

Source Law

(a) . . . An application for each policy must be signed by the applicant, unless the applicant is a minor, in which event the application may be signed by a parent or guardian. . . . If the policy is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the contestable period, the application shall so state in not less than ten (10) point type in language approved by the State Board of Insurance. All statements in the application shall in the absence of fraud be regarded as representations and not warranties. . . .

Revised Law

Sec. 884.354. LIFE INSURANCE POLICY FORMS; INCONTESTABILITY. (a) Each life insurance policy issued by a stipulated premium company must state on the front page:

- (1) the amount of death benefit to be paid; and
- (2) the circumstances or conditions under which the benefit is to be paid.

(b) Each condition of a life insurance policy must be stated in the policy.

(c) A life insurance policy must provide that a policy in force for two years becomes incontestable, except for nonpayment of premiums, on the second anniversary of the date of issuance, if the insured does not die before that date.

(d) A life insurance policy must provide that if the age of the insured is misstated, the amount of insurance is the amount that the premium paid would have purchased if the age had been stated correctly, based on premium rates in effect when the insured dies. (V.T.I.C. Art. 22.13, Sec. 1(a) (part).)

Source Law

(a) Every policy of life insurance issued by a stipulated premium company shall state on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid. . . . All conditions of the policy must be stated therein. Each policy must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two (2) years from date of issue, except for nonpayment of

premiums. It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on premium rates in force at the time of the death of the insured. . . .

Revised Law

Sec. 884.355. DESIGNATION OF BENEFICIARIES. The designation of a beneficiary under a life insurance policy issued by a stipulated premium company must comply with Subchapter B, Chapter 1103, and Subchapter A, Chapter 1104. (V.T.I.C. Art. 22.13, Sec. 4.)

Source Law

Sec. 4. The designation of all beneficiaries under policies issued by stipulated premium companies shall comply with the provisions of Art. 3.49-1 and Art. 3.49-2 of Chapter 3 of this Code.

Revised Law

Sec. 884.356. LIFE INSURANCE BENEFIT REDUCTIONS OR INCREASES. (a) A life insurance policy may provide for reduced benefits if the insured:

(1) dies or is injured while engaged in:

(A) military, naval, or aerial service or aerial flight during peace or war; or

(B) a hazardous occupation specified in the policy; or

(2) dies by the insured's own hand, regardless of whether the insured is sane or insane.

(b) The front page of a life insurance policy must call attention to any reduction or exclusion of benefits provided by the policy. The circumstances or conditions under which the reduction or exclusion applies must be stated plainly in the policy.

(c) If a policy that provides natural death benefits contains a provision for reducing the greatest death benefit provided by the policy for a specified insured for a reason other than a reason specified by Subsection (a):

(1) the reduced death benefit for the insured must at all times when the reduction is in effect equal or exceed 120 percent of the total premium paid on that policy by the insured; and

(2) the reduction must end before the fifth anniversary of the date the policy is issued.

(d) Subsection (c) does not apply to a life insurance policy on which the reduction of the death benefit does not apply at the time of the death of the insured.

(e) If a life insurance policy provides for an increase of the initial amount of the death benefit for a specified insured one or more times during the first five years of the policy, the amount of death benefit for the insured must at all times during the period of the increasing benefit equal at least 120 percent of the premiums paid on that policy by the insured during the period of the increase.

(f) Subsection (e) does not apply to a life insurance policy that has been in force for more than five years from the date the policy is issued.

(g) This section does not apply to a family group life insurance policy described by Section 884.451(b). (V.T.I.C. Art. 22.13, Sec. 5.)

Source Law

Sec. 5. A. Any policy may provide for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service or aerial flight in time of peace or war; or in case of death of the insured by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided in any life policy, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy.

B. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by

Subparagraph A of Section 5 of this Article 22.13) shall not exceed five years from issue date. This Subparagraph A of Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

C. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Subparagraph C of this Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

D. The provisions of Section 5 of this Article 22.13 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 1(b) of Article 22.11 of this Insurance Code.

E. The provisions of this Section 5 of this Article 22.13 shall not apply to health and accident policies.

Revisor's Note

(1) Subsection B, Section 5, V.T.I.C. Article 22.13, provides an exception to "[t]his Subparagraph A of Section 5 of this Article 22.13." It is clear that the exception applies to Subsection B, rather than Subsection A, and the revised law is drafted accordingly.

(2) Subsection E, Section 5, V.T.I.C. Article 22.13, provides that Section 5 does not apply to health and accident policies. The revised law omits that provision because

the section by its own terms applies only to life insurance policies.

Revised Law

Sec. 884.357. FORM APPROVAL. The approval of a form of an insurance policy issued by a stipulated premium company is governed by Article 3.42. (V.T.I.C. Art. 22.13, Secs. 1(c), 2(c).)

Source Law

[Sec. 1]

(c) The approval of life policy forms shall be made in accordance with the provisions of Article 3.42 of Chapter 3 of this Code.

[Sec. 2]

(c) The approval of health, accident, sickness and hospitalization policy forms shall be made in accordance with the provisions of Article 3.42 of Chapter 3 of this Code.

[Sections 884.358-884.400 reserved for expansion]

SUBCHAPTER I. AUTHORITY TO ISSUE OTHER COVERAGE

Revised Law

Sec. 884.401. AUTHORITY CUMULATIVE. The authority provided by this subchapter is in addition to the authority provided by this chapter for the issuance of other insurance coverage. (V.T.I.C. Art. 22.23A, Sec. 1 (part).)

Source Law

Art. 22.23A

Sec. 1. In addition to the types of insurance coverages otherwise authorized in this chapter for issuance by a stipulated premium company,

Revised Law

Sec. 884.402. ADDITIONAL COVERAGE. A stipulated premium company that, at the time it begins to issue coverages under this subchapter, possesses the amounts of capital and unencumbered surplus equal to or greater than the corresponding amounts required for organization of a life and health company under Sections 841.052, 841.054, 841.204, 841.205, 841.301, and 841.302 may, subject to Section 884.403:

(1) issue any kind of life insurance coverage authorized by Chapter 3 or Title 7;

(2) issue any kind of health or accident insurance coverage authorized by Chapter 3; or

(3) issue life insurance coverage through policies without cash surrender values or nonforfeiture values and that exceed \$10,000 on one life. (V.T.I.C. Art. 22.23A, Sec. 1 (part).)

Source Law

Sec. 1. . . . each stipulated premium company possessing at the time of commencement of writing coverages under this article, the amount of, or in excess of, the capital and unencumbered surplus required for organization of a life and health company under the provisions of Article 3.02 of this code, may:

(a) issue any type of life, health, or accident coverages authorized by Chapter 3 of this code, . . . ; and

(b) issue life insurance contracts without cash surrender values or nonforfeiture values and which are in excess of \$10,000 on any one life,

Revisor's Note

Section 1, V.T.I.C. Article 22.23A, refers to Article 3.02 and Chapter 3 of the Insurance Code. The pertinent provisions of Article 3.02 are revised as Sections 841.054, 841.204, 841.205, 841.301, and 841.302 of this code. Some of the provisions of Chapter 3 relating to life insurance are revised as Title 7 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 884.403. POLICY REQUIREMENTS. (a) A policy issued under Section 884.402(1) or (2) must be reserved and must comply with the law, including rules, applicable to a policy issued by a company authorized to engage in or engaging in the business of insurance under Chapter 841.

(b) A policy of life insurance issued under Section 884.402(3):

(1) must be reserved in accordance with a reserve table adopted by the department as appropriate for that type of policy;

(2) must contain:

(A) on its first page, a notice that the policy does not provide cash surrender values or other paid up

nonforfeiture benefits or loan values; and

(B) provisions for a grace period for the payment of each premium after the first payment during which the policy remains in force; and

(3) may not be approved until the commissioner has adopted the standard of valuation, including an appropriate mortality table and interest rate. (V.T.I.C. Art. 22.23A, Secs. 1(a) (part), (b) (part).)

Source Law

Sec. 1. . . .

(a) [issue any type of life, health, or accident coverages authorized by Chapter 3 of this code,] provided that each policy so issued shall be reserved under the provisions of Chapter 3, and each such policy shall also comply with all other provisions of law and lawful regulations applicable to policies issued by companies licensed or doing business under the provisions of Chapter 3; and

(b) [issue life insurance contracts without cash surrender values or nonforfeiture values and which are in excess of \$10,000 on any one life,] provided that (1) each policy so issued shall be reserved and reserves shall be maintained on such life policies in accordance with any reserve table adopted by the State Board of Insurance as appropriate for this type of policy; (2) no policy form shall be approved until the standard of valuation, including an appropriate mortality table and interest rate, has been adopted by the State Board of Insurance; (3) each policy so issued shall contain a notice on its first page that the policy does not provide cash surrender values, and other paid up nonforfeiture benefits or loan values; and (4) the policy contain provisions for a grace period for the payment of every premium after the first, during which grace period the policy shall remain in force.

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 22.23A, refers to Chapter 3 of the Insurance Code. The pertinent portions of Chapter 3,

relating to authorization of domestic insurance companies subject to appropriate reserve requirements, are revised in Chapter 841. The revised law is drafted accordingly.

(2) Section 1(a), V.T.I.C. Article 22.23A, refers to "regulations" applicable to life, health, or accident policies. The revised law substitutes "rules" for "regulations" 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. 884.404. CAPITAL AND SURPLUS REQUIREMENTS. (a) A stipulated premium company that issues any insurance coverage under this subchapter shall maintain at all times the capital and unencumbered surplus required when the stipulated premium company began writing the coverage.

(b) A stipulated premium company that does not comply with this section is considered to be impaired unless it reinsures all insurance coverages written under this subchapter with a company that:

(1) is authorized to engage in the business of insurance in this state under this chapter or Chapter 841 or 882 or is 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, as appropriate; and

(2) complies with the requirements prescribed by this subchapter. (V.T.I.C. Art. 22.23A, Sec. 2.)

Source Law

Sec. 2. Each stipulated premium company issuing any insurance coverage authorized by Section 1 of this article shall at all times thereafter maintain the capital and unencumbered surplus as was required at the time such stipulated premium company commenced writing coverages under this article. If the stipulated premium company fails to comply with this provision, it shall be deemed and considered as impaired unless it reinsures all insurance coverages written under this article with a company licensed to do business in Texas under the provisions of

Chapter 3, Chapter 11, or Chapter 22, provided such assuming company meets all the requirements of this article.

Revisor's Note

Section 2, V.T.I.C. Article 22.23A, refers to Chapter 3 and Chapter 11 of the Insurance Code. The pertinent portions of Chapter 3, relating to authorization of entities that may provide appropriate reinsurance, are revised in Chapters 841 and 982. Chapter 11 is revised as Chapter 882 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 884.405. AGENT; LICENSE. (a) An agent may not solicit or write any coverage authorized by this subchapter unless the agent:

(1) holds a license issued under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code); and

(2) is appointed by the stipulated premium company for which the agent is soliciting and writing coverage under this subchapter.

(b) The commissioner may issue under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), a license for an agent to solicit and write any coverage authorized by this subchapter for a stipulated premium company. Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), applies to the stipulated premium company as if the company were a legal reserve life insurance company. (V.T.I.C. Art. 22.23A, Secs. 3, 4.)

Source Law

Sec. 3. Notwithstanding any other provision of this code to the contrary, the State Board of Insurance is hereby authorized to license agents under Chapter 213, Acts of the 54th Legislature, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), to solicit and write any coverage authorized by this article on behalf of stipulated premium companies. Wherever in Chapter 213, Acts of the 54th Legislature, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), the terms "legal reserve life insurance company," "legal reserve company," "insurance carrier,"

or "insurer" are used they shall include stipulated premium companies for the limited purposes of issuing coverage under this article.

Sec. 4. No agent shall solicit or write any coverage authorized by this article unless such agent holds a license under Chapter 213, Acts of the 54th Legislature, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), and is appointed by the company for which the agent is soliciting and writing coverage under this article.

Revised Law

Sec. 884.406. ANNUAL STATEMENT. A stipulated premium company that issues or maintains in force policies under this subchapter shall file the annual statement required by Section 884.256 not later than March 1 of each year. (V.T.I.C. Art. 22.23A, Sec. 5.)

Source Law

Sec. 5. Any stipulated premium company issuing coverages provided in this article or maintaining policies in force that were issued under this article shall file its annual statement on or before March 1 of each calendar year.

Revised Law

Sec. 884.407. RELATIONSHIP OF SUBCHAPTER TO OTHER PROVISIONS OF CHAPTER. (a) Section 884.305 and Subchapter J do not apply to a policy issued under this subchapter.

(b) The provisions of Sections 884.309 and 884.351 relating to the adjustment of premiums do not apply to a life insurance policy issued under this subchapter.

(c) The department may not consider losses sustained by a stipulated premium company on a policy issued under this subchapter when applying Section 884.206 or 884.308 to the company's life insurance policies not issued under this subchapter. (V.T.I.C. Art. 22.23A, Sec. 7.)

Source Law

Sec. 7. The readjustment of premium provisions contained in Section 3, Article 22.13, of this code shall not be applicable to life policies issued under this article. The State Board of Insurance shall not take into account losses sustained by a stipulated

premium company on policies issued under this article in applying the provisions of Section 2, Article 22.13, of this code to stipulated premium companies for its life insurance business not issued under the provisions of this article. The provisions of Article 22.11 of this code shall not apply to policies written pursuant to this article.

Revised Law

Sec. 884.408. IMPLEMENTATION OF SUBCHAPTER. The commissioner shall adopt reasonable rules to implement this subchapter, including:

- (1) rules adopting mortality and reserving tables required by Sections 884.403(b)(1) and (3); and
- (2) reasonable and necessary rules for the content, form, and style of the notice and terms of the grace period required under Section 884.403(b)(2). (V.T.I.C. Art. 22.23A, Sec. 8.)

Source Law

Sec. 8. The State Board of Insurance shall adopt reasonable rules to implement this article, including but not limited to adoption of the mortality and reserving tables provided in Subsections (b)(1) and (b)(2) of Section 1 of this article and adoption of reasonable and necessary rules relating to the content, form, and style of the notice provisions under Subsection (b)(3) and terms of the grace period required under Subsection (b)(4), Section 1.

Revisor's Note

Section 8, V.T.I.C. Article 22.23A, refers to "including but not limited to." "[B]ut not limited to" is omitted 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.

Revisor's Note

(End of Subchapter)

Section 6, V.T.I.C. Article 22.23A,

requires the payment of premium taxes "in like manner as a company chartered and doing business under the provisions of Chapter 3 of this code." The revised law omits Section 6 for the reason stated in Revisor's Note (2) to Section 884.002. The omitted law reads:

Sec. 6. Any stipulated premium company issuing coverages provided in this article or maintaining policies in force that were issued under this article shall pay premium taxes on such business in like manner as a company chartered and doing business under the provisions of Chapter 3 of this code.

[Sections 884.409-884.450 reserved for expansion]

SUBCHAPTER J. RESERVES

Revised Law

Sec. 884.451. RESERVES ON INDIVIDUAL AND GROUP LIFE INSURANCE POLICIES. (a) A stipulated premium company shall maintain reserves on each of its individual life insurance policies in accordance with the reserve standard adopted by the company and approved by the department. The standard must provide reserves that in the aggregate are equal to at least the reserve amounts computed using the 1956 Chamberlain Reserve Table with interest that does not exceed 3-1/2 percent per year. A stipulated premium company may use the 1956 Chamberlain Reserve Table.

(b) A stipulated premium company shall maintain reserves on family group life insurance policies on which a group premium is charged and under which the amount of a benefit depends on the sequence of deaths. The amount of the reserves must be equal to the reserves that would be required under Subsection (a) on individual life insurance policies on the lives of:

(1) the two oldest living members of the family group, with the amount of insurance for those two members determined assuming that the elder of the two will die first; or

(2) the living members of the family group, with the amount of insurance for each member of the family group determined assuming that each member will die first.

(c) A stipulated premium company may select the method to be used to compute the amount of the reserves under Subsection (b). (V.T.I.C. Art. 22.11, Sec. 1.)

Source Law

Art. 22.11

Sec. 1. (a) Each stipulated premium individual life policy shall be reserved and

each stipulated premium company shall maintain reserves on such individual life policies in accordance with any reserve standards adopted by the company and approved by the State Board of Insurance, provided such reserves are at least equal, in the aggregate, to reserves based on the 1956 Chamberlain Reserve Table with interest not to exceed three and one-half per cent (3 1/2%) per annum. Any stipulated premium company is hereby authorized to use the 1956 Chamberlain Reserve Table.

(b) Family group life policies, upon which a group premium is charged and under which there is a varying benefit dependent upon the sequence of deaths, shall be reserved and each stipulated premium company shall, at the election of the stipulated premium company, maintain reserves on such family group policies in either one of the following methods of calculation: (1) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Section on individual life policies on the lives of the then living two (2) oldest members of each such family group; the amount of insurance for such two (2) members shall be based on the assumption that the elder of such members will be the first to die; or (2) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Section on individual life policies on the lives of the then living members of such family group; the amount of insurance for each such member of the family group shall be based on the assumption that each such member will be the first to die. Each such stipulated premium company shall be permitted to select the method it shall use to calculate such reserves.

Revised Law

Sec. 884.452. RESERVES ON ACCIDENT AND HEALTH INSURANCE POLICIES. A stipulated premium company shall maintain reserves on each accident and health insurance policy issued by the company in the manner required of a company authorized to issue that type of policy under Chapter 841. (V.T.I.C. Art. 22.11, Sec. 2

(part).)

Source Law

Sec. 2. All health, accident and sickness policies shall be reserved by the stipulated premium company and each stipulated premium company shall maintain reserves on such policies in the same manner as is required by the companies writing such coverage under the provisions of Chapter 3 of the Insurance Code of Texas

Revisor's Note

(1) Section 2, V.T.I.C. Article 22.11, refers to the reservation of a health, accident and sickness insurance policy as required under "Chapter 3 of the Insurance Code of Texas." The provisions of Chapter 3, relating to domestic accident and health insurance companies that are subject to the appropriate reserve requirements are revised as Chapter 841 of this code. The revised law is drafted accordingly.

(2) Section 2, V.T.I.C. Article 22.11, provides exceptions to the reservation requirements for accident and health insurance policies issued by a stipulated premium company in 1985 or 1986. The revised law omits those provisions as executed. The omitted law reads:

. . . except that:

(1) for policies issued during the calendar year 1985, only one-third of the unearned premium reserve shall be required to be maintained during the first policy year; and

(2) for policies issued during the calendar year 1986, only two-thirds of the unearned premium reserve shall be required to be maintained during the first policy year.

Revised Law

Sec. 884.453. DEFICIENCY RESERVE. (a) On the effective date of a direct reinsurance agreement under Subchapter L, the stipulated premium company shall compute:

(1) the amount of the reserves required under this chapter on the policies assumed under the agreement; and

(2) the amount of the net assets transferred to the

stipulated premium company under the agreement.

(b) If the amount of the net assets transferred is not equal to the amount of the required reserve, the difference shall be designated and carried as a deficiency reserve. The deficiency reserve does not create insolvency of the stipulated premium company if the company, beginning with the first calendar year that begins after the effective date of the direct reinsurance agreement, reduces the computed deficiency amount, including interest at the assumed rate, by at least 10 percent during each year as computed on December 31 of that year. The reduction must result in the deficiency reserve being eliminated on December 31 of the year for which the 11th annual statement is filed after the company enters into the direct reinsurance agreement. The required reduction in the deficiency reserve may not exceed the cumulative aggregate amount of 10 percent a year.

(c) If in any year a stipulated premium company has not reduced its deficiency reserve as required by Subsection (b), the company's board of directors by appropriate action shall increase premium rates by advancing the age of each insured at the date the insured's policy is issued or otherwise equitably adjust premium rates to correct that failure. The board shall take that action not later than the 30th day after the date the reserves are computed.

(d) If the board does not comply with Subsection (c), the stipulated premium company is considered to be insolvent for purposes of this chapter. (V.T.I.C. Art. 22.11, Sec. 3.)

Source Law

Sec. 3. (a) On all policies of a Chapter 14 company assumed under a direct reinsurance agreement as in this Chapter provided by a stipulated premium company, such stipulated premium company shall at the effective date of such reinsurance agreement calculate the amount of the required reserves in accordance with the provisions of this Article and shall also calculate and determine the amount of the net assets transferred to the stipulated premium company under such reinsurance agreement. In the event the net assets of the Chapter 14 company are insufficient to equal the amount of the required reserve, the difference shall be designated and carried as a deficiency reserve. Such deficiency reserve shall be allowed without creating the insolvency of the stipulated premium company, but the stipulated premium company must reduce said

deficiency so determined by at least ten per cent (10%) thereof during each year following the date of the reinsurance agreement, but commencing such reduction as to the next succeeding annual statement filing date so that at the date of the eleventh annual statement filing date after the effective date of said reinsurance agreement, the deficiency reserve will be fully paid and satisfied, together with assumed rate of interest thereon; provided, however, that such required reduction in the deficiency reserve shall never exceed the cumulative aggregate amount of ten per cent (10%) per annum.

(b) In the event the annual required reduction of the deficiency reserve is not accomplished as of December 31st of each year involved, the Board of Directors of the stipulated premium company shall by appropriate action increase rates by advancing the age of the insureds at issue date, or by some other equitable rate adjustment, so as to correct the failure to reduce the amount of the deficiency. In the event of the failure of the Board of Directors of the stipulated premium company to so act within thirty (30) days following the calculation of reserves, the stipulated premium company shall be dealt with in accordance with this Chapter as if it were insolvent.

Revisor's Note

Section 3(a), V.T.I.C. Article 22.11, refers to the reduction of the deficiency reserve by the "annual statement filing date." It was probably intended that the provision refer to the date for which the statement was prepared, December 31, rather than the filing date. V.T.I.C. Article 22.06, revised in relevant part as Section 884.256, provides that a company's annual statement is prepared for a calendar year and shows the condition of the company as of December 31 of that year. An annual statement may be filed on any day before April 1 (see Section 884.256) or, if a

company writes coverage under Article 22.23A, revised as Subchapter I, not later than March 1 (see Section 884.406). Section 3(b), V.T.I.C. Article 22.11, refers to December 31 and, read with Section 3(a), supports the idea that that date was intended in Section 3(a). For those reasons December 31 is substituted for "annual statement filing date" in the revised law.

Revised Law

Sec. 884.454. COMMISSIONER'S COMPUTATION OF RESERVE LIABILITY. (a) As soon as practical each year, the department shall compute the reserve liability of each stipulated premium company that has outstanding insurance policies.

(b) To make the computations, the department:

(1) shall use the net premium basis in accordance with the reserve table and interest rate adopted by the stipulated premium company and approved by the commissioner; and

(2) may use group methods and approximate averages for fractions of a year.

(c) The reserve liability may be computed on not more than a one-year preliminary term with allowance for any deficiency reserve under Section 884.453. (V.T.I.C. Art. 22.11, Sec. 4.)

Source Law

Sec. 4. The State Board of Insurance, as soon as practical, in each year, shall compute or cause to be computed the reserve liability of each stipulated premium company which has outstanding policies of insurance. In making such computations, the said Board may use group methods and approximate averages for fractions of a year or otherwise. Such reserve liability shall be computed upon the net premium basis in accordance with the reserve table and interest rate adopted by the stipulated premium company and approved by the State Board of Insurance and such reserve liability may be calculated on not more than a one-year preliminary term basis with allowance for the permissive deficiency reserve provided for in this Chapter 22.

Revised Law

Sec. 884.455. REQUIRED SECURITIES. The commissioner shall require that a stipulated premium company have securities of the class and character required by Article 3.39 in the amount of the

reserve liability computed for the company under Section 884.454 less any deficiency reserve under Section 884.453 after all the debts and claims against the company and the minimum capital required by this chapter have been applied. (V.T.I.C. Art. 22.11, Sec. 5.)

Source Law

Sec. 5. Having determined the required reserve on all policies in force, but excluding the permissive deficiency reserves authorized by this Chapter 22, the State Board of Insurance shall require that the stipulated premium company have in securities of the class and character required by the laws of this state the amount of said reserves less the permissive deficiency reserves after all the debts and claims against it and the minimum capital required by this Chapter have been provided.

Revisor's Note

Section 5, V.T.I.C. Article 22.11, refers to "securities of the class and character required by the laws of this state." While there is no provision in Chapter 22 that expressly relates to the requirement for those securities, V.T.I.C. Article 3.39, which regulates the authorized investments for certain types of insurers, is made applicable to stipulated premium companies by Section 1, V.T.I.C. Article 22.18, revised in relevant part as Section 884.002, and is the only statutory provision applicable to stipulated premium companies that contains specific requirements concerning the class and character of a reserve's securities. The revised law is drafted accordingly.

Revised Law

Sec. 884.456. INCREASE OF RESERVES. (a) If a stipulated premium company does not have the reserves required by this subchapter and the minimum capital required under this chapter, the company's board of directors by appropriate action shall increase premium rates on policies in force by advancing the age of each insured at the date the insured's policy is issued or otherwise equitably adjust premium rates to correct the reserve inadequacy. The board shall take that action not later than the 30th day after the date the reserves are computed.

(b) If the board of directors does not comply with Subsection (a), the stipulated premium company is treated as if the company had not corrected an impairment under Section 884.205(a). (V.T.I.C. Art. 22.11, Sec. 6.)

Source Law

Sec. 6. In the event the stipulated premium company does not have the required reserves, less any permissive deficiency reserve, plus the minimum capital required by this Chapter, the Board of Directors of the stipulated premium company shall by appropriate action increase rates on policies in force by advancing the age of the insureds at issue date or by some other equitable rate adjustment so as to correct such reserve inadequacy. In the event of the failure of the Board of Directors of the stipulated premium company to so act within thirty (30) days following the calculation of reserves as of the date in this Chapter provided, the stipulated premium company shall be dealt with in accordance with this Chapter as if it were insolvent under the provisions of Art. 22.12 of this Chapter.

Revisor's Note

Section 6, V.T.I.C. Article 22.11, refers to "the required reserves, less any permissive deficiency reserve." The revised law uses the phrase "reserves required by this subchapter." Those reserves do not include the deficiency reserve.

[Sections 884.457-884.500 reserved for expansion]

SUBCHAPTER K. DIRECT REINSURANCE AGREEMENTS

Revised Law

Sec. 884.501. DIRECT REINSURANCE AGREEMENTS BETWEEN STIPULATED PREMIUM COMPANIES. (a) Stipulated premium companies organized under this chapter may enter into a total or partial direct reinsurance agreement if the company assuming the policies under the agreement is authorized to transact the kinds of insurance provided by those policies.

(b) Before a stipulated premium company may enter into a total direct reinsurance agreement:

(1) the company must submit the agreement to the department; and

(2) the department must approve the agreement as fully protecting the interests of all the holders of policies being

assumed.

(c) A partial direct reinsurance agreement shall be filed with the department before the effective date of the agreement. (V.T.I.C. Art. 22.19, Secs. 1, 4 (part).)

Source Law

Art. 22.19

Sec. 1. Total or partial direct reinsurance agreements may be made and entered into between stipulated premium companies chartered under the provisions of this Chapter provided: (a) The assuming company is authorized to transact the kinds of insurance provided by the policies assumed; and (b) No total direct reinsurance agreement shall be made until the contract therefor has been submitted to and approved by the State Board of Insurance as protecting fully the interests of all the policyholders assumed.

Sec. 4. All partial direct reinsurance agreements shall be filed with the State Board of Insurance prior to the effective date of said agreement and

Revised Law

Sec. 884.502. DIRECT REINSURANCE AGREEMENT WITH LEGAL RESERVE COMPANY. (a) A stipulated premium company may enter into a total or partial direct reinsurance agreement with a legal reserve life insurance company authorized to engage in the business of insurance in this state.

(b) Before a reinsurance agreement under this section may take effect, it must be:

- (1) approved by a majority vote of the board of directors of each company;
- (2) submitted to the department; and
- (3) approved by the department as complying with Section 884.503 or 884.504, as applicable. (V.T.I.C. Art. 22.19, Sec. 2 (part).)

Source Law

Sec. 2. Any stipulated premium company may enter into total or partial direct reinsurance agreements with any legal reserve life insurance company lawfully doing business in this state upon compliance with the following terms and conditions:

(a) Such reinsurance agreement must be approved by a majority vote of the respective Boards of Directors of the respective companies parties thereto.

. . .

(d) Each such reinsurance agreement shall be submitted in advance to and approved by the State Board of Insurance as to compliance with the provisions of this Section of this Art. 22.19 prior to the same becoming effective.

Revised Law

Sec. 884.503. DIRECT REINSURANCE OF ACCIDENT OR HEALTH INSURANCE POLICIES. (a) In the direct reinsurance of a stipulated premium accident or health insurance policy under Section 884.502, the company assuming the policy under the agreement must assume the exact obligations of the policy.

(b) If a policy is non-cancellable or guaranteed renewable, the assuming company may include in the assumption certificate a premium redetermination clause instead of the clause required by Section 884.352. (V.T.I.C. Art. 22.19, Sec. 2 (part).)

Source Law

Sec. 2. [Any stipulated premium company may enter into total or partial direct reinsurance agreements with any legal reserve life insurance company lawfully doing business in this state upon compliance with the following terms and conditions:]

. . .

(b) In the event of the direct reinsurance of health, accident or sickness policies, the assuming company must assume the exact policy obligations of the stipulated premium policies; in the event the stipulated premium policy is non-cancellable or guaranteed renewable the assuming company may include in its assumption certificate a premium redetermination clause in lieu of the clause contained in the policy by reason of Art. 22.13 of this Chapter.

Revised Law

Sec. 884.504. DIRECT REINSURANCE OF CERTAIN POLICIES. (a) A reinsurance agreement authorized by Section 884.502 for the direct reinsurance of life insurance policies or a combination of

life and accident or health insurance policies must contain provisions that comply with this section.

(b) If the legal reserve life insurance company is the reinsurer and issues an assumption certificate providing whole life coverage for the life benefit, the policyholder is not entitled to receive the policyholder's individual reserve in cash by surrendering the assumption certificate.

(c) If the reserves and premium under the stipulated premium policy are inadequate to provide whole life coverage under the legal reserve assumption certificate and a term coverage assumption is made available, each affected policyholder must be allowed to select:

(1) payment in cash of the amount of the individual reserve, reduced by the deficiency reserve, if any, to the policyholder on surrender of the policy;

(2) an assumption certificate of another stipulated premium company engaging in the business of insurance under this chapter; or

(3) the legal reserve life insurance company's assumption certificate for term coverage that is renewable for the life of the insured without evidence of insurability and the rate for which is based on the legal reserve table selected by the assuming company at the attained age of the insured on the date of the renewal increased by an appropriate expense factor.

(d) To exercise the option described by Subsection (c)(1) the policyholder must request that option not later than the 60th day after the date that the notice of the options available to the policyholder is mailed. A policyholder is entitled to exercise the option under Subsection (c)(2) or (3) not later than the 60th day after the date the assumption certificate of the legal reserve life insurance company is mailed to the policyholder.

(e) If the legal reserve life insurance company makes term coverage available, the company shall use each policyholder's individual reserve, less the amount of the deficiency, if any, as:

(1) a reserve credit to permit the legal reserve assumption certificate to be backdated to the earliest date the reserve credit allows; or

(2) an annuity to reduce the required premium during the initial period of the term coverage. (V.T.I.C. Art. 22.19, Sec. 2 (part).)

Source Law

Sec. 2. [Any stipulated premium company may enter into total or partial direct reinsurance agreements with any legal reserve life insurance company lawfully doing

business in this state upon compliance with the following terms and conditions:]

. . .

(c) In the event of the direct reinsurance of life policies or a combination of life and health, accident or sickness, such reinsurance agreement shall contain provisions in compliance with the following:

(1) In the event the assuming legal reserve company issues an assumption certificate providing whole life coverage for the life benefit, the policyholder shall not have the right to receive his individual reserve in cash by surrendering the assumption certificate;

(2) In the event the reserves and premium under the stipulated premium policy are inadequate to provide whole life coverage under the legal reserve assumption certificate and a term coverage assumption is afforded, the following options shall be afforded to each policyholder affected thereby so that he may select any one of the following: (a) The amount of the individual reserve, reduced by the deficiency reserve, if any, shall be paid in cash to the legal owner and holder of the policy upon its surrender and if the same be requested within sixty (60) days following mailing of notice of the options afforded to the policyholder; (b) An assumption certificate of another stipulated premium company chartered and doing business pursuant to the provisions of this Chapter; or (c) The legal reserve company's certificate of assumption predicated upon term coverage, but which term coverage shall be renewable for the life of the insured without evidence of insurability and the rate for which shall be based on the legal reserve table selected by the assuming company at the attained age of the insured at the date of the renewal increased by an appropriate expense factor. Each affected policyholder shall have the right to exercise his option within sixty (60) days following the date the assumption certificate of the legal reserve company is mailed to the policyholder.

In the event the term coverage is afforded by the legal reserve company, the individual reserve, less the amount of the deficiency, if any, of each policyholder shall be used by the assuming company either: (a) As a reserve credit to permit the legal reserve assumption certificate to be back dated as far as the reserve credit will permit; or (b) As an annuity to reduce the required premium during the initial period of the term coverage.

. . .

Revised Law

Sec. 884.505. EFFECT OF TOTAL DIRECT REINSURANCE AGREEMENT.

(a) A stipulated premium company that enters into a total direct reinsurance agreement under Section 884.501 or 884.502 under which it is the ceding company shall promptly surrender its certificate of authority to the department.

(b) The stipulated premium company's shareholders and board of directors shall effect the company's dissolution. (V.T.I.C. Art. 22.19, Sec. 3.)

Source Law

Sec. 3. In the event of a total direct reinsurance agreement under the provisions of Section 1 or Section 2 of this Art. 22.19, the reinsured stipulated premium company shall forthwith surrender its certificate of authority to the State Board of Insurance and proceed by action of its stockholders and Board of Directors to effect its dissolution.

Revised Law

Sec. 884.506. ASSUMPTION CERTIFICATE. The company assuming a policy under a partial direct reinsurance agreement shall issue to the holder of the assumed policy an assumption certificate to be attached to the policy. (V.T.I.C. Art. 22.19, Sec. 4 (part).)

Source Law

Sec. 4. [All partial direct reinsurance agreements shall be filed with the State Board of Insurance prior to the effective date of said agreement and] the assuming company shall furnish an assumption certificate to the policyholder to be attached to his policy.

[Sections 884.507-884.550 reserved for expansion]

SUBCHAPTER L. DIRECT REINSURANCE AGREEMENTS WITH MUTUAL
ASSESSMENT COMPANIES

Revised Law

Sec. 884.551. DEFINITIONS. In this subchapter:

(1) "Mutual assessment company" means any entity regulated under Chapter 887 or 888.

(2) "Net assets" means a company's funds that are available for the payment of the company's obligations in this state, including uncollected premiums that are not more than three months past due, after the deduction of all unpaid losses and claims, claims for losses, and all other debts. (V.T.I.C. Art. 22.15, Secs. 1 (part), 10.)

Source Law

Art. 22.15

Sec. 1. Any burial association, local mutual aid association, state-wide mutual assessment corporation, or any other similar concern by whatsoever name or class designated, that is regulated by the provisions of Chapter 14 of this Code,

Sec. 10. The words "net assets" as used in this Chapter shall mean the funds of the company available for the payment of its obligations in this state, including uncollected premiums not more than three months past due after deduction from such funds all unpaid losses and claims and claims for losses and all other debts.

Revisor's Note

Section 1, V.T.I.C. Article 22.15, provides that Article 22.15 is applicable to a "burial association, local mutual aid association, state-wide mutual assessment corporation, or any other similar concern by whatsoever name or class designated, that is regulated by the provisions of Chapter 14 of this Code." There are numerous references in that article to a company that is regulated under Chapter 14 of the Insurance Code. The revised law adds a definition of "mutual assessment company," the term used by Chapter 14, as a drafting convenience. Chapter 14 is

revised as Chapters 887 and 888 of this code, and the revised law is drafted accordingly.

Revised Law

Sec. 884.552. AUTHORITY TO CONTRACT. A mutual assessment company may enter into a direct reinsurance agreement with a stipulated premium company in accordance with this subchapter. (V.T.I.C. Art. 22.15, Sec. 1 (part).)

Source Law

Sec. 1. [Any burial association, local mutual aid association, state-wide mutual assessment corporation, or any other similar concern by whatsoever name or class designated, that is regulated by the provisions of Chapter 14 of this Code,] may directly reinsure itself into a stipulated premium company chartered under the provisions of this Chapter.

Revised Law

Sec. 884.553. REINSURANCE AGREEMENT. (a) A reinsurance agreement under this subchapter must provide that the stipulated premium company is to assume the policies of the mutual assessment company.

(b) The reinsurance agreement must provide for the computation, on the effective date of the agreement, of:

(1) the amount of the net assets, including mortuary and expense funds, of the mutual assessment company that is to be transferred to the stipulated premium company after the payment of all liabilities;

(2) the amount of the required reserves to be established under the reserve and interest table used in the agreement; and

(3) the amount of any deficiency reserve resulting from the computation of Subdivisions (1) and (2).

(c) The deficiency reserve is subject to Section 884.453, except that instead of reducing the deficiency as required by that section, the reinsurance agreement may provide for immediate premium rate adjustments, in accordance with accepted actuarial practices and standards, to eliminate the deficiency at the time of reinsurance or during the period allowed for eliminating the deficiency under Section 884.453.

(d) For purposes of computing the reserves of members of a mutual assessment company, the total net assets of the company shall be apportioned among the members assessed. The percentage of the total amount of the net assets allotted to a member is computed by dividing the amount of the required reserve for that member insured under the reinsurance agreement by the total

amount of the required reserve for all members under the agreement.

(e) The reinsurance agreement must provide that each policyholder who is dissatisfied with the agreement and who does not want to accept the assumption certificate offered by the stipulated premium company is entitled to receive the amount of the reserve under the policyholder's policy reduced by the amount of any deficiency reserve applicable to the policy. The policyholder must make a written request for that option to the stipulated premium company not later than the 60th day after the date the assumption certificate is mailed. (V.T.I.C. Art. 22.15, Sec. 6 (part).)

Source Law

Sec. 6. Such reinsurance agreement shall provide that the stipulated premium company will assume the policies of the company or association regulated by the provisions of Chapter 14 of this Act subject to the provisions of this Chapter. . . . The agreement shall also provide for the calculation at the effective date of such reinsurance agreement of the following: (a) The amount of the net assets, both mortuary and expense funds, of the company or association regulated under the provisions of Chapter 14 of this Code, which are to be transferred to the stipulated premium company after the payment of all liabilities; and (b) The amount of the required reserves to be established under the reserve and interest table used in such reinsurance agreement; and (c) The amount of the deficiency reserve, if any, resulting from the calculations of items (a) and (b) of this Section 6.

Such deficiency reserve shall be permitted in accordance with the provisions of Art. 22.11 of this Chapter, but must thereafter be reduced in compliance with said Art. 22.11, or said reinsurance agreement may provide for immediate rate adjustments, in accordance with accepted actuarial practices and standards, so as to eliminate said deficiency at the time of reinsurance or during the period allowed in Art. 22.11 for curing of the said reserve deficiency. The sum total of the net assets of the company or association regulated by the provisions of

Chapter 14 of this Code shall be apportioned for reserve calculation purposes among the members assessed as follows: The percentage of the whole of the net assets allotted to any individual member shall be calculated with the amount of the required reserve for such individual insured under such reinsurance agreement as the numerator and the total of all of the required reserve for all the members under such reinsurance agreement as the denominator.

Each such reinsurance agreement shall also provide that each policyholder who is dissatisfied with such reinsurance agreement and who does not desire to accept the assumption certificate offered by the stipulated premium company, shall be entitled to receive, if he shall so request in writing to the stipulated premium company within sixty (60) days following the mailing of the assumption certificate, the amount of the reserve under his policy reduced by the deficiency reserve, if any, as applicable to such policy.

Revised Law

Sec. 884.554. APPROVAL BY DEPARTMENT. (a) A mutual assessment company's board of directors may determine by a majority vote to submit a proposed direct reinsurance agreement to the members of the company. Before the agreement may be submitted to the members, the board must prepare detailed plans for the reinsurance and must submit the agreement to the department.

(b) If the department determines that the proposed direct reinsurance agreement complies with this chapter, the department shall approve the agreement for submission to the members of the company. (V.T.I.C. Art. 22.15, Sec. 2.)

Source Law

Sec. 2. When it shall be determined by a majority vote of the Board of Directors of the company or association regulated by the provisions of Chapter 14 to submit the proposed direct reinsurance agreement to the members of the company or association regulated by the provisions of Chapter 14 of this Code, said Board of Directors shall prepare in detail plans for making such

reinsurance, and such reinsurance agreement shall be submitted to the State Board of Insurance. The State Board of Insurance shall determine whether such reinsurance agreement complies with the provisions of this Chapter, and if such reinsurance agreement be in compliance with the provisions of this Chapter, the State Board of Insurance shall approve the same for submission to the members of the company or association regulated by the provisions of Chapter 14 of this Code.

Revised Law

Sec. 884.555. MEMBERS MEETING; NOTICE. (a) After the department approves a proposed direct reinsurance agreement, the board of directors of the mutual assessment company shall:

(1) call a meeting of the company's members in accordance with the company's bylaws for voting on ratification of the direct reinsurance agreement; and

(2) mail to each member:

(A) a copy of the proposed agreement; and

(B) a copy of the notice of the meeting.

(b) The meeting may not be held before the 16th day after the date on which the copies are mailed under Subsection (a)(2). (V.T.I.C. Art. 22.15, Secs. 3, 4 (part).)

Source Law

Sec. 3. After approval of the State Board of Insurance, the Board of Directors of the company or association regulated by the provisions of Chapter 14 of this Code shall, in accordance with the by-laws, call a meeting of its membership, and shall mail to each member a copy of the proposed direct reinsurance agreement and enclose therewith a copy of the notice of membership meeting to be held not earlier than fifteen (15) days after the date of mailing of the notice and reinsurance agreement.

Sec. 4. Such meeting of the membership shall be held for the purpose of ratification or rejection of the direct reinsurance agreement. . . .

Revised Law

Sec. 884.556. MEMBERS MEETING; PROCEDURES. (a) In a meeting called under Section 884.555, a member may vote in

person, by proxy to whomever the member designates, or by mail.

(b) All votes must be cast by ballot. A two-thirds vote of the members participating in the election is required to ratify the reinsurance agreement.

(c) The person presiding at the meeting shall supervise and direct the procedure of the meeting and shall appoint an adequate number of inspectors to conduct the voting at the meeting.

(d) The inspectors may determine all questions concerning the qualifications of the voters and the verification, canvassing, and validity of the ballots.

(e) At the conclusion of the meeting, the inspectors shall certify under oath the result of the election to the department and to the stipulated premium company that is a party to the proposed agreement. (V.T.I.C. Art. 22.15, Sec. 4 (part).)

Source Law

Sec. 4. . . . Members may vote in person, by proxy to whomever the member may designate or by mail. All votes shall be cast by ballot. The Chairman of such meeting shall supervise and direct the method of procedure of said meeting and shall appoint an adequate number of inspectors to conduct the voting at said meeting; said inspectors shall have full power and authority to determine all questions concerning the verification of the ballots, the qualifications of the voters, the canvassing of the ballots and the ascertainment of the validity thereof. At the conclusion of said meeting, the inspectors shall certify under oath the result thereof to the State Board of Insurance and to the assuming stipulated premium company. A two-thirds (2/3rds) majority vote cast by those participating in said meeting in person, by proxy or by ballot shall be sufficient and adequate for the purpose of ratification of such reinsurance agreement.

Revised Law

Sec. 884.557. SUBMISSION OF MEETING FACTS TO DEPARTMENT. Not later than the 90th day after the date of the meeting of the members, all facts relating to the meeting, including the accounting of the meeting and the computation of the required reserves, shall be submitted under oath to the department. (V.T.I.C. Art. 22.15, Sec. 7.)

