of authority must include documentation demonstrating that the applicant will comply with Article 20A.09Z.

(n) An application for a certificate of authority must include any other information that the commissioner requires to make the determinations required by this chapter and Chapter 20A. (V.T.I.C. Art. 20A.04, Sec. (a) (part).)

Source Law

Art. 20A.04. (a) Each application for a certificate of authority . . . shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(2) a copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officer in the case of a corporation, and the partnership or members in the case of a partnership or association;

(4) a copy of any independent or other contract made or to be made between any provider, physician, or persons listed in Paragraph (3) hereof and the applicant;

(5) a copy of the form of evidence of coverage to be issued to the enrollee;

(6) a copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(7) a current financial statement that includes:

(A) the sources and application of funds;

(B) projected financial statements during the initial period of operations;

(C) a balance sheet beginning as of the date of

the expected start of operations;

(D) a statement of revenue and expenses with expected member months; and

(E) a cash flow statement that states any capital expenditures, purchase and sale of investments, and deposits with the state;

(8) the schedule of charges to be used during the first 12 months of operation;

(9) a statement acknowledging that all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state is valid if served in accordance with Article 1.36, Insurance Code;

(10) a statement reasonably describing the geographic area or areas to be served;

(11) a description of the complaint procedures to be utilized;

(12) a description of the procedures and programs to be implemented to meet the quality of health care requirements set forth herein;

. . .

(13) [as added Acts 75th Leg., R.S., Ch. 1026] a written description of health care plan terms and conditions made available to any current or prospective group contract holder or current or prospective enrollee of the health maintenance organization pursuant to the requirements of Section 11 of this Act;

(14) network configuration information, including an explanation of the adequacy of the physician and other provider network configuration; the information provided must include the names of physicians, specialty physicians, and other providers by zip code or zip code map and indicate whether each physician or other provider is accepting new patients from the health maintenance organization;

(15) a written description of the types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, or

capitated risk arrangements, made or to be made with physicians and providers in exchange for the provision of or an arrangement to provide health care services to enrollees, including any financial incentives for physicians and providers; such compensation arrangements shall be confidential and not subject to the open records law, Chapter 552, Government Code;

(16) documentation demonstrating that the health maintenance organization will [pay for emergency care services performed by non-network physicians or providers at the negotiated or usual and customary rate and that the health care plan contains, without regard to whether the physician or provider furnishing the services has a contractual or other arrangement with the entity to provide items or services to covered individuals, the following provisions and procedures for coverage of emergency care services:

(A) any medical screening examination or other evaluation required by state or federal law that is necessary to determine whether an emergency medical condition exists will be provided to covered enrollees in a hospital emergency facility or comparable facility;

(B) necessary emergency care services will be provided to covered enrollees, including the treatment and stabilization of an emergency medical condition; and

(C) services originated in a hospital emergency facility or comparable facility following treatment or stabilization of an emergency medical condition will be provided to covered enrollees as approved by the health maintenance organization, provided that the health maintenance organization is required to approve or deny coverage of poststabilization care as requested by a treating physician or provider within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but in no case to exceed one hour from the time of the request; the health maintenance organization must respond to inquiries from the treating physician or provider in compliance with this provision in the health maintenance organization's plan; and]

(17) such other information as the commissioner may require to make the determinations required by this Act.

Revisor's Note

(1) Section (a)(10), V.T.I.C. Article 20A.04, refers to the "geographic area" of a health maintenance organization. For consistent use of terminology throughout this chapter, the revised law substitutes "service area."

(2) Section (a)(13), V.T.I.C. Article 20A.04, as added by Chapter 1026, Acts of the 75th Legislature, Regular Session, 1997, refers to "terms and conditions." Throughout this chapter, the revised law omits "conditions" in this context as unnecessary because it is included within the meaning of "terms."

(3) Section (a)(15), V.T.I.C. Article 20A.04, refers to "the open records law, Chapter 552, Government Code." Section 1, Chapter 1035, Acts of the 74th Legislature, Regular Session, 1995, changed the heading of Chapter 552, Government Code, from "Open Records" to "Public Information." The revised law is drafted accordingly throughout this chapter.

Revised Law

Sec. 843.079. CONTENTS OF APPLICATION: LIMITED HEALTH CARE SERVICE PLAN. In addition to the items required under Section 843.078, an application for a certificate of authority for a limited health care service plan must include a specific description of the health care services to be provided by the applicant. (V.T.I.C. Art. 20A.04, Sec. (a) (part).)

Source Law

(a) Each application for a certificate of authority . . . shall set forth or be accompanied by the following:

. . .