Source Law

Sec. 7. Within ninety (90) days following such membership meeting, all facts in connection therewith, including the accounting thereof and the calculation of the required reserves, shall be submitted under oath to the State Board of Insurance.

Revised Law

Sec. 884.558. EFFECTIVE DATE OF AGREEMENT. A direct reinsurance agreement that is ratified under Section 884.556 takes effect on the date specified in the agreement. (V.T.I.C. Art. 22.15, Sec. 8.)

Source Law

Sec. 8. Such reinsurance contract shall become binding upon both companies parties hereto at the effective date thereof immediately following the ratification by the membership of the company or association regulated under the provisions of Chapter 14 of this Code.

Revised Law

Sec. 884.559. ACTION AFTER AGREEMENT RATIFICATION. (a) After ratification of the reinsurance agreement under Section 884.556, the mutual assessment company shall cease doing business and shall transfer all of its assets to the assuming stipulated premium company.

(b) The stipulated premium company shall assume:

(1) all policy liability in accordance with the reinsurance agreement; and

(2) all other liabilities in accordance with the method of payment of those liabilities.

(c) On transfer of a mutual assessment company's assets:

(1) the company shall promptly surrender its certificate of authority and charter to the department; and

(2) the company's corporate existence ceases.

(V.T.I.C. Art. 22.15, Sec. 5.)

Source Law

Sec. 5. Provided such reinsurance agreement be approved by the members in accordance with the provisions of this Art. 22.15, the company or association regulated by the provisions of Chapter 14 of this Code shall cease to do business and all

of its assets be transferred to the assuming stipulated premium company and thereupon become its sole and exclusive property. All policy liability will be assumed by the stipulated premium company in accordance with the provisions of said reinsurance agreement; all other liabilities shall be assumed by the stipulated premium company in accordance with the method and mode of payment thereof. The company or association regulated by the provisions of Chapter 14 of this Code shall thereafter forthwith surrender its certificate of authority and charter to the State Board of Insurance, which shall dissolve the same, and the company's or association's corporate existence shall cease.

Revisor's Note

(1) Section 5, V.T.I.C. Article 22.15, provides that after entering into a reinsurance agreement the mutual assessment company is required to transfer all of its assets to the assuming stipulated premium company and on transfer the assets "become its sole and exclusive property" and the mutual assessment company's existence ceases. The revised law omits the quoted language as unnecessary because title to the property passes on transfer and the property becomes the stipulated premium company's property.

(2) Section 5, V.T.I.C. Article 22.15, refers to the "method and mode" of payment of liabilities. The revised law omits the reference to "mode" because as used in this context it is included within the meaning of "method."

Revised Law

Sec. 884.560. ASSUMPTION CERTIFICATE. Immediately after ratification of the reinsurance agreement under Section 884.556, the stipulated premium company shall issue to each member of the mutual assessment company an assumption certificate that states:

- (1) the terms of the assumption; and
- (2) the reserve and interest table under which the policy is assumed. (V.T.I.C. Art. 22.15, Sec. 6 (part).)

Source Law

Sec. 6. . . . Immediately following

approval by the membership of such reinsurance agreement, the stipulated premium company shall issue to each such member a certificate of assumption setting forth the terms of the assumption, and the reserve and interest table under which such policy is assumed. . . .

Revised Law

Sec. 884.561. ADJUSTMENT OF LIFE INSURANCE PREMIUMS. (a) If the premium charged on a life insurance policy assumed by the stipulated premium company is less than the renewal net premium computed under the reserve standard adopted in the reinsurance agreement, the stipulated premium company shall adjust the premium rate to provide an amount that is at least equal to the renewal net premium based on the age of the insured on the date the policy was issued by the mutual assessment company.

(b) Notwithstanding Subsection (a), if the gross premium charged on a family group policy reinsured by a stipulated premium company is less than the renewal net premium for that policy, the stipulated premium company may choose to not adjust the rate if:

(1) the deficiency reserve of the business of the mutual assessment company is less than 25 percent of the required reserve on the business to be reinsured, including the deficiency premium reserve required by Subdivision (3);

(2) at the time of reinsurance, the gross premium of all family group policies to be reinsured by the stipulated premium company is in the aggregate equal to at least 120 percent of the required net premiums on those family group policies; and

(3) the stipulated premium company maintains on that policy, in addition to any other reserve required by law, a deficiency premium reserve that is equal to the present value, computed using the reserve standard adopted in the reinsurance agreement, of an annuity, the amount of which is equal to the difference between the premium charged and that net premium and the term of which in years is equal to the number of annual premiums for the remainder of the premium paying period.

(c) The deficiency premium reserve required by Subsection (b)(3) is a part of the company's deficiency reserve and shall be reduced in the manner provided by Section 884.453. (V.T.I.C. Art. 22.15, Sec. 9.)

Source Law

Sec. 9. In the event the premiums charged on any life policy assumed by the stipulated premium company shall be less than the renewal net premium calculated in

accordance with such reserve standard adopted by the reinsurance agreement, the rate shall be adjusted to an amount at least equal to the renewal net premium calculated in accordance with the reserve standards adopted by such reinsurance agreement based upon the insured's age at issue by the Chapter 14 Company, except that if the gross premium charged upon any family group policy so reinsured by the stipulated premium company is less than such renewal net premium for such policy or contract such rate may at the option of the stipulated premium company be not adjusted provided:

(a) The permissive deficiency reserve of the business of the Chapter 14 Company is less than 25% of the required reserve on such business to be reinsured, including the permissive deficiency premium reserve to be maintained as hereafter in this Section provided;

(b) The gross premium at time of reinsurance by the stipulated premium company of all family group policies is at least equal in the aggregate to 120% of the required net premiums upon such family group policies to be reinsured by the stipulated premium company; and

(c) There shall be maintained on each such policy contract a permissive deficiency premium reserve in addition to all other reserves required by law and for each such policy or contract the permissive deficiency premium reserve shall be the present value, according to such standard, of an annuity, the amount of which shall equal the difference between the premium charged and such net premium and the term of which in years shall equal the number of annual premiums for the remainder of the premium paying period. Such permissive deficiency premium reserve shall be included as a part of such permissive deficiency reserve and shall be reduced in like manner as in this Chapter provided for the permissive deficiency reserve.

Revised Law

Sec. 884.562. APPROVAL OF RATE ADJUSTMENT. A stipulated premium company may not adjust a life insurance premium rate under this subchapter before:

- (1) obtaining the approval of the department; and
- (2) providing notice to the policyholder. (V.T.I.C. Art. 22.15, Sec. 11.)

Source Law

Sec. 11. Any Section or provision of this Act notwithstanding, no life insurance rates may be adjusted without the advanced approval of the State Board of Insurance, on notice to the policyholder.

[Sections 884.563-884.600 reserved for expansion]

SUBCHAPTER M. CONVERSION TO LEGAL RESERVE COMPANY

Revised Law

Sec. 884.601. AUTHORIZATION TO CONVERT. (a) The shareholders of a stipulated premium company that possesses capital in an amount equal to at least \$700,000, unencumbered surplus in an amount equal to at least \$700,000, and sufficient reserves on hand for the company's policies as required under Subchapter C, Chapter 3, may convert the company to a legal reserve company that operates under Chapter 841 by complying with each requirement applicable to a company operating under that chapter.

(b) The department may approve the conversion only after determining that the converting company has complied with the requirements applicable to that company under Subsection (a). (V.T.I.C. Art. 22.20, Sec. 1 (part).)

Source Law

Art. 22.20

Sec. 1. Except as provided by Section 2 of this article, at such time that a stipulated premium company shall be possessed with at least Seven Hundred Thousand Dollars (\$700,000.00) in capital and at least Seven Hundred Thousand Dollars (\$700,000.00) in free and unencumbered surplus and additionally shall have on hand sufficient reserves so as to reserve all of its policies under the provisions of Chapter 3 of this Code, the stockholders of the stipulated premium company may convert the stipulated premium company into a legal reserve company

under the provisions of Chapter 3 of this Code. . . . In consummating said conversion, each and every of the requirements of Chapter 3 of this Code shall be complied with and the State Board of Insurance shall approve such conversion only after determining that said converted company has complied with said Chapter 3 of this Code.

Revisor's Note

Section 1, V.T.I.C. Article 22.20, refers to Chapter 3 of the Insurance Code several times. The reserve requirements are provided by Subchapter C, Chapter 3. The provisions of Chapter 3 relating to incorporation of domestic insurers are revised as Chapter 841 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 884.602. ASSUMPTION CERTIFICATE. (a) Not later than the 30th day after the date of a conversion under this subchapter, the converted company shall issue to each policyholder an assumption certificate by which the policy liability is assumed by the converted company.

(b) The certificate must contain all of the provisions applicable to a policy issued by a company operating under Chapter 841. (V.T.I.C. Art. 22.20, Sec. 1 (part).)

Source Law

Sec. 1. . . . Within thirty (30) days following such conversion, the converted company shall furnish to each and every policyholder a certificate of assumption whereby the policy liability is assumed by the converted company and which said assumption certificate shall contain all of the provisions required by Chapter 3 of this Code. . . .

Revisor's Note

Section 1, V.T.I.C. Article 22.20, refers to Chapter 3 of the Insurance Code. The revised law refers to Chapter 841 of this code for the reasons stated in the revisor's note to Section 884.601.

Revised Law

Sec. 884.603. EXEMPTION FROM CAPITAL AND SURPLUS REQUIREMENTS. (a) A stipulated premium company is exempt from the capital and surplus requirements of Section 884.601(a) if the company:

- (1) was organized before September 1, 1989;
- (2) possesses capital in an amount equal to at least \$100,000 and unencumbered surplus in an amount equal to at least \$100,000; and
- (3) converted to a company that operates under Chapter 841 before September 1, 1999.

(b) A stipulated premium company that is exempt under Subsection (a) shall immediately increase its capital and surplus to amounts that satisfy Section 884.601(a) on:

- (1) a change of control of at least 50 percent of the voting securities of the converted company; or
- (2) if the converted company or the holding company that controls the converted company, if any, is not controlled by voting securities, a change of at least 50 percent of the ownership of the converted company or its holding company.

(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 a converted stipulated premium 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. 22.20, Sec. 2.)

Source Law

Sec. 2. (a) The requirement under Section 1 of this article that a stipulated premium company have capital of at least Seven Hundred Thousand Dollars (\$700,000.00) and surplus of at least Seven Hundred Thousand Dollars (\$700,000.00) does not apply to a stipulated premium company that converts to a Chapter 3 company, if:

- (1) the stipulated premium company was organized before September 1, 1989;
- (2) the stipulated premium company shall be possessed with at least One Hundred Thousand Dollars (\$100,000.00) in capital and at least One Hundred Thousand Dollars (\$100,000.00) in free and unencumbered surplus; and
- (3) the conversion takes effect before September 1, 1999.

(b) A stipulated premium company that

is converted on or after September 1, 1989, and that has less than Seven Hundred Thousand Dollars (\$700,000.00) capital and Seven Hundred Thousand Dollars (\$700,000.00) surplus may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority. However, a stipulated premium company that is converted after September 1, 1989, must increase its capital to at least Seven Hundred Thousand Dollars (\$700,000.00) and its surplus to at least Seven Hundred Thousand Dollars (\$700,000.00) immediately after any change of control of the converted stipulated premium company or any holding company controlling the converted stipulated premium company if, after August 31, 1989:

(1) there has been a change of control of at least 50 percent of the voting securities of the converted stipulated premium company; or

(2) if the converted stipulated premium company or holding company is not controlled by voting securities, there is a change of at least 50 percent of the ownership of the stipulated premium company or holding company.

(c) For the purposes of Subsection (b) of this section, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, may not be considered a change of control of a converted stipulated premium 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

(1) Section 2(a), V.T.I.C. Article 22.20, refers to a company that "converts to a Chapter 3 company." The provisions of Chapter 3 relating to incorporation of domestic life, health, and accident insurers are revised as Chapter 841 of this code. The revised law is drafted accordingly.

(2) Section 2(b), V.T.I.C. Article

22.20, provides that a company exempted from capital and surplus requirements under Section 2(a) "may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority." The revised law omits the quoted language because the company's certificate of authority is unchanged by the conversion and permits the company to transact only those kinds of business.

[Sections 884.604-884.700 reserved for expansion]

SUBCHAPTER O. GENERAL FINANCIAL REGULATION

Sec. 884.701. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION. Articles 1.32, 21.28, and 21.28-A apply to a stipulated premium company engaged in the business of insurance in this state. (New.)

Revisor's Note

V.T.I.C. Article 22.22 establishes procedures for conservatorship of a stipulated premium company that is insolvent or that is in a hazardous financial condition. Article 22.22 was enacted in 1965 and has not been subsequently amended. After the enactment of Article 22.22, the legislature established comprehensive procedures applicable to those companies. Together with V.T.I.C. Article 21.28, the later enacted provisions, which are contained in V.T.I.C. Article 1.32, originally enacted in 1975, and V.T.I.C. Article 21.28-A, originally enacted in 1967, completely subsume and replace the procedures established under Article 22.22. As a result, the revised law omits Article 22.22 as impliedly repealed and adds a reference to Articles 1.32, 21.28, and 21.28-A for the convenience of the reader. The omitted law reads:

Art. 22.22. If, upon an examination or at any other time, it appears to the Commissioner of Insurance that any stipulated premium company be insolvent, or its condition be, in the opinion of the Commissioner, such as to render the continuance of its business hazardous to the public, or to holders of its policies, or if such company appears to have exceeded its powers or failed to comply with the law, then

the Commissioner of Insurance shall notify the company of his determination and said company shall have thirty (30) days under the supervision of the Commissioner of Insurance within which to comply with the requirements of the Commissioner of Insurance, and in the event of its failure to comply within such time, the Commissioner of Insurance, acting for himself, or through a conservator appointed by the Commissioner of Insurance for that purpose, shall immediately take charge of such company, and all of the property and effects thereof.

If the Commissioner of Insurance is satisfied that such company can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Commissioner of Insurance pending the election of new directors and officers by the shareholders in such manner as the Commissioner of Insurance may determine, the same shall be done, and the conservator may, with the approval of the Commissioner of Insurance, reinsure any part of such company's policies or certificates of insurance with some solvent insurance company authorized to transact business in this State. The conservator may transfer to the reinsurance company such assets or portions thereof as may be required to reinsure such policies. If the Commissioner of Insurance, however, is satisfied that such company is not in condition to satisfactorily continue business in the interest of its policyholders and shareholders under the conservator as above provided, the Commissioner of Insurance shall proceed to reinsure the outstanding policies in some solvent company, authorized to transact business in this State, or the Commissioner of Insurance shall proceed through such conservator to liquidate such company, or the Commissioner of Insurance may give notice to the Attorney General who shall thereupon apply to any court in Travis County having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such company or to require it to comply with the law or to

satisfy the Commissioner of Insurance as to its solvency. The Court may, in its discretion, appoint agents or receivers to take charge of the effects and wind up the business of the company under usages and practices of equity; and may make disposition of the business and policies of the company as in the discretion of the court may seem proper. No suit for receiver shall be filed against any such company, nor shall any receiver be appointed, except upon the application therefor by the Attorney General, and in no event shall any receiver for any such company be appointed until after reasonable notice has issued and a hearing had before the court.

It shall be in the discretion of the Commissioner of Insurance to determine whether or not he will operate the company through a conservator, as provided above, or proceed to liquidate the company, or report it to the Attorney General, as herein provided.

When all the policies of a company are reinsured or liquidated, and all of its affairs concluded, as herein provided, the Commissioner of Insurance shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the company so reinsured and liquidated. Where the Commissioner of Insurance lends his approval to the merger, reinsurance or consolidation of the policies of one company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the company from which the policies were merged, reinsured or consolidated, in the same manner as is provided for the charters of companies totally reinsured or liquidated. The cost incident to the conservator's services shall be fixed and determined by the Commissioner of Insurance and shall be a charge against the assets and funds of the company to be allowed and paid as the Commissioner of Insurance may determine.

CHAPTER 885. FRATERNAL BENEFIT SOCIETIES

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CHAPTER 885. FRATERNAL BENEFIT SOCIETIES
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 885.001. DEFINITIONS. In this chapter:

- (1) "Benefit certificate" means a document issued as written evidence of a benefit contract.
- (2) "Benefit contract" means an agreement for provision of benefits authorized by Section 885.301, as that agreement is described by Section 885.306.
- (3) "Benefit member" means an adult designated by the laws or rules of a fraternal benefit society as a benefit member under a benefit contract.

(4) "Fraternal benefit society's laws" means a fraternal benefit society's articles of incorporation, constitution, and bylaws, however designated.

(5) "Lodge" means a subordinate member unit of a fraternal benefit society. The term includes a camp, court, council, or branch.

(6) "Premium" means a premium, a rate, dues, or another required contribution that is payable under a benefit certificate or benefit contract.

(7) "Rule" means a rule, regulation, or resolution adopted by the supreme governing body or board of directors that has general application to the members of a fraternal benefit society. (V.T.I.C. Art. 10.03-1.)

Source Law

Art. 10.03-1. In this chapter:

(1) "Benefit contract" means the agreement for provision of benefits authorized by Article 10.05 of this chapter, as that agreement is described in Article 10.15 of this chapter.

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society as a benefit member under a benefit contract.

(3) "Certificate" means a document issued as written evidence of a benefit contract.

(4) "Laws" means a society's articles of incorporation, constitution, and bylaws, however designated.

(5) "Lodge" means a subordinate member unit of a society, including a camp, court, council, or branch.

(6) "Premiums" means a premium, a rate, dues, or other required contributions that are payable under a certificate or benefit contract.

(7) "Rules" means a rule, regulation, or resolution adopted by the supreme governing body or board of directors that has general application to the members of the society.

Revisor's Note

(1) Subdivision (3), V.T.I.C. Article 10.03-1, defines "certificate" as a document issued as written evidence of a benefit

contract. Subsequent provisions of V.T.I.C. Chapter 10 use the term "certificate of authority," which is the document issued to a fraternal benefit society that is authorized to transact business in this state. To avoid confusion, the revised law defines "benefit certificate" rather than "certificate" and substitutes that term as appropriate throughout this chapter.

(2) Subdivision (4), V.T.I.C. Article 10.03-1, defines "laws" as a fraternal benefit society's articles of incorporation, constitution, and bylaws, however designated. Subsequent provisions of V.T.I.C. Chapter 10 use "laws" to refer to the laws of this state. To avoid confusion, the revised law defines "fraternal benefit society's laws" rather than "laws" and substitutes that term as appropriate throughout this chapter.

Revised Law

Sec. 885.002. LIMITED EXEMPTION FROM INSURANCE LAWS. (a) Except as provided by this chapter, a fraternal benefit society is governed by this chapter and is exempt from all other insurance laws of this state for all purposes.

(b) A law enacted after July 1, 1913, does not apply to fraternal benefit societies unless a fraternal benefit society is expressly designated in the law. (V.T.I.C. Art. 10.04.)

Source Law

Art. 10.04. Except as herein provided, such societies shall be governed by this chapter and shall be exempt from all provisions of the insurance laws of this State, not only in governmental relations with the State, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

Revisor's Note

(1) V.T.I.C. Article 10.04 provides that a fraternal benefit society is exempt from all provisions of the insurance laws of this state, "not only in governmental relations with the State," but for all purposes. The revised law omits the quoted language as unnecessary because an exemption relating to "governmental relations" falls within an exemption "for all purposes."

(2) V.T.I.C. Article 10.04 refers to laws "hereafter enacted." Article 10.04 was enacted as part of Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951, which enacted the Insurance Code in its original form. Section 2 of that act provided that "[n]othing contained in this Act shall be held or construed to effect any substantive change in the laws existing prior to the passage of this Act." Article 10.04 was derived from Article 4823, Revised Statutes. The Revised Statutes were enacted by Section 1 of the act captioned "An Act to Adopt and Establish the 'REVISED CIVIL STATUTES of the State of Texas,'" Acts of the 39th Legislature, Regular Session, 1925. Section 2 of that act repealed "all civil statutes of a general nature," and Section 3 of that act provided that "the repeal of any statute, or any portion thereof, by the preceding section, shall not affect or impair any . . . right vested or accrued . . . before such repeal shall take effect; but every such . . . right vested or accrued . . . shall remain in full force and effect to all intents or purposes as if such statute, or part thereof so repealed, had remained in force." Among the statutes repealed was the predecessor to Article 4823, which was enacted by Chapter 113, General Laws, Acts of the 33rd Legislature, Regular Session, 1913. That act took effect July 1, 1913. Accordingly, the revised law substitutes a reference to that effective date for "hereafter."

Revised Law

Sec. 885.003. EXEMPTION FROM TAXATION. (a) A fraternal benefit society organized or holding a certificate of authority under this chapter, including the former Chapter 10 of this code and Chapter 8, Title 78, Revised Statutes, is a charitable and benevolent institution. Except as provided by Subsection (b), all funds of a fraternal benefit society described by this subsection are exempt from any state, county, district, municipal, or school tax, including an occupation tax.

(b) Real estate or office equipment used for a purpose other than a lodge purpose is subject to taxation. (V.T.I.C. Art. 10.39.)

Source Law

Art. 10.39. Every fraternal benefit society organized or licensed under the provisions of Chapter 8 of Title 78 of the Revised Civil Statutes of Texas or this Chapter is hereby declared to be a charitable and benevolent institution, and all of the funds of such fraternal benefit society shall be exempt from all and every state, county, district, municipal and school tax, including occupation taxes, other than taxes or real estate and office equipment when used for other than lodge purposes.

Revisor's Note

V.T.I.C. Article 10.39 refers to a fraternal benefit society "licensed" under V.T.I.C. Chapter 10 or its statutory predecessors. Subsequent provisions of V.T.I.C. Chapter 10 refer to a "certificate," a "license to transact business," or a license "to do business." Throughout this chapter, the revised law substitutes "certificate of authority" for "certificate" or "license" and "holding 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. 885.004. INAPPLICABILITY TO CERTAIN SOCIETIES. (a) Except as provided by Subsection (b), this chapter does not apply to:

(1) a grand or subordinate lodge of Masons, Odd Fellows, Knights of Pythias, or the Junior Order of the United American Mechanics;

(2) a society that limits its membership to those engaged in one or more hazardous occupations in the same or similar lines of business;

(3) a society that does not issue benefit certificates;

(4) an association of local lodges of a society engaged in business in this state on July 1, 1913, that provides:

(A) death benefits of not more than \$500 to any one individual;

(B) disability benefits of not more than \$300 in any one year to any one individual; or

(C) both death benefits described by Paragraph (A) and disability benefits described by Paragraph (B);

(5) a contract of reinsurance on a plan in this state described by Subdivision (4);

(6) a domestic society that limits its membership to the employees of:

(A) a particular municipality; or

(B) a designated firm or corporation; or

(7) a domestic lodge, order, or association of a purely religious, charitable, and benevolent description that does not provide:

(A) death benefits of more than \$100; or

(B) disability benefits of more than \$150 to any one individual in any one year.

(b) This chapter applies to:

(1) the insurance department of the supreme lodge Knights of Pythias; and

(2) the beneficiary degree of insurance branch of the Junior Order of the United American Mechanics.

(c) The department may require from any society information that will permit the department to determine whether the society is exempt from this chapter. (V.T.I.C. Art. 10.12, Subsec. (e); Art. 10.38 (part).)

Source Law

[Art. 10.12]

(e) Nothing contained in this chapter shall be construed to affect or apply to societies which admit to membership only persons engaged in one or more hazardous occupations, in the same or similar lines of business.

Art. 10.38. Nothing in this chapter shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias) and the Junior Order of the United American Mechanics (exclusive of their beneficiary degree of insurance branch) or societies which limit their membership to any one hazardous occupation nor to similar societies which do not issue insurance certificates nor to an association of local lodges of a society now doing business in this State which provides death benefits not exceeding Five Hundred (\$500.00) Dollars to

any one person or disability benefits not exceeding Three Hundred (\$300.00) Dollars in any one year to pay one person or both, nor to any contracts of reinsurance business on such plan in this State nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit of more than One Hundred (\$100.00) Dollars or for disability benefits of more than One Hundred and Fifty (\$150.00) Dollars to any person in one (1) year. The Board of Insurance Commissioners may require from any society such information as will enable it to determine whether such society is exempt from the provisions of this law.

. . .

Revisor's Note

(1) Subsection (e), V.T.I.C. Article 10.12, and V.T.I.C. Article 10.38 provide that the chapter does not "affect or apply to" certain societies. The revised law omits the reference to "affect" because in context, "affect" is included within the meaning of "apply to."

(2) V.T.I.C. Article 10.38 refers to an association of local lodges of "a society now doing business in this State." The revised law substitutes the date July 1, 1913, for "now" for the reason stated in Revisor's Note (2) to Section 885.002. Article 10.38 was enacted by the same act as V.T.I.C. Article 10.04, and the discussion in Revisor's Note (2) to Section 885.002 relating to Article 10.04 applies equally to Article 10.38.

(3) V.T.I.C. Article 10.38 refers to a "city or town." The revised law substitutes "municipality" for "city or town" because that is the term used in the Local Government Code.

(4) V.T.I.C. Article 10.38 refers to a "designated firm, business house or corporation." The revised law omits the

reference to "business house" because it is included within the meaning of "firm or corporation."

(5) V.T.I.C. Article 10.38 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 or the State Board of Insurance have been changed appropriately.

Revised Law

Sec. 885.005. FRATERNAL BENEFIT SOCIETIES THAT PROVIDE BENEFITS RESULTING FROM ACCIDENTS ONLY. (a) A fraternal benefit society that provides benefits for death or disability resulting from accidents only and does not provide death benefits or benefits for sickness may hold a certificate of authority under this chapter if the society:

- (1) was organized and incorporated before July 1, 1913; and
- (2) operates as provided by Sections 885.051-885.054 and 885.062.

(b) A fraternal benefit society that holds a certificate of authority as provided by Subsection (a) may exercise all the privileges provided by and is subject to this chapter other than:

- (1) provisions requiring medical examination;
- (2) provisions requiring that a benefit certificate specify the amount of benefits; and
- (3) provisions relating to the valuation of benefit certificates. (V.T.I.C. Art. 10.38 (part).)

Source Law

Art. 10.38. . . . Any fraternal benefit society heretofore organized and incorporated

and operating within the definition set forth in the first three articles of this chapter, providing for the benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this chapter and shall have all the privileges and shall be subject to all the provisions and regulations of this law, except that the provisions of this law requiring medical examinations, valuations of benefit certificates and that the certificates shall specify the amount of benefits, shall not apply to such society.

Revisor's Note

V.T.I.C. Article 10.38 refers to a "fraternal benefit society heretofore organized and incorporated and operating." The revised law substitutes the date July 1, 1913, for "heretofore" for the reasons stated in Revisor's Note (2) to Section 885.002 and Revisor's Note (2) to Section 885.004.

Revised Law

Sec. 885.006. TREATMENT OF CERTAIN GRAND LODGES. A grand lodge, by whatever name known and without regard to whether incorporated, that holds a charter from any supreme governing body and that was engaging in business in this state on July 1, 1913, as a fraternal beneficiary association under the separate jurisdiction plan is considered to be a single state organization. (V.T.I.C. Art. 10.27 (part).)

Source Law

Art. 10.27. . . . All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this State upon the passage of this law as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single State organizations, and

Revisor's Note

V.T.I.C. Article 10.27 refers to "grand lodges . . . which were conducting business in this State upon the passage of this law."

The revised law substitutes the date July 1, 1913, for "upon the passage of this law" for the reason stated in Revisor's Note (2) to Section 885.002. Article 10.27 was enacted by the same act as V.T.I.C. Article 10.04, and the discussion in Revisor's Note (2) to Section 885.002 relating to Article 10.04 applies equally to Article 10.27.

[Sections 885.007-885.050 reserved for expansion]

SUBCHAPTER B. STRUCTURE OF FRATERNAL BENEFIT SOCIETY

Revised Law

Sec. 885.051. FRATERNAL BENEFIT SOCIETY DEFINED. A corporation, society, order, or voluntary association is a fraternal benefit society if it:

(1) has a lodge system and a representative form of government or limits its membership to a secret fraternity that has a lodge system and a representative form of government;

(2) is organized and operated solely for the mutual benefit of its members and their beneficiaries and not for profit;

(3) does not have capital stock; and

(4) provides for the payment of benefits in accordance with Section 885.301. (V.T.I.C. Art. 10.01, Subsec. (a) (part).)

Source Law

Art. 10.01. (a) Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, and which shall make provision for the payment of benefits in accordance with Article 10.05 is hereby declared to be a fraternal benefit society. . . .

Revised Law

Sec. 885.052. CONTROL OF FRATERNAL BENEFIT SOCIETY. (a) In this section, "control" has the meaning described by Sections 823.005 and 823.151.

(b) Control of a fraternal benefit society must be ultimately vested in the membership as provided by this chapter. Control of a fraternal benefit society may be exercised by lodges and a supreme governing body elected under Section 885.054.

(c) The methods provided by this section for exercising

control over a fraternal benefit society are exclusive.

(d) Chapter 823 applies to a fraternal benefit society. Each change in control of a fraternal benefit society must be consistent with the nature of a fraternal benefit society as specified by this section, Sections 885.051, 885.053, and 885.054, and other applicable law. (V.T.I.C. Art. 10.01, Subsec. (b); Art. 10.21, Subsec. (c).)

Source Law

[Art. 10.01]

(b) A characteristic of a fraternal benefit society as defined by Section (a) of this article is that control must be ultimately vested in the membership as provided by this article, Articles 10.02 and 10.03 of this code, and other provisions of this chapter, and that control of the fraternal benefit society may be exercised by lodges and a supreme legislative or governing body elected in the manner provided by Article 10.03 of this code. The methods provided by this section for exercising control over a fraternal benefit society are exclusive. In this section, "control" has the meaning assigned by Section 2(d), Article 21.49-1, of this code.

[Art. 10.21]

(c) Article 21.49-1 of this code applies to fraternal benefit societies. There may be no change in control of a fraternal benefit society that is inconsistent with the nature of a fraternal benefit society as specified in Article 10.01, 10.02, or 10.03 of this code and other applicable provisions of law.

Revisor's Note

Subsection (b), V.T.I.C. Article 10.01, refers to "a supreme legislative or governing body elected in the manner provided by Article 10.03 of this code." V.T.I.C. Article 10.03, revised as Section 885.054, refers only to "a supreme governing body," which may be either an assembly or a board. For consistency throughout this chapter, the revised law omits "legislative" from the reference to a "supreme legislative or

governing body."

Revised Law

Sec. 885.053. LODGE SYSTEM DEFINED. A fraternal benefit society is considered to be operating on the lodge system if the society:

(1) has a supreme governing body; and

(2) has lodges:

(A) into which members are admitted in accordance with the fraternal benefit society's laws, rituals, and rules; and

(B) that are required by the fraternal benefit society's laws to hold periodic meetings. (V.T.I.C. Art. 10.02 (part).)

Source Law

Art. 10.02. Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known into which members shall be admitted in accordance with its constitution, laws, ritual, rules and regulations, and which shall be required by the laws of such society to hold periodical meetings, shall be deemed to be operating on the lodge system. . . .

Revisor's Note

(1) V.T.I.C. Article 10.02 refers to "subordinate lodges or branches by whatever name known." Other provisions of V.T.I.C. Chapter 10 contain similar references. Throughout this chapter, the revised law omits the references to "subordinate" and "branches by whatever name known" as unnecessary because the definition of "lodge" under Subdivision (5), V.T.I.C. Article 10.03-1, revised as Section 885.001(5), defines a lodge as "a subordinate member unit of a fraternal benefit society."

(2) V.T.I.C. Article 10.02 refers to a fraternal benefit society's "constitution, laws, ritual, rules and regulations." Other provisions of V.T.I.C. Chapter 10 contain similar references. Throughout this chapter, the revised law omits "constitution" as unnecessary because Subdivision (4), V.T.I.C. Article 10.03-1, revised as Section 885.001(4), defines "fraternal benefit society's laws" as including a fraternal

benefit society's constitution. Similarly, throughout this chapter, the revised law omits "regulations" as unnecessary because the definition of "rule" under Subdivision (7), V.T.I.C. Article 10.03-1, revised as Section 885.001(7), defines "rule" as including a regulation.

Revised Law

Sec. 885.054. REPRESENTATIVE FORM OF GOVERNMENT DEFINED. A fraternal benefit society has a representative form of government if:

- (1) the society has a supreme governing body constituted as:
 - (A) an assembly, as described by Section 885.055;or
 - (B) a board, as described by Section 885.057;
 - (2) the officers of the society are elected by the supreme governing body or the board of directors;
 - (3) only a benefit member is eligible to serve as a member of the supreme governing body, the board of directors, or an intermediate assembly of the society;
 - (4) only a benefit member may vote on the management of the society's insurance affairs;
 - (5) a voting member of the society has only one vote;
- and
- (6) a voting member of the society may not cast a vote by proxy. (V.T.I.C. Art. 10.03.)

Source Law

Art. 10.03. A society has a representative form of government if:

- (1) the society has a supreme governing body constituted:
 - (A) as an assembly as described by Article 10.03A of this chapter;or
 - (B) as a board as described by Article 10.03B of this chapter;
- (2) the officers of the society are elected by the supreme governing body or by the board of directors;
- (3) only benefit members are eligible to serve as members of the supreme governing body, the board of directors, or an intermediate assembly of the society;
- (4) only benefit members may vote on the management of insurance affairs of the society;

(5) a voting member of the society has only one vote; and

(6) a voting member may not cast a vote by proxy.

Revised Law

Sec. 885.055. ASSEMBLY AS SUPREME GOVERNING BODY. (a) The supreme governing body of a fraternal benefit society is an assembly if the body is composed of:

(1) delegates elected directly by the members or at intermediate assemblies or conventions by the members or their representatives; and

(2) other delegates as prescribed by the fraternal benefit society's laws.

(b) The elected delegates to an assembly must:

(1) constitute a majority of the assembly in number; and

(2) be entitled to cast the greater of:

(A) two-thirds of the votes in the assembly; or

(B) the number of votes required to amend the fraternal benefit society's laws.

(c) A fraternal benefit society may provide for election of delegates by mail. (V.T.I.C. Art. 10.03A, Subsecs. (a), (b), (c).)

Source Law

Art. 10.03A. (a) The supreme governing body is an assembly if it is composed of:

(1) delegates elected directly by the members or at intermediate assemblies or conventions by the members or their representatives; and

(2) other delegates as prescribed by the society's laws.

(b) A society may provide for election of delegates by mail.

(c) The elected delegates to the assembly must:

(1) constitute a majority of the assembly in number; and

(2) be entitled to the greater of:

(A) two-thirds of the votes in the assembly; or

(B) the number of votes required to amend the society's laws.

Revised Law

Sec. 885.056. ASSEMBLY MEETINGS; DIRECTORS. (a) An

assembly that is the supreme governing body of a fraternal benefit society shall:

- (1) meet at least once every four years; and
- (2) elect a board of directors to conduct the business of the society between meetings of the assembly.

(b) A vacancy on the board of directors that occurs between elections may be filled in the manner prescribed by the fraternal benefit society's laws. (V.T.I.C. Art. 10.03A, Subsecs. (d), (e).)

Source Law

(d) The assembly shall:

- (1) meet at least once every four years; and
- (2) elect a board of directors to conduct the business of the society between meetings of the assembly.

(e) A vacancy on the board of directors that occurs between elections may be filled as prescribed in the society's laws.

Revised Law

Sec. 885.057. BOARD AS SUPREME GOVERNING BODY. (a) The supreme governing body of a fraternal benefit society is a board if the body is composed of:

(1) individuals elected directly by the members or at intermediate assemblies by the members or their representatives; and

(2) other individuals as prescribed by the fraternal benefit society's laws.

(b) The individuals elected to the board must:

- (1) constitute a majority of the board in number; and
- (2) have at least the number of votes required to amend the fraternal benefit society's laws, other than laws, if any, that must be amended by direct vote of the members.

(c) A fraternal benefit society may provide for election of the board by mail. (V.T.I.C. Art. 10.03B, Subsecs. (a), (b), (c).)

Source Law

Art. 10.03B. (a) The supreme governing body is a board if it is composed of:

- (1) persons elected either directly by the members or at intermediate assemblies by the members or their representatives; and
- (2) other persons as prescribed by the society's laws.

(b) A society may provide for election of the board by mail.

(c) The persons elected to the board must:

(1) constitute a majority of the board in number; and

(2) have at least the number of votes required to amend the society's laws, other than laws of the society, if any, that must be amended by direct vote of the members.

Revised Law

Sec. 885.058. BOARD MEMBERS; MEETINGS. (a) The term of a member of a board that is the supreme governing body of a fraternal benefit society may not exceed four years.

(b) A vacancy on the board that occurs between elections may be filled in the manner prescribed by the fraternal benefit society's laws. An individual filling the unexpired term of an elected board member is considered to be an elected member.

(c) A board shall meet at least annually to conduct the business of the fraternal benefit society. (V.T.I.C. Art. 10.03B, Subsecs. (d), (e), (f).)

Source Law

(d) The term of a board member may not exceed four years.

(e) A vacancy on the board that occurs between elections may be filled in the manner prescribed by the society's laws. A person filling the unexpired term of an elected board member is considered to be an elected member.

(f) A board shall meet at least once each year to conduct the business of the society.

Revised Law

Sec. 885.059. LOCATION OF MEETINGS OF SUPREME GOVERNING BODY. (a) A domestic fraternal benefit society may provide that its supreme governing body may hold meetings in any state, district, province, or territory in which the society has a lodge.

(b) All business transacted at a meeting authorized under Subsection (a) is as valid in all respects as if the meeting were held in this state. (V.T.I.C. Art. 10.25 (part).)

Source Law

Art. 10.25. Each domestic society . . . but may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches. All business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State.

Revisor's Note

V.T.I.C. Article 10.25 refers to the "legislative or governing body" of a fraternal benefit society. For consistency throughout this chapter, the revised law substitutes "supreme governing body" for "legislative or governing body."

Revised Law

Sec. 885.060. FRATERNAL BENEFIT SOCIETY'S LAWS BINDING. A fraternal benefit society's laws may provide that a lodge or a subordinate officer or member of the society may not waive any provision of those laws. Those laws are binding on:

- (1) the society;
- (2) each member of the society; and
- (3) each beneficiary of a member. (V.T.I.C. Art. 10.27

(part).)

Source Law

Art. 10.27. The constitution and laws of the society may provide that no subordinate body nor any of its subordinate officers or members shall have the power or authority to waive any provision of the laws and Constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. . . .

Revised Law

Sec. 885.061. AMENDMENT OF FRATERNAL BENEFIT SOCIETY'S LAWS. (a) A fraternal benefit society transacting business under this chapter shall file with the department a certified copy of each amendment of the fraternal benefit society's laws not later than the 90th day after the date of enactment of the amendment.

(b) A printed copy of a fraternal benefit society's laws, as amended, that is certified by the society's secretary or corresponding officer is prima facie evidence that the laws were

legally adopted. (V.T.I.C. Art. 10.29.)

Source Law

Art. 10.29. Every society transacting business under this chapter shall file with the Board, a duly certified copy of all amendments of, or additions to, its Constitution and laws within ninety (90) days after the enactment of the same. Printed copies of the Constitution and laws, as amended, changed, or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

Revisor's Note

V.T.I.C. Article 10.29 refers to "amendments of" and "additions to" a fraternal benefit society's constitution and laws and to a society's constitution and laws "as amended, changed, or added to." Throughout this chapter, references to "additions" and "changes" are omitted from the revised law because in this context, "additions" and "changes" are included within the meaning of "amendments."

Revised Law

Sec. 885.062. QUARTERLY LODGE MEETINGS REQUIRED. A fraternal benefit society's laws must require each lodge to hold regular meetings at least once each calendar quarter to further the society's purposes. (V.T.I.C. Art. 10.02 (part).)

Source Law

Art. 10.02. . . . The laws of the society must require subordinate lodges to hold regular meetings at least once in each calendar quarter in furtherance of the purposes of the society.

Revised Law

Sec. 885.063. MERGER OR TRANSFER OF MEMBERSHIP OR FUNDS.
(a) A domestic fraternal benefit society may not merge with or accept a transfer of the membership or funds of another fraternal benefit society unless:

(1) the merger or transfer is evidenced by a written contract that fully sets out the terms of the merger or transfer; and

(2) the societies file with the department:

(A) a copy of the contract;
(B) a sworn statement of the financial condition of each society by its president and secretary or corresponding officers; and

(C) a certificate of those officers, verified under oath, that the merger or transfer has been approved by a vote of two-thirds of the members of the supreme governing body of each society.

(b) On submission, the commissioner shall examine the contract, financial statements, and certificates. The commissioner shall approve the merger or transfer and issue a certificate to that effect if the commissioner determines that:

(1) the contract conforms with this section and Section 885.052(d);

(2) the financial statements are correct;

(3) the merger or transfer is just and equitable to the members of each society; and

(4) the new or surviving society complies with each requirement of a fraternal benefit society under this chapter.

(c) A contract of merger or transfer takes effect on issuance of a certificate under Subsection (b). (V.T.I.C. Art. 10.21, Subsecs. (a), (b).)

Source Law

Art. 10.21. (a) No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the department, together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds (2/3) of the members of the supreme legislative or governing body of each of said societies.

(b) Upon the submission of said contract, financial statements and certificates, the department shall examine the same, and if it shall find that such statements are correct and the said contract to be in conformity with the provisions of this article, that such merger or transfer is

just and equitable to the members of each of said societies, and that the new or surviving society complies with all of the requirements of a fraternal benefit society as set forth in this chapter, the department shall approve said merger or transfer, issue its certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect.

Revisor's Note

Subsection (a), V.T.I.C. Article 10.21, refers to the "terms and conditions" of a merger or transfer. Throughout this chapter, references to "conditions" are omitted from the revised law as unnecessary in this context because "conditions" is included within the meaning of "terms."

[Sections 885.064-885.100 reserved for expansion]

SUBCHAPTER C. MEMBERS

Revised Law

Sec. 885.101. QUALIFICATIONS FOR FRATERNAL BENEFIT SOCIETY MEMBERSHIP. (a) A fraternal benefit society shall specify in the fraternal benefit society's laws or rules:

- (1) subject to Subsection (b), the eligibility standards for each membership class;
- (2) the process for admission for each membership class; and
- (3) subject to Subsection (c), the rights and privileges of each membership class.

(b) If a fraternal benefit society provides benefits on the lives of children, the minimum age for adult membership may not be less than 15 years or more than 21 years.

(c) Only a benefit member may vote on the management of the insurance affairs of a fraternal benefit society.

(d) Membership rights in a fraternal benefit society are personal to the member, and a member may not assign those rights. (V.T.I.C. Art. 10.12, Subsecs. (a), (c).)

Source Law

Art. 10.12. (a) A society shall specify in its laws or rules:

- (1) the eligibility standards for each membership class, provided that if benefits are provided on the lives of children, the minimum age for adult membership is not less than 15 years of age and not more than 21 years of age;

(2) the process for admission for each membership class; and

(3) the rights and privileges of each membership class, provided that only benefit members may vote on the management of the insurance affairs of the society.

(c) Membership rights in the society are personal to the member. A member may not assign membership rights.

Revised Law

Sec. 885.102. SOCIAL MEMBERS. A fraternal benefit society may admit social members. A social member may not vote in the management of the insurance affairs of the society. (V.T.I.C. Art. 10.12, Subsec. (b).)

Source Law

(b) A society may admit social members. A social member may not vote in the management of the insurance affairs of the society.

Revised Law

Sec. 885.103. CHILDREN. (a) A fraternal benefit society may organize and operate branches for children on whose lives the society provides insurance or annuities.

(b) A child is not required to be a member of a lodge or to be initiated in a lodge.

(c) A child may not have any voice in the management of a fraternal benefit society. (V.T.I.C. Art. 10.06 (part).)

Source Law

Art. 10.06. [Any fraternal benefit society authorized to do business in this State may provide . . . for insurance, annuities, or for insurance and annuities, upon the lives of children at any age] Any such society may at its option organize and operate branches for such children and membership in local lodges, and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society.

Revised Law

Sec. 885.104. GRIEVANCE OR COMPLAINT PROCEDURES. A fraternal benefit society's laws or rules may provide for

grievance or complaint procedures for members. (V.T.I.C. Art. 10.12, Subsec. (d).)

Source Law

(d) A society may provide in its laws or rules for grievance or complaint procedures for members.

[Sections 885.105-885.150 reserved for expansion]

SUBCHAPTER D. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 885.151. APPLICABILITY TO CERTAIN FRATERNAL BENEFIT SOCIETIES CONTINUOUSLY AUTHORIZED TO ENGAGE IN BUSINESS. This subchapter does not apply to a fraternal benefit society authorized to engage in business in this state on June 1, 1965, as long as the society's certificate of authority or any renewal or extension of its certificate of authority continues in force. (V.T.I.C. Art. 10.19, Subsec. (g) (part).)

Source Law

(g) . . . provided further, that the above provisions of this article shall not apply to Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965, so long as their licenses or renewals or extensions thereof continue in force. . . .

Revisor's Note

Subsection (g), V.T.I.C. Article 10.19, in part provides that the "following provisions" of Article 10.19, meaning Subsection (h), which is revised as Sections 885.251 and 885.501, "shall apply to such Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965." The revised law omits this provision as unnecessary because the law applies to any fraternal benefit society engaging in business in this state in the absence of a provision to the contrary. The omitted law reads:

(g) . . . The following provisions of this article shall apply to such Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965.

Revised Law

Sec. 885.152. ELIGIBILITY TO PROVIDE BENEFITS. After June 1, 1965, a corporation, society, order, or voluntary association may qualify as a fraternal benefit society as defined by Section 885.051 for the purpose of providing for the payment of benefits as provided by Section 885.301 only if it:

(1) has at least 500 members and at least 10 lodges;
and

(2) has been in continuous operation for at least the five years preceding the filing of its articles of incorporation or association as provided by Section 885.153. (V.T.I.C. Art. 10.19, Subsec. (a) (part).)

Source Law

Art. 10.19. (a) Hereafter, only such corporation, society, order of voluntary association, having not less than five hundred (500) members and ten (10) subordinate lodges, without capital stock organized and carried on solely for the mutual benefit of its members, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government, may, provided that it has been in continuous operation for a period of not less than five (5) years immediately preceding the filing of its articles of incorporation or association as hereinafter provided, qualify as a Fraternal Benefit Society as defined in Article 10.01 for the purpose of providing for the payment of benefits as provided in Article 10.05,

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 10.19, provides that "[h]ereafter" only certain corporations, societies, orders, or associations may qualify as a fraternal benefit society for the purpose of providing benefits. That language was added to Article 10.19 by Chapter 551, Acts of the 59th Legislature, Regular Session, 1965. That act also added language later designated as Subsection (g), Article 10.19, revised as Section 885.151, that provides that "the

above provisions of this article [including Subsection (a), revised in this section] shall not apply to Fraternal Benefit Societies authorized to transact business in this state on June 1, 1965, so long as their licenses or renewals or extensions thereof continue in force." When Subsections (a) and (g) are read together, it is clear that "hereafter" means "after June 1, 1965," and the revised law is drafted accordingly.

(2) Subsection (a), V.T.I.C. Article 10.19, refers to a "corporation, society, [or] order of voluntary association." Order "of" voluntary association, in context, is clearly a typographical error. Subsection (a), V.T.I.C. Article 10.01, revised in relevant part as Section 885.051, refers to a "corporation, society, order, or voluntary association." Accordingly, the revised law substitutes "order or voluntary association" for "order of voluntary association."

(3) Subsection (a), V.T.I.C. Article 10.19, provides that a corporation, society, order, or voluntary association "without capital stock organized and carried on solely for the mutual benefit of its members, and not for profit, and having a lodge system and representative form of government, or which limits its membership to a secret fraternity having a lodge system and representative form of government" may qualify as a fraternal benefit society under V.T.I.C. Article 10.01, revised in relevant part as Section 885.051. Throughout this chapter after Section 885.051, the revised law omits the quoted language and similar provisions as unnecessary because each restriction imposed by the quoted language is imposed on all fraternal benefit societies by Subsection (a), V.T.I.C. Article 10.01, revised in relevant part as Section 885.051.

(4) Subsection (a), V.T.I.C. Article 10.19, refers to "a period of not less than five (5) years immediately preceding" the filing of a fraternal benefit society's articles of incorporation or association. The revised law omits the reference to "immediately" as unnecessary and refers to

"the five years preceding" the filing of the articles because "the five years preceding" means the five years "immediately preceding."

Revised Law

Sec. 885.153. FILING OF ARTICLES OF INCORPORATION OR ASSOCIATION. A corporation, society, order, or voluntary association eligible under Section 885.152 may qualify as a fraternal benefit society by filing with the department:

(1) certified articles of incorporation or association that set out:

(A) the name of the society;

(B) the purpose for which the society is formed;

and

(C) the manner in which the society's corporate powers are to be exercised;

(2) certified copies of the fraternal benefit society's laws and rules;

(3) copies of all proposed forms of benefit certificates, applications for benefit certificates, and circulars to be issued by the society;

(4) a surety bond as required by Section 885.156; and

(5) additional information that the commissioner considers necessary. (V.T.I.C. Art. 10.19, Subsecs. (a) (part), (b) (part).)

Source Law

(a) . . . only such corporation, society, order of voluntary association . . . may . . . qualify as a Fraternal Benefit Society [as defined in Article 10.01 for the purpose of providing for the payment of benefits as provided in Article 10.05,] by filing with the department duly certified articles of incorporation or association. Such articles shall set out:

(1) The name of the society,

(2) The purpose for which it is formed, . . . and the mode in which its corporate powers are to be exercised. . . .

(b) Such articles of incorporation or association and duly certified copies of the Constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond . . . shall be filed with the commissioner, who may require such further

information as the commissioner deems necessary, and

Revised Law

Sec. 885.154. NAME OF FRATERNAL BENEFIT SOCIETY. The name of a fraternal benefit society may not so closely resemble the name of any society or insurance company engaging in business in this state as to mislead the public or lead to confusion. (V.T.I.C. Art. 10.19, Subsec. (a) (part).)

Source Law

(a) . . . [Such articles shall set out:
(1) The name of the society] which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or lead to confusion.
. . . .

Revised Law

Sec. 885.155. PURPOSES OF FRATERNAL BENEFIT SOCIETY.
(a) The purposes for which a fraternal benefit society is organized may not include more liberal powers than are granted by this chapter. Any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious advantages may be set out among the society's purposes.
(b) A fraternal benefit society's purposes may be implemented directly by the society or indirectly through subsidiary corporations or affiliated organizations. (V.T.I.C. Art. 10.19, Subsec. (a) (part).)

Source Law

(a) . . . [Such articles shall set out:
. . . .
(2) The purpose for which it is formed,] which shall not include more liberal powers than are granted by this Chapter. Any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious advantages may be set forth among the purposes of the society These purposes may be carried out directly by the society or indirectly through subsidiary corporations or affiliated organizations.

Revised Law

Sec. 885.156. SURETY BOND. (a) A fraternal benefit society must file with the department a bond in an amount not less than \$300,000 and not more than \$1.5 million, as required by the commissioner, with sureties approved by the commissioner.

(b) The bond must be conditioned on the return of advance payments to applicants for benefit certificates as provided by this subchapter if the fraternal benefit society fails to qualify under this subchapter within one year. (V.T.I.C. Art. 10.19, Subsec. (b) (part).)

Source Law

(b) . . . a bond in the sum of not less than Three Hundred Thousand Dollars (\$300,000.00) and not more than One Million Five Hundred Thousand Dollars (\$1,500,000.00), as required by the commissioner, with sureties approved by the commissioner, conditioned upon the return of the advance payments, as provided in this article, to applicants, if the organization fails to qualify within one (1) year, shall be filed with the commissioner

Revised Law

Sec. 885.157. ISSUANCE OF PRELIMINARY CERTIFICATE OF AUTHORITY. If the purposes of a fraternal benefit society conform to the requirements of this chapter and all provisions of law have been complied with, the commissioner shall:

(1) certify that the society is in compliance with all provisions of law;

(2) retain and record the articles of incorporation or association; and

(3) issue to the society a preliminary certificate of authority. (V.T.I.C. Art. 10.19, Subsec. (b) (part).)

Source Law

(b) . . . if the purposes of the society conform to the requirements of this law, and all provisions of law have been complied with, the commissioner shall so certify and retain and record or file the articles of incorporation or association and furnish the incorporators a preliminary certificate authorizing said society to solicit from its members applications for insurance benefits as hereinafter provided.

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 10.19, requires the commissioner of insurance to "record or file" a fraternal benefit society's articles of incorporation or association. The reference to "file" is omitted from the revised law because in this context, "file" is included within the meaning of "record."

(2) Subsection (b), V.T.I.C. Article 10.19, refers to a preliminary certificate "authorizing said society to solicit from its members applications for insurance benefits as hereinafter provided." The revised law omits the quoted language as unnecessary because Subsection (c), V.T.I.C. Article 10.19, revised in relevant part as Section 885.158(a), provides that under a preliminary certificate, a fraternal benefit society may solicit applications for benefits from its members.

Revised Law

Sec. 885.158. POWERS AND DUTIES UNDER PRELIMINARY CERTIFICATE OF AUTHORITY; QUALIFICATION. (a) On receipt of a preliminary certificate of authority from the department under Section 885.157, a fraternal benefit society:

(1) may solicit from its members applications for insurance benefits for the purpose of completing the society's qualification;

(2) shall collect from each applicant an amount equal to at least one regular monthly payment, in accordance with the society's table of rates as provided by the fraternal benefit society's laws; and

(3) shall issue to each applicant a receipt for the amount collected under Subdivision (2).

(b) A fraternal benefit society operating under a preliminary certificate of authority may not incur a liability other than for advance payments collected under Subsection (a)(2), issue a benefit certificate, or pay, allow, or offer or promise to pay or allow to any person a death or disability benefit until:

(1) the society has established 10 lodges into which at least 500 applicants have been initiated;

(2) the society has received bona fide applications for death benefit certificates on at least 500 lives for at least \$2,000 each;

(3) each applicant for death benefits under Subdivision (2) has been regularly examined by a legally

qualified practicing physician;

(4) a certificate of each medical examination has been filed with and approved by the chief medical examiner of the society;

(5) the society submits to the department a list of the applicants for death benefits under Subdivision (2); and

(6) the society shows to the department, by the sworn statement of its treasurer or corresponding officer, that at least 500 applicants have each paid in cash in advance at least one regular monthly payment per \$1,000 of indemnity to be provided and that the payments in the aggregate amount to at least \$150,000.

(c) The list of applicants for death benefits submitted under Subsection (b)(5) must be under oath of the fraternal benefit society's president and secretary or corresponding officers and must provide for each applicant:

- (1) the applicant's name and address;
- (2) the date the applicant was examined;
- (3) the date the applicant was approved;
- (4) the date the applicant was initiated;
- (5) the name and number of the lodge of which the applicant is a member;
- (6) the amount of benefits to be granted; and
- (7) the rate of stated premiums.

(d) The rate of stated premiums under Subsection (c)(7) must be sufficient to provide for meeting the obligations the fraternal benefit society has contracted to pay, when valued for death benefits on the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or, at the society's option, any higher standard, and for disability benefits or combined death and permanent total disability benefits by tables based on reliable experience, with an interest assumption not greater than a rate of four percent a year.

(e) A fraternal benefit society shall hold advance payments received under this section in trust during the period of completing qualification. The society shall credit the advance payments to the mortuary or disability fund on account of the applicants and may not use any part of the payments for expenses. If the society does not complete its qualification within one year, as provided by this subchapter, the society shall return the advance payments to the applicants. (V.T.I.C. Art. 10.19, Subsecs. (c), (d).)

Source Law

(c) Upon receipt of said certificate from the department, said society may solicit from its members applications for insurance

benefits for the purpose of completing its qualification and shall collect from each applicant the amount of not less than one (1) regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred (500) lives for at least Two Thousand Dollars (\$2,000.00) each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examination have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten (10) subordinate lodges or branches into which said five hundred (500) applicants have been initiated; nor until there has been submitted to the department, under oath of the president and secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent (4%) per annum; nor

until it shall be shown to the department by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred (500) applicants have each paid in cash at least one (1) regular monthly payment as herein provided per One Thousand Dollars (\$1,000.00) of indemnity to be effected, which payments in the aggregate shall amount to at least One Hundred Fifty Thousand Dollars (\$150,000.00); all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

(d) Said advanced payments shall, during the period of completing qualification, be held in trust, and if such qualification is not completed within one (1) year as hereinafter provided, returned to said applicants.

Revisor's Note

Subsection (c), V.T.I.C. Article 10.19, refers to the "rate of stated periodical contributions" of members of a fraternal benefit society. Subsequent provisions of V.T.I.C. Chapter 10 refer to payment of "contributions" and "designations" and to "periodical or other payments." Throughout this chapter, the revised law substitutes "premiums" for "contributions," "designations," and "periodical or other payments" because under Subdivision (6), V.T.I.C. Article 10.03-1, revised as Section 885.001(6), "premium" is defined as a required contribution that is payable under a benefit certificate or benefit contract.

Revised Law

Sec. 885.159. TERMINATION OF AUTHORITY UNDER PRELIMINARY CERTIFICATE OF AUTHORITY. (a) Unless a fraternal benefit society has qualified under this subchapter, a preliminary certificate of authority granted under Section 885.157 is void on the first anniversary of the date the certificate is issued.

(b) The department, on cause shown, may extend the period prescribed by Subsection (a). An extension may not exceed one year. (V.T.I.C. Art. 10.19, Subsec. (f).)

Source Law

(f) Unless the five hundred (500) applicants herein required have been secured and the organization has qualified as a fraternal benefit society as herein provided, the preliminary certificate granted under the provisions of this article shall be null and void after one (1) year from its date, or after such further period, not exceeding one (1) year, as may be authorized by the department upon cause shown.

Revisor's Note

Subsection (f), V.T.I.C. Article 10.19, provides that a fraternal benefit society's preliminary certificate of authority is void after one year "[u]nless the five hundred (500) applicants herein required have been secured and the organization has qualified as a fraternal benefit society as herein provided." The revised law omits the reference to 500 applicants as unnecessary because that concept is included within the meaning of qualification under this subchapter. See Section 885.158.

Revised Law

Sec. 885.160. ISSUANCE OF CERTIFICATE OF AUTHORITY.

(a) The department may make an examination and require information in addition to that required by Section 885.158(b) that the department considers advisable. On presentation of satisfactory evidence that a fraternal benefit society has complied with all provisions of law, the department shall issue to the society a certificate of authority.

(b) The certificate of authority issued is prima facie evidence of the qualification of the fraternal benefit society as of the date of the certificate.

(c) The department shall make a record of a certificate of authority issued under Subsection (a). A certified copy or duplicate of the department's record shall be accepted in evidence with the same effect as the original certificate. (V.T.I.C. Art. 10.19, Subsec. (e); Art. 10.22 (part).)

Source Law

[Art. 10.19]

(e) The department may make such examination and require such further information as it deems advisable; and upon

presentation of satisfactory evidence that the society has complied with all the provisions of law, the department shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the qualification of such society at the date of such certificate. The department shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

Art. 10.22. . . . A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

Revisor's Note
(End of Subchapter)

V.T.I.C. Article 10.22 in part provides that "[s]ocieties which are now authorized to transact business in this State may continue such business until their present licenses expire and the authority of such societies may thereafter be renewed annually." The revised law omits the portion of Article 10.22 that permits a fraternal benefit society that was authorized to engage in business on July 1, 1913, to continue under its "present license" as obsolete because those licenses have all expired. The revised law also omits the provision in Article 10.22 relating to annual renewal of licenses as repealed. Under Section 1, Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . , including [Article] 10.22 . . . to the extent that they require periodic renewal of certificates of authority." The omitted law reads:

Art. 10.22. Societies which are now authorized to transact business in this State

may continue such business until their present licenses expire and the authority of such societies may thereafter be renewed annually for a period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next after the date of its issuance. The license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the Board of Insurance Commissioners Ten (\$10.00) Dollars. . . .

[Sections 885.161-885.200 reserved for expansion]

SUBCHAPTER E. FOREIGN FRATERNAL BENEFIT SOCIETIES

Revised Law

Sec. 885.201. CERTIFICATE OF AUTHORITY REQUIRED. A foreign fraternal benefit society organized and engaging in business before July 1, 1913, that was not authorized to engage in business in this state as of that date may not engage in business in this state without a certificate of authority from the commissioner. (V.T.I.C. Art. 10.23 (part).)

Source Law

Art. 10.23. No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Board of Insurance Commissioners. . . .

Revisor's Note

V.T.I.C. Article 10.23 refers to a foreign fraternal benefit society "now" engaging in business and organized before "the passage of this law." The revised law substitutes the date July 1, 1913, for "now" and "the passage of this law" for the reason stated in Revisor's Note (2) to Section 885.002. Article 10.23 was enacted by the same act as V.T.I.C. Article 10.04, and the discussion in Revisor's Note (2) to Section 885.002 applies equally to Article 10.23.

Revised Law

Sec. 885.202. ADMISSION OF FOREIGN FRATERNAL BENEFIT SOCIETY. (a) To engage in business in this state, a foreign fraternal benefit society described by Section 885.201 must:

- (1) have the qualifications required of a domestic fraternal benefit society under this chapter; and
- (2) have its assets invested as required by the laws of the state, territory, district, province, or country in which the society is organized.

(b) A foreign fraternal benefit society described by Section 885.201 is entitled to a certificate of authority to engage in business in this state on filing with the department:

- (1) a certified copy of the society's charter or articles of association;
- (2) a copy of the fraternal benefit society's laws, certified by its secretary or corresponding officer;
- (3) a statement of the society's business;
- (4) a certificate from the proper official in the society's home state, province, or country showing that the society is legally organized;
- (5) a copy of the society's benefit contract;
- (6) information showing that the society's assets are invested as required by Subsection (a)(2); and
- (7) additional information the commissioner considers necessary to demonstrate the society's business and method of operation.

(c) A statement of business filed by a foreign fraternal benefit society under Subsection (b)(3) must:

- (1) be under oath of the society's president and secretary or corresponding officers;
- (2) be in the form required by the commissioner; and
- (3) be verified by an examination made by the supervising insurance official of the society's home state or another state satisfactory to the commissioner.

(d) A benefit contract filed by a foreign fraternal benefit society under Subsection (b)(5) must show that benefits are provided for by premiums paid by persons holding similar contracts.

(e) The commissioner shall issue a certificate of authority to a foreign fraternal benefit society that complies with Subsection (b). (V.T.I.C. Art. 10.23 (part).)

Source Law

Art. 10.23. . . . Any such society shall be entitled to a license to transact business within this State upon filing with said Board a duly certified copy of its charter or articles of association; a copy

of its Constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the Chairman of the Board as hereinafter provided; a statement of its business under oath of its president and secretary or corresponding officers in the form required by said Board of Insurance Commissioners, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the Board of Insurance Commissioners; a certificate from the proper official in its home state, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical or other payments by persons holding similar contracts; and upon furnishing the Board such other information as it may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, said Board shall issue a license to such society to do business in this State Any foreign society desiring admission to this State shall have the qualifications required of domestic societies organized under this chapter and have its assets invested as required by the laws of the state, territory, district, country or province where it is organized. . . .

Revisor's Note

V.T.I.C. Article 10.23 requires a foreign fraternal benefit society to file with the Board of Insurance Commissioners "a power of attorney to the Chairman of the Board as hereinafter provided." The "hereinafter" is a reference to V.T.I.C. Article 10.24. Article 10.24, which was repealed by Chapter 46, Acts of the 70th Legislature, Regular Session, 1987, required each domestic or foreign fraternal benefit society to appoint in writing the Chairman of the Board of Insurance Commissioners as the

society's agent for service of legal process. Service of process on a foreign fraternal benefit society is now governed by V.T.I.C. Article 1.36, revised in this code as Chapter 804. Accordingly, the revised law omits the reference to filing a power of attorney.

Revised Law

Sec. 885.203. REFUSAL TO ISSUE CERTIFICATE OF AUTHORITY TO FOREIGN FRATERNAL BENEFIT SOCIETY. (a) If the commissioner refuses to issue a certificate of authority to a foreign fraternal benefit society under Section 885.202, the commissioner shall:

- (1) make the refusal in writing;
- (2) file the refusal in the department's office; and
- (3) on request, provide a copy of the refusal and a statement of the commissioner's reasons for the refusal to the society's officers.

(b) The commissioner's refusal to issue a certificate of authority to a foreign fraternal benefit society for authority to engage in business in this state is reviewable by proper proceedings in a state court. (V.T.I.C. Art. 10.23 (part).)

Source Law

Art. 10.23. [No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Board of Insurance Commissioners.] . . . When said Board refuses to license any society . . . , the Board shall reduce its decision to writing and file the same in its office, and shall furnish a copy thereof, together with a statement of its reasons, to the officers of the society, upon request, and the action of said Board of Insurance Commissioners shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. . . .

Revisor's Note

V.T.I.C. Article 10.23 refers to proceedings in any court "of competent jurisdiction." Throughout this chapter, the revised law omits the quoted language as unnecessary because the general laws of civil jurisdiction determine which courts have

jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 885.204. NOTICE OF INTENT TO REVOKE FOREIGN FRATERNAL BENEFIT SOCIETY'S CERTIFICATE OF AUTHORITY. (a) The commissioner shall notify a foreign fraternal benefit society engaging in business under this chapter of the commissioner's determination if, following an investigation, the commissioner determines that the society:

- (1) has failed to comply with this chapter;
- (2) has exceeded its powers;
- (3) is not fulfilling its contracts in good faith; or
- (4) is engaging in business fraudulently.

(b) A notification under Subsection (a) must:

(1) state in writing the grounds of the commissioner's dissatisfaction; and

(2) require that the society, after reasonable notice and on the date stated in the notice, show cause why the society's certificate of authority should not be revoked.

(V.T.I.C. Art. 10.37 (part).)

Source Law

Art. 10.37. When the Board of Insurance Commissioners on investigation is satisfied that any foreign society transacting business under this law has exceeded its powers, or has failed to comply with any provision of this chapter, or is conducting business fraudulently, or is not carrying out its contracts in good faith, the Board shall notify the society of its findings, and state in writing the grounds of the Board's dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. . . .

Revised Law

Sec. 885.205. REVOCATION OF FOREIGN FRATERNAL BENEFIT SOCIETY'S CERTIFICATE OF AUTHORITY. (a) The commissioner may revoke a foreign fraternal benefit society's certificate of authority to engage in business in this state if, on the date stated in the notice under Section 885.204, the society:

(1) has not, to the commissioner's satisfaction, removed the commissioner's objections; or

(2) does not present good and sufficient reason why

its certificate of authority should not be revoked.

(b) Section 885.203 applies to a decision by the commissioner to revoke a foreign fraternal benefit society's authority to engage in business in this state as if it were a decision to refuse to issue a certificate of authority.

(V.T.I.C. Arts. 10.23 (part), 10.37 (part).)

Source Law

Art. 10.23. [No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Board of Insurance Commissioners.] . . . When said Board [refuses to license any society] or revokes its authority to do business in this State, the Board shall reduce its decision to writing and file the same in its office, and shall furnish a copy thereof, together with a statement of its reasons, to the officers of the society, upon request, and the action of said Board of Insurance Commissioners shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. . . .

Art. 10.37. . . . If, on the date named in said notice, such objections have not been removed to the satisfaction of said Board or the society does not present good and sufficient reason why its authority to transact business in this State should not at that time be revoked, the Board may revoke the authority of the society to continue business in this State. All decisions and findings of said Board made under the provisions of this article may be reviewed by proper proceedings in any court of competent jurisdiction.

Revised Law

Sec. 885.206. CONTINUANCE OF CONTRACTS FOLLOWING REVOCATION OF CERTIFICATE OF AUTHORITY. This subchapter may not be construed to prevent a foreign fraternal benefit society that has had its certificate of authority refused under former Article 10.23, Insurance Code, or a predecessor to that statute, or that has had its certificate of authority revoked, from continuing in good

faith each contract made in this state during the time the society was authorized to engage in business in this state. (V.T.I.C. Art. 10.23 (part).)

Source Law

Art. 10.23. . . . Nothing in this or the preceding article shall be construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein.

Revisor's Note

V.T.I.C. Article 10.23 provides that "the preceding article," meaning V.T.I.C. Article 10.22, does not prevent a foreign fraternal benefit society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business in this state. The revised law omits the reference to Article 10.22 as unnecessary. V.T.I.C. Article 10.22 formerly provided for annual renewal of a certificate of authority to transact business; as noted in the revisor's note to the end of Subchapter D, that provision has been repealed. The reference in Article 10.23 to Article 10.22 was intended to permit a foreign fraternal benefit society whose annual certificate of authority has expired to continue its contracts. However, since the law no longer contains an annual renewal requirement, once a foreign fraternal benefit society has been issued a certificate of authority to transact business in this state, its certificate remains in effect unless revoked. Accordingly, the revised law refers only to a foreign fraternal benefit society that has had its certificate of authority revoked.

Revisor's Note

(End of Subchapter)

V.T.I.C. Article 10.23 in part provides for the issuance to a foreign fraternal benefit society of an annual license to engage in business in this state. The

revised law omits this provision for the reason stated in the revisor's note to the end of Subchapter D. The omitted law reads:

Art. 10.23. [No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Board of Insurance Commissioners. . . . said Board shall issue a license to such society to do business in this State] for the period of not more than fifteen (15) months, and not extending more than ninety (90) days beyond the last day of February next following the date of said certificate, and such license shall, upon compliance with the provisions of this chapter, be renewed annually. The license shall continue in full force and effect until the new license be issued or specifically refused. . . . For each such license or renewal the Society shall pay the Board of Insurance Commissioners Ten (\$10.00) Dollars. . . .

[Sections 885.207-885.250 reserved for expansion]

SUBCHAPTER F. POWERS AND DUTIES OF FRATERNAL
BENEFIT SOCIETY

Revised Law

Sec. 885.251. GENERAL POWERS. A fraternal benefit society may:

- (1) make a constitution and bylaws for the government of the society, the admission of its members, the management of its affairs, and the setting and readjusting of premiums;
- (2) amend its constitution and bylaws; and
- (3) exercise other powers necessary and incidental to achieving its purposes. (V.T.I.C. Art. 10.19, Subsec. (h) (part).)

Source Law

(h) . . . Every such society shall have the power to make a constitution and bylaws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to

change, alter, add to, or amend such constitution and bylaws and shall have such other powers as are necessary and incidental to carrying into effect its object and purposes.

Revisor's Note

(1) Subsection (h), V.T.I.C. Article 10.19, provides that a fraternal benefit society may readjust the rates of contribution of the society's members "from time to time." Throughout this chapter, the revised law omits "from time to time" as unnecessary. The authority to perform an act includes the authority to perform the act "from time to time."

(2) Subsection (h), V.T.I.C. Article 10.19, provides that a fraternal benefit society may "change, alter, add to, or amend" the society's constitution and bylaws. The references to "change," "alter," and "add to" are omitted from the revised law for the reason stated in the revisor's note to Section 885.061.

(3) Subsection (h), V.T.I.C. Article 10.19, refers to the "object and purposes" of a fraternal benefit society. The reference to "object" is omitted from the revised law because "object" is included within the meaning of "purposes."

Revised Law

Sec. 885.252. POWERS OF CERTAIN FRATERNAL BENEFIT SOCIETIES. (a) A fraternal benefit society engaged in business in this state on July 1, 1913, may exercise:

(1) each right conferred by this chapter; and
(2) if the society is incorporated, each right, power, or privilege exercised or possessed as of July 1, 1913, by the society under its charter or articles of incorporation consistent with this chapter.

(b) A fraternal benefit society engaged in business in this state on July 1, 1913, that is a voluntary association may incorporate under this chapter.

(c) A fraternal benefit society organized as of July 1, 1913, is not required to reincorporate under this chapter and may amend the society's articles of incorporation in the manner provided in the articles or the fraternal benefit society's laws. A society shall file an amendment described by this subsection with the department. The amendment becomes operative on filing

unless a later time is provided in the amendment or in the fraternal benefit society's articles of incorporation or laws. (V.T.I.C. Art. 10.20.)

Source Law

Art. 10.20. Any society now engaged in transacting business in this State may exercise all of the rights conferred hereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this chapter, if incorporated; or if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its Constitution and laws, and all such amendments shall be filed with the Board and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, Constitution or laws.

Revisor's Note

V.T.I.C. Article 10.20 refers to a "society now engaged in transacting business in this State." The revised law substitutes the date July 1, 1913, for "now" for the reason stated in Revisor's Note (2) to Section 885.002. Article 10.20 was enacted by the same act as V.T.I.C. Article 10.04, and the discussion in Revisor's Note (2) to Section 885.002 applies equally to Article 10.20.

Revised Law

Sec. 885.253. PRINCIPAL OFFICE OF DOMESTIC FRATERNAL BENEFIT SOCIETY. A domestic fraternal benefit society shall have its principal office in this state. (V.T.I.C. Art. 10.25 (part).)

Source Law

Art. 10.25. Each domestic society shall have its principal office in this State,

Revised Law

Sec. 885.254. IMMUNITY. (a) A director, officer, employee, member, or volunteer of a fraternal benefit society serving without compensation is not personally liable for damages resulting from an act or omission in the exercise of judgment or discretion in connection with the duties of that person for the society unless the act or omission involved wilful or wanton misconduct.

(b) This section does not limit a fraternal benefit society's direct or indirect liability. (V.T.I.C. Art. 10.26, Subsec. (i).)

Source Law

(i) A director, officer, employee, member, or volunteer of a society serving without compensation is not personally liable for damages resulting from an act or omission in the exercise of judgment or discretion in connection with the duties of that person for the society unless the act or omission involved wilful or wanton misconduct. This subsection does not limit a society's direct or indirect liability.

Revised Law

Sec. 885.255. INDEMNIFICATION OR REIMBURSEMENT. (a) A fraternal benefit society may indemnify and reimburse a person for expenses reasonably incurred by, and liabilities imposed on, that person in connection with or arising out of a proceeding, whether civil, criminal, administrative, or investigative, in which the person is involved, or in connection with or arising out of a threat of a proceeding against that person, because that person is or was a director, officer, employee, or agent of:

(1) the society; or

(2) a firm, corporation, or organization with which the person served in any capacity at the request of the society.

(b) The right of indemnification and reimbursement under Subsection (a) is not exclusive of other rights to which a person may be entitled as a matter of law and inures to the benefit of the person's devisees, legatees, heirs, and estate. (V.T.I.C. Art. 10.26, Subsecs. (b), (g).)

Source Law

(b) A society may indemnify and reimburse a person for expenses reasonably incurred by, and liabilities imposed on, that person in connection with or arising out of an action, suit, or other proceeding, whether

civil, criminal, administrative, or investigative, in which the person is involved, or in connection with or arising out of a threat of a proceeding against that person, because that person is or was a director, officer, employee, or agent of:

- (1) the society; or
- (2) a firm, corporation, or organization with which the person served in any capacity at the request of the society.

(g) The right of indemnification and reimbursement under this article is not exclusive of other rights to which a person may be entitled as a matter of law and inures to the benefit of the person's devisees, legatees, heirs, and estate.

Revisor's Note

Subsection (b), V.T.I.C. Article 10.26, refers to an "action, suit, or other proceeding." The revised law omits the references to "action" and "suit" because in context, those terms are included within the meaning of "proceeding."

Revised Law

Sec. 885.256. INDEMNIFICATION OR REIMBURSEMENT IN RELATION TO BREACH OF DUTY PROHIBITED. (a) Except as provided by Subsection (b), a person may not be indemnified or reimbursed under Section 885.255 in relation to:

(1) a matter in a proceeding in which the person is finally adjudged guilty of breach of a duty as a director, officer, employee, or agent of the fraternal benefit society; or

(2) an agreement that settles:

(A) a matter in a proceeding described by Subdivision (1); or

(B) the threat of a proceeding involving the person's alleged breach of a duty as a director, officer, employee, or agent of a fraternal benefit society.

(b) A fraternal benefit society may indemnify or reimburse a person in relation to a matter described by Subsection (a) only if the supreme governing body, the board of directors, or a court determines that:

(1) the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society; and

(2) in a criminal proceeding, the person had no reasonable cause to believe that the person's conduct was

unlawful.

(c) A determination by a supreme governing body or board of directors under Subsection (b) must be made by majority vote of a quorum consisting of persons who were not parties to the proceeding under review.

(d) The termination of a proceeding by judgment, order, settlement, or conviction or on a plea of no contest does not create a conclusive presumption that a person does not meet the standard of conduct required to justify indemnification and reimbursement. (V.T.I.C. Art. 10.26, Subsecs. (c), (d), (e), (f).)

Source Law

(c) Except as provided by Subsection (d) of this article, a person may not be indemnified or reimbursed in relation to:

(1) a matter in an action, suit, or other proceeding in which the person is finally adjudged guilty of breach of a duty as a director, officer, employee, or agent of the society; or

(2) an agreement that settles:

(A) a matter in an action, suit, or other proceeding described by Subdivision (1) of this subsection; or

(B) the threat of the proceeding.

(d) A society may indemnify or reimburse a person in relation to a matter described by Subsection (c) of this article only if the supreme governing body, the board of directors, or a court of competent jurisdiction determines that:

(1) the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society; and

(2) in a criminal action or proceeding, the person had no reasonable cause to believe that the person's conduct was unlawful.

(e) A determination by a supreme governing body or board of directors under Subsection (d) of this article must be made by majority vote of a quorum consisting of persons who were not parties to the action, suit, or other proceeding under review.

(f) The termination of an action or

other proceeding by judgment, order, settlement, or conviction or on a plea of no contest does not create a conclusive presumption that a person does not meet the standard of conduct required in order to justify indemnification and reimbursement.

Revisor's Note

Subsections (c)-(f), V.T.I.C. Article 10.26, refer to an "action, suit, or other proceeding" and an "action or other proceeding." The revised law omits the references to "action" and "suit" for the reason stated in the revisor's note to Section 885.255.

Revised Law

Sec. 885.257. INSURANCE FOR DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS. (a) A fraternal benefit society may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of another firm, corporation, or organization against a liability asserted against that person or incurred by that person in any capacity or arising out of that person's status as a director, officer, employee, or agent of the society or the other firm, corporation, or organization.

(b) A fraternal benefit society may purchase and maintain insurance under this section regardless of whether the society has the power to indemnify or reimburse the person with respect to the covered liability under Sections 885.255 and 885.256. (V.T.I.C. Art. 10.26, Subsec. (h).)

Source Law

(h) A society may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of another firm, corporation, or organization against a liability asserted against that person or incurred by that person in any capacity or arising out of that person's status as a director, officer, employee, or agent of the society or the other firm, corporation, or organization. A society may purchase and maintain insurance under this subsection regardless of whether the society has the

power to indemnify or reimburse the person with respect to the covered liability under this article.

Revised Law

Sec. 885.258. MANAGEMENT AND USE OF ASSETS AND FUNDS. (a) A fraternal benefit society shall hold, invest, and disburse all assets for the use and benefit of the society. A member or beneficiary may not have or acquire individual rights in the assets of a fraternal benefit society or become entitled to any apportionment or surrender of any part of a society's assets except as provided by a benefit contract.

(b) A fraternal benefit society may create, maintain, invest, disburse, and apply any special fund necessary to implement any purpose permitted by the fraternal benefit society's laws.

(c) A fraternal benefit society may create, maintain, invest, disburse, and apply an emergency surplus or other similar fund in accordance with the fraternal benefit society's laws. Unless otherwise provided by a benefit contract, a fraternal benefit society shall hold, invest, and disburse a fund created under this subsection for the use and benefit of the society. A member or beneficiary may not have or acquire individual rights in a fund created under this subsection or become entitled to any apportionment or the surrender of any part of the fund except as provided by Section 885.301. (V.T.I.C. Art. 10.16 (part); Art. 10.18, Subsecs. (a), (b).)

Source Law

Art. 10.16. Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment of the surrender of any part thereof, except as provided in Article 10.05 of this chapter. . . .

Art. 10.18. (a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part

thereof, except as provided in the contract.

(b) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

Revised Law

Sec. 885.259. SOURCE OF FUNDS. (a) A fraternal benefit society shall derive the funds from which the society pays benefits and the funds from which the society defrays its expenses from:

- (1) premiums paid by members of the society; and
- (2) accretions of those funds.

(b) A domestic or foreign fraternal benefit society may not engage in business in this state unless the society provides for stated premiums sufficient to permit meeting the obligations contracted, when valued in accordance with the reserving standards specified by this chapter. (V.T.I.C. Art. 10.16 (part).)

Source Law

Art. 10.16. . . . The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. No society, domestic or foreign, shall transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the obligations contracted, when valued in accordance with the reserving standards specified in this chapter. . . .

Revised Law

Sec. 885.260. SPECIFIED PAYMENTS. (a) A fraternal benefit society may provide in the fraternal benefit society's laws and benefit certificates for specified payments on account of the expense or general fund.

(b) A payment under this section may or may not be mingled with the general fund of the fraternal benefit society as provided by the society's constitution and bylaws. (V.T.I.C. Art. 10.10.)

Source Law

Art. 10.10. Any society shall have the right to provide in its laws and the

certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide.

Revised Law

Sec. 885.261. CONTROL OF FUND BY LODGE. (a) This section applies if the constitution and bylaws of the grand lodge or governing body of a fraternal benefit society:

(1) provide that all or part of the beneficiary, mortuary, or insurance fund of the society that is paid by or collected from the members of a lodge may be retained in the custody of and controlled and managed by the lodge; and

(2) designate an officer of the lodge to have custody and control of a fund described by Subdivision (1) and authority to loan or invest the fund.

(b) A lodge officer having custody and control of a fund described by Subsection (a)(1) shall execute a bond or other written instrument to be prescribed and approved in terms and amount by the commissioner to indemnify the fund against waste, depletion, or loss. The lodge officer shall file the bond or other written instrument with the department, if required to do so by the department.

(c) A fund secured as provided by Subsection (b) is exempt from this chapter. (V.T.I.C. Art. 10.17 (part).)

Source Law

Art. 10.17. . . . In case the Constitution and by-laws of the Grand Lodge or governing body of any such association provides that all or any part of the beneficiary or mortuary or insurance fund of such association that is paid in by or collected from the members of such subordinate or local lodge may be retained in the custody of and controlled and managed by such subordinate or local lodge, and designate what officer of such subordinate or local lodge shall have the custody and control of such fund and authorize such local officers to loan or invest the same, and such local officer shall have executed and filed, and shall from time to time when required by the Board of Insurance Commissioners, file with the Board such bond or other written instrument to be prescribed and approved in terms and amount by such Board as will

indemnify such fund against waste, depletion or loss through loans, investment or otherwise, then such fund so secured shall be exempt from the provisions of this chapter.

Revisor's Note

V.T.I.C. Article 10.17 refers to a bond to indemnify a beneficiary, mortuary, or insurance fund of a lodge of a fraternal benefit society against "waste, depletion or loss through loans, investment or otherwise." The revised law omits "through loans, investment or otherwise" as unnecessary because the quoted language describes any type of loss and does not act as a limitation.

Revised Law

Sec. 885.262. INVESTMENT OF FRATERNAL BENEFIT SOCIETY FUNDS. (a) Except as provided by Subsection (b), a fraternal benefit society may invest its funds only in securities permitted by state law for the investment of the assets of life insurance companies.

(b) A foreign fraternal benefit society authorized to or seeking to engage in the business of insurance in this state that invests its funds in accordance with the laws of the state in which the society is incorporated is considered to meet the requirements of this chapter for the investment of funds. (V.T.I.C. Art. 10.17 (part).)

Source Law

Art. 10.17. Every society shall invest its funds only in securities permitted by the laws of this State for the investment of the assets of life insurance companies. Any foreign society permitted or seeking to do business in this State which invest funds in accordance with the laws of the state in which it is incorporated shall be held to meet the requirements of this chapter for the investment of funds. . . .

Revised Law

Sec. 885.263. TREATMENT OF DEFERRED CLAIMS. (a) A deferred payment or an installment of a claim is considered to be a fixed liability on the occurrence of the contingency on which the payment or installment is to be paid. The amount of the liability is the present value of the future payment or installment at the rates of interest and mortality assumed by the

fraternal benefit society for valuation.

(b) A fraternal benefit society shall maintain a fund sufficient to meet each fixed liability under Subsection (a) regardless of proposed future collections to meet the liability. (V.T.I.C. Art. 10.16 (part).)

Source Law

Art. 10.16. . . . Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

Revisor's Note

(End of Subchapter)

Subsection (g), V.T.I.C. Article 10.19, in part provides that Article 10.19 "shall not apply to societies specifically exempted from the provisions of Chapter 10 of the Insurance Code." The revised law omits this provision as unnecessary because Subsection (e), V.T.I.C. Article 10.12, and V.T.I.C. Article 10.38, revised in relevant part as Section 885.004, provide that Chapter 10, including Article 10.19, does not apply to certain fraternal benefit societies. The omitted law reads:

(g) Provided, however, that this Article shall not apply to societies specifically exempted from the provisions of Chapter 10 of the Insurance Code and

[Sections 885.264-885.300 reserved for expansion]

SUBCHAPTER G. BENEFITS PROVIDED BY FRATERNAL
BENEFIT SOCIETIES

Revised Law

Sec. 885.301. TYPES OF BENEFITS PERMITTED. (a) A fraternal benefit society may provide for the payment of:

- (1) death benefits in any form;

- (2) endowment benefits;
- (3) annuity benefits;
- (4) benefits for temporary or permanent disability resulting from disease or accident;
- (5) benefits for hospital, medical, or nursing expenses resulting from sickness, bodily infirmity, or accident;
- (6) benefits for the erection of a monument or tombstone to the memory of a deceased member;
- (7) funeral benefits; and
- (8) any other benefit that may be provided by a life, accident, or health insurance company and that is:
 - (A) offered in compliance with the provisions of Chapter 3 and Title 7 applicable to a life, accident, or health insurance company; and
 - (B) consistent with this chapter.

(b) A fraternal benefit society shall:

- (1) specify in the fraternal benefit society's laws or rules those persons to whom a benefit certificate may be issued or who may be covered by benefits; and
- (2) make the provision of those benefits consistent with the provision of benefits to members and their beneficiaries. (V.T.I.C. Art. 10.05, Subsecs. (a), (b).)

Source Law

Art. 10.05. (a) A society authorized to do business in this State may provide for the payment of:

- (1) Death benefits in any form;
- (2) Endowment benefits;
- (3) Annuity benefits;
- (4) Temporary or permanent disability benefits as a result of disease or accident;
- (5) Hospital, medical or nursing benefits due to sickness or bodily infirmity or accident;
- (6) Monument or tombstone benefits to the memory of deceased members;
- (7) Funeral benefits; and
- (8) Any other benefit that may be provided by a life, accident, or health insurance company, provided that the benefit is:
 - (A) offered in compliance with Chapter 3 of this code; and
 - (B) consistent with this chapter.