(13) [as added Acts 75th Leg., R.S., Ch. 1023] for a limited health care service plan, a specific description of the health care services to be provided; and

. . .

Revised Law

Sec. 843.080. MODIFICATION OR AMENDMENT OF APPLICATION INFORMATION. (a) The commissioner may adopt reasonable rules that the commissioner considers necessary for the proper administration of this chapter to require a health maintenance organization, after receiving its certificate of authority, to submit modifications or amendments to the operations or documents described in Sections 843.078 and 843.079 to the commissioner, for the commissioner's approval or only to provide information, before implementing the modification or amendment or to require the health maintenance organization to indicate the modifications to the commissioner at the time of the next site visit or examination.

(b) As soon as reasonably possible after any filing for approval required under this section is made, the commissioner shall approve or disapprove the filing in writing. If, before the 31st day after the date a modification or amendment for which the commissioner's approval is required is filed, the commissioner does not disapprove the modification or amendment, it is considered approved. The commissioner may delay action as necessary for proper consideration for not more than an additional 30 days. (V.T.I.C. Art. 20A.04, Sec. (b).)

Source Law

(b) The commissioner may promulgate such reasonable rules and regulations as the commissioner deems necessary to the proper administration of this Act to require a health maintenance organization, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents described in Subsection (a) of this section to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment or to require the health maintenance organization to indicate the modifications to the commissioner at the time of the next site visit or examination. As soon as reasonably possible after any filing for approval required by this subsection is

made, the commissioner shall in writing approve or disapprove it. Any modification or amendment for which the commissioner's approval is required shall be considered approved unless disapproved within 30 days; provided that the commissioner may postpone the action for such further time, not exceeding an additional 30 days, as necessary for proper consideration.

Revised Law

Sec. 843.081. DEADLINE FOR ACTION ON APPLICATION. (a) After receipt by the department of a completed application for a certificate of authority, the department shall provide notice and an opportunity for a hearing regarding the matter. Not later than the 75th day after the date the department receives the completed application:

(1) the department shall schedule the matter for a hearing; or

(2) the commissioner shall issue or deny a certificate of authority to the person filing the application.

(b) Notwithstanding Subsection (a), the commissioner may grant to an applicant a delay of final action on the application. (V.T.I.C. Art. 20A.05, Sec. (a) (part).)

Source Law

Art. 20A.05. (a) The commissioner shall, after notice and hearing, issue or deny a certificate of authority to any person filing an application pursuant to Section 4 of this Act, within 75 days of the receipt of a completed application; provided, however, that if notice and the opportunity for a hearing is involved in a particular issuance or denial, then the matter must be scheduled for a hearing within 75 days of the receipt of a completed application. In any event, the commissioner may grant a delay of final action on the application to an applicant. . . .

Revised Law

Sec. 843.082. REQUIREMENTS FOR APPROVAL OF APPLICATION. The commissioner shall issue a certificate of authority on payment of

the application fee prescribed by Section 843.154(c) if the commissioner is satisfied that:

(1) with respect to health care services to be provided, the applicant:

(A) has demonstrated the willingness and potential ability to ensure that the health care services will be provided in a manner to:

(i) ensure both availability and accessibility of adequate personnel and facilities; and

(ii) enhance availability, accessibility, quality of care, and continuity of services;

(B) has arrangements, established in accordance with rules adopted by the commissioner, for a continuing quality of health care assurance program concerning health care processes and outcomes; and

(C) has a procedure, that is in accordance with rules adopted by the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of operation, the pattern of utilization of services, and availability and accessibility of services;

(2) the person responsible for the conduct of the affairs of the applicant is competent, is trustworthy, and has a good reputation;

(3) the health care plan, limited health care service plan, or single health care service plan is an appropriate mechanism through which the health maintenance organization will effectively provide or arrange for the provision of basic health care services, limited health care services, or a single health care service on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments;

(4) the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees, after considering:

(A) the financial soundness of the health care plan's arrangement for health care services and the schedule of

charges used in connection with the arrangement;

(B) the adequacy of working capital;

(C) any agreement with an insurer, a group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or providing for automatic applicability of an alternative coverage in the event the plan is discontinued;

(D) any agreement that provides for the provision of health care services; and

(E) any deposit of cash or securities submitted in accordance with Section 843.405 as a guarantee that the obligations will be performed; and

(5) the proposed plan of operation, as shown by the information submitted under Section 843.078 and, if applicable, Section 843.079, or by independent investigation, does not violate state law. (V.T.I.C. Art. 20A.05, Sec. (a) (part).)