(b) A society shall:

(1) specify in its laws or rules those persons to whom a certificate may be issued or who may be covered by benefits; and

(2) make the provision of those benefits consistent with the provision of benefits to members and their beneficiaries.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 10.05, provides that a fraternal benefit society "authorized to do business in this State" may provide for the payment of certain types of benefits. Subsequent provisions of V.T.I.C. Chapter 10 contain similar language. Throughout this chapter, the revised law omits the quoted language as unnecessary. V.T.I.C. Article 10.19, applicable to domestic fraternal benefit societies and revised as Sections 885.151-885.160 and 885.501, and V.T.I.C. Article 10.23, applicable to foreign fraternal benefit societies and revised as Sections 885.201-885.203, prohibit a fraternal benefit society from engaging in business in this state without obtaining a certificate of authority. Since providing for the payment of benefits is "engaging in business," it is clear without an express statement to that effect that only a fraternal benefit society "authorized to do business in this State" may provide for the payment of benefits.

(2) Subsection (a)(8), V.T.I.C. Article 10.05, refers to "[a]ny other benefit . . . provided by a life, accident, or health insurance company, provided that the benefit is . . . offered in compliance with Chapter 3 of this code." Some of the provisions of Chapter 3 that govern the type of coverages provided by life, accident, or health insurance companies are revised as portions of Title 7 of this code. The revised law is drafted accordingly.

Revised Law

Sec. 885.302. ISSUANCE OF BENEFIT CONTRACTS ON VARIABLE BASIS. A fraternal benefit society may, as provided by a resolution of its supreme governing body, establish and operate one or more separate accounts and issue benefit contracts on a variable basis, subject to laws regulating a life insurance

company that establishes those types of accounts and issues those types of contracts. To comply with applicable federal or state laws or rules, the society may:

(1) issue on a variable basis contracts to which Sections 885.306(b) and (c) and 885.311(a) do not apply; and

(2) adopt special procedures for conducting the business and affairs of a separate account and provide special voting and other rights for a person having beneficial interests in a separate account, including special procedures and rights relating to:

- (A) investment policy;
- (B) investment advisory services;
- (C) selection of certified public accountants;

and

(D) selection of a committee to manage the business and affairs of the account. (V.T.I.C. Art. 10.18, Subsec. (c).)

Source Law

(c) A society may, pursuant to a resolution of its supreme governing body, establish and operate one or more separate accounts and issue benefit contracts on a variable basis, subject to the provisions of law regulating a life insurance company that establishes those types of accounts and issues those types of contracts. In order to comply with applicable federal or state laws or rules, the society may:

(1) issue contracts on a variable basis to which Articles 10.15(a) and 10.30(e) of this chapter do not apply; and

(2) adopt special procedures for the conduct of the business and affairs of a separate account and provide special voting and other rights for a person having beneficial interests in a separate account, including special procedures and rights relating to:

- (A) investment policy;
- (B) investment advisory services;

(C) selection of certified public accountants; and

(D) selection of a committee to manage the business and affairs of the account.

Revised Law

Sec. 885.303. BENEFITS FOR CHILDREN. (a) A fraternal benefit society may provide by its laws, in addition to other benefits provided for by the fraternal benefit society's laws, for insurance or annuities, or insurance and annuities, on the lives of children of any age, on the application of an adult individual related to or interested in the child, as provided by the fraternal benefit society's laws.

(b) A life insurance benefit contract issued on the life of an individual who is younger than a fraternal benefit society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the benefit certificate. A fraternal benefit society may require approval of an application for membership in order to make the transfer and may provide in all other respects for control of the benefit certificate and rights, obligations, and liabilities incident and connected to the certificate. Ownership rights under the benefit certificate before a transfer must be specified in the certificate. (V.T.I.C. Art. 10.06 (part); Art. 10.15, Subsec. (f).)

Source Law

Art. 10.06. Any fraternal benefit society authorized to do business in this State may provide in its laws, in addition to other benefits provided for therein, for insurance, annuities, or for insurance and annuities, upon the lives of children at any age, upon the application of some adult person related to or interested in said child as the laws of such society may provide. . . .

[Art. 10.15]

(f) A life insurance benefit contract issued on the life of a person who is younger than the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect the transfer and may provide in all other respects for the regulation, government, and control of certificates and rights, obligations, and liabilities incident and connected to the certificate. Ownership rights under the certificate before a transfer must be

specified in the certificate.

Revisor's Note

Subsection (f), V.T.I.C. Article 10.15, refers to the "regulation, government, and control" of benefit certificates issued by a fraternal benefit society. Throughout this chapter, such references to "regulation" and "government" are omitted from the revised law because in this context, "regulation" and "government" are included within the meaning of "control."

Revised Law

Sec. 885.304. BENEFICIARIES. (a) The owner of a benefit contract may change the beneficiary at any time in accordance with a fraternal benefit society's laws or rules unless the owner waives that right by specifically requesting in writing that the beneficiary designation be irrevocable.

(b) A fraternal benefit society may, through the fraternal benefit society's laws or rules, limit the scope of beneficiary designations and shall provide that a person whose designation as a beneficiary is revocable may not have or obtain a vested interest in the proceeds, in conformity with the benefit contract.

(c) If, at the death of an insured, a lawful beneficiary to whom the proceeds of the benefit contract are payable does not exist under the benefit contract, a fraternal benefit society shall pay the amount of the benefit under the benefit contract:

- (1) to the personal representative of the insured; or
- (2) if the owner of the benefit certificate is a person other than the insured, to the owner of the certificate.

(d) Subsection (c) does not apply to the extent funeral benefits may be paid under the benefit contract. (V.T.I.C. Art. 10.12-1.)

Source Law

Art. 10.12-1. (a) The owner of a benefit contract may change the beneficiary at any time in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that a person whose designation as beneficiary is revocable may not have or obtain a vested interest in the proceeds, in conformity with the benefit

contract.

(b) If, at the death of the deceased insured, a lawful beneficiary to whom the proceeds of the benefit contract are payable does not exist under the benefit contract, the amount of a benefit under a benefit contract shall be paid:

(1) to the personal representative of the deceased insured; or

(2) if the owner of the certificate is a person other than the deceased insured, to the owner of the certificate.

(c) Subsection (b) of this article does not apply to the extent funeral benefits may be paid under the benefit contract.

Revised Law

Sec. 885.305. ORGANIZATION AS BENEFICIARY. A fraternal benefit society may provide in the fraternal benefit society's laws for the issuance to its members of benefit certificates under which an association, society, or corporation that is organized and operated for religious, eleemosynary, or educational purposes is named as beneficiary. (V.T.I.C. Art. 10.14.)

Source Law

Art. 10.14. Fraternal benefit societies, heretofore or hereafter incorporated by the State of Texas or licensed to do business therein, shall be authorized to provide in their constitutions, by-laws or fundamental laws for the issuance of benefit certificates to their members, wherein any association, society or corporation, organized and operated for religious, eleemosynary or educational purposes, may be named as beneficiary.

Revisor's Note

V.T.I.C. Article 10.14 refers to fraternal benefit societies "heretofore or hereafter incorporated by the State of Texas or licensed to do business therein." The revised law omits "heretofore or hereafter" as unnecessary because that describes any fraternal benefit society authorized to transact business in this state. The revised

law also omits "incorporated by the State of Texas or licensed to do business therein" as unnecessary. The quoted language was included in V.T.I.C. Article 10.14 to make the provision apply to both domestic and foreign fraternal benefit societies; in this chapter, absent language limiting a provision to one type of fraternal benefit society, it applies to both.

Revised Law

Sec. 885.306. BENEFIT CERTIFICATE. (a) A fraternal benefit society may not deliver or issue for delivery in this state a benefit certificate unless the form of the certificate has been filed under Article 3.42.

(b) Each benefit certificate issued by a fraternal benefit society must:

(1) specify the amount of benefits provided under the certificate;

(2) state the amount of premiums that are payable under the certificate; and

(3) provide that the certificate, the society's charter or articles of incorporation or, if the society is a voluntary association, the society's articles of association, the fraternal benefit society's laws, the application for membership and medical examination, signed by the applicant, and all amendments to each of those constitute the agreement between the society and the member.

(c) An amendment to a fraternal benefit society's charter, articles of incorporation or association, or laws made or enacted after the issuance of a benefit certificate:

(1) binds the member and the member's beneficiaries; and

(2) controls the agreement in all respects as if the amendment had been in force at the time of the application for membership.

(d) A life, accident, health, or disability insurance benefit certificate or annuity benefit certificate issued by a fraternal benefit society must meet the requirements applicable to similar policies issued by an insurer in this state that are not inconsistent with this chapter as determined by rule of the commissioner.

(e) A copy of a document described by Subsection (b)(3), certified by a fraternal benefit society's secretary or corresponding officer, shall be admitted as evidence of the terms of the agreement between the society and the member. (V.T.I.C. Art. 10.15, Subsecs. (a), (b), (d).)

Source Law

Art. 10.15. (a) Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions or amendments to said charter or articles of incorporation, or articles of association, or constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and the member's beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

(b) A certificate may not be delivered or issued for delivery in this state unless the form of the certificate has been filed with the department under Article 3.42 of this code. A life, accident, health, or disability insurance certificate or annuity certificate issued by a society must meet the requirements applicable to similar policies issued by an insurer in this state that are not inconsistent with this chapter as determined by rule of the commissioner.

(d) Each certificate must state the amount of premiums that are payable under the certificate.

Revised Law

Sec. 885.307. GRACE PERIOD. A fraternal benefit society shall include in the terms of a benefit certificate a grace period of at least one month for payment of premiums. (V.T.I.C.

Art. 10.15, Subsec. (c).)

Source Law

(c) A society shall include in the terms of a certificate a grace period of at least one month for payment of premiums.

Revised Law

Sec. 885.308. ASSIGNMENT OF LIFE INSURANCE BENEFIT CONTRACT. A fraternal benefit society may specify the terms for the assignment of a life insurance benefit contract. (V.T.I.C. Art. 10.15, Subsec. (g).)

Source Law

(g) A society may specify the terms and conditions for the assignment of a life insurance benefit contract.

Revised Law

Sec. 885.309. NONFORFEITURE BENEFITS. (a) The value of a nonforfeiture benefit provided under a benefit certificate issued before January 1, 2001, must comply with the law applicable to the certificate immediately before that date.

(b) The value of a nonforfeiture benefit provided under a benefit certificate issued on or after January 1, 2001, is computed as provided under:

(1) the provisions of Chapters 1105 and 1107 applicable to life insurance companies issuing policies containing similar benefits; and

(2) the applicable tables required by those chapters. (V.T.I.C. Art. 10.31.)

Source Law

Art. 10.31. (a) For a certificate providing a nonforfeiture benefit that is issued before January 1, 2001, the value of the nonforfeiture benefit granted under the certificate must comply with the law applicable to the certificate immediately before that date.

(b) For a certificate providing a nonforfeiture benefit that is issued on or after January 1, 2001, the value of the nonforfeiture benefit granted under the certificate shall be computed as provided under the provisions of Articles 3.44a and 3.44b of this code applicable to life insurance companies issuing policies

containing similar benefits and under the applicable tables established under those articles.

Revised Law

Sec. 885.310. ENFORCING PAYMENT OF PREMIUMS; CONTROL OF BENEFIT CERTIFICATES. A fraternal benefit society may provide for:

- (1) enforcing payment of premiums;
- (2) designating beneficiaries; and
- (3) controlling benefit certificates and all rights, obligations, and liabilities incident to the certificates not in conflict with this chapter. (V.T.I.C. Art. 10.09.)

Source Law

Art. 10.09. Any society shall have the full power to provide for means of enforcing payment of contributions, designations, and in all other respects for the regulation, government and control of such certificate and all rights, obligations and liabilities incident thereto and connected herewith not at variance with the provisions of this chapter.

Revisor's Note

V.T.I.C. Article 10.09 refers to "rights, obligations and liabilities incident thereto and connected herewith" in reference to benefit certificates. The reference to "connected herewith" is omitted from the revised law because "connected herewith" is included within the meaning of "incident thereto."

Revised Law

Sec. 885.311. DEFICIENCY PAYMENTS. (a) A fraternal benefit society shall provide in the fraternal benefit society's laws that if the society's reserves for any class of the society's benefit certificates become impaired, the society's supreme governing body or board of directors may require the certificate holders to pay the society an equitable proportion of the deficiency as determined by the governing body or board.

(b) If a holder of a benefit certificate does not pay a fraternal benefit society the amount determined under Subsection (a), the holder, in a manner determined by the society, may elect to accept:

- (1) the amount determined under Subsection (a) as an indebtedness against the certificate, with the amount drawing

interest at a rate that does not exceed the rate specified for a certificate loan under a certificate that has cash value;

(2) a proportionate reduction in the benefits payable under the certificate; or

(3) a combination of the limitations on the certificate described by Subdivisions (1) and (2).

(c) A fraternal benefit society may determine a presumed election for a holder of a benefit certificate under Subsection (b) if the holder fails to make an election. (V.T.I.C. Art. 10.30, Subsecs. (e), (f), (g).)

Source Law

(e) A society shall provide in the society's laws that if the society's reserves for any class of the society's certificates become impaired, the society's supreme governing body or board of directors may require the certificate holder to pay the society an equitable proportion of the deficiency as determined by the governing body or board.

(f) If the certificate holder does not pay the society the amount determined under Subsection (e) of this article, the holder, in a manner determined by the society, may elect to accept:

(1) the amount determined under Subsection (e) of this article as an indebtedness against the certificate, with the amount drawing interest at a rate that does not exceed the rate specified for a certificate loan under a certificate that has cash value;

(2) a proportionate reduction in the benefits under the certificate; or

(3) a combination of the limitations on the certificate as described by Subdivisions (1) and (2) of this subsection.

(g) The society may determine a presumed election for the certificate holder under Subsection (f) of this article if the holder fails to make an election.

Revised Law

Sec. 885.312. CONTINUATION OF BENEFIT CERTIFICATE ON EXPULSION OR SUSPENSION OF MEMBER. If a fraternal benefit society's laws provide for expulsion or suspension of a member,

the benefit certificate must provide that a member who is expelled or suspended may maintain the certificate in force by continuing payment of the required premium unless the expulsion or suspension:

- (1) is for nonpayment of a premium; or
- (2) occurs within the contestable period of the benefit contract and is for material misrepresentation in the application for membership or insurance. (V.T.I.C. Art. 10.15, Subsec. (e).)

Source Law

(e) If the laws of the society provide for expulsion or suspension of a member, the certificate must provide that a member who is expelled or suspended may maintain the certificate in force by continuing payment of the required premium, unless the expulsion or suspension:

- (1) is for nonpayment of a premium; or
- (2) occurs within the contestable period of the benefit contract and is for material misrepresentation in the application for membership or insurance.

Revised Law

Sec. 885.313. CONTINUATION OF BENEFIT CERTIFICATE ISSUED ON CHILD. If the membership in a fraternal benefit society of a person responsible for the support of a child on whose account a benefit certificate has been issued terminates, the certificate may be continued for the benefit of:

- (1) the child's estate, if payment of the premiums is continued; or
- (2) any other person responsible for the support and maintenance of the child, if the person assumes the payment of the required premiums. (V.T.I.C. Art. 10.11.)

Source Law

Art. 10.11. In the event of the termination of membership in the society by the person responsible for the support of any child, on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided, the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child,

who shall assume the payment of the required contributions.

Revised Law

Sec. 885.314. RESPONSIBILITY FOR PAYMENT OF BENEFITS. (a) An officer or member of the supreme, the grand, or any subordinate body of an incorporated fraternal benefit society is not individually liable for the payment of any disability or death benefit provided for by the fraternal benefit society's laws and contracts.

(b) Benefits are payable only out of the fraternal benefit society's funds and in the manner provided by the fraternal benefit society's laws. (V.T.I.C. Art. 10.26, Subsec. (a).)

Source Law

Art. 10.26. (a) Officers and members of the supreme, grand or any subordinate body of an incorporated society are not individually liable for the payment of any disability or death benefit provided for in the laws and agreements of the society. Those payments are payable only out of the funds of the society and in the manner provided by its law.

Revised Law

Sec. 885.315. DAMAGES FOR FAILURE TO TIMELY PAY BENEFITS. A fraternal benefit society that is liable for a loss and that does not pay benefits before the 61st day after the date of the demand for payment is liable to the holder of the benefit certificate, in addition to the amount of the loss, for damages of 12 percent of the amount of the loss and reasonable attorney's fees for the prosecution and collection of the loss. (V.T.I.C. Art. 10.13.)

Source Law

Art. 10.13. In all cases where a loss occurs and the fraternal benefit society liable therefor shall fail to pay the same within sixty (60) days after the demand therefor, such society shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve (12%) per cent damages on the amount of such loss together with reasonable attorney's fees for the prosecution and collection of such loss.

Revised Law

Sec. 885.316. EXEMPTION OF BENEFITS. Money or another

benefit or charity to be paid or provided by a fraternal benefit society, before or after payment is not subject to attachment, garnishment, or other process and may not be seized or applied by any legal or equitable process or operation of law to pay any debt or liability of a member, a beneficiary, or any other person who may have a right under the benefit contract. (V.T.I.C. Art. 10.28.)

Source Law

Art. 10.28. No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment.

Revisor's Note

(1) V.T.I.C. Article 10.28 refers to "money or other benefit, charity or relief or aid" to be paid by a fraternal benefit society. The references to "relief" and "aid" are omitted from the revised law because, in this context, "relief" and "aid" are included within the meaning of "benefit or charity."

(2) V.T.I.C. Article 10.28 refers to a benefit to be "provided or rendered" by a fraternal benefit society. The reference to "rendered" is omitted from the revised law because "rendered" is included within the meaning of "provided."

(3) V.T.I.C. Article 10.28 refers to a benefit being "seized, taken or appropriated or applied." The reference to "taken" is omitted from the revised law because "taken" is included within the meaning of "seized." The reference to "appropriated" is omitted from the revised law because in this context, "appropriated" is included within the meaning of "applied."

[Sections 885.317-885.350 reserved for expansion]

SUBCHAPTER H. AGENTS

Revised Law

Sec. 885.351. AGENTS. (a) A fraternal benefit society may

appoint an agent licensed by the department under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), to sell benefits listed under Section 885.301(a) to society members.

(b) A person may not solicit or procure benefit contracts for a fraternal benefit society unless the person is licensed as an agent under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code). (V.T.I.C. Art. 10.05, Subsec. (c); Art. 10.37-3, Subsec. (a).)

Source Law

[Art. 10.05]

(c) A society may appoint an agent licensed by the department under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), to sell benefits listed under Subsection (a) of this article to society members.

Art. 10.37-3. (a) A person may not solicit or procure insurance contracts for a society unless the person is licensed as an agent under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code).

Revisor's Note

Subsection (a), V.T.I.C. Article 10.37-3, refers to "insurance contracts." For consistency with other provisions of this chapter, throughout this subchapter the revised law substitutes "benefit contracts" for "insurance contracts." "Benefit contract," a defined term under Subsection (1), V.T.I.C. Article 10.03-1, revised as Section 885.001(2), is the type of insurance contract that a fraternal benefit society provides.

Revised Law

Sec. 885.352. EXCEPTION. (a) Section 885.351(b) does not apply to an agent, representative, or member of a fraternal benefit society who devotes less than 50 percent of the person's time to the solicitation and procurement of benefit contracts for that society.

(b) For purposes of this section, a person is presumed for a calendar year to have devoted at least 50 percent of the person's time to the solicitation or procurement of benefit

contracts if, in the preceding calendar year, the person solicited or procured on behalf of a fraternal benefit society:

(1) life insurance contracts that have generated, in the aggregate, more than \$20,000 of direct premiums for all lives insured;

(2) benefit contracts other than life insurance contracts that have insured the individual lives of more than 25 persons; or

(3) variable life insurance or variable annuity contracts.

(c) A person to whom this section applies may not solicit or procure on behalf of a fraternal benefit society an interest-sensitive life insurance contract that exceeds \$35,000 of coverage on an individual life unless the person holds the designation of fraternal benefit counselor. (V.T.I.C. Art. 10.37-3, Subsecs. (b), (c).)

Source Law

(b) An agent, representative, or member of a fraternal benefit society who devotes less than 50 percent of the person's time to the solicitation and procurement of insurance contracts for that society is exempt from the requirements of Subsection (a) of this article.

(c) For the purposes of Subsection (b) of this article, a person is presumed for a calendar year to have devoted at least 50 percent of the person's time to the solicitation or procurement of insurance contracts if, in the preceding calendar year, the person solicited or procured on behalf of a society:

(1) life insurance contracts that have generated, in the aggregate, more than \$20,000 of direct premiums for all lives insured, provided that an interest-sensitive life insurance contract has not been solicited or procured by a person that exceeds \$35,000 of coverage on an individual life unless that person holds the designation of "Fraternal Benefit Counselor";

(2) insurance contracts, other than life insurance contracts, that have insured the individual lives of more than 25 persons; or

(3) variable life insurance or variable annuity contracts.

Revised Law

Sec. 885.353. EMPLOYMENT OF CERTAIN PERSONS TO SOLICIT BUSINESS PROHIBITED. A fraternal benefit society may not employ or otherwise retain a person to solicit business if the person has had a license revoked under Article 21.07 or 21.14, or under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code). (V.T.I.C. Art. 10.37-2.)

Source Law

Art. 10.37-2. A fraternal benefit society may not employ or otherwise retain a person to solicit business if that person has had a license revoked under Articles 21.07 or 21.14, Insurance Code, or under Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code).

[Sections 885.354-885.400 reserved for expansion]

SUBCHAPTER I. REGULATION OF FRATERNAL BENEFIT SOCIETIES

Revised Law

Sec. 885.401. ANNUAL REPORT. (a) Each fraternal benefit society engaged in business in this state shall annually, on or before March 1:

(1) file with the department in the form required by the commissioner a statement, under oath of the society's president and secretary or corresponding officers, of:

(A) the society's condition and standing on the preceding December 31; and

(B) the society's transactions for the preceding calendar year; and

(2) provide additional information the commissioner considers necessary to demonstrate the society's business and method of operation.

(b) The commissioner may periodically require any additional statement the commissioner considers necessary relating to a fraternal benefit society.

(c) The department or the state may use the report required under Subsection (a) in determining a fraternal benefit society's financial solvency. (V.T.I.C. Art. 10.30, Subsecs. (a), (d) (part).)

Source Law

Art. 10.30. (a) Every society transacting business in this State shall annually, on or before the first day of

March, file with the department in such form as the commissioner may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as the commissioner may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement it may deem necessary to be made relating to such society.

(d) The annual report herein provided for may be used by the department or the State of Texas in determining the financial solvency of the society. . . .

Revisor's Note

Subsection (a), V.T.I.C. Article 10.30, refers to the "next preceding" December 31. A subsequent provision of V.T.I.C. Chapter 10 refers to "December 31st last preceding." Throughout this subchapter, the revised law omits "next" and "last" as unnecessary in this context. "The preceding" means "the next preceding" or "the last preceding."

Revised Law

Sec. 885.402. REPORTS OF CERTAIN GRAND LODGES. The officers of the supreme state governing body of a grand lodge considered to be a single state organization under Section 885.006 shall make each report required by this chapter. The report must include the transactions, liabilities, and assets of the state organization. (V.T.I.C. Art. 10.27 (part).)

Source Law

Art. 10.27. . . . [All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this State upon the passage of this law as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single State organizations, and] all reports required by the provisions of this chapter shall be made and furnished by the

officers of such supreme State governing body and shall embrace and contain the transactions, liabilities and assets of such State organization.

Revisor's Note

V.T.I.C. Article 10.27 provides that reports required under V.T.I.C. Chapter 10 shall be "made and furnished" by the supreme state governing body of certain grand lodges. The reference to "furnished" is omitted from the revised law because in this context, "furnished" is included within the meaning of "made."

Revised Law

Sec. 885.403. VALUATION OF BENEFIT CERTIFICATES. (a) A fraternal benefit society shall include in its report under Section 885.401 a valuation of the society's benefit certificates in force on the preceding December 31. The report of valuation shall show:

(1) as contingent liabilities, the present midyear value of the promised benefits provided by the fraternal benefit society's laws under the benefit certificates subject to valuation; and

(2) as contingent assets, the present midyear value of the future net premiums provided by the fraternal benefit society's laws as the premiums are in practice actually collected.

(b) At the option of a fraternal benefit society, instead of the valuation determined under Subsections (a)(1) and (2), the valuation may show the net value of benefit certificates subject to valuation under Subsection (a). The net value, when computed in case of monthly premiums, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

(c) The valuation, including the valuation of benefit certificates, must be certified by an actuary or, at the request and expense of the fraternal benefit society, verified by the actuary of the insurance department of the society's home state.

(d) The legal minimum standard of valuation for all benefit certificates, other than benefit certificates for accident and health benefits, is computed using a mortality table and interest rate specified by Section 885.404.

(e) Each valuation report must set out clearly and fully the mortality and interest rates and the method of valuation.

(f) The report required by Section 885.401 must also include a valuation of benefit certificates in accordance with Section 885.408. (V.T.I.C. Art. 10.30, Subsec. (b) (part).)

Source Law

(b) Each society shall include in its annual report to the department a valuation of its certificates in force on December 31st last preceding. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation including valuation of certificates shall be certified by an actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society. The legal minimum standard of valuation for all certificates, except for accident and health benefits, shall be [the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society,] Each such valuation report shall set forth clearly and fully the mortality and interest bases and the method of valuation. The annual report required by this article shall also include a valuation of certificates in accordance with Article 10.07 of this code.

Revised Law

Sec. 885.404. MORTALITY TABLES; INTEREST RATES. (a) In valuing benefit certificates under Section 885.403, a fraternal benefit society, at the option of the society, may use:

(1) the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899;

(2) any table producing reserves in the aggregate at least as great as the reserves produced by the table described by Subdivision (1);

(3) the Commissioners 1941 Standard Ordinary Mortality Table;

(4) the Commissioners 1958 Standard Ordinary Mortality Table; or

(5) except as provided by Subsection (e), a table based on the society's own experience of at least 20 years and covering at least 100,000 lives.

(b) Notwithstanding Subsection (a), a fraternal benefit society may value the society's benefit certificates in accordance with valuation standards otherwise authorized by state law for the valuation of similar policies issued by life insurance companies.

(c) For any category of benefit certificates issued to insure a female risk, a modified net premium or present value referred to in Article 3.28 may be computed according to an age not more than six years younger than the actual age of the insured.

(d) The interest assumption used with a mortality table described by Subsection (a)(1), (2), (3), or (4) may not be more than 4-1/2 percent a year. The interest assumption used with a mortality table described by Subsection (a)(5) may not be more than four percent a year.

(e) A fraternal benefit society may not use a table based on the society's own experience for a benefit certificate issued on or after January 1, 1989. (V.T.I.C. Art. 10.30, Subsec. (b) (part).)

Source Law

(b) . . . [The legal minimum standard of valuation for all certificates, except for accident and health benefits,] shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any table producing reserves in the aggregate at least as great as the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899; at the option of the society, the Commissioners 1941 Standard Ordinary Mortality Table; or at the option of the society, the Commissioners 1958 Standard Ordinary Mortality Table, except that for any category of such certificates issued on female risks, all modified net

premiums and present values referred to in Article 3.28 of this code may be calculated according to an age not more than six (6) years younger than the actual age of the insured. The interest assumption to be used with any of the preceding mortality tables may not be more than four and one-half (4 1/2%) per centum per annum. As an alternative, the society may use a table based upon the society's own experience of at least twenty (20) years, and covering not less than one hundred thousand (100,000) lives with interest assumption not more than four (4%) per centum per annum, provided, however, that any society may value its certificates in accordance with valuation standards otherwise authorized by the laws of this state for the valuation of similar policies issued by life insurance companies provided that no society may use a table based on its own experience for certificates issued on or after January 1, 1989. . . .

Revised Law

Sec. 885.405. VALUATION OF AND SEPARATE FUND FOR DISABILITY BENEFITS. (a) A fraternal benefit society that provides for disability benefits shall keep the net premiums for disability benefits in a fund separate from all other benefit and expense funds and the valuation of all other business of the society.

(b) Notwithstanding Subsection (a), if a fraternal benefit society uses a combined premium table for both death and permanent total disability benefits:

(1) the valuation must be according to tables of reliable experience; and

(2) the society is not required to maintain a separation of those funds. (V.T.I.C. Art. 10.30, Subsec. (c).)

Source Law

(c) Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences,

and in such cases a separation of the funds shall not be required.

Revisor's Note

Subsection (c), V.T.I.C. Article 10.30, refers to maintaining a fund for disability benefits "separate and apart" from other funds. The reference to "apart" is omitted from the revised law because "apart" is included within the meaning of "separate."

Revised Law

Sec. 885.406. PUBLICATION OF VALUATION AND CONDITION. A fraternal benefit society shall publish, in the society's official paper, a statement of:

(1) the valuation provided by Sections 885.403 and 885.405; and

(2) an explanation of the facts concerning the society's condition disclosed by that valuation. (V.T.I.C. Art. 10.30, Subsec. (d) (part).)

Source Law

(d) . . . A statement of the valuation provided by this article and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed in the society's official paper.

Revised Law

Sec. 885.407. SOLVENCY. A fraternal benefit society is considered solvent if its admissible assets are equal to or greater than its liabilities. (V.T.I.C. Art. 10.08 (part).)

Source Law

Art. 10.08. . . . A society is considered solvent as long as its admissible assets are equal to or greater than its liabilities.

Revised Law

Sec. 885.408. RESERVES FOR ACCIDENT AND HEALTH INSURANCE.
(a) A fraternal benefit society shall establish reserves for the types of coverage specified by Sections 885.301(a)(4) and (5) in the same manner and to the same extent as required for a company organized under Chapter 841.

(b) Article 3.39 applies to reserve investments for a domestic fraternal benefit society. (V.T.I.C. Art. 10.07, Subsecs. (a), (b).)

Source Law

Art. 10.07. (a) Fraternal benefit societies shall establish reserves for the types of coverage specified in Articles 10.05(a)(4) and (5) of this code in the same manner and to the same extent as required for companies organized under Chapter 3 of this code except:

(1) for certificates issued during the calendar year 1988, only one-third of the unearned premium reserve is required to be maintained during the first policy year; and

(2) for certificates issued during the calendar year 1989, only two-thirds of the unearned premium reserve is required to be maintained during the first policy year.

(b) Article 3.39 of this code applies to reserve investments for fraternal benefit societies organized under the laws of this state.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 10.07, requires a fraternal benefit society to establish reserves for certain types of coverage in the same manner and to the same extent as required for certain companies, except that for benefit certificates issued during the calendar year 1988, only one-third of the unearned premium reserve is required to be maintained during the first policy year, and for benefit certificates issued during the calendar year 1989, only two-thirds of the unearned premium reserve is required to be maintained during the first policy year. The revised law omits these exceptions as obsolete because in each case, the first policy year has passed.

(2) Subsection (a), V.T.I.C. Article 10.07, requires a fraternal benefit society to establish reserves "in the same manner and to the same extent as required for companies organized under Chapter 3 of this code." The portions of Chapter 3 that govern the organization of domestic life, health, and accident insurance companies are revised as Chapter 841. The revised law is drafted

accordingly.

(3) Subsection (b), V.T.I.C. Article 10.07, refers to "fraternal benefit societies organized under the laws of this state." For consistency throughout this chapter, the revised law substitutes "domestic fraternal benefit society" for "fraternal benefit societies organized under the laws of this state."

(4) Subsection (c), V.T.I.C. Article 10.07, provides that Article 10.07 may not be construed to prevent or limit an action by or remedy available to the State Board of Insurance or the state under V.T.I.C. Article 21.28 or 21.28-A or other applicable law. The revised law omits this provision as unnecessary because Subsection (h), V.T.I.C. Article 10.30, revised as Section 885.414(a), provides that V.T.I.C. Chapter 10, which includes Article 10.07, may not be construed to prevent or limit an action by or remedy available to the Texas Department of Insurance or the state under V.T.I.C. Article 21.28 or 21.28-A or other applicable law. The omitted law reads:

(c) This article may not be construed to prevent, or in any way limit, any action by or remedy available to the State Board of Insurance or the State of Texas under Article 21.28 or 21.28-A of this code or other applicable law.

Revised Law

Sec. 885.409. REPORTING OF RESERVES. The report of a fraternal benefit society under Section 885.401 must show as a liability the reserves required by this chapter. (V.T.I.C. Art. 10.08 (part).)

Source Law

Art. 10.08. The reserves required by this chapter shall be reflected as a liability in the annual reports of a fraternal benefit society. . . .

Revised Law

Sec. 885.410. EXAMINATION OF DOMESTIC FRATERNAL BENEFIT SOCIETIES. A domestic fraternal benefit society is subject to Articles 1.15, 1.15A, and 1.16. (V.T.I.C. Art. 10.33, Subsec.

(a.)

Source Law

Art. 10.33. (a) Each domestic society is subject to Articles 1.15, 1.15A, and 1.16 of this code.

Revised Law

Sec. 885.411. EXAMINATION OF FOREIGN FRATERNAL BENEFIT SOCIETIES. (a) The commissioner or a person appointed by the commissioner may examine a foreign fraternal benefit society transacting or applying for admission to engage in business in this state. The commissioner may employ assistants for this purpose.

(b) The commissioner or a person appointed by the commissioner to examine a foreign fraternal benefit society:

(1) is entitled to free access to all books, papers, and documents that relate to the business of the society; and

(2) may summon, qualify as witnesses under oath, and examine the society's officers, agents, and employees and other persons in relation to the affairs, transactions, and conditions of the society.

(c) Instead of an examination under this section, the commissioner may accept the examination of the insurance department of the state, territory, district, province, or country in which a foreign fraternal benefit society is organized.

(d) If a foreign fraternal benefit society or the society's officers refuse to permit an examination under this section or to comply with the provisions of law relating to an examination, the commissioner shall suspend the society's authority to write new business in this state or refuse the society's application for a certificate of authority. A suspension or refusal under this subsection continues until the commissioner receives satisfactory evidence relating to the condition and affairs of the society. A foreign fraternal benefit society may not write any new business in this state during a suspension under this subsection.

(e) A foreign fraternal benefit society is subject to the provisions of Articles 1.15 and 1.16 that apply to an insurer that is not organized under the laws of this state but is authorized to engage in business in this state. (V.T.I.C. Art. 10.35.)

Source Law

Art. 10.35. The commissioner, or any person appointed by the commissioner, may examine any foreign society transacting or applying for admission to transact business

in this State. The commissioner may employ assistants, and the commissioner or the commissioner's appointee shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and conditions of the society. The commissioner may accept in lieu of such examination the examination of the Insurance Department of the state, territory, district, province or country where such society is organized. If any such society or its officers refuse to permit such examination or to comply with the provisions of the law relative thereto, the authority of such society to write new business in this State shall be suspended, or license refused, until satisfactory evidence is furnished to the commissioner relating to the condition and affairs of the society, and during suspension the society shall not write any new business in this State. Each foreign society is subject to the provisions of Articles 1.15 and 1.16 of this code that are applicable to insurance carriers that are not organized under the laws of this State but are authorized to transact business in this State.

Revised Law

Sec. 885.412. ADVERSE PUBLICATION PROHIBITED. (a) Pending, during, or after an examination or investigation of a fraternal benefit society, the commissioner may not make public a financial statement, report, or finding, or permit a financial statement, report, or finding affecting the status, standing, or rights of the society to become public, until:

(1) the commissioner serves a copy of the statement, report, or finding on the society at its home office; and

(2) the society has been provided a reasonable opportunity to:

(A) answer the statement, report, or finding; and

(B) make a showing in connection with the statement, report, or finding as the society desires.

(b) This section does not apply to a proceeding involving a fraternal benefit society instituted by the commissioner or the state, including an administrative hearing, a proceeding under

Article 21.28 or 21.28-A, or a court proceeding. (V.T.I.C. Art. 10.36.)

Source Law

Art. 10.36. Pending, during or after an examination or investigation of any such society, either domestic or foreign, the Board of Insurance Commissioners shall make public no financial statement, report or finding, nor shall it permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement or report or finding, and to make such showing in connection therewith as it may desire. This article does not apply to proceedings involving a fraternal benefit society instituted by the State Board of Insurance or the State of Texas including administrative hearings, proceedings under Article 21.28 or 21.28-A of this code, and court proceedings.

Revisor's Note

V.T.I.C. Article 10.36 refers to "any such society, either domestic or foreign." The revised law omits "domestic or foreign" as unnecessary. In the absence of language limiting the application of the revised law to only domestic or foreign fraternal benefit societies, the law applies to both.

Revised Law

Sec. 885.413. FEES. The department shall deposit fees collected under this chapter to the credit of the Texas Department of Insurance operating account. Article 1.31A applies to fees collected under this chapter. (V.T.I.C. Art. 10.01, Subsec. (a) (part).)

Source Law

(a) . . . Fees collected by the board under this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to fees collected under this article.

Revisor's Note

Subsection (a), V.T.I.C. Article 10.01, 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, that fund was converted to an account in the general revenue fund. The revised law is drafted accordingly.

Revised Law

Sec. 885.414. REMEDIES NOT EXCLUSIVE. (a) This chapter does not prevent or limit any action by or remedy available to the department or the state under Article 21.28 or 21.28-A or other applicable law.

(b) In addition to any other provision of law relating to disciplinary action regarding a fraternal benefit society, Chapter 82 applies to a fraternal benefit society. (V.T.I.C. Art. 10.30, Subsec. (h); Art. 10.37-1.)

Source Law

[Art. 10.30]

(h) This chapter may not be construed to prevent or in any way limit any action by or remedy available to the department or the State of Texas under Article 21.28 or 21.28-A of this code or other applicable law.

Art. 10.37-1. In addition to any other provision of law relating to disciplinary action respecting fraternal benefit societies, Subsection 7, Article 1.10, of this code applies to fraternal benefit societies.

[Sections 885.415-885.450 reserved for expansion]

SUBCHAPTER J. CONVERSION OF FRATERNAL BENEFIT SOCIETY

Revised Law

Sec. 885.451. CONVERSION OF FRATERNAL BENEFIT SOCIETY TO MUTUAL OR STOCK COMPANY. (a) Subject to Subsection (b), a fraternal benefit society engaging in business in this state may convert to a mutual life insurance company or incorporated stock company by complying with this subchapter.

(b) A fraternal benefit society may not convert to a mutual life insurance company or incorporated stock company except on terms that, in the commissioner's opinion, will fully protect the rights and interests of the society's members and holders of

benefit certificates. (V.T.I.C. Art. 10.40, Secs. 1, 2 (part).)

Source Law

Art. 10.40

Sec. 1. Any fraternal benefit society with a lodge system and representative form of government, doing business in the State of Texas, may convert itself into a Mutual Benefit Company, or into an incorporated Stock Company, by conforming to the provisions of this act.

Sec. 2. . . . Provided that no such society shall convert itself into a mutual benefit or incorporated stock company except upon such terms and conditions as in the opinion of the Board of Insurance Commissioners of Texas shall fully protect the rights and interests of its members and policyholders; and

Revisor's Note

Sections 1 and 2, V.T.I.C. Article 10.40, refer to conversion of a fraternal benefit society into a "mutual benefit company." It is clear from the context of the provisions of Article 10.40 revised as this subchapter that the intent of the article is to permit a fraternal benefit society to convert to a company regulated under V.T.I.C. Chapter 11, revised as Chapter 882 of this code. An entity regulated under Chapter 882 is referred to as a "mutual life insurance company," and the revised law is drafted accordingly.

Revised Law

Sec. 885.452. MEETING OF LODGE REPRESENTATIVES; NOTICE. (a) The governing body of a fraternal benefit society that proposes converting to a mutual life insurance company or incorporated stock company shall call a meeting of lodge representatives. The meeting may not be held before the 90th day after the date the meeting is called.

(b) Not later than the 40th day before the date of the meeting, the fraternal benefit society shall mail to each society member or holder of a benefit certificate, at the member's or holder's mailing address as shown by the society's records, and to each lodge:

- (1) notice of the meeting; and
- (2) a general plan of the proposed conversion.

(c) Not later than the 20th day after the date of receipt of the notice, each lodge shall meet in a regular or called session to act on the proposal and choose a representative to the governing body for the state, if the society operates in more than one state.

(d) The lodge representatives chosen under Subsection (c) shall meet and choose the requisite number of representatives to which the state is entitled to the supreme or grand lodge, if that body is located in this state.

(e) A fraternal benefit society shall submit the plan of the proposed conversion to the commissioner, and the commissioner must approve the plan, before the society may submit the plan to the society's members, holders of benefit certificates, and lodges. (V.T.I.C. Art. 10.40, Secs. 2 (part), 3 (part).)

Source Law

Sec. 2. When it shall be determined by the governing body of a Fraternal Benefit Society to submit the proposed change to the members of the society, a meeting shall be called not less than ninety (90) days hence, and notice of such purpose with a general plan of the changes shall be mailed to each member or policyholder of the Society to their post office address as shown by the Society records, and all the subordinate lodges or branches of the Society, which notice shall be mailed at least forty (40) days prior to the day named in the call by the governing body. Within twenty (20) days after the receipt of such notice, each lodge or subordinate branch shall in Regular or Called Session pass upon the proposal and choose a representative or delegate, by whatever name the representative may be known, to the governing body for the State (if such Society be operating in more than one State). When the delegates or representatives so chosen to the State body shall have assembled they shall choose the requisite number of representatives or delegates to which the State may be entitled to the Supreme or Grand Lodge, if same be located in the State of Texas. . . . the plan of such change shall be submitted to and approved by the Board of Insurance Commissioners before it shall be submitted to the members or policyholders and the

subordinate lodges or branches as hereinbefore provided.

Sec. 3. Pursuant to said notice and convening of the supreme governing body, [there shall be adopted a resolution by] delegates representing lodges

Revisor's Note

Section 2, V.T.I.C. Article 10.40, refers to a "representative or delegate, by whatever name the representative may be known." Throughout this subchapter the revised law omits "delegate" and "by whatever name the representative may be known" as unnecessary. In this context, "delegate" is included within the meaning of "representative" because "representative" is a generic term that applies to any person chosen to represent the views of a member or lodge of a fraternal benefit society.

Revised Law

Sec. 885.453. RESOLUTION TO CONVERT; ADDITIONAL REQUIREMENTS. (a) As provided by the notice under Section 885.452 and after convening the supreme governing body of the fraternal benefit society, the lodge representatives shall vote on whether to adopt a resolution authorizing the conversion of the society to a mutual life insurance company or incorporated stock company. To take effect, the resolution must be approved by lodge representatives of lodges that constitute at least 60 percent of the total membership of the fraternal benefit society.

(b) The resolution authorizing the conversion must:

(1) set out or ratify a certificate of incorporation amending the fraternal benefit society's charter; and

(2) state:

(A) the society's name;

(B) the name of the new company by which the society will be known;

(C) the object of the company;

(D) the location of the company's principal office;

(E) the names of the principal officers of the company, who serve until their successors are elected and qualified; and

(F) the period, if any, of the duration of the company.

(c) If the fraternal benefit society is converting to a mutual life insurance company:

(1) the resolution authorizing the conversion must

also state the amount of the unencumbered surplus;

(2) the amount and form of the unencumbered surplus must comply with Sections 882.055, 882.301(a), 882.302, 882.304, and 882.404; and

(3) the conversion must comply with Sections 882.056(a) and (b), 882.057, 882.058, 882.059, and 882.101.

(d) If the fraternal benefit society is converting to an incorporated stock company:

(1) the resolution authorizing the conversion must also state:

(A) the amount of the surplus, the amount of capital stock authorized, and the number of shares into which the capital stock is divided; and

(B) the amount of capital stock to be immediately paid in;

(2) the amounts and form of the surplus and capital must comply with Sections 841.054, 841.055, 841.056, 841.057, 841.204, 841.205, 841.301, and 841.302; and

(3) the conversion must comply with Sections 841.058, 841.059(a)(1), 841.060, 841.061, 841.062, and 841.063. (V.T.I.C. Art. 10.40, Sec. 3 (part).)

Source Law

Sec. 3. Pursuant to said notice and convening of the supreme governing body, there shall be adopted a resolution by delegates representing lodges which comprise not less than sixty (60%) per cent of the total membership of the association authorizing the conversion of the said fraternal benefit society into a mutual or stock life insurance company, and shall set forth or ratify a certificate of incorporation, amending the society's charter, and shall set forth:

(a) The name of the society, and the name of the new corporation by which it shall thereafter be known . . . ;

(b) The object of the corporation;

(c) The location of its principal office . . . and the names of the principal officers of such corporation, who shall serve until their successors are elected and qualified;

(d) The period, if any, for the duration of the corporation;

(e) If the conversion is into a mutual benefit company there shall be set

forth the amount of the free surplus which in amount and form shall comply with Article 11.01 of this Code as amended; and such conversion shall comply with the requirements of Article 11.02 of this Code as amended, and If the conversion is into an incorporated stock company, there shall be set forth the amount of the surplus and the amount of the capital stock authorized, the number of shares into which it is divided, and the amount of capital stock to be immediately paid in, and in amount and form such capital and surplus shall be in conformity with Articles 3.02 and 3.02a of this Code, as amended; and such conversion shall comply with the requirements of Article 3.04 of this Code as amended, and

Revisor's Note

(1) Section 3, V.T.I.C. Article 10.40, refers to the "free surplus" of a mutual life insurance company. 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) Section 3, V.T.I.C. Article 10.40, refers to V.T.I.C. Articles 11.01, 11.02, 3.02, 3.02a, and 3.04, "as amended." The revised law omits the references to "as amended" because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, and amendments of the statute.

Revised Law

Sec. 885.454. CONVERSION DOCUMENTS. (a) A fraternal benefit society that converts to a mutual life insurance company or incorporated stock company shall file with the department:

- (1) the certificate of incorporation as adopted or amended; and
- (2) a report of the meeting of lodge representatives, certified by the presiding officers under the corporate seal of the fraternal benefit society.

(b) The certificate of incorporation must be incorporated in the charter of the proposed company. (V.T.I.C. Art. 10.40, Secs. 4, 5.)

Source Law

Sec. 4. The certificate of incorporation so adopted or amended shall be filed with the Board of Insurance Commissioners and be incorporated in the charter of the proposed Company.

Sec. 5. A report of said meeting certified to by the presiding officers under the corporate seal of such Society shall also be filed with the Board of Insurance Commissioners.

Revised Law

Sec. 885.455. SALE OF STOCK OF CONVERTED FRATERNAL BENEFIT SOCIETY. (a) If a fraternal benefit society converts to an incorporated stock company, each holder of a benefit certificate or other member of the society has a preference right to subscribe for the proportion of the total capital stock offered for sale that the amount of the member's insurance bears to the society's total insurance in force at the time the society's supreme governing body authorizes the conversion. The right provided by this subsection expires on the 90th day after the date the society's supreme governing body authorizes the conversion.

(b) Before an incorporated stock company that is converted from a fraternal benefit society may offer any stock for public sale, the society's membership has a preference right to purchase the stock. A member may not subscribe for or purchase more than:

(1) 25 percent of the capital stock of the new company; or

(2) 10 percent of the capital stock of the new company, if there are other members applying in writing to purchase stock whose subscriptions are not filled.

(c) If the membership of a converted fraternal benefit society has not subscribed for the total capital stock authorized, the new company may permit others who were not society members at the time of the conversion to subscribe for stock and hold equal rights in the ownership of the stock.

(d) Not later than the 10th day after the date a fraternal benefit society approves a resolution authorizing the society to convert to an incorporated stock company, the society shall notify each holder of a benefit certificate or other member of:

(1) the member's right to subscribe for and purchase the stock of the incorporated stock company;

(2) the amount of stock for which the member is entitled to subscribe; and

(3) all other terms of the subscription and purchase.

(e) The notice required under Subsection (d) must be in a form approved by the department. Proof of depositing a letter addressed to each holder of a benefit certificate or other member providing the notice in the approved form is considered proof of compliance with the requirements of Subsection (d) and this subsection. (V.T.I.C. Art. 10.40, Sec. 6.)

Source Law

Sec. 6. If such Fraternal Benefit Society be converted into a Stock Life Insurance Company, each and every policyholder, certificate holder, or other member of such Society, shall have a preference right for ninety (90) days after such determination to subscribe for the proportion of the total capital stock offered for sale, which the amount of his insurance bears to the Society's total insurance in force at the time of the conversion, which time shall be that at which the supreme governing body authorize the change.

Before any of the stock shall be offered for public sale, the membership of the Society shall have a preference in the purchase thereof, provided that no one member shall be allowed to subscribe or purchase more than twenty-five (25%) per cent of the capital stock of the new company, nor shall he subscribe or be allowed to purchase more than ten (10%) per cent of the capital stock of the new company if there be other members applying in writing for the purchase of stock whose subscriptions are not filled. If the membership shall not have subscribed for the total capital stock authorized, then others who were not members of the Society at the time of the conversion may be permitted to subscribe for stock and be allowed equal rights in the ownership thereof, with all other stockholders. It shall be the duty of such Fraternal Benefit Society desiring to be converted into a Stock Company to advise every member or policyholder of his right to subscribe for and purchase the stock of such Stock Life Insurance Company and of the amount of such stock for which he is entitled to subscribe and all other terms and conditions, in a form to be approved by the

Board of Insurance Commissioners within ten (10) days after such Society shall be voted to so convert itself into a Stock Company. Proof of depositing a letter addressed to all members or policyholders, conveying the advice, in the approved form as herein provided for, shall be deemed proof of compliance with the foregoing requirement.

Revised Law

Sec. 885.456. LEGAL EFFECT OF CONVERSION TO MUTUAL LIFE INSURANCE COMPANY. A fraternal benefit society that converts to a mutual life insurance company is subject to Chapter 882. (V.T.I.C. Art. 10.40, Sec. 3 (part).)

Source Law

Sec. 3. . . .

. . . .

(e) If the conversion is into a mutual benefit company . . . upon such conversion such company shall be subject to all of the provisions of Chapter 11 of this Code. . . .

Revised Law

Sec. 885.457. COMPLETION AND LEGAL EFFECT OF CONVERSION TO STOCK COMPANY. (a) The conversion of a fraternal benefit society to an incorporated stock company is complete when the society has:

- (1) complied with this subchapter and other state law regulating the incorporation of a life insurance company; and
- (2) received from the commissioner its charter or certificate of authority to transact business as an incorporated stock company.

(b) A fraternal benefit society that converts to an incorporated stock company:

- (1) is considered by law to have each right, privilege, power, or authority of any other stock corporation organized for engaging in the business of life insurance in this state;
- (2) is subject to laws applicable to a stock corporation organized under Chapter 841 for engaging in the business of life insurance in this state;
- (3) is considered by law to be a continuation of the business of the fraternal benefit society on the formation of the new company or amendment of its former charter; and
- (4) succeeds to and is invested with each right, privilege, or franchise and all property of the former society,

including debts due on any account and all choses in action.

(c) On conversion of a fraternal benefit society to an incorporated stock company, the title to any real estate by deed or otherwise vested in the society vests in the company, and the title is not in any way impaired because of the conversion.

(V.T.I.C. Art. 10.40, Secs. 3 (part), 7.)

Source Law

Sec. 3. . . .

. . . .

(e) . . . If the conversion is into an incorporated stock company, . . . upon such conversion such company shall be subject to all of the provisions of Chapter 3 of this Code.

Sec. 7. When such Fraternal Benefit Societies shall have complied with the provisions of this article and the other laws of this State regulating the incorporation of Life Insurance Companys, and shall have received from the Board of Insurance Commissioners its charter or certificate of authority to transact business as a Stock Life Insurance Company, its reorganization and conversion into such Stock Company shall be complete. Such reorganization and converted corporation shall be deemed in law to have all the rights, privileges, powers, and authority of any other Stock corporation organized for doing a Life Insurance business in the State of Texas, and controlled by the laws applying thereto. The new corporation shall be deemed in law to be a continuation of the business of the Fraternal Benefit Society when the reorganization and conversion shall have been accomplished by the formation of a new Company or by amendment to its former charter, and such reorganized corporation shall succeed to and become invested with all and singular the rights, privileges, franchises, and all property, real, personal, or mixed, of the former Society, and all debts due on any account and all other things and choses in action theretofore belonging to such Fraternal Benefit Society, and all property rights, privileges, franchises, and all other

interest, shall thereafter be as effectually the property of such organized and converted corporation as they were the property of the former Fraternal Benefit Society, and the title to any real estate by deed or otherwise vested in the former Fraternal Benefit Society shall forthwith vest in such organized converted corporation, and the title thereto shall not in any way be impaired by reason of such change or reincorporation.

Revisor's Note

(1) Sections 3(e) and 7, V.T.I.C. Article 10.40, refer respectively to "all of the provisions of Chapter 3 of this Code" and to "the . . . laws of this State regulating the incorporation of Life Insurance Companys." The law governing incorporation of domestic life insurance companies is contained in the portion of Chapter 3 revised as Chapter 841. A converted company is also subject to the other provisions of Chapter 3 and other law applicable to any life insurance company organized under that chapter. The revised law is drafted accordingly.

(2) Section 7, V.T.I.C. Article 10.40, provides that on conversion of a fraternal benefit society to an incorporated stock company, the company "shall succeed to and become invested with all and singular the rights, privileges, franchises, and all property, real, personal, or mixed, of the former Society, and all debts due on any account and all other things and choses in action theretofore belonging to such Fraternal Benefit Society, and all property rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as they were the property of the former Fraternal Benefit Society." The revised law omits the references to "real," "personal," and "mixed" property because under Section 311.005(4), Government Code (Code Construction Act), "property" includes real and personal property and, by extension,

mixed property. That definition applies to the revised law. The reference to "things in action" is omitted from the revised law because "things in action" is included within the meaning of "choses in action." The reference to "all other interest" is omitted from the revised law because "all other interest" is included within the meaning of "all . . . rights . . . and . . . property." The provision that the property of the former fraternal benefit society "shall thereafter be as effectually the property of such . . . corporation" is omitted from the revised law as unnecessary; providing that the property vests in the corporation means that the property will effectually be the corporation's.

Revised Law

Sec. 885.458. CONTINUING OBLIGATIONS OF CONVERTED FRATERNAL BENEFIT SOCIETY. (a) The rights of each member, holder of a benefit certificate, or creditor and the standing of each claim against a fraternal benefit society that converts under this subchapter must be preserved unimpaired under the new corporation.

(b) Each debt, liability, and duty of a converted fraternal benefit society attaches to the new corporation and may be enforced against it to the same extent as if the debt or liability had been incurred or contracted by the new corporation.

(c) Each outstanding benefit certificate issued by a converted fraternal benefit society is a valid obligation of the new corporation without the issuance of a new certificate.

(d) A new corporation formed from a converted fraternal benefit society is obligated to perform each obligation owing by the society to a holder of a benefit certificate issued by the society. The holder may enforce a benefit certificate against the new corporation to the same extent as if the certificate had been issued by the new corporation after conversion.

(e) A pending suit in which a converted fraternal benefit society was a party is not affected by the conversion and may be prosecuted by or against the new corporation as if the conversion had not taken place. (V.T.I.C. Art. 10.40, Secs. 8, 9.)

Source Law

Sec. 8. The rights of all members, policyholders, creditors, and the standing of all claims under the former Fraternal Benefit Society shall be preserved unimpaired under the new corporation, and all debts,

liabilities, and duties of the former Fraternal Benefit Society shall thenceforth attach to the reorganized corporation, and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, and all outstanding benefit certificates or policies issued by the said Fraternal Benefit Society shall be valid obligations of the new incorporation without the issuance of new policies.

Sec. 9. Such organized and converted corporation shall be obliged to carry out and perform all of the obligations of every kind and character owing by the former Fraternal Benefit Society to the holders of its policies or beneficial certificates, and the same may be enforced against it to the extent as if said policies and beneficial certificates had been issued by it after conversion. Any pending suits wherein the former Fraternal Benefit Society was a party shall be unaffected by the conversion thereof and shall be prosecuted by or against such reorganized and converted corporation the same as if the conversion had not taken place.

Revisor's Note

Section 9, V.T.I.C. Article 10.40, refers to the duty of a corporation formed from a converted fraternal benefit society to "carry out and perform" the society's obligations. The reference to "carry out" is omitted from the revised law because "carry out" is included within the meaning of "perform."

Revised Law

Sec. 885.459. NAME OF CONVERTED FRATERNAL BENEFIT SOCIETY. The name of a mutual life insurance company or incorporated stock company to which a fraternal benefit society converts:

(1) must, if possible, be a continuation of the society's name; and

(2) may not, if the new company's name is changed from the society's name, be:

(A) the same as that of any other company engaging in business in this state; or

(B) a name similar to that of any other company

engaging in business in this state. (V.T.I.C. Art. 10.40, Sec. 3 (part).)

Source Law

Sec. 3. . . .

(a) . . . the name of the new corporation . . . which shall preferably be a continuation of the same name. Provided that if the new corporation shall change from the former name of the society, it shall not adopt the same name as that of any other such society doing business in this State, nor a name similar to that of any other society doing business in this State;

. . .

Revised Law

Sec. 885.460. PRINCIPAL OFFICE OF CONVERTED FRATERNAL BENEFIT SOCIETY. The principal office of a mutual life insurance company or incorporated stock company created by the conversion of a fraternal benefit society under this subchapter must be located in this state. (V.T.I.C. Art. 10.40, Sec. 3 (part).)

Source Law

Sec. 3. . . .

. . .

(c) The location of its principal office, which must be within the State of Texas; and

Revised Law

Sec. 885.461. SOCIAL OR CHARITABLE CLUBS FORMED BY MEMBERS OF CONVERTED FRATERNAL BENEFIT SOCIETY. The members of a converted fraternal benefit society or the policyholders in the new corporation may form local clubs for social and charitable purposes. A club formed under this section:

(1) may not be connected with the management of the corporation; and

(2) does not affect the corporation's liability or the insurance in effect. (V.T.I.C. Art. 10.40, Sec. 10.)

Source Law

Sec. 10. The members of such Fraternal Benefit Society, or the policyholders in the chartered incorporated Company, may form local clubs for social and charitable purposes, but the same shall have no connection with the management of the affairs

of the corporation or affect its liability or the insurance in effect.

[Sections 885.462-885.500 reserved for expansion]

SUBCHAPTER K. TERMINATION OF FRATERNAL BENEFIT SOCIETY

Revised Law

Sec. 885.501. DISCONTINUATION OF BUSINESS BY DOMESTIC FRATERNAL BENEFIT SOCIETY. A domestic fraternal benefit society's certificate of authority becomes void if the society:

- (1) discontinues business for a period of one year; or
- (2) has fewer than 400 members holding benefit certificates. (V.T.I.C. Art. 10.19, Subsec. (h) (part).)

Source Law

(h) When any domestic society shall have discontinued business for the period of one (1) year, or has less than four hundred (400) members holding benefit certificates, its permanent certificate shall become null and void. . . .

Revisor's Note

Subsection (h), V.T.I.C. Article 10.19, refers to a fraternal benefit society's certificate of authority becoming "null and void." The reference to "null" is omitted from the revised law because "null" is included within the meaning of "void."

Revised Law

Sec. 885.502. INITIATION OF PROCEEDINGS FOR TERMINATION OF DOMESTIC FRATERNAL BENEFIT SOCIETY. (a) The commissioner may advise the attorney general of the commissioner's determination if:

- (1) after examining a domestic fraternal benefit society, the commissioner determines that the society:
 - (A) has failed to comply with any provision of this chapter;
 - (B) is exceeding its powers;
 - (C) is not fulfilling its contracts in good faith; or
 - (D) is engaging in business fraudulently; or
 - (2) the commissioner determines that a domestic fraternal benefit society:
 - (A) has, after its first year of existence, had fewer than 400 members; or
 - (B) has discontinued business.
- (b) The attorney general shall bring an action in quo

warranto against the fraternal benefit society if the attorney general determines that circumstances warrant the action.

(V.T.I.C. Art. 10.33, Subsec. (b) (part).)

Source Law

(b) Whenever after examination the commissioner is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one (1) year or more, shall have a membership of less than four hundred (400), or shall determine to discontinue business, the commissioner may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and

Revisor's Note

Subsection (b), V.T.I.C. Article 10.33, provides that under certain circumstances the attorney general may "commence an action in quo warranto in a court." The reference to "a court" is omitted from the revised law as unnecessary because an action in quo warranto may only be brought in a court.

Revised Law

Sec. 885.503. ISSUANCE OF INJUNCTION AND APPOINTMENT OF RECEIVER. (a) If it appears on the trial of an action brought under Section 885.502(b) that the fraternal benefit society should be closed, the court shall:

(1) enjoin the society from engaging in further business; and

(2) appoint a receiver for the society.

(b) A receiver appointed under Subsection (a)(2) shall:

(1) immediately take possession of the books, papers, money, and other assets of the fraternal benefit society; and

(2) promptly, under the court's direction, proceed to close the society's affairs and distribute its funds to the persons entitled to those funds.

(c) A court in this state may not hear an application for an injunction against or proceedings for the dissolution of or the appointment of a receiver for a domestic fraternal benefit society or lodge unless the attorney general makes the

application or brings the proceedings. (V.T.I.C. Art. 10.33, Subsec. (b) (part); Art. 10.34.)

Source Law

[Art. 10.33]

(b) . . . if it shall then appear upon the trial that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society, and to distribute its funds to those entitled thereto.

Art. 10.34. No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in the State unless the same is made by the Attorney General.

[Sections 885.504-885.700 reserved for expansion]

SUBCHAPTER O. CRIMINAL PENALTIES

Revised Law

Sec. 885.701. FALSE STATEMENTS; CRIMINAL PENALTY. (a) A person commits an offense if the person wilfully makes a false or fraudulent statement or representation:

(1) in or with reference to an application for membership in a fraternal benefit society authorized to engage in business in this state; or

(2) for the purpose of obtaining money from or benefits in a fraternal benefit society transacting business under this chapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than \$100 or more than \$500;

(2) confinement in jail for not less than 30 days or more than one year; or

(3) both the fine and confinement. (V.T.I.C. Art. 10.41.)

Source Law

Art. 10.41. Any person, officer, member or examining physician of any society

authorized to do business under the laws of this State relating to fraternal benefit societies who wilfully makes any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this law, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than thirty days nor more than one year, or both.

Revisor's Note

(1) V.T.I.C. Article 10.41 refers to "any person, officer, member or examining physician." The reference to an "officer, member or examining physician" is omitted from the revised law because these terms are included within the meaning of the term "person."

(2) V.T.I.C. Article 10.41 provides that a person who engages in certain prohibited conduct "shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than thirty days nor more than one year, or both." Subsequent articles of V.T.I.C. Chapter 10 contain similar provisions. Throughout this subchapter, the revised law provides that a person who engages in prohibited conduct "commits an offense" to be consistent with the terminology used in the Penal Code. In addition, under Chapter 12, Penal Code, offenses are designated as felonies or misdemeanors, and the highest category of misdemeanors, a Class A misdemeanor, is punishable by a fine not to exceed \$4,000, confinement in jail for not more than one year, or both the fine and confinement. Thus, throughout this subchapter, the revised law clarifies that such offenses are misdemeanors.

Revised Law

Sec. 885.702. SOLICITING MEMBERSHIP IN UNAUTHORIZED FRATERNAL BENEFIT SOCIETY; CRIMINAL PENALTY. (a) A person commits an offense if the person solicits membership for or in any manner assists in procuring membership in a fraternal benefit

society that is not authorized to transact business in this state.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200. (V.T.I.C. Art. 10.42.)

Source Law

Art. 10.42. Whoever solicits membership for, or in any manner assists in procuring membership in any fraternal benefit society not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in such society not authorized by law to do business in this State, shall be fined not less than fifty nor more than two hundred dollars.

Revised Law

Sec. 885.703. SOLICITING MEMBERSHIP IN LODGE OF UNAUTHORIZED FRATERNAL BENEFIT SOCIETY; CRIMINAL PENALTY. (a) A person commits an offense if the person solicits for or organizes a lodge of a fraternal benefit society without first obtaining from the commissioner a certificate of authority that entitles the society to engage in business in this state.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not less than \$100 or more than \$250;
- (2) confinement in jail for not less than three months or more than six months; or
- (3) both a fine and confinement. (V.T.I.C. Art. 10.43.)

Source Law

Art. 10.43. Whoever solicits for or organizes lodges of such association as are defined to be a fraternal benefit society under the laws of this State, without first obtaining from the Commissioner of Insurance a certificate of authority showing that the association has complied with the provisions of such laws and is entitled to do business in this State, shall be fined not less than one hundred nor more than two hundred and fifty dollars, or be imprisoned in jail for not less than three nor more than six months, or both.

Revised Law

Sec. 885.704. EXCEPTION TO SOLICITATION OFFENSES. Sections 885.702 and 885.703 do not:

(1) prohibit a member of an existing lodge from soliciting a person to become a member of the lodge; or

(2) apply to a member of a lodge who participates in, directs, or conducts the organization or establishment of a lodge within the limits of the county in which the person resides or of the person's lodge district. (V.T.I.C. Art. 10.44.)

Source Law

Art. 10.44. No provision of the preceding articles shall prohibit any member of a local or subordinate lodge from soliciting any person to become a member of any local or subordinate lodge already in existence, nor apply to any members of any local or subordinate lodge who participate in, direct or conduct the organization or establishment of any local or subordinate lodge within the limits of the county of their residence or lodge district.

Revised Law

Sec. 885.705. GENERAL CRIMINAL PENALTY. (a) An officer, agent, or employee of a domestic fraternal benefit society commits an offense if the person neglects, refuses to comply with, or violates any provision of the laws of this state governing domestic fraternal benefit societies.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200. (V.T.I.C. Art. 10.45 (part).)

Source Law

Art. 10.45. Any officer, agent or employe of any fraternal benefit society organized under the laws of this State who neglects or refuses to comply with or who violates any provision of the laws of this State governing such societies, shall [where the penalty is not provided for in the preceding articles of this chapter,] be fined not exceeding two hundred dollars.

Revised Law

Sec. 885.706. OTHER PENALTIES. Notwithstanding Section 885.705, if another section of this chapter provides a penalty for a violation of the section, the penalty provided in the other

section prevails. (V.T.I.C. Art. 10.45 (part).)

Source Law

Art. 10.45. . . . [Any officer, agent or employe of any fraternal benefit society organized under the laws of this State who neglects or refuses to comply with or who violates any provision of the laws of this State governing such societies,] shall where the penalty is not provided for in the preceding articles of this chapter,

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CHAPTER 886. LOCAL MUTUAL AID ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 886.001. DEFINITION. In this chapter, "local mutual aid association" means an entity, including a society or

association of any sort, authorized under this chapter to engage in the business of insurance and pay benefits with money provided by assessments on the members as needed, including a burial association described by Section 888.001. (V.T.I.C. Art. 12.01 (part).)

Source Law

Art. 12.01. [This chapter and Chapter 14 of this code shall apply to and regulate the business of] local mutual aid associations, including those associations defined in Article 14.37 of Chapter 14 of this code operating for the purpose of providing benefit for members and death benefit for the beneficiaries of deceased members, and shall comprehend and include all societies and associations of any sort operating an insurance business and paying such benefits where funds are provided by assessments upon the members as needed

Revisor's Note

V.T.I.C. Article 12.01 refers to associations defined by V.T.I.C. Article 14.37 "operating for the purpose of providing benefit for members and death benefit for the beneficiaries of deceased members." The revised law omits the quoted phrase as unnecessary, as it describes the only type of entity described by Article 14.37, revised in this code as Section 888.201. Throughout this chapter, the revised law uses the phrase "burial association" because that is the phrase used to describe those entities in Chapter 888.

Revised Law

Sec. 886.002. APPLICABILITY OF CHAPTER; EXEMPTIONS. (a) Except as provided by Subsection (b), this chapter and Chapters 887 and 888 apply to local mutual aid associations.

(b) This chapter does not apply to the following entities unless the entity is a burial association described by Section 888.001:

- (1) a labor union, domestic order, or association that does not provide a death benefit of more than \$150;
- (2) an association described by Section 885.004; or
- (3) any society or association operating before March 21, 1929, statewide on an assessment basis under a charter

granted under another statute of this state. (V.T.I.C. Arts. 12.01 (part), 12.16.)

Source Law

Art. 12.01. This chapter and Chapter 14 of this code shall apply to and regulate the business of local mutual aid associations . . . except those exempt under this chapter and Chapter 14 aforesaid.

Art. 12.16. The provisions of this chapter shall not apply to labor unions, domestic orders or associations which do not provide a death benefit of more than One Hundred and Fifty (\$150.00) Dollars, nor to the associations which are now described in Article 10.38 of this code, nor any society or association, if any, heretofore legally operating statewide on an assessment basis under any charter heretofore granted under any valid statute of this State; provided, nothing herein shall affect those associations defined in Article 14.37, Chapter 14 of this code, organized and operating under the provisions of this chapter.

Revisor's Note

(1) V.T.I.C. Article 12.16 refers to any society or association "heretofore" operating under certain laws. Article 12.16 is derived from, and is substantively identical to, Section 29, Chapter 274, Acts of the 41st Legislature, Regular Session, 1929. The revised law substitutes March 21, 1929, the date that Chapter 274 was approved, for "heretofore."

(2) V.T.I.C. Article 12.16 refers to a charter granted under any "valid" state statute. The revised law omits "valid" as unnecessary because the word does not add to the clear meaning of the law. For example, a charter may not be granted under a statute that was not valid.

Revised Law

Sec. 886.003. LIMITED EXEMPTION FROM INSURANCE LAWS. A local mutual aid association is subject only to this chapter and Chapters 887 and 888. Except as otherwise provided by this

chapter, a local mutual aid association is exempt from all other insurance laws of this state, unless a local mutual aid association is expressly designated in the law. (V.T.I.C. Art. 12.12 (part).)

Source Law

Art. 12.12. . . . Except as herein provided, such association shall be governed by this chapter and Chapter 14 of this code and shall be exempted from all other provisions of the insurance laws of this State. No law hereafter enacted shall apply to them unless they be expressly designated therein.

Revisor's Note

V.T.I.C. Article 12.17 states that certain laws do not apply to a local mutual aid association. The revised law omits Article 12.17 as duplicative of V.T.I.C. Article 12.12, revised as this section. Article 12.12 specifically designates those laws that apply to an association. The omitted law reads:

Art. 12.17. The provisions of the Fraternal Society Law, which is Chapter 10 of this code, and Chapter 3 of this code shall not apply to associations coming within purview of this chapter.

Revised Law

Sec. 886.004. ORGANIZATION OF NEW ASSOCIATION PROHIBITED. A new local mutual aid association may not be organized under this chapter. (V.T.I.C. Art. 22.21.)

Source Law

Art. 22.21. From and after the effective date of this Act, no local mutual aid association or local mutual burial association may be organized under and pursuant to the provisions of Art. 12.05 of the Insurance Code of Texas. The provisions of this Art. 22.21 shall not, however, be applicable to: (1) any company or association which holds a temporary or other certificate of authority at the effective date of this Act; or (2) any company or association for which an application to the

Commissioner of Insurance or the State Board of Insurance for a temporary or other certificate of authority is pending at the effective date of this Act.

Revisor's Note

V.T.I.C. Article 22.21, which took effect on August 28, 1961, prohibits the formation of a local mutual aid association "[f]rom and after the effective date of this Act" and refers to associations that have applications pending or that hold temporary certificates of authority on that date. The revised law omits these provisions as executed.

Revisor's Note

(End of Subchapter)

(1) Provisions contained in V.T.I.C. Articles 12.02, 12.05, 12.06, 12.07, and 12.08 authorize and specify the procedures and requirements for incorporation as a local mutual aid association; however, under V.T.I.C. Article 22.21, revised in this chapter as Section 886.004, a local mutual aid association may not be organized from or after August 28, 1961. Consequently, the revised law omits the referenced provisions in Articles 12.02, 12.05, 12.06, 12.07, and 12.08 as executed. The omitted law reads:

Art. 12.02. Any person or persons desiring to organize a local mutual aid association to be operated upon the assessment as needed or similar plan or a burial company, association or society as defined in Article 14.37, Chapter 14 of this code, shall be permitted to do so upon the terms and conditions hereinafter set forth and by complying with the provisions of this chapter. . . .

Art. 12.05. Any number of persons not less than five, all of whom must be citizens of the United States and residents of the territory to be embraced within their field of operation may organize a local mutual aid association or an association as defined in Article 14.37 of Chapter 14 of this code in

the following manner:

(1) They shall draw up articles of association which shall be executed in triplicate, acknowledged as required for instruments intended to be recorded, and [which shall state]:

. . .

(d) . . . the names of the persons who will, pending permanent organization, fill such offices.

(2) The said articles of association so executed shall be presented to the Board of Insurance Commissioners of the State of Texas, together with the application for a permit to solicit members, and together with the bond in a sum of Five Thousand (\$5,000.00) Dollars, which said bond shall be payable to the Board of Insurance Commissioners, executed by the organizers as principals and one surety company, acceptable to the Board, as surety, conditioned that if the persons organizing the association shall fail to secure the requisite number of members or for any other reason shall not consummate the organization of the association within six (6) months from its date, then the advance membership dues and assessments shall be returned to the parties paying same.

(3) The constitution and by-laws under which the association will operate pending permanent organization, together with the certificate of membership which the association proposes to issue, shall be submitted to the Board for approval.

(4) The Board shall make an investigation of the individuals who shall make such application, and when the Board shall be satisfied that the organizers are responsible persons, and of the probability that territory to be served can support such association and that the articles of association, constitution, by-laws and certificates are in proper form and the bond shall have been approved, it shall issue a permit to the organizers authorizing them to solicit membership in the association and to collect the membership fee and one death

assessment.

(5) When such permit to solicit membership has been issued by the Commissioners, the organizers may solicit members, and when they shall have received not less than five hundred (500) bona fide applications for membership in the association in all classes and when they shall have collected from such members the membership fees and one advance assessment, they shall make a showing to the Board of Insurance Commissioners of Texas in such form as is required, setting forth the facts. Such membership should be completed within six (6) months from date of filing application. . . .

(6) [The Board shall then issue] . . . together with a certified copy of the charter.

Art. 12.06. Upon application for charter to do business in Texas the Board of Insurance Commissioners may determine whether the name of the association would be confusing and misleading to the public; if so, it may refuse the certificate or charter, and prohibit the doing of business under the name.

Art. 12.07. If the organizers shall not complete the membership within the time required, the money collected shall be returned and the temporary permit issued shall be revoked.

Art. 12.08. The constitution, by-laws and form of certificates of each association submitted to the Board and approved before writing of business is commenced, shall be effective until the first annual meeting of the association, at which time they must be confirmed by such meeting, with or without amendments as the association may decide.

. . . .

(2) V.T.I.C. Article 12.05 states that the certificate of authority of a local mutual aid association expires on May 31 following issuance of the certificate. The revised law omits the reference to the expiration of a certificate of authority as

repealed. Under V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority of an insurer is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, repealed "[a]ll laws and parts of laws in conflict herewith . . . including . . . [Article] . . . 14.17 . . . to the extent that they require periodic renewal of certificates of authority." Article 14.17 is applicable to a local mutual aid association in accordance with V.T.I.C. Article 12.12, revised in pertinent part in this chapter as Section 886.003. The omitted law reads:

Art. 12.05. . . .

(6) [The Board shall then issue to such association a certificate of authority to do business in Texas,] which shall expire on May 31st following, [together with a certified copy of the charter.]

[Sections 886.005-886.050 reserved for expansion]

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 886.051. OPERATION UNDER CERTIFICATE OF AUTHORITY. A local mutual aid association engages in business under a certificate of authority issued by the department. (V.T.I.C. Art. 12.05 (part).)

Source Law

Art. 12.05. . . .

(6) The Board shall then issue to such association a certificate of authority to do business in Texas

Revisor's Note

V.T.I.C. Article 12.05 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, 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. 886.052. COMPLIANCE WITH LAW REQUIRED. An individual, firm, or corporation may not engage in business in this state as a local mutual aid society or association that pays a death benefit or other benefit and that pays benefits with money provided by assessments made as necessary unless the individual, firm, or corporation is acting in accordance with this chapter or another law of this state. (V.T.I.C. Art. 12.02 (part).)

Source Law

Art. 12.02. . . . No person, firm or corporation shall hereafter operate in this State any sort of a local mutual aid society or association paying a death benefit or other benefits and providing its funds by assessments as needed, except under the provisions hereof, or under other specific provisions of the laws of this State.

[Sections 886.053-886.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF ASSOCIATION

Revised Law

Sec. 886.101. GENERAL POWERS OF ASSOCIATION. A local mutual aid association is a body corporate that may sue and be sued in its own name and exercise the other powers and functions specifically granted in this chapter, but not otherwise. (V.T.I.C. Art. 12.12 (part).)

Source Law

Art. 12.12. Any association organized under the provisions hereof or which has accepted the provisions hereof shall for the purposes of operation be and become a body corporate with authority to sue and be sued in its own name and to exercise the other

powers and functions specifically herein granted, but not otherwise. . . .

Revised Law

Sec. 886.102. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a local mutual aid association. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to local mutual aid associations.

(b) On advance approval of the commissioner, a local mutual aid association may pay dividends to its members. (V.A.C.S. Art. 1396-10.04, Sec. B (part).)

Source Law

Sec. B. In so far as the same are not inconsistent with or contrary to any applicable provision of the Insurance Code of Texas, or any amendment thereto, the provisions of this Act shall apply; to and govern . . . local mutual aid associations . . . provided however, (a) that any such mutual insurance associations or . . . may, upon advance approval of the Commissioner of Insurance, pay dividends to its members, and (b) that wherever in this 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 in so far as such mutual . . . associations are concerned.

Revisor's Note

(1) Section B, V.A.C.S. Article 1396-10.04, states that the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) shall "apply to and govern" local mutual aid associations. The revised law omits the reference to "govern" because, in context, "govern" is included in the meaning of "apply to."

(2) Section B, V.A.C.S. Article 1396-10.04, refers to the Insurance Code "or any amendment thereto." The revised law omits the reference to "any amendment thereto" because under Section 311.027, Government

Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(3) Section B, V.A.C.S. Article 1396-10.04, refers to a "duty, responsibility, power, authority . . ." of the secretary of state and commissioner of insurance. The revised law substitutes "power and duty" for the quoted phrase because "responsibility" is included in the meaning of "duty" and "authority" is included in the meaning of "power."

(4) Section B, V.A.C.S. Article 1396-10.04, refers to an act "vested in, required of, or to be performed by" the secretary of state and commissioner of insurance. The revised law omits the references to "vested in" and "required of" because, in context, these phrases are included in the meaning of the phrase "to be performed by."

Revised Law

Sec. 886.103. ARTICLES OF ASSOCIATION, CONSTITUTION, AND BYLAWS. (a) The articles of association of a local mutual aid association must state:

- (1) the name of the association, which must be distinctly different from other associations operating in the same area;
- (2) the purpose for which the association is created, including the upper and lower age limits of individuals to whom benefit certificates may be issued;
- (3) the location of the principal office of the association;
- (4) the territory in which the association will engage in business;
- (5) the titles of the officers of the association; and
- (6) the number of directors of the association.

(b) The constitution and bylaws of the association may not violate, and must be in harmony with, this chapter. (V.T.I.C. Arts. 12.05 (part), 12.08 (part).)

Source Law

Art. 12.05. . . .

(1) [They shall draw up articles of association] . . . which shall state:

(a) The name of the association, which must be distinctly

different from associations operating in the same radius.

(b) The location of the principal office and the territory to which its operation shall be confined.

(c) The object for which the association is created, including the upper and lower age limits of persons to whom benefit certificates may be issued.

(d) Titles of the officers of the association and the number of directors, and

Art. 12.08. . . . The constitution and by-laws of such association shall not violate any of the provisions of this law, but shall be in harmony herewith.

Revised Law

Sec. 886.104. BENEFITS AUTHORIZED. (a) Except as provided by Subsection (b), a local mutual aid association may provide only for the payment of death benefits. An association may not provide for old age benefits or benefits for accidental injury or sickness.

(b) A local mutual aid association organized before March 21, 1929, that provides for the payment of death, old age, and accident benefits may continue to provide those benefits.

(c) The policy issued by the association must clearly state the benefits provided.

(d) A local mutual aid association may not issue a policy providing for:

- (1) a level premium;
- (2) guaranteed benefits; or
- (3) surrender of loan values. (V.T.I.C. Arts. 12.09,

12.10.)

Source Law

Art. 12.09. Any association hereafter organized under the provisions of this chapter shall provide for the payment of death benefits only and may not provide for old age benefits and benefits in case of accidental injuries or sickness. Any association heretofore organized prior to March 21, 1929, and paying death, old age and accident benefits may continue to pay same. Anyone or all of said benefits and the benefits to be provided shall be clearly set

out in the policy issued by the association.

Art. 12.10. An association shall not issue certificates providing for a level premium or guaranteed benefits, nor for surrender of loan values.

Revisor's Note

V.T.I.C. Article 12.10 refers to "certificates" providing for a level premium or guaranteed benefits. The revised law substitutes "policy" for "certificate" because the terms are synonymous in context and "policy" is the term more frequently used in this chapter.

Revised Law

Sec. 886.105. TERRITORIAL LIMITATIONS. (a) A local mutual aid association may conduct business in any county in this state.

(b) If the articles of association of an association provide that the association engages in business only in a limited territory, the association may amend the articles to permit statewide business. After the amendment, the association is entitled to receive a certificate of authority permitting statewide business. (V.T.I.C. Art. 12.03.)

Source Law

Art. 12.03. Any local mutual aid association or association defined in Article 14.37, Chapter 14, of this code, shall be permitted to operate in any county in this State. If the Articles of Association of such association provides for its operation in a limited portion or area of this State, such local mutual aid association or association defined in Article 14.37, Chapter 14, of this code, may hereafter amend such Articles of Association so as to permit it to operate and do business on a statewide basis, and after such amendment it shall be entitled to receive a certificate of authority covering all such territory, provided such association shall not be possessed of a permissive deficiency reserve as provided in Article 14.15 of this Chapter 14 of this Code.

Revisor's Note

(1) V.T.I.C. Article 12.03 refers to a local mutual aid association or "association

defined in Article 14.37, Chapter 14." Under the portion of V.T.I.C. Article 12.01 revised in this chapter as Section 886.001, the term "local mutual aid association" includes an entity governed by Section 888.201, which codifies V.T.I.C. Article 14.37. The revised law is drafted accordingly.

(2) V.T.I.C. Article 12.03 provides that certain local mutual aid associations may not hold a permissive deficiency reserve under V.T.I.C. Article 14.15. Sections 4, 5, and 6, V.T.I.C. Article 14.15, prescribe procedures related to a permissive deficiency reserve and require an association to begin complying with those sections not later than July 1, 1966, and to completely reduce any permissive deficiency reserve not later than December 31, 1983. An association that does not reduce its reserve as required by those sections is treated as insolvent. The revised law omits the reference to the permissive deficiency reserve as obsolete.

Revised Law

Sec. 886.106. CONNECTION WITH OTHER ASSOCIATIONS PROHIBITED. (a) A local mutual aid association may not have any connection with another local mutual aid association.

(b) An association may not contribute any form of salary or compensation to an executive officer of another association. (V.T.I.C. Art. 12.04.)

Source Law

Art. 12.04. There shall be no connection between any two associations operating under this chapter and no one association shall contribute anything by way of salary or compensation to any executive officer for the purposes of such other association.

Revised Law

Sec. 886.107. ANNUAL STATEMENT; FILING FEE. (a) For the filing of each annual statement, the department shall charge the appropriate fee. The fee must be:

(1) payable to the department; and
(2) deposited in the Texas Department of Insurance operating account.

(b) Article 1.31A applies to the fee. (V.T.I.C. Art. 12.18.)

Source Law

Art. 12.18. For the filing of each annual statement, the Board shall charge the fee prescribed by law, which shall be paid to the State Board of Insurance and must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund, and Article 1.31A of this code applies to that fee.

Revisor's Note

V.T.I.C. Article 12.18 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. 886.108. SURETY BOND. (a) A local mutual aid association's officer responsible for the funds of the association shall file with the department a surety bond.

(b) The surety bond must be:

- (1) executed by a surety company authorized to do business in this state;
- (2) satisfactory to the department; and
- (3) payable in an amount and conditioned as specified by Section 887.054.

(c) This section does not apply to a local mutual aid association that:

- (1) has a total membership of 1,000 or fewer members;
- (2) charges \$1 or less each for annual dues or assessments; and
- (3) charges \$2.50 or less for a membership fee.

(d) An association exempted under Subsection (c) shall file with the department a bond in the amount of \$1,000 and conditioned as provided by Section 887.054. (V.T.I.C. Art. 12.05 (part).)

Source Law

Art. 12.05. . . .

(5) . . . Thereupon the Board shall require, and the officer of the

association designated to have charge of the funds of the association shall make and file a surety bond executed by a surety company authorized to do business in the State of Texas, satisfactory to the Board as surety, payable and in an amount and conditioned as required and specified in Article 14.08, Chapter 14 of this code.

Provided, however, that the provisions of this Article shall not apply to any local mutual aid association now organized and operating whose total membership shall at no time exceed one thousand (1,000) members and which shall never charge for annual dues or assessments in excess of One (\$1.00) Dollar each, and whose membership fee shall at no time exceed Two Dollars and Fifty Cents (\$2.50). However, such association thus exempted shall file a bond, conditioned as herein above provided, in the amount of One Thousand (\$1,000.00) Dollars with the Board of Insurance Commissioners of Texas.

Revised Law

Sec. 886.109. VOLUNTARY DISSOLUTION. A local mutual aid association may dissolve by vote of the majority of the members at:

- (1) a regular meeting called by the secretary; or
- (2) a special meeting called for the purpose of considering dissolution. (V.T.I.C. Art. 12.13 (part).)

Source Law

Art. 12.13. Associations may dissolve at any time by vote of the majority of the members at a regular meeting called by the secretary or a special meeting called for the purpose of considering dissolution

Revised Law

Sec. 886.110. AUTOMATIC DISSOLUTION. A local mutual aid association is dissolved automatically and forfeits its right to engage in the business of insurance if:

- (1) the association's membership falls below 25 percent of the maximum value of the policy issued; or
- (2) the association's membership falls below 50 percent of the maximum value of the policy issued and the association fails to notify each member of the amount paid on the

preceding death claim when assessment is made. (V.T.I.C. Art. 12.13 (part).)

Source Law

Art. 12.13. . . . provided, however, that if any such association or society shall have engaged in business continuously for a period of ten (10) years, then it shall not automatically be dissolved nor forfeit its right to do business, at any time the membership shall fall below fifty (50%) per cent of the maximum value of the policy issued, but it shall become dissolved only in the event the membership shall fall below twenty-five (25%) per cent of the maximum value of the policy issued. Provided, further, that when membership becomes less than fifty (50%) per cent, the association will be dissolved automatically in event it fails to notify each member when assessment is made of the amount paid on the next preceding death claim.

Revisor's Note

(1) V.T.I.C. Article 12.13 refers to an association "engaged in business continuously for a period of ten (10) years." The revised law omits this reference as unnecessary because V.T.I.C. Article 22.21, which is revised in this chapter as Section 886.004 and which became effective August 28, 1961, provides that no new associations may be organized from or after that date. Therefore, any association currently engaged in the business of insurance has been in business for more than 10 years. The revised law is drafted accordingly.

(2) V.T.I.C. Article 12.13 refers to the "next preceding death claim." The revised law omits "next" as unnecessary. "[T]he preceding" means "next preceding."