Source Law

(a) . . . Issuance of the certificate of authority shall be granted upon payment of the application fee prescribed in Section 32 of this Act if the commissioner is satisfied that:

(1) the applicant for a certificate of authority, with respect to health care services to be furnished:

(A) has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities, in a manner enhancing availability, accessibility, quality of care, and continuity of services;

(B) has arrangements, established in accordance with rules and regulations promulgated by the commissioner, for an ongoing quality of health care assurance program concerning health care processes and outcome; and

(C) has a procedure, established by rules and regulations of the commissioner to develop, compile, evaluate,

and report statistics relating to the cost of operation, the pattern of utilization of its services, and availability and accessibility of its services;

(2) the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(3) the health care plan, limited health care service plan, or single health care service plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services, limited health care services or single health care service on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for co-payment;

(4) the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner shall consider:

(A) the financial soundness of the health care plan's arrangement for health care services and a schedule of charges used in connection therewith;

(B) the adequacy of working capital;

(C) any agreement with an insurer, group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of plan;

(D) any agreement which provides for the provision of health care services; and

(E) any deposit of cash or securities submitted in accordance with Section 13 of this Act as a guarantee that the obligations will be duly performed; and

(5) nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 4 of this Act, or by independent investigation, is contrary to Texas law.

Revised Law

Sec. 843.083. DENIAL OF CERTIFICATE OF AUTHORITY. (a) If the commissioner certifies that the health maintenance organization's proposed plan of operation does not meet the requirements of Section 843.082, the commissioner may not issue a certificate of authority.

(b) The commissioner shall notify the applicant that the plan is deficient and specify the deficiencies. (V.T.I.C. Art. 20A.05, Sec. (b).)

Source Law

(b) If the commissioner shall certify that the health maintenance organization's proposed plan of operation does not meet the requirements of this section, the commissioner shall not issue the certificate of authority. The commissioner shall notify the applicant that it is deficient and shall specify in what respects it is deficient.

Revised Law

Sec. 843.084. DURATION OF CERTIFICATE OF AUTHORITY. A certificate of authority continues in effect:

(1) while the certificate holder meets the requirements of this chapter and Chapter 20A; or

(2) until the commissioner suspends or revokes the certificate or the commissioner terminates the certificate at the request of the certificate holder. (V.T.I.C. Art. 20A.05, Sec. (c) (part).)

Source Law

(c) A certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. . . .

Revised Law

Sec. 843.085. CHANGE IN CONTROL: COMMISSIONER APPROVAL. Any change in control, as defined by Chapter 823, of a health maintenance organization is subject to the approval of the commissioner. (V.T.I.C. Art. 20A.05, Sec. (c) (part).)

Source Law

(c) . . . Any change in control, as defined by Article 21.49-1 of the Insurance Code of Texas, of the health maintenance organization, shall be subject to the approval of the commissioner.

Revisor's Note
(End of Subchapter)

Section (b), V.T.I.C. Article 20A.03, contains special provisions for the treatment of health maintenance organizations that were in existence on the effective date of the Texas Health Maintenance Organization Act, which was enacted in 1975 by the 64th Legislature and which took effect December 1, 1975. The revised law omits the provisions as executed law. The omitted law reads:

(b) Within 90 days of the effective date of this Act, every existing health maintenance organization shall submit an application for a certificate of authority. Each such applicant may continue to operate until the commissioner acts on the application. In the event that an application is denied, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.

[Sections 843.086-843.100 reserved for expansion]

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF HEALTH MAINTENANCE ORGANIZATIONS

Revised Law

Sec. 843.101. PROVIDING OR ARRANGING FOR CARE. (a) A health maintenance organization may provide or arrange for medical care services only through:

(1) other health maintenance organizations; or

(2) physicians or groups of physicians who have independent contracts with the health maintenance organizations.

(b) A health maintenance organization may provide or arrange for health care services only through:

(1) other health maintenance organizations;

(2) providers or groups of providers who are under contract with or are employed by the health maintenance organization; or

(3) additional health maintenance organizations or physicians or providers who have contracted for health care services with:

(A) the other health maintenance organizations;

(B) physicians with whom the health maintenance organization has contracted; or

(C) providers who are under contract with or are employed by the health maintenance organization.

(c) Notwithstanding Subsections (a) and (b), a health maintenance organization may provide or authorize the following in a manner approved by the commissioner:

(1) emergency care;

(2) services by referral; and

(3) services provided outside the service area.

(d) A health maintenance organization may not employ or contract with other health maintenance organizations or physicians or providers in a manner that is prohibited by a law of this state under which those health maintenance organizations or physicians or providers are licensed or otherwise authorized. (V.T.I.C. Art. 20A.06, Sec. (a) (part).)