(3) V.T.I.C. Article 12.13 provides in part for the dissolution of certain local mutual aid associations that have been in existence for six months or more or that have not operated for one year or longer. However, by its own terms, this part of Article 12.13 does not apply to local mutual

aid associations that have been engaged in the business of insurance for a period of at least 10 years. Since V.T.I.C. Article 22.21, revised in this chapter as Section 886.004, provides that a local mutual aid association may not be formed after August 28, 1961, any association currently in existence has been in operation for a period of at least 10 years. Consequently, the revised law omits as obsolete that part of Article 12.13 that applies to local mutual aid associations in existence for less than 10 years. The omitted law reads:

Art. 12.13. [Associations may dissolve at any time by vote of the majority of the members at a regular meeting called by the secretary or a special meeting called for the purpose of considering dissolution;] any class or group which has been in existence for six (6) months or more shall also be dissolved automatically and shall forfeit its right to do business at any time the membership shall fall below fifty (50%) per cent of the maximum value of the policy issued, or when any class or group shall cease to operate for a period of one (1) year, and no action by any supervisory officer of the state shall be necessary to such dissolution or forfeiture. In the event of said membership becoming less than fifty (50%) per cent of the maximum amount provided in said class or group, said members by a majority vote of said officers for them shall have the right to transfer and merge said members with any other society or association after obtaining the approval of the Board of Insurance Commissioners

[Sections 886.111-886.700 reserved for expansion]

SUBCHAPTER O. DISCIPLINARY PROCEDURES AND CRIMINAL PENALTY

Revised Law

Sec. 886.701. REVOCATION. Except as otherwise provided by law, the department may revoke the right of a local mutual aid association to engage in the business of insurance in this state only on:

- (1) the judgment of a court;
- (2) the filing of articles of dissolution by the

members of the association or by the officers on behalf of the members; or

(3) a filing showing that the association's membership has been merged and taken over by another association. (V.T.I.C. Art. 12.11.)

Source Law

Art. 12.11. The Board shall not revoke the right of any association to do business in this State except upon the judgment of a court of competent jurisdiction or upon the filing of articles of dissolution by the members of said association or the officers for them or upon a statement being filed with said Board showing that said membership had been merged and taken over by another society or association.

Revisor's Note

(1) V.T.I.C. Article 12.11 provides that the right of a local mutual aid association to engage in business may not be revoked except in certain limited circumstances. Article 12.11 is derived from, and substantively identical to, Section 22, Chapter 274, Acts of the 41st Legislature, Regular Session, 1929. Since enactment of Section 22, former V.T.I.C. Article 1.10(7), revised in this code as Chapter 82, has been amended to expressly permit revocation of the certificate of authority of an association. The revised law is drafted accordingly.

(2) V.T.I.C. Article 12.11 refers to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 886.702. GROUNDS FOR DISSOLUTION OR FORFEITURE. (a) In addition to any other penalties imposed on a local mutual aid association or on its members or officers, an association is subject to dissolution and forfeiture of its right to engage in

the business of insurance if the association:

- (1) ceases to engage in the business of insurance;
- (2) falls below the requirements of this chapter;
- (3) engages in the business of insurance without a certificate of authority;
- (4) fails to make reports as required by law;
- (5) refuses to submit to examination by the department or pay the cost of an examination;
- (6) engages in the business of insurance in a fraudulent, illegal, or dishonest manner; or
- (7) violates this chapter.

(b) The attorney general shall, at the request of the department, file any action necessary to wind up the affairs of an association to which Subsection (a) applies and provide for the appointment of a receiver if necessary.

(c) An action under this section must be brought in Travis County. (V.T.I.C. Art. 12.14.)

Source Law

Art. 12.14. If any association heretofore or hereafter doing a local mutual aid business as herein defined or as defined in Article 14.37, Chapter 14 of this code shall cease to operate, or shall fall below the requirements of this Chapter or shall undertake to operate without a permit or certificate of authority, or shall fail or refuse to make reports as and when by law required, or shall refuse to submit to examination or pay the cost thereof, or shall conduct its business in a fraudulent, illegal or dishonest manner, or shall violate any of the terms of this chapter, shall, in addition to any other penalties imposed on it or on its members or officers, subject itself to forfeiture of its right to do business and to dissolution; and the Attorney General shall at the request of the Board of Insurance Commissioners file such suit as may be necessary to wind up the affairs of such association and if necessary have a receiver appointed for that purpose, the venue of all of which suits shall be laid in Travis County, Texas.

Revisor's Note

V.T.I.C. Article 12.14 refers to operation as a local mutual aid association

without a "permit or certificate of authority." The revised law omits as unnecessary the reference to the permit. Under V.T.I.C. Article 12.05, the Board of Insurance Commissioners issued a permit to a local mutual aid association during the period the association was forming. See Revisor's Note (1) following Subchapter A of this chapter. Under V.T.I.C. Article 22.21, revised as Section 886.004 of this chapter, a local mutual aid association may not be organized after August 28, 1961.

Revised Law

Sec. 886.703. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$500. (V.T.I.C. Art. 12.15.)

Source Law

Art. 12.15. Any person or persons who shall violate any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than Five Hundred (\$500.00) Dollars.

CHAPTER 887. PROVISIONS APPLICABLE TO CERTAIN
MUTUAL ASSESSMENT COMPANIES

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CHAPTER 887. PROVISIONS APPLICABLE TO CERTAIN
MUTUAL ASSESSMENT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 887.001. DEFINITIONS. In this chapter:

- (1) "Assessment" means any money or thing of value, including premiums, paid in consideration of insurance provided by an insurance certificate.
- (2) "Association" means an organization subject to this chapter.
- (3) "Insurance certificate" means an insurance policy, contract of insurance, certificate of membership, or other document through which insurance is effected or evidenced.
- (4) "Member" includes a certificate holder or any other insured of an association.
- (5) "Membership fee" means the amount of the first assessment or assessments placed in the expense fund of an association and representing the cost of soliciting or procuring a member, as permitted by the department.
- (6) "Mortuary fund" includes a mortuary fund, relief fund, claim fund, or similar fund. (V.T.I.C. Art. 14.02 (part); New.)

Source Law

Art. 14.02. The following terms when used in this chapter shall be defined:

"Association" shall refer to and include all types of organizations, corporations, firms, associations, or groups subject to the provisions of this chapter.

. . .

"Member" shall include policyholders or any persons insured by an association, by whatsoever means the insurance may be made effective.

"Certificate" shall include any insurance policy or contract of insurance, certificate of membership or other document through which insurance is effected or evidenced.

. . .

"Assessment" shall include premiums and mean any and all money or valuable thing paid in consideration of such insurance as is afforded by the certificate.

"Membership fee" shall be the amount of the first assessment or assessments permitted by the Board to be placed in the expense fund of associations, representing cost of soliciting or procuring the member.

Revisor's Note

(1) V.T.I.C. Article 14.02 refers to "organizations, corporations, firms, associations, or groups" subject to this chapter. The revised law omits the reference to "corporations, firms, associations, or groups" as included within the meaning of "organizations." It is clear from the context of V.T.I.C. Chapter 14 that a "group" must be organized to fall under that chapter. For example, V.T.I.C. Article 14.04, revised in part as Section 887.051, refers to required provisions of an association's bylaws, and V.T.I.C. Article 14.08, revised in part as Section 887.054, requires a surety bond covering certain officers of an association.

(2) V.T.I.C. Article 14.02 defines "board" as "the Board of Insurance Commissioners of the State of Texas." Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, abolished the Board of Insurance Commissioners and transferred its functions to the State Board of Insurance. Other provisions of V.T.I.C. Chapter 14 refer to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31, Insurance Code, defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. The revised law omits the definition of

"board," and throughout this chapter, references to the Board of Insurance Commissioners or the State Board of Insurance have been changed appropriately. The omitted law reads:

"Board" shall refer to the Board of Insurance Commissioners of the State of Texas.

(3) V.T.I.C. Article 14.02 defines "paid in full" and "full payment." The revised law omits the definition as unnecessary because in contexts in which the revised law refers to full payment of a claim, it is clear what the term "full payment" means. The omitted law reads:

"Paid in full" or "full payment" shall mean the payment of the full amount of maximum benefit due on the happening of the contingency insured against.

(4) V.T.I.C. Article 14.02 defines "insolvent" as meaning "any condition or situation which is so designated herein." In places in which an association's condition results in the association being regarded as insolvent (such as V.T.I.C. Article 14.31, revised as Section 887.207), the law clearly explains the condition that is treated as insolvency. Accordingly, the revised law omits the definition as unnecessary. The omitted definition reads:

"Insolvent" shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this chapter.

(5) V.T.I.C. Article 14.02 defines "certificate" as any insurance policy or contract of insurance, certificate of membership, or other document through which insurance is effected or evidenced. Subsequent provisions of V.T.I.C. Chapter 14 use the term "certificate of authority," which is the document issued to an association that is authorized to engage in business in this state. To avoid confusion, the revised law defines "insurance

certificate" rather than "certificate" and substitutes that term as appropriate throughout this chapter. Article 14.02 also refers to "policyholders." Throughout this chapter where appropriate, the revised law substitutes "certificate holder" for "policyholder" to be consistent with "insurance certificate."

(6) The definition of "mortuary fund" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 887.002. PURPOSE. The primary purpose of this chapter and Chapter 888 is to secure to members and the beneficiaries of members the full and prompt payment of all claims, according to the maximum benefit provided under the insurance certificate. (V.T.I.C. Art. 14.29 (part).)

Source Law

Art. 14.29. It is the primary purpose of this chapter to secure to the members of the associations and their beneficiaries the full and prompt payment of all claims according to the maximum benefit provided in their certificates. . . .

Revised Law

Sec. 887.003. APPLICABILITY OF CHAPTER. (a) This chapter governs:

- (1) local mutual aid associations;
- (2) statewide mutual life associations;
- (3) life, health, and accident associations;
- (4) mutual assessment life, health, and accident associations;
- (5) burial associations; and
- (6) similar entities.

(b) Except as provided by Section 887.004, this chapter applies to insurance companies and associations, whether incorporated or not:

(1) that issue policies or certificates of insurance on the lives of individuals on a mutual assessment plan or that provide health and accident benefits on a mutual assessment plan or whose funds are derived from assessments on certificate holders or members; and

- (2) that are not governed by:
 - (A) Chapter 841, 861, 882, 883, 885, 941, or 942;

or

(B) Chapter 5, Title 78, Revised Statutes, as provided by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929.

(c) This chapter does not apply to mutual fire insurance companies. (V.T.I.C. Arts. 14.01 (part), 14.03 (part), 14.54.)

Source Law

Art. 14.01. This chapter shall apply to and embrace all insurance companies and associations, whether incorporated or not, which issue policies or certificates of insurance on the lives of persons, or provide health and accident benefits, upon the so called mutual assessment plan, or whose funds are derived from the assessments upon its policyholders or members, and shall, in fact apply to all life, health and accident companies or associations which do not come within the provisions of Chapters 3, 8, 10, 11, 15, 18 or 19 of this code and Chapter 5 of Title 78, Revised Civil Statutes, 1925, and amendments thereto

This chapter shall include local mutual aid associations; statewide life; or life, health and accident associations; mutual assessment life, health and accident associations; burial associations; and similar concerns by whatsoever name or class designated, whether specifically named or not.

Art. 14.03. All associations operating under this chapter shall be mutual in character, but

Art. 14.54. Nothing in this chapter shall ever be construed to include or affect in any manner mutual fire insurance companies.

Revisor's Note

(1) V.T.I.C. Article 14.01 refers to "Chapter 5, Title 78, Revised Civil Statutes, 1925." That chapter was repealed by Section 18, Chapter 40, Acts of the 41st Legislature,

1st Called Session, 1929. That provision, which was amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, provides that the repeal of Chapter 5, Title 78, does not affect a company or association doing business under that chapter, and the company or association continues to be governed by that chapter. For the reader's convenience, the revised law includes a reference to the 1929 law continuing Chapter 5, Title 78, in effect for certain companies.

(2) V.T.I.C. Article 14.01 refers to "Chapters 3, 8, 10, 11, 15, 18 or 19 of this code and Chapter 5 of Title 78, Revised Civil Statutes, 1925, and amendments thereto." Subsequent provisions of V.T.I.C. Chapter 14 refer to various statutes "as amended." Throughout this chapter, the revised law omits the references to "amendments thereto" and "as amended" because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, and amendments of the statute.

(3) V.T.I.C. Article 14.01 refers to life, health and accident companies or associations that do not come within the provisions of V.T.I.C. Chapter 3. The relevant portions of Chapter 3, relating to the organization of domestic life, health and accident companies, are revised in Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 887.004. INAPPLICABILITY TO CERTAIN ORGANIZATIONS OF MEMBERS OF RELIGIOUS DENOMINATION. This chapter does not apply to an association that:

- (1) is not operated for profit;
- (2) is composed only of the members of a particular religious denomination;
- (3) does not provide insurance benefits in an amount greater than \$1,000 on any one individual; and
- (4) does not pay any officer of the association a salary greater than \$100 a month. (V.T.I.C. Art. 14.01 (part).)

Source Law

Art. 14.01. [This chapter shall apply to

and embrace all insurance companies and associations,] . . . except that it shall not apply to associations not operated for profit composed only of the members of a particular religious denomination, and which do not provide insurance benefits in excess of One Thousand (\$1,000.00) Dollars, on any one person and which do not pay any officer a salary in excess of One Hundred (\$100.00) Dollars per month.

. . .

Revised Law

Sec. 887.005. DEPARTMENT OF PUBLIC SAFETY EMPLOYEE MUTUAL ASSOCIATION. Notwithstanding any other provision of this chapter, a mutual association for employees of the Department of Public Safety may provide coverage and benefits to retired officers and employees of that department. (V.T.I.C. Art. 14.17A.)

Source Law

Art. 14.17A. Notwithstanding any provision of this chapter, including Article 14.17, a mutual association for employees of the Department of Public Safety of the State of Texas may provide coverage and benefits to retired officers and employees of the department.

Revised Law

Sec. 887.006. CONSTRUCTION. (a) This chapter does not:

- (1) enlarge the powers or rights of any association;
- (2) enlarge the scope of an association's legal or corporate existence; or
- (3) authorize the creation of any association or corporation to engage in the business of insurance described by Section 887.003(b) if that creation is not specifically permitted by law.

(b) The laws prohibiting or limiting creation of an association and the exercise of corporate power are not affected by this chapter. (V.T.I.C. Art. 14.01 (part).)

Source Law

Art. 14.01. . . .

This chapter does not enlarge the powers or rights of any of such associations nor enlarge the scope of their legal or corporate existence; nor authorize the creation of any association or corporation to do any of the

sorts of business above indicated, where such creation is not now specifically permitted by law. The laws prohibiting or limiting such creation and the exercise of corporate power are not affected by this chapter.

Revised Law

Sec. 887.007. DEPOSIT OF FEES. The department shall deposit a fee collected under this chapter to the credit of the Texas Department of Insurance operating account. (V.T.I.C. Art. 14.60 (part).)

Source Law

Art. 14.60. All fees paid to the State Board of Insurance by all associations regulated by this chapter shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and

Revisor's Note

(1) V.T.I.C. Article 14.60 states that fees paid to the State Board of Insurance "shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund." Under Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

(2) V.T.I.C. Article 14.60, as amended by Chapter 622, Acts of the 68th Legislature, Regular Session, 1983, provides that fees paid to the State Board of Insurance shall be spent for specified purposes. The revised law omits that provision as impliedly repealed by V.T.I.C. Article 4.07, which provides that all fees paid to the department are available for use to pay salaries and other expenses arising out of the examination and licensing of insurance companies generally and investigations of violations of the insurance laws. Article 4.07, as amended by Chapter 249, Acts of the 70th Legislature, Regular Session, 1987, applies to "any and all" mutual insurance companies. The omitted

law reads:

Art. 14.60. [All fees paid] . . . shall be spent for the purpose of enforcing and carrying out the provisions of this chapter and other laws relating to the regulation and supervision of such associations. . . .

(3) V.T.I.C. Article 14.60, as amended by Chapter 622, Acts of the 68th Legislature, Regular Session, 1983, provides that fees paid to the State Board of Insurance may be spent as authorized by appropriation in a specified manner. The revised law omits that language as unnecessary. Section 6, Article VIII, Texas Constitution, provides that "[n]o money shall be drawn from the Treasury but in pursuance of specific appropriations made by law." Chapter 2103, Government Code, enacted as Article 6252-31, Revised Statutes, by Chapter 641, Acts of the 72nd Legislature, Regular Session, 1991, establishes specific procedures for withdrawing money from the state treasury. The omitted law reads:

Art. 14.60. [All fees paid . . . shall be spent] . . . as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance.

Revised Law

Sec. 887.008. INTERPRETATION OF CHAPTER BY COMMISSIONER. If a provision of this chapter appears obscure when applied to health, accident, or disability provisions in an insurance certificate issued by an association authorized to issue health, accident, or disability certificates, the commissioner shall interpret the provision in accordance with the expressed purpose of this chapter and looking to the full payment of claims and preserving to members the benefit of the association's protection. (V.T.I.C. Art. 14.36.)

Source Law

Art. 14.36. If any of the provisions of this chapter may appear obscure when applied to health, accident or disability provisions in certificates issued by associations authorized to issue health, accident or disability certificates, then the Board is

directed to interpret same in accord with the expressed purpose and spirit of this chapter looking to the full payment of claims, and at the same time preserving to members the benefit of the protection afforded by such association.

Revised Law

Sec. 887.009. RULES. The commissioner may adopt reasonable rules to implement the purposes of this chapter. (V.T.I.C. Art. 14.39.)

Source Law

Art. 14.39. The Board is hereby authorized to promulgate reasonable rules and regulations to carry out the purposes of this chapter.

Revisor's Note

V.T.I.C. Article 14.39 refers to "rules and regulations." Throughout this chapter, the revised law omits the references 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.

[Sections 887.010-887.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES; OFFICERS
AND DIRECTORS

Revised Law

Sec. 887.051. BYLAWS. (a) An association shall submit to the department a copy of the association's bylaws. The department shall examine the bylaws and approve the bylaws if they comply with this chapter. The association shall conform the bylaws to this chapter if they are not in compliance.

(b) On approval of the bylaws under Subsection (a), an association shall file with the department a copy of the bylaws certified by the president or general manager and the secretary of the association.

(c) An association's bylaws must contain all things required by this chapter and may not contain any provision in conflict with this chapter.

(d) An association's bylaws must provide for periodic and special meetings of the membership. (V.T.I.C. Art. 14.04 (part).)

Source Law

Art. 14.04. Each corporation shall

submit to the Board of Insurance Commissioners a copy of its by-laws. Such by-laws shall contain all things required by this chapter and shall not contain any provision in conflict with this chapter. The by-laws shall provide for the periodical meetings of the membership and for special meetings The Board of Insurance Commissioners shall examine such by-laws, and if the same comply with the provisions of this chapter shall signify their approval of same. If they shall not be in accordance with the provisions hereof, then the corporation shall make said by-laws conform hereto. Upon approval of the by-laws a copy duly certified to by the president or general manager and the secretary of the corporation shall be filed with the Board of Insurance Commissioners, and

Revisor's Note

(1) V.T.I.C. Article 14.04 requires each "corporation" to submit a copy of its bylaws to the Board of Insurance Commissioners. Other provisions of V.T.I.C. Chapter 14 refer to a "corporation." Throughout this chapter, the revised law substitutes "association" for "corporation" because V.T.I.C. Article 14.01, revised in part as Section 887.003, provides that Chapter 14 applies to certain "insurance companies and associations, whether incorporated or not," and it is clear from the context of the article that the legislature did not intend the article to apply only to corporations.

(2) V.T.I.C. Article 14.04 provides that a copy of an association's bylaws certified by the Board of Insurance Commissioners (now the commissioner of insurance) "shall be received in evidence in all the courts of this State." The revised law omits the provision, enacted as part of the Insurance Code in 1951, as unnecessary because Rule 902, Texas Rules of Evidence, governs the admissibility of certified copies of public records, including "a document authorized by law to be recorded or filed and

actually recorded or filed in a public office." The cited rules were originally adopted, as Rules of Civil Evidence and Rules of Criminal Evidence, respectively, in 1983 and 1985, as provided by Sections 22.004 and 22.109, Government Code.

The cited rules apply to all proceedings to which the provision could apply. The Texas Rules of Evidence apply to civil proceedings in all courts other than small claims courts. Under Section 28.033, Government Code, proceedings in small claims courts are informal, so specific rules and statutes regarding receipt of evidence are unnecessary. The Texas Rules of Evidence also apply under Section 2001.081, Government Code, to contested case hearings governed by Chapter 2001, Government Code. The Texas Rules of Evidence apply to all criminal proceedings. The omitted law reads:

Art. 14.04. . . . a copy duly certified by such Board shall be received in evidence in all the courts of this State.

Revised Law

Sec. 887.052. AMENDMENT OF BYLAWS. (a) A majority of an association's members present at a regular meeting or at a meeting called for the purpose may amend the association's bylaws.

(b) An association shall mail to all members notice of any regular or special meeting at which amendments to bylaws will be considered. The notice must contain:

- (1) a complete copy of the proposed amendments; and
- (2) a fair explanation of the intent and effect of the proposed amendments.

(c) An amendment must be ratified by the association's board of directors.

(d) An association shall file with the department, in the same manner provided for filing bylaws under Section 887.051, an amendment adopted by the association. An amendment is not effective unless approved by the department.

(e) An association shall mail to each member a certified copy of any amendment to the association's bylaws at the next assessment after the amendment to the bylaws is made.

(f) On adoption of an amendment to an association's bylaws that might affect the insurance rights of the association's members, the association shall immediately send a copy of the amendment by first class mail to each affected member. The

burden of proof is on the association to prove that the association mailed the amendment. (V.T.I.C. Arts. 14.04 (part), 14.05, 14.18 (part).)

Source Law

Art. 14.04. . . . All amendments shall be filed with the Board of Insurance Commissioners in a like manner as the original by-laws. A certified copy of any changes in the by-laws of each such corporation shall be mailed to each of the stockholders and/or members at the next assessment after such change in the by-laws is made.

Art. 14.05. By-laws of any association may be amended by a majority of the members of the association present when ratified by the Board of Directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered, must be mailed to all members. Such notices must contain full copies of the proposed changes in the by-laws and fair explanations of the intent and effect thereof.

Art. 14.18. . . . [All conditions of the certificate must be stated thereon, including such portions of the by-laws of the association as may affect the insurance rights of the parties in any material way;] . . . amendments to the by-laws which might affect such rights of members must forthwith be mailed by first-class mail to each certificate holder affected. In case of controversy the burden of proof shall be on the company to prove the amendment was mailed to the member. . . .

Revisor's Note

V.T.I.C. Article 14.04 refers to "stockholders and/or members" of an association. The revised law omits the reference to stockholders because, under

V.T.I.C. Article 14.02, revised as Section 887.001, "member" is the defined term and because "member" is the appropriate term to use in connection with the type of associations to which this chapter applies, as described by V.T.I.C. Article 14.01, revised as Section 887.003.

Revised Law

Sec. 887.053. IMMUNITY. An officer, director, or member of an association is not individually liable because of an insurance certificate issued by the association or a claim arising from an insurance certificate. (V.T.I.C. Art. 14.03 (part).)

Source Law

Art. 14.03. [All associations operating under this chapter shall be mutual in character, but] no liability shall rest upon any officer, director or member in an individual capacity by virtue of any policy issued or claims arising thereon.

Revisor's Note

V.T.I.C. Article 14.03 refers to a "policy" issued by an association. Throughout this chapter where appropriate, the revised law substitutes "insurance certificate" for "policy" because "insurance certificate" is the defined term and because it is clear from the context that the law applies to any type of document that is an insurance certificate, as that term is defined by V.T.I.C. Article 14.02, revised as Section 887.001.

Revised Law

Sec. 887.054. FINANCIAL OFFICER; BOND. (a) An association, by resolution entered in its minutes, shall designate an officer to be responsible for handling the association's funds. The president, secretary, or general manager of the association must certify a copy of the resolution, and the association shall file the copy with the department.

(b) Except as provided by Subsection (c) or (d), the association shall make and file a surety bond covering the officer designated under Subsection (a). The bond must:

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

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

(3) obligate the principal and surety to pay any monetary loss sustained by the association through an act of

fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by the officer, whether acting alone or with other persons, while employed as or exercising the powers of an officer designated under Subsection (a); and

(4) be in an amount of:

(A) at least \$2,500; or

(B) if the association's mortuary fund exceeds \$2,500, an amount equal to the lesser of:

(i) the amount of the association's mortuary fund; or

(ii) \$20,000.

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

(d) Except as provided by Subsection (e), this section does not apply to a local mutual aid association that was operating on May 12, 1939, and has never:

(1) had a total membership of more than 1,000 members;

(2) charged more than \$1 each for annual dues and assessments; and

(3) charged more than \$2.50 for membership fees.

(e) An association to which Subsection (d) applies must file with the department a bond in the amount of \$1,000, conditioned as provided for a bond under Subsection (b).

(f) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted. (V.T.I.C. Art. 14.08 (part).)

Source Law

Art. 14.08. Such association shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the Board of Insurance Commissioners, designating therein some officer who shall be responsible in the handling of the funds of the corporation. Such association shall make and file for such officer a surety bond with a corporate surety company authorized to write surety bonds in this State, as surety, satisfactory and payable to the Board of Insurance Commissioners of Texas in the sum of not less than Two Thousand Five Hundred (\$2,500.00) Dollars for the use and benefit of said association, and which shall at all times be equal to the amount of the mortuary fund on

hand, not to exceed Twenty Thousand (\$20,000.00) Dollars, which said bond shall obligate the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others, while employed as such officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the Board of Insurance Commissioners cash (or securities approved by the Board) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond. Provided, however, that the provisions of this article shall not apply to any local mutual aid association now organized and operating whose total membership shall at no time exceed one thousand (1,000) members and which shall never charge for annual dues or assessments in excess of One (\$1.00) Dollar each, and whose membership fee shall at no time exceed Two Dollars and Fifty Cents (\$2.50). However, such association thus exempted shall file a bond, conditioned as hereinabove provided in the amount of One Thousand (\$1,000.00) Dollars with the Board of Insurance Commissioners. . . . Successive recoveries on any of the bonds provided for in this article may be had on such bonds until same are exhausted.

Revisor's Note

(1) V.T.I.C. Article 14.08 refers to "dishonesty," "theft," "embezzlement," and "wrongful abstraction." The revised law omits "wrongful abstraction" because that term is included within the meaning of "dishonesty," "theft," and "embezzlement."

(2) V.T.I.C. Article 14.08 provides that Article 14.08 does not apply to a local mutual aid association that is "now organized and operating" and that meets certain other requirements. The quoted language can only be read as meaning "organized and operating

before the effective date of this Act." Article 14.08 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. Section 2 of that act provides that "[n]othing contained in this Act shall be held or construed to effect any substantive change in the laws existing prior to the passage of this Act." Article 14.08 was derived from Article 5068-1, Vernon's Texas Civil Statutes. Article 5068-1 was enacted by Chapter 6, page 401, General Laws, Acts of the 46th Legislature, Regular Session, 1939; that act took effect May 12, 1939. Accordingly, the revised law includes a reference to May 12, 1939.

Revised Law

Sec. 887.055. BOND REQUIREMENTS FOR CERTAIN PERSONS. (a) In addition to the bond required by Section 887.054 and any other bond required by law, an association shall obtain a separate or blanket surety bond covering each other person who may have access to the association's mortuary funds. The bond must:

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

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

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

(4) be in an amount determined by the department of at least \$1,000 but not more than \$5,000.

(b) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted. (V.T.I.C. Art. 14.08 (part).)

Source Law

Art. 14.08. . . .

In addition to the bond required in the preceding paragraph, and in addition to the bond already required by law of certain associations subject to this chapter, each association shall procure for all other office employees, or other persons who may have access to any of its claim funds, separate bonds or blanket bonds with some surety licensed by the Board to do business

in Texas, in an amount or amounts fixed by the Board with a minimum of One Thousand (\$1,000.00) Dollars and a maximum of Five Thousand (\$5,000.00) Dollars, payable to the Board of Insurance Commissioners for the use and benefit of the association obligating the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided for in this article may be had on such bonds until same are exhausted.

Revisor's Note

(1) V.T.I.C. Article 14.08 refers to a surety "licensed" by the Board of Insurance Commissioners. The revised law substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(2) V.T.I.C. Article 14.08 refers to "dishonesty," "theft," "embezzlement," and "wrongful abstraction." The revised law omits "wrongful abstraction" for the reason stated in Revisor's Note (1) to Section 887.054.

Revised Law

Sec. 887.056. RECOVERY ON BOND. (a) On receipt of information that an officer of an association has violated the terms of a bond under Section 887.054 or 887.055, the department shall demand from the officer a written explanation of the charge.

(b) If after an explanation under Subsection (a) the department is not satisfied regarding the existing facts in controversy, the department shall:

(1) notify the officer to appear in Travis County, not earlier than the 11th day or later than the 16th day after service of notice, with any records and other information the department considers proper; and

(2) conduct an examination into the charge against the officer.

(c) If after an examination under Subsection (b) the department is satisfied that the officer violated the terms of the bond, the department shall:

- (1) immediately notify the company executing the bond;
- (2) prepare a written statement covering the facts;

and

- (3) deliver the statement to the attorney general.

(d) On receipt of a statement under Subsection (c), the attorney general shall investigate the charges. If the attorney general is satisfied that the officer violated the terms of the bond, the attorney general shall:

- (1) enforce the liability against the cash or securities provided as surety by the officer; or

- (2) in the name of the commissioner, file suit in Travis County on the bond for the benefit of the bond's beneficiaries against the officer as principal and the sureties for the recovery of:

- (A) any amounts due by the officer; and
- (B) all costs of the suit. (V.T.I.C.

Art. 14.09.)

Source Law

Art. 14.09. When the Board is informed that any officer of any such association has violated the terms of either of said bonds it shall demand a written explanation of such officer as to such charge, and if after such explanation the Board is not satisfied as to the existing facts in controversy it shall notify such officer to be and appear in Travis County with such records, writings, and other correspondence and facts as the Board deems proper, not earlier than ten (10) days or later than fifteen (15) days from service of notice, and it shall there conduct an examination into such affair, and if upon such examination the Board shall become satisfied that the terms of said bond have been violated by said officer the Board shall immediately notify the company executing said bond and prepare a written statement covering said facts and deliver same to the Attorney General of Texas, whose duty it shall be to investigate said charges and if satisfied that the terms of said bond have been violated he shall enforce the liability against said cash or securities, or he shall file suit on said bond in the name of the Board of Insurance Commissioners of Texas for the benefit of the beneficiaries thereof against said officer as principal and the

sureties of his bond for the recovery of said amounts due by said officer, and all costs of suit in some court of competent jurisdiction, in Travis County, Texas.

Revisor's Note

(1) V.T.I.C. Article 14.09 refers to "records, writings, and other correspondence and facts." The revised law substitutes "records and other information" for that phrase because "writings, and other correspondence and facts" is included within and synonymous with the meaning of "other information," which is more concise.

(2) V.T.I.C. Article 14.09 refers to a suit brought "in some court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 887.057. DEPOSIT. (a) An association shall, through the department, deposit with the comptroller an amount equal to the largest risk assumed by the association on any one life or individual.

(b) A deposit under this section must be cash or convertible securities subject to approval by the department.

(c) A deposit is liable for the payment of any final judgment against the association and is subject to garnishment after a final judgment against the association.

(d) An association shall immediately replenish a deposit under this section if the deposit is impounded or depleted. If the association fails to immediately replenish the deposit on demand by the department, the department may consider the association insolvent and take appropriate action.

(e) An association may not state in an advertisement, in a letter, in literature, or otherwise that it has made a deposit with the department as required by law, unless the association also states fully:

(1) the purpose of the deposit;

(2) the conditions under which the deposit is made;

and

(3) the exact amount and character of the deposit.

(V.T.I.C. Art. 14.10.)

Source Law

Art. 14.10. Each association shall place with the comptroller through the Board of Insurance Commissioners a deposit equal to the largest risk assumed on any one life or person, which may be in cash or in convertible securities subject to approval by the Board. Such deposit shall be liable for the payment of all final judgments against the association, and subject to garnishment after final judgments against the association. When such deposit becomes impounded or depleted it shall at once be replenished by the association, and if not replenished immediately on demand by the Board, the association may be regarded as insolvent and dealt with as hereinafter provided.

When any association shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

Revised Law

Sec. 887.058. CHANGE OF ASSOCIATION'S NAME. An association may change its name by amending the association's charter if:

- (1) the association submits the proposed amendment to the department for approval; and
- (2) the department does not determine that the proposed name is confusing and misleading to the public.

(V.T.I.C. Art. 14.14.)

Source Law

Art. 14.14. Any amendment to the charter of an association operating under this chapter changing the name of the association, must be submitted to the Board of Insurance Commissioners for approval; and the charter of any association operating under this chapter may not be amended to provide for changing its name to a name that is determined by the Board of Insurance Commissioners to be confusing and misleading to the public.

Revised Law

Sec. 887.059. BOOKS AND RECORDS. (a) An association shall keep the association's books and records in a form and manner that:

(1) accurately reflects the condition of the association or the facts essential to the association's faithful and effective operation; and

(2) is acceptable to the department.

(b) The association shall adopt forms or systems that are acceptable to the department and will most effectively serve the purpose described by Subsection (a)(1). (V.T.I.C. Art. 14.12.)

Source Law

Art. 14.12. All the records and books of each association shall be kept in the shape, form and manner acceptable to the Board, and if such records and books of any association are kept in such manner as not to reflect truly and accurately the condition of the association, or the facts essential to its faithful and effective operation, the association shall at once adopt forms or systems acceptable to the Board which will serve the purpose most effectively.

Revisor's Note

(1) V.T.I.C. Article 14.12 refers to the "shape, form and manner" of records and books. The revised law omits "shape" as included within the meaning of "manner."

(2) V.T.I.C. Article 14.12 refers to records and books that "truly and accurately" reflect the condition of an association. The revised law omits the reference to "truly" because "truly" is included within the meaning of "accurately."

Revised Law

Sec. 887.060. ANNUAL STATEMENT. (a) Not later than April 1 of each year, an association shall file with the department a sworn statement of the association's condition on the preceding December 31.

(b) A statement under this section must be on a form provided by the department for that purpose and include a complete account of:

(1) the association's real and contingent assets;

(2) the association's liabilities; and

(3) income to and disbursements from the association's mortuary and expense funds during the year. (V.T.I.C. Art. 14.15,

Source Law

Art. 14.15

Sec. 1. On or before the 1st day of April of each year, each association or company operating under the provisions of this Chapter shall file with the State Board of Insurance a complete and full sworn statement of its condition on the 31st day of December next preceding. Such statement shall exhibit all real and contingent assets, and all liabilities and an account of income and disbursements to and from the mortuary and expense funds during the year, and on forms which the State Board of Insurance shall furnish for the making of such annual statements. . . .

Revisor's Note

(1) Section 1, V.T.I.C. Article 14.15, refers to an "association or company operating under the provisions of this Chapter." Throughout this chapter, references to "company" in this context are omitted from the revised law because "association" is defined by V.T.I.C. Article 14.02 (revised as Section 887.001) to include any type of organizations, and it is clear from the context that the law applies to all types of entities regulated under this chapter.

(2) Section 1, V.T.I.C. Article 14.15, refers to the "next preceding" December 31. The revised law omits "next" as unnecessary. "The preceding" means "next preceding."

(3) Section 1, V.T.I.C. Article 14.15, provides that, after examining an association's annual statement, "the State Board of Insurance shall, if such report shows that the company or association is in all things complying with the requirements of law, issue such company or association a certificate of authority to transact its business in this State for the year next succeeding the filing of said report, or continue its certificate of authority in force as is provided in Article 1.14 of this

Insurance Code." The revised law omits the provision relating to the issuance of a certificate of authority for the "year next succeeding" as repealed. Section 1, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amended Section 1, V.T.I.C. Article 1.14, to require the State Board of Insurance to issue a certificate of authority to transact insurance business to any insurer that fully complies with applicable law. Under Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, repealed "[a]ll laws and parts of laws in conflict herewith . . . to the extent that they require periodic renewal of certificates of authority." The revised law omits the portion of Article 14.15 that refers to Article 1.14 because Article 1.14 applies by its own terms, and it is not necessary to include a reference to that article. The omitted law reads:

Sec. 1. . . . Upon examination of said annual statement, the State Board of Insurance shall, if such report shows that the company or association is in all things complying with the requirements of law, issue such company or association a certificate of authority to transact its business in this State for the year next succeeding the filing of said report, or continue its certificate of authority in force as is provided in Article 1.14 of this Insurance Code.

Revised Law

Sec. 887.061. REPORT ON CONDITION OF ASSOCIATION. The department may require from an association written reports on the condition of the association at any time the department considers advisable. The department may require that a report be verified by the oath of a responsible officer of the association.
(V.T.I.C. Art. 14.57 (part).)

Source Law

Art. 14.57. The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such

association whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the association. . . .

Revised Law

Sec. 887.062. EXAMINATION. Articles 1.15 and 1.16 apply to an association. (V.T.I.C. Art. 14.16.)

Source Law

Art. 14.16. Articles 1.15 and 1.16 of this code apply to corporations and associations regulated under this chapter.

Revised Law

Sec. 887.063. ADMITTED ASSETS. An association may include among its admitted assets, within the assets of the expense fund only, any asset designated as a net asset under Section 841.004. (V.T.I.C. Art. 3.01, Sec. 10(d) (part).)

Source Law

[Art. 3.01, Sec. 10]

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

Revised Law

Sec. 887.064. DIVIDENDS. If the amount of an association's mortuary fund exceeds the amount of reserves required by Subchapter I, the association may pay dividends from the fund to its certificate holders. The amount of the dividends and the method of distribution of the dividends must be:

- (1) equitable and nondiscriminatory; and
- (2) approved by the department before payment.

(V.T.I.C. Art. 14.15, Sec. 8.)

Source Law

Sec. 8. In the event that the amount of the mortuary or claim fund of the company or association shall exceed the amount of the required reserves to be maintained, such company or association may pay dividends from said fund to its policyholders provided: (a) no permissive deficiency reserve exists at date of payment; and (b) the amount of the dividend and method of distribution thereof is equitable and nondiscriminating and approved in advance of payment by the State Board of Insurance.

Revisor's Note

Section 8, V.T.I.C. Article 14.15, provides that an association may pay dividends from its mortuary fund if "no permissive deficiency reserve exists at date of payment." The revised law omits the reference to a permissive deficiency reserve because the provisions of Article 14.15 relating to permissive deficiency reserves have been omitted as executed. See the revisor's note at the end of Subchapter I.

Revised Law

Sec. 887.065. MERGER. (a) An association may not merge with another association without the advance approval of the department.

(b) The department may grant approval under Subsection (a) only after the department:

- (1) completely investigates the facts; and
- (2) determines that the proposed merger is to the advantage of the members. (V.T.I.C. Art. 14.13 (part).)

Source Law

Art. 14.13. . . .

The associations subject to this chapter are hereby expressly prohibited from merging with another association . . . without the consent in advance of the Board of Insurance Commissioners which may be given only after complete investigation into the facts and determination that such . . . merger is to the advantage of members of the association or groups to be affected.

Revisor's Note
(End of Subchapter)

The revised law omits V.T.I.C. Article 14.14a. In part, Article 14.14a validates the charters of all companies "regulated by the provisions of Chapter 14 of the Insurance Code of Texas on the effective date hereof" that were "actively conducting an insurance business under Chapter 14 . . . on the effective date hereof." Article 14.14a was added by Chapter 125, Acts of the 58th Legislature, Regular Session, 1963, and took effect May 9, 1963. The validation provision is omitted from the revised law because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable to the revised law, provides that the repeal of a statute does not affect any validation previously made under the statute.

V.T.I.C. Article 14.14a also provides that an existing association may amend its charter to extend the association's duration by filing an amendment to the association's charter within six months of the effective date of Article 14.14a. The revised law omits that provision as obsolete because any amendment would have to have been filed within six months of May 9, 1963.

The omitted law reads:

Art. 14.14a. This Article shall apply to every company or association regulated by the provisions of Chapter 14 of the Insurance Code of Texas on the effective date hereof. The charters of all such companies which are actively conducting an insurance business under Chapter 14 of the Insurance Code of Texas on the effective date hereof and which have been issued a permanent certificate of authority from the State Board of Insurance pursuant to Article 1.14 of the Insurance Code of Texas, authorizing such companies to transact an insurance business, are hereby in all things validated. Any such company or association shall have the right to amend its charter for the purpose of extending its

period of duration, which may be perpetual, by filing an amendment for such purpose within six (6) months after the effective date of this Article in the same manner as would be done with any other amendment to its charter under existing laws. This Article shall not apply to any company or association which failed to comply with the provisions of Article 13.06 of the Insurance Code of Texas, nor to any company or association which has heretofore voluntarily surrendered its charter, nor to any company or association which has had its charter forfeited or cancelled by a Court of competent jurisdiction, nor to any company or association which has surrendered its certificate of authority and charter to the State Board of Insurance and has had a cessation of corporate existence under the provisions of Chapter 22 of the Insurance Code of the State of Texas.

[Sections 887.066-887.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 887.101. CERTIFICATE OF AUTHORITY REQUIRED. (a) Except as provided by Section 887.102, the department shall require an association or person to hold a certificate of authority issued by the department before the association or person may engage in the business of insurance in this state.

(b) If an association or person writes insurance without a certificate of authority issued under Subsection (a), the department shall notify the attorney general. The attorney general shall institute proceedings in the district court of Travis County to restrain the association or person from writing insurance without a certificate of authority. (V.T.I.C. Art. 14.17 (part).)

Source Law

Art. 14.17. It shall be the duty of the Board of Insurance Commissioners to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such

company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Board to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided

Revisor's Note

V.T.I.C. Article 14.17 refers to "any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization." The revised law substitutes "association or person" for that phrase because "association," as defined by Section 887.001, includes any organization subject to this chapter, including a "corporation" or "firm, association, local mutual aid association, or any local association, company, or organization."

Revised Law

Sec. 887.102. EXEMPT ASSOCIATION; PERMIT. (a) An association is not required to hold a certificate of authority under Section 887.101 if the association:

(1) limits its membership to:

(A) the employees and the families of employees of a particular designated firm, corporation, or individual; or

(B) borrowers of a federal agency in this state and members of the borrower's immediate family who are living with the borrower and are not engaged in nonfarm work for their chief income;

(2) has been in existence for at least five years;

(3) is not operated for profit; and

(4) does not pay commissions.

(b) An association exempt under this section shall:

(1) make annual reports to the department, on forms provided for that purpose, showing the financial condition of the association, receipts and expenditures of the association, and any other facts required by the department; and

(2) obtain from the department a permit to engage in the business of insurance. (V.T.I.C. Art. 14.17 (part).)

Source Law

Art. 14.17. . . . no provision of this and the preceding Article shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation, or individual, nor shall it apply to associations which limit their membership to bona fide borrowers of a Federal agency in Texas and members of the borrower's immediate family who are living with him and who are not engaged in nonfarm work for their chief income, and which association has been in existence for at least five (5) years, and which are not operated for profit and which pay no commissions to anyone; provided, however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. . . .

Revisor's Note

(1) V.T.I.C. Article 14.17 refers to "bona fide" borrowers of a federal agency. The revised law omits "bona fide" as unnecessary because the word does not add to the clear meaning of the law.

(2) V.T.I.C. Article 14.17 provides that an association's permit expires each year and may be renewed by the Board of Insurance Commissioners on approval of the association's financial statement. The revised law omits this provision as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter

194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . including . . . [Article] 14.17 . . . to the extent that they require periodic renewal of certificates of authority." For purposes of Article 1.14, a permit issued under Article 14.17 is equivalent to a certificate of authority. The omitted law reads:

Art. 14.17. . . . Such permit shall be for the current year or fractional part thereof and shall expire on the thirty-first day of May thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners.

Revised Law

Sec. 887.103. REFUSAL OF CERTIFICATE OF AUTHORITY OR PERMIT. (a) An association may not continue to engage in the business of insurance in this state if the commissioner notifies the association in writing of the commissioner's refusal to issue a certificate of authority or a permit.

(b) Not later than the 60th day after the date notice is received under Subsection (a), an association may file suit to review the commissioner's action in accordance with Subchapter D, Chapter 36. (V.T.I.C. Art. 14.06, Subsec. (a).)

Source Law

Art. 14.06. (a) No such corporation shall continue to operate in this State if the Board has notified it in writing of the refusal of the Board to issue it a certificate and permit. But any such corporation may within sixty (60) days after receiving such notice file a suit to review the said action of the Board in accordance with Article 1.04 of this code.

Revised Law

Sec. 887.104. REFUSAL OR REMOVAL FOR UNWORTHINESS OF PUBLIC TRUST. (a) The department may not issue a certificate of authority to an association if the department determines that an officer, employee, or member of the board of directors of the association is unworthy of the trust or confidence of the public.

(b) On issuance of a certificate of authority to an association, the commissioner shall order the removal of an

officer, employee, or director of the association if the officer, employee, or director is found unworthy of the trust or confidence of the public.

(c) If the association does not remove an officer, employee, or director as required by an order issued under Subsection (b), the commissioner shall:

- (1) revoke the certificate of authority; and
- (2) treat the association as insolvent. (V.T.I.C. Art. 14.07.)

Source Law

Art. 14.07. The Board of Insurance Commissioners shall not issue to any association a certificate of authority to do business in Texas, when it shall find any officer, employee, or member of the board of directors to be unworthy of the trust or confidence of the public. After a certificate has been granted, the Board shall order the removal of any officer, employee, or director found unworthy of the trust, and if such officer, employee, or director be not removed, the Board shall cancel the certificate and proceed to deal with the association as though it were insolvent.

Revisor's Note

V.T.I.C. Article 14.07 states that the Board of Insurance Commissioners (now the commissioner of insurance) "shall cancel" a certificate of authority in certain circumstances. The revised law substitutes "revoke" for "cancel" because, in context, the terms are synonymous, and "revoke" is more frequently used. Similar changes are made throughout this chapter.

[Sections 887.105-887.150 reserved for expansion]

SUBCHAPTER D. MEMBERS

Revised Law

Sec. 887.151. CLASSES OF MEMBERS. (a) An association's constitution and bylaws shall state the number of members to be admitted in a class of the association.

(b) An association shall keep the accounts of the classes' mortuary assessments separate. The association may not use the funds of a class to pay claims for any other class.

(c) Not later than six months after the date a class of members is created, an association must build the class up to the required membership to pay claims in full. Until the required

membership level is reached, the insurance certificates for the class may not provide for a benefit greater than \$500, unless the association has sufficient funds to lawfully make the full payment of benefits.

(d) Creation of any new class is subject to advance approval of the department. (V.T.I.C. Art. 14.27.)

Source Law

Art. 14.27. The constitution and by-laws of each association shall state the number of members to be admitted in a class or group of the association. Accounts of the mortuary assessments of the several classes shall be kept separately; and the funds of one group or class shall not be used to pay claims for any other classes.

In the creation of a new group, club, or class, an association may have six (6) months from the date of its creation within which to build said group, club, or class up to the required membership to pay claims in full, provided in the interim the certificates provide for no more than a Five Hundred (\$500.00) Dollar benefit, unless the association has funds out of which it may lawfully make and actually does make the full payment of benefits in the interim. Creation of any new group shall be subject to advance approval by the Board of Insurance Commissioners.

Revisor's Note

V.T.I.C. Article 14.27 refers variously to a "class or group" of members of an association, a "class" of members, a "group, club, or class" of members, and a "group" of members. Other articles in V.T.I.C. Chapter 14 use some or all of those terms or refer to a class or "other division of membership." In this context, the terms are synonymous. For consistency throughout this chapter, the revised law omits references to a "group," "club," or "other division" of members or substitutes "class" for "group" or "club."

Revised Law

Sec. 887.152. QUALIFYING MEMBERSHIP IN ASSOCIATION. (a) An individual must qualify under an association's bylaws to become a member of the association.

(b) An association must maintain the qualifying membership at all times. If an association fails to maintain the qualifying membership, the commissioner shall treat the association as insolvent. (V.T.I.C. Art. 14.11.)

Source Law

Art. 14.11. Membership in the association shall be confined to persons qualified under the provisions of the by-laws. Such membership shall equal the qualifying membership at all times and failure to maintain such, the association shall be considered insolvent and dealt with as hereinafter provided.

Revised Law

Sec. 887.153. VOTING RIGHTS OF MEMBERS. An association shall permit each member of the association to vote at any periodic meeting or special meeting of the members. (V.T.I.C. Art. 14.04 (part).)

Source Law

Art. 14.04. . . . [The by-laws shall provide for the periodical meetings of the membership and for special meetings,] at which meetings all members shall be permitted to vote. . . .

Revised Law

Sec. 887.154. MEMBERSHIP RECORDS. An association shall keep:

- (1) a complete and correct roster of the association's members, with proper statistical records for determining by age or some other method the proper cost of insurance;
- (2) accurate records of classes of memberships; and
- (3) records of amounts of assessments paid by each member and by each class that show:
 - (A) how the funds are distributed between mortuary and expense funds for each class; and
 - (B) the amounts paid out of the funds of the whole membership or each class in death claims or other benefits.

(V.T.I.C. Art. 14.13 (part).)

Source Law

Art. 14.13. Each association shall keep a complete and correct roster of its members with proper statistical records for the purpose of determining proper cost of

insurance, by ages or otherwise, and shall keep accurate records of groups, classes or clubs or other division of memberships, if any; and shall keep records to show amounts paid in on assessments by each member and each group; and as to groups, must show how the funds are distributed between expense and mortuary or relief funds, and showing the amounts paid out of the funds of the whole membership or each group in death claims or other benefits.

. . .

Revised Law

Sec. 887.155. TRANSFER OF MEMBERSHIP OR MERGER OF CLASSES.

(a) Without advance approval of the department, an association may not:

- (1) transfer any part or class of membership or all membership to another association; or
- (2) merge classes or transfer a member from one class to another in the association.

(b) The department may grant approval under Subsection (a) only after the department:

- (1) completely investigates the facts; and
- (2) determines that the proposed merger or transfer is to the advantage of the members or classes affected by the merger or transfer. (V.T.I.C. Art. 14.13 (part).)

Source Law

Art. 14.13. . . . The associations subject to this chapter . . . are prohibited from "transferring" any part or group of membership, or all the membership to another association or from merging groups or transferring members from one group to another in an association without the consent in advance of the Board of Insurance Commissioners which may be given only after complete investigation into the facts and determination that such transfer or merger is to the advantage of members of the association or groups to be affected.

[Sections 887.156-887.200 reserved for expansion]

SUBCHAPTER E. POWERS AND DUTIES RELATING TO INSURANCE
AND COVERAGES

Revised Law

Sec. 887.201. LIMIT ON LIFE INSURANCE. An association may not insure an individual life for more than \$5,000. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. . . .

It shall be unlawful for any association to assume liability on a life insurance risk on any one life in an amount in excess of Five Thousand (\$5,000.00) Dollars.

. . .

Revised Law

Sec. 887.202. STIPULATED PREMIUM PLAN; DEDUCTION OF UNPAID PREMIUM BALANCE. (a) An association may issue an insurance certificate on a stipulated premium plan that provides for the insured to pay regular premiums weekly, monthly, quarterly, semiannually, or annually, as determined by the insured.

(b) An association may issue an insurance certificate that provides that on the maturity of benefits payable under the certificate any balance of premium for the certificate year remaining unpaid is deducted from the benefits payable. (V.T.I.C. Art. 14.21 (part).)

Source Law

Art. 14.21. Any insurance company or association licensed by the Board of Insurance Commissioners to operate under this chapter may issue policies on the stipulated or specified premium plan which allows the insured the privilege of paying regular premiums weekly, monthly, quarterly, semi-annually, or annually, as he may choose from time to time. Such policies may also provide that upon the maturity of benefits payable under the policy or certificate any balance of premium for the current policy year remaining unpaid shall be deducted from the benefits payable. . . .

Revisor's Note

(1) V.T.I.C. Article 14.21 refers to a "stipulated or specified premium plan." The revised law omits the reference to a

"specified premium plan" because "specified premium plan" is included within the meaning of the phrase "stipulated premium plan."

(2) V.T.I.C. Article 14.21 provides that it applies to "all outstanding policies." It is clear that the legislature included the provision regarding "outstanding policies" to extend the application of the article to policies outstanding on the effective date of the article. The provision, having accomplished its purpose on the date the article became effective, is executed law. Therefore, the revised law omits the provision as unnecessary. The omitted law reads:

Art. 14.21. . . . The provisions of this article shall apply to all outstanding policies already containing such a provision.

Revised Law

Sec. 887.203. ISSUANCE OF LIFE INSURANCE POLICY BY CERTAIN ASSOCIATIONS. (a) A local mutual aid association or statewide mutual assessment company that has a mortuary fund and expense fund with a combined value of at least \$100,000 greater than the liabilities of the combined funds may issue a life insurance policy in the same manner as a company organized under Chapter 841.

(b) An insurance policy issued as provided by Subsection (a):

(1) may not insure an individual life for more than \$5,000;

(2) must be reserved as required for a company organized under Chapter 841; and

(3) may be issued only on an endowment or limited pay basis. (V.T.I.C. Art. 14.64.)

Source Law

Art. 14.64. Each local mutual aid association or statewide mutual assessment company possessing a mortuary fund and expense fund combined in at least the sum of \$100,000.00 above all liabilities of such combined funds may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that: (1) no individual life shall be insured for more than \$5,000.00, (2) each such policy shall be

reserved as required under the provisions of Chapter Three of this Insurance Code, and (3) each such life policy shall be issued only upon an endowment or limited pay basis.

Revisor's Note

V.T.I.C. Article 14.64 refers to policies of life insurance authorized and permitted under V.T.I.C. Chapter 3 and to the reserve requirements of V.T.I.C. Chapter 3. The portions of Chapter 3 that relate to the organization of companies that are authorized to write that type of life insurance and that are subject to the appropriate reserve requirements are revised as Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 887.204. RENEWAL OR REINSTATEMENT OF INSURANCE CERTIFICATE. (a) If an insurance certificate terminates for any reason and the association's rules provide that a reinstated certificate is regarded as a new certificate, an application for reinstatement must state in at least 10-point type that:

(1) the same rules that apply to the original certificate apply to the reinstated certificate; and

(2) the association may invalidate the certificate within the contestable period for a false statement regarding the applicant's health or physical condition or another matter material to the risk.

(b) On reinstatement of an insurance certificate, an association shall send to the certificate holder by first class mail a copy of the application for reinstatement. The burden of proof is on the association to prove that the association mailed the application.

(c) If a renewal insurance certificate is issued after termination of an insurance certificate, the association shall attach to the renewal insurance certificate a copy of the application for reinstatement. The application is part of the renewal insurance certificate.

(d) If an association renews or reinstates an insurance certificate after termination of the certificate, the association shall divide the reinstated member's payments between the funds in the same percentage as is required of regular payments in the association's bylaws, except that if the period between termination and reinstatement is nine months or longer, the association may:

(1) charge a reinstatement fee not greater than the membership fee; and

(2) place the fee in the expense fund.

(e) A renewal or reinstatement certificate may not be contestable for any cause except nonpayment of assessments for a period longer than six months from the date of renewal or reinstatement, except that if the renewal or reinstatement occurs within the certificate's original two-year contestable period, the contestable period may be extended for six months from the date it would have originally expired. (V.T.I.C. Art. 14.19.)

Source Law

Art. 14.19. In case a certificate shall terminate for any reason, and in case it shall be a rule of the association that all reinstated certificates shall be regarded as new certificates, then the application for reinstatement shall carry the statement in at least ten point type that the same rules apply to it as to the original certificate, and that it can be invalidated within the contestable period for false statements respecting the health or physical condition of the applicant, or other matters material to the risk. A true and correct copy of the application for reinstatement shall be mailed by first-class mail to the certificate holder upon the reinstatement of the certificate. In case of controversy the burden of proof shall be on the association to prove the copy of reinstatement application was mailed to the member. In the event a renewal certificate is issued, such renewal certificate shall have a copy of the application for reinstatement attached and made a part thereof.

It is specifically provided, however, that in case an association shall renew or reinstate a certificate after termination, the payments by the reinstated member shall be divided between the funds in the same percentage as is required of regular payments in the particular by-laws, unless nine (9) months have elapsed between termination and reinstatement. If nine (9) months have elapsed between termination and reinstatement, a reinstatement fee not in excess of the membership fee may be charged and placed in the expense fund. Furthermore, in case of renewal or reinstatement, the renewal or reinstatement certificate shall

not be contestable for any cause except nonpayment of assessments for longer than six (6) months from date thereof, unless the reinstatement or renewal is within the original two (2) year contestable period, in which case the same may be extended for six (6) months from the date on which it would have originally expired.

Revisor's Note

V.T.I.C. Article 14.19 refers to a "true and correct" copy of an application for reinstatement of an insurance certificate. The revised law omits the quoted language as unnecessary because "true and correct" is included within the meaning of "copy." For example, the absence of "true and correct" before "copy" does not imply that one can make a fraudulent copy of a document required by statute.

Revised Law

Sec. 887.205. LIFE INSURANCE CERTIFICATE BENEFICIARIES. (a)
An association may pay death benefits only to:

- (1) a member's spouse;
- (2) a member's relative by blood to the fourth degree or by marriage to the third degree;
- (3) a person actually dependent on the member;
- (4) a creditor, estate, or other person with an insurable interest; or
- (5) a purely charitable or religious institution.

(b) A beneficiary of a life insurance certificate forfeits the beneficiary's interest in the certificate if the beneficiary is the principal or an accomplice in wilfully bringing about the death of the insured. The nearest relative of the insured is entitled to the proceeds of an insurance certificate forfeited under this subsection. (V.T.I.C. Art. 14.28.)

Source Law

Art. 14.28. The payment of death benefits shall be confined to the wife or husband of a member, or relatives by blood to the fourth degrees, or by marriage to the third degree, or to persons actually dependent upon the member, and creditor, estate or any one having an insurable interest or any purely charitable or religious institution.

The interest of a beneficiary in a life

insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in willfully bringing about the death of the insured. When such is the case the nearest relative of the insured shall receive said insurance.

Revised Law

Sec. 887.206. PAYMENT OF CLAIM; PROOF OF CLAIM. (a) An association shall pay each claim under an insurance certificate in full not later than the 60th day after the date of receipt of due proof of claim.

(b) Written notice of a claim given to an association is considered due proof of claim if the association does not provide the claimant with the forms usually provided for filing claims before the 16th day after the date notice is received.

(c) If an association is unable to pay a valid claim in full within the time prescribed by Subsection (a), the commissioner shall treat the association as insolvent. (V.T.I.C. Art. 14.29 (part).)

Source Law

Art. 14.29. . . . It is therefore required of all associations that all claims under certificates be paid in full within sixty (60) days after receipt of due proof of claims.

Written notice of claim given to the association shall be deemed due proof in the event the association fails upon receipt of notice to furnish the claimant, within fifteen (15) days, such forms as are usually furnished by it for filing claims.

Any association which shall become unable to pay its valid claims in full within sixty (60) days after due proofs are received, shall for the purpose of this chapter be regarded as insolvent, and dealt with as is more fully provided hereinafter.

Revised Law

Sec. 887.207. EXCEPTION TO FULL PAYMENT REQUIREMENT: ASSESSMENT-AS-NEEDED ASSOCIATIONS. (a) Section 887.206 does not apply to a class organized before May 12, 1939, and operating on the postmortem or assessment-as-needed plan on that date.

(b) An association with a postmortem or assessment-as-needed class to which Subsection (a) applies may

continue to operate on the plan only if:

(1) the class has a sufficient membership at the assessment rate charged to produce for the mortuary fund at least 50 percent of the maximum value of the largest certificate in the class; and

(2) the association receives the amount required by Subdivision (1).

(c) If the membership of a class is sufficient in number to pay more than 50 percent but less than 100 percent of the maximum value of the largest certificate in the class, an officer of the association shall print on each assessment notice the percentage of the maximum value of the certificate actually paid on the last claim for death benefits in the class.

(d) If the amount realized on an assessment is not sufficient to pay 50 percent of the maximum amount of promised benefits as shown on the certificate, the commissioner shall treat the association as insolvent.

(e) Any benefits paid by an association operating on a postmortem or assessment-as-needed basis are dependent on the amount realized from assessments on the membership. Each of the association's insurance certificates must state:

(1) that any benefits paid are dependent on the amount realized from assessments on the membership; and

(2) the certificate's maximum payment.

(f) An association or a class in an association organized after May 12, 1939, may not operate on the postmortem or assessment-as-needed plan. (V.T.I.C. Arts. 14.02 (part), 14.31.)

Source Law

Art. 14.02. The following terms when used in this chapter shall be defined:

. . .

"Face of certificate" shall refer to the maximum amount of promised benefits, as shown on the certificate.

. . .

Art. 14.31. The provisions of this chapter requiring the full payment of claims shall not apply to any groups, club, or class previously organized and now operating on the post-mortem or assessment-as-needed plan and any association having such a group, club, or class may continue to operate it on said plan so long as any such group, club, or class has a sufficient membership at the assessment rate charged to produce, and so long as it does produce, for the mortuary or relief fund

at least fifty (50%) per cent of the maximum value of the largest policy in said group, club, or class. In the event the membership of any group, club, or class is only sufficient in number to pay between fifty (50%) per cent and one hundred (100%) per cent of the maximum value, it shall be the duty of the officer of said association to have printed on each assessment notice the percentage of the maximum value of the certificate actually paid on the last death claim in said group, club, or class. Provided further, that no association and no group, club, or class in any association shall hereafter be organized to operate on the post-mortem or assessment-as-needed plan.

If on any assessment the amount realized is not sufficient to pay fifty (50%) per cent of the face of the certificate, the association shall be deemed insolvent and dealt with as hereinafter provided.

The benefits to be paid by such association shall be dependent upon the amount realized from assessments upon the membership, and the certificates issued shall so provide; and the certificates shall also state the maximum to be paid.

Revisor's Note

V.T.I.C. Article 14.31 refers to a class "previously organized and now operating" on the postmortem or assessment-as-needed plan. The quoted language can only be read as meaning "organized and operating before the effective date of this Act." Article 14.31 also provides that an association may not "hereafter" operate on the postmortem or assessment-as-needed plan. The revised law substitutes "organized before May 12, 1939, and operating . . . on that date" for "previously organized and now operating" and substitutes "after May 12, 1939," for "hereafter" for the reason stated in Revisor's Note (2) to Section 887.054. Article 14.31 was enacted by the same act that enacted Article 14.08, and the discussion in the revisor's note relating to Article 14.08 applies equally to Article

14.31.

Revised Law

Sec. 887.208. CONTESTED CLAIMS. (a) An association may not contest a claim:

(1) only for delay or for a captious or inconsequential reason; or

(2) to force settlement at less than full payment.

(b) An association shall notify a claimant of the association's intent to deny liability on a claim not later than the 60th day after the date the association receives due proof of claim.

(c) An association that does not notify a claimant as provided by Subsection (b) is presumed as a matter of law to have accepted liability on the claim.

(d) The commissioner shall revoke the certificate of authority of any association the commissioner finds is operating fraudulently or improperly contesting claims.

(e) An association shall report to the department the costs of contests in the annual statement under Section 887.060. The report must be verified by an officer of the association.

(V.T.I.C. Art. 14.30 (part).)

Source Law

Art. 14.30. . . . claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. Therefore, if liability is to be denied on any claim, the association is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

The Board shall cancel the certificate of authority of any association found to be operating fraudulently or improperly contesting its claims.

Reports regarding the costs of contests must be made under oath of an officer of the association, with the annual report of all associations to the Board.

Revisor's Note

V.T.I.C. Article 14.30 provides that an association may contest claims "for valid reasons" but may not contest a claim for delay or for certain other reasons. The

revised law omits the quoted language as unnecessary because prohibiting an association from contesting a claim for certain reasons does not imply that the association may not otherwise contest a claim for a valid reason. The omitted law reads:

Art. 14.30. . . . It shall not be unlawful for an association to contest claims for valid reasons; but

Revised Law

Sec. 887.209. VENUE. An action brought against an association that grows out of or is based on any right of claim or loss or proceeds due, arising from or predicated on any claim for benefits under an insurance certificate issued by the association, may be brought in:

- (1) the county where the certificate holder or beneficiary instituting the action resides; or
- (2) the county of the principal office of the association. (V.T.I.C. Art. 14.35.)

Source Law

Art. 14.35. In all actions brought against corporations operating under and subject to this chapter growing out of or based upon any right of claim or loss or proceeds due, arising from or predicated upon any claim for benefits under any policy or contract of insurance issued by such corporation, venue shall lie in the county where the policyholder or beneficiary instituting such suit resides or in the county of the principal office of such corporation.

Revisor's Note

V.T.I.C. Article 14.35 refers to "any policy or contract of insurance." The revised law substitutes "insurance certificate" for "policy or contract of insurance" because V.T.I.C. Article 14.02, revised as Section 887.001, defines "insurance certificate" as including "any insurance policy or contract of insurance."

Revised Law

Sec. 887.210. REINSURANCE. (a) An association may enter into a reinsurance agreement with a legal reserve company that:

- (1) is authorized to write life, health, and accident

insurance in this state; and

(2) has capital or surplus of at least \$100,000.

(b) A reinsurance agreement under this section is subject to the commissioner's approval.

(c) An association may not pay more out from its mortuary fund for reinsurance under this section than is received at the time of reinsurance by the mortuary fund on the insurance certificates or members reinsured. (V.T.I.C. Art. 14.62 (part).)

Source Law

Art. 14.62. Companies and associations operating under the provisions of this Act may enter into reinsurance contracts or agreements with legal reserve companies authorized to write life, health, and accident insurance in this State with capital or surplus of at least One Hundred Thousand Dollars (\$100,000), and Provided, that such reinsurance contracts or agreements shall be subject to the approval of the Board of Insurance Commissioners of Texas, and that no company or association shall pay more out of its mortuary or claim fund for such reinsurance than is currently received by the mortuary or claim fund on the policies or members reinsured. . . .

Revisor's Note

(1) V.T.I.C. Article 14.62 refers to "contracts or agreements." The reference to "contracts" is omitted from the revised law because "contract" is included within the meaning of "agreement."

(2) V.T.I.C. Article 14.62 requires the Board of Insurance Commissioners to issue instructions on reinsurance agreements under that article "[w]ithin thirty (30) days from the effective date of this Act." The revised law omits that provision as obsolete. Article 14.62 was derived from Chapter 144, Acts of the 52nd Legislature, Regular Session, 1951. The effective date of that act was September 7, 1951. The omitted law reads:

Art. 14.62. . . . Within thirty (30) days from the effective date of this Act, the Board of Insurance Commissioners shall issue instructions outlining the conditions under

which such contracts or agreements will be approved.

[Sections 887.211-887.250 reserved for expansion]

SUBCHAPTER F. CONTENTS OF APPLICATIONS
AND INSURANCE CERTIFICATES

Revised Law

Sec. 887.251. GENERAL REQUIREMENTS FOR INSURANCE CERTIFICATE AND APPLICATION FORMS; INCONTESTABILITY. (a) An insurance certificate issued by an association must include:

(1) any condition of the certificate, including any portion of the bylaws of the association that affects the insurance rights of the parties in any material way; and

(2) a statement that the certificate is issued subject to:

(A) the association's constitution and bylaws;
and

(B) any amendments to the constitution and bylaws approved by the commissioner.

(b) An insurance certificate must provide that a certificate in force for two years becomes incontestable, except for nonpayment of dues or assessments, on the second anniversary of the date of issuance, if the insured does not die before that date.

(c) An insurance certificate issued by an association or an application for the certificate may not contain language or be in a form that misleads the certificate holder or applicant about the kind of insurance provided under the certificate. (V.T.I.C. Arts. 14.04 (part), 14.18 (part), 14.22.)

Source Law

Art. 14.04. . . . All policies issued by a corporation under this chapter shall provide that said policy is subject to the by-laws of the corporation and all future amendments thereto. . . .

Art. 14.18. . . .

All conditions of the certificate must be stated thereon, including such portions of the by-laws of the association as may affect the insurance rights of the parties in any material way; and Each certificate must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two years from date of issue, except for

non-payment of dues or assessments. . . . No certificate issued by such association, nor any application for the certificate shall contain language or be in such form as to mislead the applicant or the policyholder as to the type of insurance afforded.

. . .

Art. 14.22. Certificates issued by an association shall state that said certificate is issued subject to all the terms of the constitution and by-laws of the association then in force and as the same might thereafter be amended and that said certificate shall be governed by such by-laws and constitutional provisions that the Board of Insurance Commissioners shall theretofore and thereafter approve.

Revised Law

Sec. 887.252. APPLICATION FOR INSURANCE CERTIFICATE. (a) An application for an insurance certificate issued by an association must be signed by the applicant. If the applicant is a minor, the application may be signed by a parent or guardian.

(b) The application for an insurance certificate that provides that a misstatement relating to the applicant's health or physical condition may void the certificate within the contestable period must state that provision in language approved by the commissioner. The statement must be in at least 10-point type.

(c) An association shall attach to an insurance certificate a copy of the application for the certificate. The application is part of the insurance certificate.

(d) In the absence of fraud, each statement in an application for an insurance certificate is regarded as a representation and not a warranty. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. . . .

An application for each certificate must be signed by the applicant, unless the applicant is a minor, in which event the application may be signed by a parent or guardian; and a copy thereof must be attached to and made part of such certificate. If the certificate is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the

contestable period, the application shall so state in not less than ten point type in language acceptable to the Board. All statements in the application shall in the absence of fraud be regarded as representations and not warranties.

. . .

Revised Law

Sec. 887.253. LIFE INSURANCE CERTIFICATE FORMS. (a) A life insurance certificate issued by an association must include:

- (1) on the front page of the certificate, a definitive statement of the amount of the death benefit to be paid; and
- (2) a plain statement of the circumstances or conditions under which the benefit is to be paid.

(b) A life insurance certificate must provide that if the age of the insured is misstated, the amount of insurance is the amount that the premium paid would have purchased if the age had been stated correctly, based on rates in effect when the insured dies. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. Every policy or certificate of insurance issued by an association shall state definitely on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid shall be plainly stated in the policy. . . . It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on rates in force at the time of the death of the insured. . . .

Revisor's Note

V.T.I.C. Article 14.18 refers to a "policy or certificate of insurance." The reference to "policy" is omitted from the revised law for the reason stated in the revisor's note to Section 887.209.

Revised Law

Sec. 887.254. HEALTH AND ACCIDENT INSURANCE CERTIFICATE FORMS. An insurance certificate issued by an association must include a plain statement of each health, accident, or other benefit under the certificate and the terms under which each benefit is paid. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. . . . Every health, accident or other benefit shall be plainly stated in the policy, and the terms and conditions under which they shall be paid shall be stated plainly in the policy.

. . .

Revisor's Note

V.T.I.C. Article 14.18 refers to the "terms and conditions" of insurance certificates. The reference to "conditions" is omitted from the revised law because "conditions" is included within the meaning of "terms."

Revised Law

Sec. 887.255. LIFE INSURANCE BENEFIT REDUCTIONS AND EXCLUSIONS. (a) An association may, with the commissioner's approval, issue an insurance certificate that provides for:

(1) reduced benefits if the insured:

(A) dies or is injured while engaged in:

(i) military, naval, or aerial service or aerial flight during peace or war; or

(ii) a hazardous occupation specified in the certificate;

(B) dies by the insured's own hand, regardless of whether the insured was sane or insane; or

(C) dies or is injured by mob violence or legal execution; or

(2) reduced or excluded benefits for sickness from certain causes specified in the certificate.

(b) The front page of an insurance certificate must call attention to any reduction or exclusion of benefits provided by the certificate. The circumstances or conditions under which the reduction or exclusion applies must be stated plainly in the certificate.

(c) If an insurance certificate that provides natural death benefits contains a provision for reducing the greatest death benefit provided by the certificate for a specified insured for a reason other than a reason specified by Subsection (a):

(1) the reduced death benefit for the insured must at all times when the reduction is in effect equal or exceed 120 percent of the total premium paid on that certificate by the insured; and

(2) the reduction must end before the fifth anniversary of the date the certificate is issued.

(d) Subsection (c) does not apply to a life insurance

certificate on which the reduction of the death benefit does not apply at the time of the death of the specified insured.

(e) If a life insurance certificate provides for an increase of the initial amount of the death benefit for a specified insured one or more times during the first five years of the certificate, the amount of the death benefit for the insured must at all times during the period of the increasing benefit equal at least 120 percent of the premiums paid on that certificate by the insured during the period of the increase.

(f) Subsection (e) does not apply to a life insurance certificate that has been in force for more than five years from the date the certificate was issued.

(g) Subsections (c)-(f) do not apply to a family group life insurance certificate described by Section 887.402.

(h) This section does not apply to health and accident insurance policies. (V.T.I.C. Art. 14.20 (part).)

Source Law

Art. 14.20

Sec. 1. Any company or association licensed and operating under this chapter, may with the approval of the State Board of Insurance issue policies providing for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service, or aerial flight in time of peace or war; or in case of death of the member by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy; or if death or injury is caused by mob violence or legal execution; or reduce or exclude benefits for sickness from certain named causes. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided herein, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy. . . .

Sec. 2. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Section 1 of this Article 14.20) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified

insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Section 1 of this Article 14.20) shall not exceed five years from issue date. This Section 2 of this Article 14.20 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

Sec. 3. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Section 3 of this Article 14.20 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

Sec. 4. The provisions of Section 2 and Section 3 of this Article 14.20 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 2(a)(2) of Article 14.15 of this Insurance Code.

Sec. 5. The provisions of this Article 14.20 shall not apply to health and accident policies.

Revisor's Note

Section 1, V.T.I.C. Article 14.20, provides that Section 1 applies to "all outstanding policies already containing" certain provisions. It is clear that the legislature included the provision regarding

"outstanding policies" to extend the application of the article to policies outstanding on the effective date of the article. The provision, having accomplished its purpose on the date the article became effective, is executed law. Therefore, the revised law omits the provision as unnecessary. The omitted law reads:

Sec. 1. . . . The provisions of this Section 1 of this Article 14.20 shall apply to all outstanding policies already containing such limitations.

Revised Law

Sec. 887.256. FORM APPROVAL. (a) The commissioner shall approve the form and language of an insurance certificate before the certificate is used by an association. The commissioner shall, in cooperation with the several associations, ensure that the certificate forms are as uniform as feasible. Forms for all associations are not required to be uniform.

(b) An insurance certificate form used by an association after May 12, 1939, must comply with this chapter and with any other laws regulating the association. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. . . .

Every certificate issued must be approved by the Board as to form and language before it is used by an association. It is not mandatory that these forms be uniform for all associations, but the Board is directed to bring about as great uniformity as is feasible as early as practicable by cooperation with the several associations. All certificate forms hereafter used must be in accord with the provisions of this chapter and with all other laws regulating such associations as are embraced in this chapter.

Revisor's Note

V.T.I.C. Article 14.18 provides that certificate forms "hereafter used" must comply with that article and other laws regulating associations. The quoted language can only be read as meaning "certificate forms used after the effective date of this Act." The revised law substitutes "after May

12, 1939," for "hereafter" for the reason stated in Revisor's Note (2) to Section 887.054. Article 14.18 was enacted by the same act that enacted Article 14.08, and the discussion in the revisor's note relating to Article 14.08 applies equally to Article 14.18.

[Sections 887.257-887.300 reserved for expansion]

SUBCHAPTER G. ASSESSMENTS AND REVENUE

Revised Law

Sec. 887.301. ASSESSMENTS REQUIRED. (a) An association shall levy regular and periodic assessments on its membership in amounts and at intervals necessary to:

(1) meet the reasonable operating expenses of the association; and

(2) allow the association to pay in full any claims arising under its insurance certificates.

(b) An association may also levy an assessment for surplus funds.

(c) An association shall specify the purpose of an assessment.

(d) An assessment on a life insurance certificate issued after May 21, 1965, insuring the life of one or more individuals must be:

(1) in accordance with the reserve standard adopted by the association and approved by the commissioner, except that an association may use the 1956 Chamberlain Reserve Table with interest not to exceed 3-1/2 percent a year; and

(2) in an amount sufficient to deposit in the mortuary fund an amount at least equal to the renewal net premiums computed in accordance with the reserve standard adopted by the association and approved by the commissioner. (V.T.I.C. Art. 14.23, Sec. 1; Art. 14.24 (part).)

Source Law

Art. 14.23

Sec. 1. (a) Each company or association shall levy regular and periodical assessments by whatever name they may be called. These assessments must be in such amounts and at such proper intervals as will meet the reasonable operating expenses of the company or association and pay in full the claims arising under its certificates.

(b) All premiums or assessments upon policies hereafter issued insuring the life of one or more persons shall be in accordance with the reserve table standards adopted by

the company or association and approved by the State Board of Insurance, except that any company or association is hereby authorized to use the 1956 Chamberlain Reserve Table with interest not to exceed 3 1/2% per annum, and shall be in an amount so as to deposit in the mortuary or claim fund an amount at least equal to the renewal net premiums calculated in accordance with the reserve standard adopted by such company or association and approved by the State Board of Insurance.

Art. 14.24. . . . Assessments shall be made upon the membership to meet benefit claims and for surplus funds and for expenses. Calls for assessments must specify the purpose for which made. . . .

Revisor's Note

(1) Section 1, V.T.I.C. Article 14.23, refers to "assessments by whatever name they may be called" and to "premiums or assessments." The revised law substitutes "assessments" for those and similar references throughout this chapter because Section 887.001(1) of the revised law defines "assessment" to include "premium."

(2) Section 1(b), V.T.I.C. Article 14.23, refers to assessments on "policies hereafter issued." The quoted language can only be read as meaning "policies issued after the effective date of this Act." That provision was added to Article 14.23 by amendments to that article made by Chapter 234, Acts of the 59th Legislature, Regular Session, 1965. That act took effect May 21, 1965. The revised law substitutes "after May 21, 1965," for "hereafter."

Revised Law

Sec. 887.302. AUTHORITY TO INCREASE ASSESSMENT RATES ON CERTAIN INSURANCE CERTIFICATES. (a) An association's board of directors may by resolution increase assessment rates on life insurance certificates in force up to the rate on an attained age basis in accordance with the 1956 Chamberlain Reserve Table, with interest at 3-1/2 percent a year, or any other reasonable, equitable, or necessary increase. The board may also adjust assessment rates on accident, health, and hospitalization insurance certificates in force.

(b) An assessment rate increase or adjustment under this section on insurance certificates in force applies to all classes of the same or similar certificates. (V.T.I.C. Art. 14.23, Sec. 4.)

Source Law

Sec. 4. The Board of Directors of each company or association by resolution may increase rates on life policies in force up to the rate on an attained age basis in accordance with the 1956 Chamberlain Reserve Table, with interest at 3 1/2% per annum, or any other reasonable, equitable or necessary increase, and may likewise adjust rates on health, accident, sickness and hospitalization policies in force. Any increase rate or rate adjustment on policies in force shall apply to all classes of the same or similar policies.

Revisor's Note

Section 4, V.T.I.C. Article 14.23, refers to "health, accident, sickness and hospitalization" insurance policies. The revised law substitutes "accident, health, and hospitalization insurance" for the quoted language because the terms are substantively identical and "accident, health, and hospitalization insurance" is more commonly used in this revision.

Revised Law

Sec. 887.303. APPROVAL REQUIRED FOR CERTAIN RATE INCREASES. An association may not implement a rate increase on insurance certificates in force before the commissioner approves the rate increase as complying with this chapter. (V.T.I.C. Art. 14.15, Sec. 9; Art. 14.23, Sec. 5.)

Source Law

[Art. 14.15]

Sec. 9. Whenever rates shall be increased subsequent to date of issue of a policy, such increase shall not be placed in effect until first approved by the State Board of Insurance as provided in Article 14.23 of this Chapter 14.

[Art. 14.23]

Sec. 5. Any increase in rates on

policies in force shall not be placed in effect without the advance approval of the State Board of Insurance approving the same as being in compliance with the provisions of this Chapter.

Revised Law

Sec. 887.304. LIMIT ON RATE INCREASES. Notwithstanding any other provision of this chapter, on a life insurance certificate issued after May 21, 1965, an association may not during any consecutive five-year period increase the rate to more than double the rate charged the insured at the time of the rate increase. (V.T.I.C. Art. 14.25, Sec. 7.)

Source Law

Sec. 7. Any other provision of this Chapter 14 of this Insurance Code, as amended, notwithstanding, rates on life policies issued after the effective date of this Act may not be increased during any consecutive five-year period more than double the rate than charged such insured at the time of such rate increase.

Revisor's Note

Section 7, V.T.I.C. Article 14.25, applies to life insurance policies "issued after the effective date of this Act." Section 7 was added to Article 14.25 by Chapter 234, Acts of the 59th Legislature, Regular Session, 1965; that act took effect May 21, 1965. The revised law substitutes that date for "the effective date of this Act."

Revised Law

Sec. 887.305. EXPENSE LOADING ON CERTAIN INSURANCE CERTIFICATES. If an association increases a life insurance assessment rate at any age other than at age of issue, the expense loading on the new assessments may not, on 50 years of age or greater, exceed 25 percent of the gross assessment charged, unless an additional expense loading is approved by the commissioner as reasonable and necessary. (V.T.I.C. Art. 14.25, Sec. 1 (part).)

Source Law

Sec. 1. . . .

(a) . . . Whenever any life premium rate is increased in accordance with

the provisions of this Chapter at any age other than at age of issue, the expense loading on the new premiums shall not, upon all ages fifty and above, exceed twenty-five per cent (25%) of such gross premium charged, unless an additional expense loading is approved by the State Board of Insurance as being reasonable and necessary.

. . .

Revised Law

Sec. 887.306. ASSESSMENT-AS-NEEDED ASSOCIATIONS: PAYMENTS ON CERTAIN INSURANCE CERTIFICATES. (a) This section applies only to an association operating on an assessment-as-needed basis.

(b) If the members' payments on insurance certificates issued and in force before May 12, 1939, or on the reinsurance or renewals of those certificates, are not sufficient to pay matured death and disability claims in the maximum amount stated in the certificates and to provide for the creation and maintenance of the funds required by the association's bylaws, the association may, with the commissioner's approval and after proper hearing before the commissioner, provide for meeting the deficiency by additional, increased, or extra rates of payment.

(c) The association may give the members the option of agreeing to reduced maximum benefits or making increased payments. (V.T.I.C. Art. 14.32.)

Source Law

Art. 14.32. If the payments of the members of any association coming within the scope of this chapter on certificates issued and in force when this code takes effect, or the reinsurance or renewals of such certificates, shall prove insufficient to pay matured death and disability claims in the maximum amount stated in such policies or certificates, and to provide for the creation and maintenance of the funds required by its by-laws, such association may with the approval of the Board of Insurance Commissioners and after proper hearing before said Board provide for meeting such deficiency by additional, increased, or extra rates of payment. The members may be given the option of agreeing to reduced maximum benefits, or of making increased payments.

Revisor's Note

(1) V.T.I.C. Article 14.32 provides that, if the payments by the members of an association are not sufficient to pay claims and to provide for the creation and maintenance of funds required by the association's bylaws, the association may provide for meeting the deficiency by additional, increased, or extra rates of payment. Except as to assessment-as-needed associations, that provision was impliedly repealed. Article 14.32 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. Article 14.15, as amended by Chapter 234, Acts of the 59th Legislature, Regular Session, 1965, requires an association to maintain certain reserves for the payment of claims; Section 7 of that article provides that if an association does not have the required reserves, the association shall increase rates on insurance certificates to correct the deficiency. Section 2, Article 14.15, provides that the reserve requirements do not apply to assessment-as-needed associations. The later amendment of Article 14.15 impliedly repealed the requirements of Article 14.32 as applied to associations other than assessment-as-needed associations. For clarity, the revised law provides that it applies only to assessment-as-needed associations.

(2) V.T.I.C. Article 14.32 provides that it applies to insurance certificates "issued and in force when this code takes effect." The revised law substitutes "May 12, 1939," for "when this code takes effect" for the reason stated in Revisor's Note (2) to Section 887.054. Article 14.32 was enacted by the same act that enacted Article 14.08, and the discussion in the revisor's note relating to Article 14.08 applies equally to Article 14.32.

Revised Law

Sec. 887.307. REVENUE OF ASSOCIATION; DEPOSIT. (a) The revenue of an association must be derived from:

- (1) membership fees; and
- (2) assessments.

(b) Not later than the fifth day after the date an association collects revenue, the association shall deposit the revenue in a state or national bank. (V.T.I.C. Art. 14.24 (part).)

Source Law

Art. 14.24. The funds of the association shall be derived from membership fees and assessments. . . . All funds collected that belong to the association shall be deposited within five (5) days in a state or national bank.

Revised Law

Sec. 887.308. SUSPENSION OF MEMBER FOR NONPAYMENT. Before suspending a member from membership for nonpayment of assessments or membership fees, an association shall send notice to the member by first class mail stating the final date of payment. (V.T.I.C. Art. 14.24 (part).)

Source Law

Art. 14.24. . . . Before suspending any member from membership it shall be necessary for the association to mail a notice, by first-class mail, to the member, which notice shall state the final date of payment. . . .

Revisor's Note

V.T.I.C. Article 14.24 requires an association to send a member a notice stating "the final date of payment" before suspending the member from membership. The portion of Article 14.24 that precedes this requirement provides that an association's revenues are derived from membership fees and assessments. (That portion is revised as Section 887.307.) Thus, in context, the "final date of payment" revised in this section may only be read as referring to payment of an assessment or membership fee. The revised law clarifies that it applies to suspension of a member for nonpayment of assessments or membership fees.

Revised Law

Sec. 887.309. FAILURE TO COMPLY WITH CERTAIN COMMISSIONER ORDERS. If an association refuses to comply with an order of the commissioner regarding rates or assessments under this chapter, the commissioner shall treat the association as insolvent. (V.T.I.C. Art. 14.23, Sec. 3.)

Source Law

Sec. 3. When any company or association shall refuse to comply with the order of the State Board of Insurance respecting rates or assessments as in this Chapter authorized, it shall be treated as insolvent.

[Sections 887.310-887.350 reserved for expansion]

SUBCHAPTER H. MORTUARY AND EXPENSE FUNDS

Revised Law

Sec. 887.351. MORTUARY AND EXPENSE FUNDS. An association's bylaws must provide for the method and procedure for allocating assessments between the association's mortuary and expense funds. (V.T.I.C. Art. 14.25, Sec. 3.)

Source Law

Sec. 3. Each company or association shall provide in its bylaws for the method and procedure for the allocation of premiums to be made between the mortuary and expense funds.

Revised Law

Sec. 887.352. LIMITS ON USE OF FUNDS. An association may spend or invest money from a mortuary fund or expense fund only as provided for each fund by this subchapter. (V.T.I.C. Art. 14.25, Sec. 5.)

Source Law

Sec. 5. Each company or association mortuary fund and expense fund shall be expended only in the manner as is provided for each fund in Subparagraph (a) of Section 1 of Article 14.25 of this Chapter of this Insurance Code and invested only as provided in Section 4 of Article 14.25 of this Chapter of this Insurance Code.

Revised Law

Sec. 887.353. DIVISION OF FUNDS: CERTAIN LIFE INSURANCE CERTIFICATES. (a) This section applies to a life insurance certificate insuring the life of one or more individuals issued:

(1) after December 31, 1965; or

(2) before December 31, 1965, and on which the assessment rate has been increased based on an age other than age on the date the certificate was issued.

(b) To the extent consistent with this subchapter, an

association shall divide collected assessments into at least two funds.

(c) An association shall deposit in a mortuary fund a portion of the association's assessments at least equal to the renewal net premium computed at the age of issue or some other advanced age in accordance with the reserve standard adopted by the association. The association may pay from the mortuary fund only:

- (1) fund claims under insurance certificates;
- (2) dividends to certificate holders as provided by Section 887.064; and
- (3) any other expenditures permitted by law.

(d) An association shall deposit in an expense fund the remaining portion of the assessments not deposited under Subsection (c). The association may pay expenses from the expense fund.

(e) This section does not apply to an association operating on an assessment-as-needed basis. (V.T.I.C. Art. 14.25, Sec. 1 (part).)

Source Law

Art. 14.25

Sec. 1. The provisions of this Section 1 shall apply to all companies or associations regulated by the provisions of this Chapter, except companies or associations operating upon an assessment-as-needed basis.

(a) Assessments or premiums upon

- (i) policies issued after December 31, 1965, insuring the life of one or more persons, and
- (ii) policies insuring the life of one or more persons issued prior to December 31, 1965, and upon which the rate has been increased based upon an age other than age at date of issue, when collected shall be divided into at least two funds. One of these shall be the mortuary or relief fund, by whatever name it may be called in the different companies or associations, and from which fund claims under certificates shall be paid, and nothing else, except: (1) dividends to policyholders when paid in accordance with this Chapter, . . . (3) other expenditures permitted by law; and the other fund shall be the expense fund from which expenses may be paid. As applies to all such policies, as defined in (i) and (ii) of this subparagraph and insuring the life of one or

more persons, an amount at least equal to the renewal net premium, calculated at the age of issue or some other advanced age in accordance with the reserve standard adopted by such company or association, shall be placed in the mortuary fund. All other portions of the premiums may be placed in the expense fund. . . .

Revisor's Note

Section 1, V.T.I.C. Article 14.25, refers to a "mortuary or relief fund, by whatever name it may be called in the different companies or associations." Other provisions in V.T.I.C. Chapter 14 refer to a "mortuary or claim fund." Throughout this chapter, the revised law substitutes "mortuary fund" for the quoted language because "mortuary fund" is the defined term under Section 887.001 of the revised law.

Revised Law

Sec. 887.354. DIVISION OF FUNDS: ACCIDENT AND HEALTH INSURANCE CERTIFICATES AND CERTAIN LIFE INSURANCE CERTIFICATES.

(a) This section applies to:

- (1) a life insurance certificate in force on December 31, 1965, to which Section 887.353 does not apply; and
- (2) an accident, health, or hospitalization insurance certificate.

(b) An association shall deposit in a mortuary fund an amount equal to at least 60 percent of the association's assessments, not including membership fees.

(c) An association shall deposit in an expense fund:

- (1) membership fees; and
- (2) the remaining portion of the assessments not deposited under Subsection (b).

(d) This section does not apply to an association operating on an assessment-as-needed basis. (V.T.I.C. Art. 14.25, Sec. 1 (part).)

Source Law

Sec. 1. The provisions of this Section 1 shall apply to all companies or associations regulated by the provisions of this Chapter, except companies or associations operating upon an assessment-as-needed basis.

. . .

(b) Premiums or assessments upon all policies in force on December 31, 1965,

except as in Subparagraph (a) of this Section 1 provided, and upon all health, accident, sickness and hospitalization policies shall be divided so that at least sixty per cent (60%) of such premium, exclusive of the membership fee, shall be placed in the mortuary fund of the company or association. The membership fee and the remaining portion of the premium may be placed in the expense fund. . . .

Revised Law

Sec. 887.355. DIVISION OF FUNDS: CERTAIN LIFE INSURANCE CERTIFICATES WITH NO RATE INCREASE. (a) This section applies to a life insurance certificate in force on December 31, 1965, on which the assessment rate has not been increased.

(b) An association may:

(1) deposit in a mortuary fund at least the net renewal premium, based on the reserve table adopted by the association; and

(2) deposit in an expense fund the remaining portion of the premium.

(c) This section does not apply to an association operating on an assessment-as-needed basis. (V.T.I.C. Art. 14.25, Sec. 1 (part).)

Source Law

Sec. 1. The provisions of this Section 1 shall apply to all companies or associations regulated by the provisions of this Chapter, except companies or associations operating upon an assessment-as-needed basis.

. . .

(b) . . . As to policies in force on December 31, 1965, insuring the life of one or more persons and upon which a rate increase has not been accomplished, any company or association may at its election divide the premiums on such life policies so as to place at least the net renewal premium, based upon the reserve table adopted by it, in its mortuary fund and place the remaining portion of said premium in its expense fund.

Revised Law

Sec. 887.356. DIVISION OF FUNDS: ASSESSMENT-AS-NEEDED ASSOCIATIONS. (a) An association operating on an assessment-as-needed basis shall divide collected assessments

into at least:

- (1) a mortuary fund; and
- (2) an expense fund.

(b) An association under this section shall deposit into a mortuary fund an amount equal to at least 60 percent of the association's assessments, not including membership fees.

(V.T.I.C. Art. 14.25, Sec. 2.)

Source Law

Sec. 2. The provision of this Section 2 shall apply to all companies or associations operating upon an assessment-as-needed basis.

(a) Assessments when collected shall be divided into at least two funds. One of these shall be the mortuary or relief fund, by whatever name it may be called in the different associations; and the other fund shall be the expense fund. At least sixty per cent (60%) of assessments collected except the membership fee, must be placed in the mortuary or relief fund.

Revised Law

Sec. 887.357. INVESTMENT OF FUNDS. (a) An association may invest money from a mortuary fund only in securities and investments that are a legal investment for the reserve funds of a domestic life, accident, and health insurance company operating under Chapter 841.

(b) An association may invest money from an expense fund only in securities and investments that are a legal investment for the surplus funds of a domestic life, accident, and health insurance company operating under Chapter 841.

(c) An association may invest surplus funds belonging to the association only in securities that are a legal investment for the surplus funds of a domestic life, accident, and health insurance company operating under Chapter 841. (V.T.I.C. Art. 14.25, Sec. 4; Art. 14.26.)

Source Law

[Art. 14.25]

Sec. 4. The mortuary fund may be invested only in such securities and investments as are a legal investment for the reserve funds of a domestic life, health and accident insurance company regulated by the provisions of Chapter 3 of this Insurance Code, as amended, and the expense fund may be invested in any securities and investments as

are legal investments for the surplus funds of a domestic life, health and accident insurance company regulated by the provisions of Chapter 3 of this Insurance Code, as amended.

Art. 14.26. Any surplus funds on hand belonging to any such association must be invested, if at all, in such securities as the funds of stock life, health and accident insurance companies may be invested in.

Revisor's Note

(1) Section 4, V.T.I.C. Article 14.25, refers to "Chapter 3 of this Insurance Code." The relevant portions of Chapter 3 relating to the organization of domestic life, health, and accident insurance companies are revised in Chapter 841. The revised law is drafted accordingly.

(2) V.T.I.C. Article 14.26 refers to "stock life, health and accident insurance companies." Those companies are organized under the portions of V.T.I.C. Chapter 3 revised in Chapter 841. For consistency, the revised law refers to a domestic life, accident, and health insurance company organized under Chapter 841.

Revised Law

Sec. 887.358. PAYMENT OF TAXES ON MORTUARY FUND INCOME. An association may pay from a mortuary fund any taxes that are assessed against income on the fund and required to be paid by the association. (V.T.I.C. Art. 14.25, Sec. 1 (part); Art. 14.53.)

Source Law

[Art. 14.25]

Sec. 1. . . .

(a) . . . [One of these shall be the mortuary or relief fund, by whatever name it may be called in the different companies or associations, and] from which fund [claims under certificates shall be paid, and nothing else,] except: . . . (2) income taxes, if any, which may be due by reason of the income to or operation of said fund, and

Art. 14.53. Any company or association

operating under the provisions of this chapter, may pay from the mortuary or relief funds by whatever name it may be called any taxes that may be assessed against or required to be paid by the company or association because of income to such funds.

Revised Law

Sec. 887.359. PAYMENT OF REINSURANCE PREMIUM. An association may pay from a mortuary fund the premiums for any reinsurance under Section 887.210. (V.T.I.C. Art. 14.62 (part).)

Source Law

Art. 14.62. Companies and associations . . . may . . . pay the premiums for such reinsurance out of the mortuary or claim funds. . . .

Revised Law

Sec. 887.360. COST OF DEFENDING CONTESTED CLAIMS. An association authorized to write accident, health, or hospitalization insurance may pay the reasonable costs of defending a contested claim on an accident, health, or hospitalization insurance certificate from the mortuary fund of the association if:

- (1) the expenditure is approved by the commissioner;
- and
- (2) the association has the reserves required by Subchapter I. (V.T.I.C. Art. 14.25, Sec. 6.)

Source Law

Sec. 6. The reasonable costs of defending contested claims on health, accident, sickness or hospitalization policies only may be paid from the mortuary or claim fund of any company or association authorized to write health, accident, sickness or hospitalization insurance, provided: (a) each such expenditure for that purpose is approved by the State Board of Insurance, and (b) such company or association possess the required reserves as provided in this Chapter 14 but less any permissive deficiency reserve.

Revisor's Note

Section 6, V.T.I.C. Article 14.25, provides that an association may pay the

costs of defending contested claims from its mortuary or claim fund if the association possesses the required reserves "less any permissive deficiency reserve." Throughout this chapter, the revised law omits references to a permissive deficiency reserve because the provisions of Article 14.15 relating to permissive deficiency reserves have been omitted as executed. See the revisor's note at the end of Subchapter I.

[Sections 887.361-887.400 reserved for expansion]

SUBCHAPTER I. RESERVES

Revised Law

Sec. 887.401. RESERVES ON INDIVIDUAL LIFE INSURANCE CERTIFICATES. (a) An association shall reserve an individual life insurance certificate insuring one or more persons at individual premiums for each person as provided by this section.

(b) An association shall maintain reserves on each of its individual life insurance certificates in accordance with the reserve standard adopted by the association and approved by the commissioner. The standard must provide reserves that in the aggregate are at least equal to the reserve amounts computed using the 1956 Chamberlain Reserve Table with interest not to exceed 3-1/2 percent a year. An association may use the 1956 Chamberlain Reserve Table with interest not to exceed 3-1/2 percent a year. (V.T.I.C. Art. 14.15, Sec. 2 (part).)

Source Law

Sec. 2. . . .

(a)(1) Each individual life policy insuring one or more persons at individual premiums for each such person shall be reserved and each company or association regulated by the provisions of this Chapter shall maintain reserves on such individual life policies in accordance with any reserve standards adopted by such company or association and approved by the State Board of Insurance, provided such reserves are at least equal in the aggregate to reserves based on the 1956 Chamberlain Reserve Table with interest not to exceed three and one half per cent (3 1/2%) per annum. Any company or association is hereby authorized to use the 1956 Chamberlain Reserve Table with interest not to exceed three and one half per cent (3 1/2%) per annum.

. . .

Revised Law

Sec. 887.402. RESERVES ON FAMILY GROUP LIFE INSURANCE CERTIFICATES. (a) An association shall reserve a family group life insurance certificate on which the association charges a group premium that is not reduced on the death of an insured as provided by this section.

(b) An association shall maintain reserves on each of its family group life insurance certificates using one of the following methods:

(1) the reserves must be equal to the reserves that would be required under Section 887.401 on individual life insurance certificates on the lives of the two oldest living members of the family group, with the amount of insurance for those two members determined assuming that the elder of the two will die first;

(2) the reserves must be equal to the reserves required under Section 887.401 on individual life insurance certificates on the lives of the living members of the family group, with the amount of insurance for each member of the family group determined assuming that each member will die first; or

(3) any other table or method of computing reserves approved in advance by the commissioner.

(c) An association may select the method to be used to compute the reserves under Subsection (b). (V.T.I.C. Art. 14.15, Sec. 2 (part).)

Source Law

Sec. 2. . . .

(a)

(2) Family group life policies upon which a group premium is charged, and which premium is not reduced upon the death of any insured, shall be reserved and each company or association shall maintain reserves on such family group policies in any one of the following methods of calculation as may be selected by such company or association:

(i) The reserves shall be equal to the reserves which would be required in accordance with the provisions of this Article on individual life policies on the lives of the then living two oldest members of each such family group; the amount of insurance for such two members shall be based on the assumption that the elder of such two members will be the first to die; or

(ii) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Article, on individual life policies, on the lives of the then living members of such family group; the amount of insurance for each such member of the family group shall be based on the assumption that each such member will be the first to die; or

(iii) Any table or any method of calculating reserves as shall be approved in advance by the State Board of Insurance.

. . .

Revised Law

Sec. 887.403. ISSUE YEAR AND ISSUE AGE IN CERTAIN INSURANCE CERTIFICATES. (a) In this section, "gross premium" means the renewal net premium plus any expense loading designated by the association or as otherwise regulated by this chapter.

(b) For an individual or family group life insurance certificate in force on December 31, 1965, or an individual or family group life insurance certificate with a rate increase effective after December 31, 1965, the reserves may be computed as if:

(1) the issue year is the last calendar year that the gross premium computed using the reserve table and interest rate adopted by the association at the insured's age in that calendar year is equal to or less than the premium rate charged by the association on the reserved certificate; and

(2) the issue age is the insured's age in the calendar year under Subdivision (1). (V.T.I.C. Art. 14.15, Sec. 2 (part).)

Source Law

Sec. 2. . . .

(a) . . .

(3) As is applicable to all life policies (individual and family group) in force on December 31, 1965, or upon which a rate increase is effected after December 31, 1965, life reserves (individual and family group) may be determined as follows:

(i) the issue year shall be the last calendar year for which the gross premium on the reserve table and interest rate adopted by the company or association at the attained age in that

calendar year is equal to or less than the premium rate charged by the company or association on such policy so reserved, and (ii) the issue age shall be the attained age in the calendar year just defined.

Gross premium as herein used shall mean the renewal net premium plus such expense loading as shall be designated by the company or association or as shall otherwise be regulated by the provisions of this Chapter 14.

. . .

Revised Law

Sec. 887.404. RESERVES ON ACCIDENT, HEALTH, AND HOSPITALIZATION INSURANCE CERTIFICATES. An association shall maintain reserves on each of its accident, health, and hospitalization insurance certificates in the manner required of a company authorized to issue that type of coverage under Chapter 841. (V.T.I.C. Art. 14.15, Sec. 2 (part).)

Source Law

Sec. 2. . . .

(b) All health, accident, hospitalization and sickness insurance shall be reserved by the company or association and such company or association shall maintain reserves on such insurance in the same manner as is required by a company writing such coverage under the provisions of Chapter 22 of this Insurance Code, as amended.

Revisor's Note

Section 2, V.T.I.C. Article 14.15, requires an association to maintain reserves on health, accident, hospitalization, and sickness insurance policies "in the same manner as is required by a company writing such coverage under the provisions of Chapter 22 of this Insurance Code, as amended." Section 2, V.T.I.C. Article 22.11, revised in part as Section 884.452, provides that a company must maintain reserves on health, accident, and sickness policies "in the same manner as is required by the companies writing such coverage under the provisions of Chapter 3 of the Insurance Code of Texas."

The provisions of Chapter 3 relating to domestic accident and health insurance companies that are subject to the appropriate reserve requirements are revised in Chapter 841. For the reader's convenience, the revised law substitutes a reference to Chapter 841, the revision of Chapter 3, for the reference to Chapter 22.

Revised Law

Sec. 887.405. COMPUTATION OF RESERVE LIABILITY. (a) Each year, an association shall compute its reserve liability on all outstanding insurance certificates.

(b) To make the computation, an association:

(1) shall use the net premium basis in accordance with the reserve table and interest rate adopted by the association and approved by the commissioner; and

(2) may use group methods and approximate averages for fractions of a year.

(c) The reserve liability may be computed on not more than a one-year preliminary term.

(d) As soon as practical each year, the commissioner shall compute or cause to be computed the reserve liability of each association. To make the computation, the commissioner may use group methods and approximate averages for fractions of a year. (V.T.I.C. Art. 14.15, Secs. 2 (part), 3.)

Source Law

Sec. 2. In the manner as in this Article is hereinafter provided, each company or association regulated by the provisions of this Chapter, . . . shall in each year, commencing as of December 31, 1965, compute or cause to be computed its reserve liability on all outstanding and in force policies of insurance. In making such computation each company or association is authorized to use group methods and approximate averages for fractions of a year or otherwise. Such reserve liability shall be computed upon the net premium basis in accordance with the reserve table and interest rate adopted by such company or association and approved by the State Board of Insurance and such reserve liability may be calculated on not more than a one year preliminary term basis with allowance for the permissive deficiency reserve provided for in this Chapter 14. Such reserves shall be calculated and

determined as follows:

. . .

Sec. 3. The State Board of Insurance, as soon as practical, in each year, shall compute or cause to be computed the reserve liability of each company or association regulated by the provisions of this Chapter 14. In making such computation the said Board may use group methods and approximate averages for fractions of a year or otherwise.

Revisor's Note

(1) Section 2, V.T.I.C. Article 14.15, requires an association to compute its reserve liability, "commencing as of December 31, 1965." The revised law omits the reference to a commencement date as executed.

(2) Section 2, V.T.I.C. Article 14.15, refers to "outstanding and in force policies of insurance." The reference to "in force" is omitted from the revised law because, in this context, "in force" is included within the meaning of "outstanding."

Revised Law

Sec. 887.406. INCREASE OF RESERVES. (a) If an association does not have in its mortuary fund the reserves required by this subchapter, the association's board of directors by appropriate action shall increase assessment rates on insurance certificates in force by advancing the age of each insured from the age at the date the certificate is issued or from the age previously advanced or otherwise equitably or reasonably adjust assessment rates to correct the reserve inadequacy. The board shall take that action not later than the 30th day after the date the reserves are computed.

(b) An association may make an assessment rate adjustment under Subsection (a) at any time if it appears that a reserve inadequacy will exist as of December 31 of the year in which the rate adjustment is made.

(c) The commissioner shall order an association to comply with this chapter.

(d) If the board of directors does not comply with Subsection (a), the commissioner shall treat the association as insolvent. (V.T.I.C. Art. 14.15, Sec. 7; Art. 14.23, Sec. 2.)

Source Law

[Art. 14.15]

Sec. 7. In the event any company or

association at any future time does not possess in its mortuary fund the required reserves, less any permissive deficiency reserve, the Board of Directors of the company or association shall by appropriate action increase rates on policies in force by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment so as to correct such reserve inadequacy. Such rate adjustment may be made at any time, and from time to time, provided it shall be apparent that such reserve inadequacy will exist as of December 31st of the year in which such rate adjustment is made, and any such rate adjustment or readjustment so made shall be deemed and considered as an assessment upon said policies. In the event of the failure of the Board of Directors of the company or association to so act in adjusting rates within thirty (30) days following the calculation of reserves as of the dates in this Chapter provided, the company or association shall be dealt with in accordance with this Chapter as if it were insolvent.

[Art. 14.23]

Sec. 2. When, or if, in the course of operation the amount of the mortuary fund of the company or association is not equal to or in excess of the required reserves under the reserve standard adopted by the company or association and approved by the State Board of Insurance on such policies, but less any permissive deficiency reserve, the amount of the premiums shall be increased in the manner as prescribed in this Chapter 14 until such rates are adequate to eliminate the inadequacy of the required reserve, less any permissive deficiency reserve, and the State Board of Insurance shall so order.

Revised Law

Sec. 887.407. NONAPPLICABILITY TO ASSESSMENT-AS-NEEDED ASSOCIATIONS. This subchapter does not apply to an association operating on an assessment-as-needed basis. (V.T.I.C. Art. 14.15,

Sec. 2 (part).)

Source Law

Sec. 2. [In the manner as in this Article is hereinafter provided, each company or association regulated by the provisions of this Chapter,] except assessment-as-needed associations or companies, [shall in each year, commencing as of December 31, 1965, compute or cause to be computed its reserve liability on all outstanding and in force policies of insurance.] . . .

Revisor's Note

(End of Subchapter)

Sections 4, 5, and 6, V.T.I.C. Article 14.15, prescribe procedures related to a permissive deficiency reserve and require an association to begin complying with those sections not later than July 1, 1966, and to completely reduce any permissive deficiency reserve not later than December 31, 1983. An association that does not reduce its reserve as required by those sections is treated as insolvent. The revised law omits those provisions as obsolete. The omitted law reads:

Sec. 4. (a) As of December 31, 1965, each such company or association regulated by the provisions of this Chapter shall so calculate the amount of the required reserves as afore provided in this Article, and shall also determine the amount of the net assets (net assets being the gross amount of such mortuary fund assets at such date, but less any liabilities of said fund, exclusive of reserves) of its mortuary or claim fund, or by whatever name said fund may be designated. In the event the net assets of the mortuary fund are insufficient to equal the amount of the required reserves as in this Article provided, the difference shall be designated and carried as a permissive deficiency reserve.

(b) In the event any company or association shall, as of December 31, 1965, possess a permissive deficiency reserve, it

shall not later than July 1, 1966: (1) file an application with the State Board of Insurance seeking approval of a rate increase whereby such rate increase shall be accomplished by charging a premium based upon the advancement of ages of such insureds, from age at issue date, or such ages so previously advanced, in order to totally eliminate such permissive deficiency reserve or to partially eliminate such permissive deficiency reserve in connection with a plan to cure such permissive deficiency reserve; or (2) file an application with the State Board of Insurance for approval of a plan whereby such permissive deficiency reserve will be eliminated over a period of time not to exceed eighteen (18) years. Such plan shall reasonably demonstrate the anticipated ability of the company or association to correct such permissive deficiency reserve during such period of time. Such plan may include any reasonable method, procedure or financial arrangement in order to accomplish the required reduction of the permissive deficiency reserve over such period of eighteen (18) years. Provided said plan is found to reasonably demonstrate the ability of the company or association during such period of time to eliminate such permissive deficiency reserve, then such permissive deficiency reserve shall be allowed without creating the insolvency of the company or association, but the company or association shall reduce said permissive deficiency reserve so determined by at least 1/18th thereof during each calendar year thereafter, commencing as of December 31, 1966, so that as of December 31, 1983, the permissive deficiency reserve will be fully paid and satisfied, provided, however, that such required reduction in the permissive deficiency reserve shall never exceed the cumulative aggregate amount of 1/18th per annum.

In the event that such plan be not finally approved, such company or association shall increase rates as provided in Section 4, Paragraph (b)(1) of this Article.

(c) Each company or association may, in addition to, or in combination with, or in lieu of, such rate adjustment or readjustments of rates as in this Chapter provided, offer each insured a proportionate reduction in the amount of insurance, or some lesser reduction, provided such plan is agreed to by the individual insured or the controller of said policy.

(d) Any decision made by the State Board of Insurance as to approval or disapproval of the plan for curing such permissive deficiency reserve shall be subject to judicial review in accordance with Article 21.44 of Sub-Chapter F of Chapter 21 of this Insurance Code.

Sec. 5. (a) Any company or association using an approved plan to cure its permissive deficiency reserve, but possessing as of December 31, 1965, a permissive deficiency reserve equal to or in excess of 50% of its required reserve so determined to exist as of such date, shall, by July 1, 1966, furnish to the State Board of Insurance an affidavit executed by its President, Vice President or Secretary, certifying that at least the renewal net premium based upon: (1) the table of rates and reserves adopted by the company or association; and (2) the age of each insured at date from which reserves are calculated, is being deposited to the company's or association's mortuary or claim fund upon each in force life policy or life policy in combination with other type benefits. In the event such company or association cannot so furnish such affidavit, said company or association shall: (1) forthwith alter the division of premiums between the mortuary and expense funds so that such renewal net premium so calculated at age from which reserves are calculated on each such policy is placed in the company's or association's mortuary fund; or (2) forthwith apply to the State Board of Insurance for approval of a rate increase whereby the rate charged on each such policy will thereafter contribute to the mortuary fund at least the renewal net premium so

determined under such table at age from which reserves are calculated.

(b) Any company or association using an approved plan to cure its permissive deficiency reserve, but possessing as of December 31, 1965, a permissive deficiency reserve of less than 50% of its required reserve so determined to exist as of such date, shall, by July 1, 1966, furnish to the State Board of Insurance an affidavit executed by its President, Vice President or Secretary, certifying that in the aggregate premiums deposited to the mortuary or claim fund equal or exceed at least the aggregate amount of the renewal net premiums on all policies in force on December 31, 1965, based upon (1) the table of rates and reserves adopted by the company or association, and (2) the age of each insured at date from which reserves are calculated. In the event such company or association cannot so furnish such affidavit, said company or association shall: (1) forthwith: (i) alter the division of premiums between the mortuary and expense funds so that such renewal net premium in the aggregate on all policies in force on December 31, 1965, so calculated at age from which reserves are determined on each policy in force is placed in the company's or association's mortuary fund, and (ii) provide in its bylaws that annually thereafter in each calendar year an amount, from the premiums collected, in the aggregate equal to the renewal net premium on all policies in force on December 31st of each such year will be deposited to the company's or association's mortuary fund; or (2) forthwith apply to the State Board of Insurance for approval of a rate increase whereby the rate charged on each such policy will thereafter contribute to the mortuary fund at least the renewal net premium so determined under such table at age from which reserves are calculated.

Sec. 6. In the event any annual required reduction of the permissive deficiency reserve is not accomplished as of December 31st of each year involved, the Board of

Directors of the company or association shall by appropriate action increase rates by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment, so as to correct the failure to make the required reduction of the permissive deficiency reserve. In the event of the failure of the Board of Directors of the company or association to so act within thirty (30) days following such calculation of its reserves, the company or association shall be dealt with in accordance with this Chapter as if it were insolvent. In like manner if it shall be apparent at any time during any calendar year that the annual required reduction of the permissive deficiency reserve cannot be accomplished as of December 31st of each or any year, the Board of Directors of the company or association may by appropriate action increase rates by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment so as to correct the failure to accomplish such annual required reduction of the permissive deficiency reserve on all or any part of the permissive deficiency reserve. Any such rate adjustment or readjustment shall be deemed and considered as assessments upon said policies.

[Sections 887.408-887.450 reserved for expansion]

SUBCHAPTER J. CONVERSION TO LEGAL RESERVE INSURANCE COMPANY

Revised Law

Sec. 887.451. AUTHORIZATION TO CONVERT OR REINSURE. Subject to the requirements of this subchapter, an association may convert or reinsure itself to a legal reserve insurance company operating under Chapter 882. (V.T.I.C. Art. 14.61, Sec. 1(a) (part).)

Source Law

Art. 14.61

Sec. 1. (a) Any domestic local mutual aid association; statewide life, or life,

health and accident association; mutual assessment life, health and accident association; burial association; or any other similar concern, by whatsoever name or class designated, whether specifically named herein or not, organized and operating under the laws of the State of Texas, may convert or reinsure itself into a legal reserve insurance company operating under the provisions of Chapter 11 of this code, or
. . . .

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 14.61, refers to a "domestic local mutual aid association; statewide life, or life, health and accident association; mutual assessment life, health and accident association; burial association; or any other similar concern, by whatsoever name or class designated, whether specifically named herein or not." The revised law substitutes "association" for the quoted language because "association" is the term defined by V.T.I.C. Article 14.02, which is revised in part as Section 887.001, and because V.T.I.C. Article 14.01, which is revised in part as Section 887.003, provides that this chapter applies to the listed entities.

(2) Section 1(a), V.T.I.C. Article 14.61, provides that an association may "be reinsured by any legal reserve insurance company operating under the provisions of Chapter 3 of this code by conforming to the provisions of this article." The revised law omits that provision as repealed by the enactment of Article 14.62, which is revised in part as Section 887.210. Article 14.61 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951, and was derived from Article 5068-3, Vernon's Texas Civil Statutes. Article 5068-3 was enacted by Chapter 353, Acts of the 48th Legislature, Regular Session, 1943. V.T.I.C. Article 14.62 was enacted by Chapter 144, Acts of the 52nd Legislature, Regular Session, 1951, as an amendment to Article 5068-1, and designated as part of the Insurance Code

pursuant to H.C.R. 179, Acts of the 52nd Legislature, Regular Session, 1951. Article 14.62 provides that an association may enter into a reinsurance agreement with legal reserve companies that meet certain criteria; it also provides that the reinsurance agreement must be approved by the Board of Insurance Commissioners. Section 2, Chapter 144, Acts of the 52nd Legislature, Regular Session, 1951, provides that "[a]ll laws or parts of laws in conflict herewith are hereby repealed." Thus, the later enactment of Article 14.62 repealed the provisions of Article 14.61 relating to reinsurance of an association by a legal reserve company. The omitted law reads:

Art. 14.61. . . . be reinsured by any legal reserve insurance company operating under the provisions of Chapter 3 of this code by conforming to the provisions of this article. . . .

Revised Law

Sec. 887.452. PROPOSAL FOR CONVERSION OR REINSURANCE. An association's board of directors may determine by majority vote to submit a proposed conversion or reinsurance under Section 887.451 to the members of the association. Before the proposed conversion or reinsurance may be submitted to the members, the board must prepare detailed plans for the conversion or reinsurance and submit the plans to the commissioner. (V.T.I.C. Art. 14.61, Sec. 1(a) (part).)

Source Law

(a) . . . When it shall be determined by a majority vote of the Board of Directors of any such association to submit the proposed change to the members of the association, said board of directors shall prepare in detail plans for making such change, and such plans shall be submitted to the Board of Insurance Commissioners. . . .

Revised Law

Sec. 887.453. MEMBERS MEETING; NOTICE. (a) On receipt of the commissioner's written approval of proposed plans under Section 887.452 or of the plans as amended to meet the commissioner's requirements in accordance with Chapter 882, an association's board of directors or an officer of the association

authorized by its bylaws to call a meeting of its members shall:

(1) call a meeting of the association's members for voting on ratification of the proposed conversion or reinsurance; and

(2) mail to each member of the association:

(A) a copy of the proposed plans; and

(B) a notice of the meeting.

(b) The meeting may not be held before the 16th day after the date the notice is mailed under Subsection (a)(2). (V.T.I.C. Art. 14.61, Secs. 1(a) (part), (b) (part).)

Source Law

(a) . . . Upon receipt of such Board's written approval of such plans, or of such plans amended to meet the requirements of such Board in accordance with the provisions of said chapters, said board of directors or such officer of such association as may be authorized by its by-laws to call a meeting of its members, shall mail to each member a copy of the proposed plans and shall enclose with each copy of such plans a notice of a meeting of said members to be held not earlier than fifteen (15) days after the date of mailing of such notice.

(b) Such meeting shall be held for the purpose of ratification or rejection of the proposed change, and

Revised Law

Sec. 887.454. MEMBERS MEETING; PROCEDURES. (a) In a meeting called under Section 887.453, a member may vote in person, by proxy, or by mail.

(b) All votes must be cast by ballot. A majority vote of the members participating in the election is required to ratify the conversion or reinsurance.

(c) The person presiding at the meeting shall supervise and direct the procedure of the meeting and appoint an adequate number of inspectors to conduct the voting.

(d) Under rules adopted by the commissioner, the inspectors may determine all questions concerning the qualifications of the voters and the verification, canvassing, and validity of the ballots. The inspectors shall certify the result of the election to the commissioner and to the association. (V.T.I.C. Art. 14.61, Sec. 1(b) (part).)

Source Law

(b) [Such meeting shall be held for the

purpose of ratification or rejection of the proposed change, and] the members may vote in person, by proxy, or by mail; provided that all votes shall be cast by ballot, and the Chairman of the meeting shall supervise and direct the method of procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting, who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the Chairman of the Board of Insurance Commissioners and to the association the result thereof, under such rules and regulations as shall be prescribed by the Board of Insurance Commissioners. A majority vote cast shall be sufficient for ratification of said change.

Revised Law

Sec. 887.455. COMPLETION AND LEGAL EFFECT OF CONVERSION OR REINSURANCE. (a) An association's conversion or reinsurance is complete when the association has:

(1) complied with all laws regulating the incorporation of a mutual legal reserve insurance company; and

(2) received from the commissioner its charter and certificate of authority to engage in business as a mutual insurance company.

(b) An association that converts or reinsures to a mutual legal reserve insurance company:

(1) is considered by law to have each right, privilege, power, or authority of any other mutual legal reserve company;

(2) is considered by law to be a continuation of the business of the association; and

(3) succeeds to and is invested with:

(A) each right or privilege of the former association that is not inconsistent with Chapter 882;

(B) each franchise or other interest of the former association; and

(C) all property of the former association, including debts due on any account and all choses in action.

(c) On conversion or reinsurance of an association to a mutual legal reserve insurance company, the title to any real estate by deed or otherwise vested in the former association vests in the company, and the title is not in any way impaired

because of the conversion or reinsurance. (V.T.I.C. Art. 14.61, Sec. 1(c) (part).)

Source Law

(c) When such association shall have complied with the provisions of this Article and the other laws of this State regulating the incorporation of such mutual legal reserve insurance companies, and shall have received from the Board of Insurance Commissioners its charter and certificate of authority to transact business as a mutual insurance company, its reorganization and conversion shall be complete. Such reorganized and converted or reinsured corporation shall be deemed in law to have the rights, privileges, powers and authority of any other corporation organized in accordance with the provisions of said Chapters. The new corporation shall be deemed in law to be a continuation of the business of the former association and shall succeed to and become invested with all and singular the rights and privileges not inconsistent with the provisions of said Chapters, and all property, real, personal or mixed of the former association, and all debts due on any account, and all other things and choses in action theretofore belonging to such association, and all property, rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as if they were the property of the former association, and the title to any real estate by deed or otherwise vested in the former association shall forthwith vest in such organized converted corporation and the title thereto shall not in any way be impaired by reason of such change or reincorporation. . . .

Revisor's Note

Section 1(c), V.T.I.C. Article 14.61, provides that, on conversion of an association to a mutual legal reserve insurance company, the company shall "succeed to and become invested with all and singular

the rights and privileges not inconsistent with the provisions of said Chapters, and all property, real, personal or mixed of the former association, and all debts due on any account, and all other things and choses in action theretofore belonging to such association, and all property, rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as if they were the property of the former association." The revised law omits the references to "real," "personal," and "mixed" property because under Section 311.005(4), Government Code (Code Construction Act), "property" includes real and personal property and, by extension, mixed property. That definition applies to the revised law. The reference to "things . . . in action" is omitted from the revised law because "things in action" is included within the meaning of "choses in action." The reference to "all other interest" is omitted from the revised law because "all other interest" is included within the meaning of "all . . . rights . . . and . . . property." The provision that the property of the former association "shall thereafter be as effectually the property of such . . . corporation" is omitted from the revised law as unnecessary; providing that the property vests in the company means that the property will effectually be the company's.

Revised Law

Sec. 887.456. CONTINUING OBLIGATIONS OF CONVERTED OR REINSURED ASSOCIATION. (a) The standing of each claim against an association that converts or reinsures under this subchapter must be preserved unimpaired under the reorganized company or the company reinsuring the membership of the association.

(b) Each debt, liability, and duty of a converted or reinsured association attaches to the reorganized company or the company reinsuring the membership of the association and may be enforced against it to the same extent as if the debt or liability had been incurred or contracted by the company, except that a reorganized company or reinsuring company may alter a liability created under the terms of an insurance certificate outstanding at the date of conversion or reinsurance in

accordance with the plan approved by the commissioner under this subchapter.

(c) Notwithstanding Subsection (b), the company may not alter the renewability or noncancellability of an insurance certificate issued before the date of conversion or reinsurance. (V.T.I.C. Art. 14.61, Sec. 1(c) (part).)

Source Law

(c) . . . The standing of all claims under the former association shall be preserved unimpaired under the new corporation, and all debts, liabilities and duties of the former association shall thenceforth attach to the reorganized corporation and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, except that the liabilities created under the terms of policies or certificates outstanding at the date of conversion or reorganization may be altered in accordance with the provisions of said plans approved by the Board of Insurance Commissioners; provided, however, that no alteration shall be made in the renewability or noncancellability of any insurance agreement, contract, policy or certificate theretofore made or issued.

Revised Law

Sec. 887.457. DISBURSEMENT OF MORTUARY FUND. (a) The mortuary fund belonging to an association that converts or reinsures under this subchapter is the property of the reorganized company or the company reinsuring the membership of the former association. Money in the mortuary fund may be disbursed to:

(1) pay a valid claim outstanding and arising after the date of conversion or reinsurance from an insurance policy issued by the company to the association's members under an approved plan;

(2) establish the legal reserve on new insurance policies issued by the company to the association's members under an approved plan; or

(3) pay the appropriate actuarial portion of the mortuary fund to a member of the association who refuses to accept a new insurance policy offered by the company.

(b) A member must request payment under Subsection (a)(3) not later than the 60th day after the date of the conversion or

reinsurance.

(c) The effective date of a mutual legal reserve company's insurance policy may be the effective date of the reinsurance contract. On conversion, 10 percent of the mortuary fund credit allocated to each policy may be credited to the contingency reserve fund of the company for the benefit of the policyholders. The balance of the mortuary fund credit may be applied as:

- (1) a reserve credit to permit the company's policy to be backdated to the earliest date the reserve credit allows; or
- (2) an annuity to reduce the required premium either for a given term or for the whole of life.

(d) A company may not change the manner in which a mortuary fund credit is applied under Subsections (c)(1) and (2) without the prior approval of the commissioner. (V.T.I.C. Art. 14.61, Sec. 2.)

Source Law

Sec. 2. The sums of any mortuary funds belonging to such association shall thereafter be effectually the property of such organized and converted corporation or corporation reinsuring the membership of such association, but may be disbursed for payment of valid claims outstanding and arising thereafter from policies issued by the legal reserve company to the members of the assessment association under the approved agreement; to set up the legal reserve on new policies issued by the legal company to the members of the assessment association under said agreement; and to pay their actuarial portion of such mortuary fund to members of such association who refuse to accept the new policies offered them, and who make request therefor within sixty (60) days from the date of conversion or reinsurance.

The effective date of the legal reserve policies may be the effective date of the reinsurance contract. On conversion ten (10%) per cent of the mortuary fund credit allocated to each policy may be credited to the contingency reserve fund of the company for the benefit of the policyholders, and the balance of the mortuary credit may be applied in either of the following ways:

- (a) As a reserve credit to permit the legal reserve policy issued to be dated back as far as the reserve credit will

permit; or

(b) As an annuity to reduce the required premium either for a given term or for the whole of life.

(c) No change shall ever be made until same shall have been approved by the Board of Insurance Commissioners.

Revisor's Note

(End of Subchapter)

Section 3, V.T.I.C. Article 14.61, provides that Article 14.61 is permissive and that the Board of Insurance Commissioners may not require an association to convert or reinsure to a legal reserve company. The revised law omits that provision as unnecessary because Section 887.451, which authorizes conversion or reinsurance, is clearly permissive and not mandatory, and nothing in this subchapter may be read as permitting the commissioner or department to require an association to convert or reinsure. The omitted law reads:

Sec. 3. Providing further that nothing in this article or in the provisions of Chapter 11 or Chapter 3 of this code shall ever be construed to mean that any of the associations or other similar concerns, by whatsoever name or class designated, whether specifically named herein or not, shall be required by the Board of Insurance Commissioners to make the change herein provided for unless they voluntarily decide to do so, and that this article is purely permissive and if such associations do not so voluntarily decide to come under this article, or laws amended by it, then this article shall not in any way apply to such association.

[Sections 887.458-887.500 reserved for expansion]

SUBCHAPTER K. CONVERSION TO STOCK LEGAL RESERVE LIFE
INSURANCE COMPANY

Revised Law

Sec. 887.501. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a local mutual aid association or statewide

mutual assessment company or association engaging in business in this state on January 1, 1955. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Art. 14.63

Sec. 1. Any local mutual aid association or statewide mutual assessment company or association doing business in this State on January 1, 1955, [may convert into a stock legal reserve life insurance company]

Revised Law

Sec. 887.502. AUTHORIZATION TO CONVERT. An association may convert to a stock legal reserve life insurance company if the association:

- (1) has at least \$100,000 in the association's mortuary fund at the time of conversion; and
- (2) except as provided by Section 887.508, possesses:
 - (A) capital in an amount equal to at least \$700,000 cash; and
 - (B) surplus in an amount equal to at least \$700,000 cash. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. Any local mutual aid association or statewide mutual assessment company or association [doing business in this State on January 1, 1955,] may convert into a stock legal reserve life insurance company, provided such company or association so converted has at least One Hundred Thousand (\$100,000.00) Dollars in its claim or mortuary fund at the time of such conversion and complies with the following provisions:

- a. Except as provided by Section 2 of this article, there shall be contributed in cash of the United States the additional sum of not less than Seven Hundred Thousand (\$700,000.00) Dollars in capital and not less than Seven Hundred Thousand (\$700,000.00) Dollars in surplus.

. . . .

Revised Law

Sec. 887.503. APPROVAL BY MEMBERSHIP. An association may convert under this subchapter only if the association's membership votes to approve the conversion at a meeting called

for that purpose. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

c. Such conversion shall only be made upon a vote of the membership duly called for such purposes. . . .

Revised Law

Sec. 887.504. AMENDMENT OF CHARTER OR ARTICLES OF ASSOCIATION REQUIRED. On authorization under Section 887.503, the board of directors and officers of the association shall amend the association's charter or articles of association to comply with Sections 841.051, 841.052, and 841.053. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

c. . . . Pursuant to such authorization, the board of directors and officers of such company or association shall amend its existing charter or articles of association, as the case may be, so as to comply with the requirements contained in Article 3.02 of this Code, as amended, except as to the capital and surplus requirements thereof.

. . . .

Revised Law

Sec. 887.505. EXCHANGE OF INSURANCE CERTIFICATES; RESERVES. (a) An association that converts to a stock legal reserve life insurance company shall exchange each insurance certificate in force on the date of the conversion for a legal reserve policy as provided by Section 887.457.

(b) On the exchange of mutual assessment insurance certificates for legal reserve policies as provided by Subsection (a), an association shall establish and maintain the reserves required for a company organized under Chapter 841 for legal reserve policies.

(c) After the reserves are established, the association's capital must remain unimpaired and in an amount equal to at least \$700,000. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

b. All policies of insurance in force shall be exchanged for a legal reserve

policy in accordance with the provisions of Section 2 of Article 14.61 of this Code.

. . .

d. After the exchange of such mutual assessment policies for legal reserve policies in accordance with the provisions of Section 2 of Article 14.61, the proper legal reserve required by Chapter 3 of this Code, as amended, shall be established and maintained for such policies so as to leave the capital of the company at all times unimpaired and not less than Seven Hundred Thousand (\$700,000.00) Dollars.

Revisor's Note

Section 1, V.T.I.C. Article 14.63, refers to a "proper legal reserve" required by V.T.I.C. Chapter 3. The portions of Chapter 3 that relate to the organization of companies that are subject to the appropriate reserve requirements are revised as Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 887.506. COMPLETION OF CONVERSION. An association becomes a stock legal reserve life insurance company on:

- (1) compliance with this subchapter; and
- (2) approval by the commissioner. (V.T.I.C.

Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

e. After compliance with the provisions hereof, and approval of the same by the State Board of Insurance, such company or association shall be and become a legal reserve stock life insurance company

Revised Law

Sec. 887.507. LEGAL EFFECT OF CONVERSION. Except as provided by this subchapter, an association that converts to a stock legal reserve life insurance company under this subchapter is subject to Chapter 841. (V.T.I.C. Art. 14.63, Sec. 4.)

Source Law

Sec. 4. From and after the date of such conversion such legal reserve stock life insurance company shall be governed by the provisions of Chapter 3 of the Insurance

Code, as amended, except as otherwise herein provided.

Revisor's Note

Section 4, V.T.I.C. Article 14.63, provides that a company that converts under Article 14.63 is subject to V.T.I.C. Chapter 3. The relevant portions of Chapter 3, relating to the organization of domestic legal reserve stock life insurance companies, are revised in Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 887.508. EXEMPTION FROM CAPITAL AND SURPLUS REQUIREMENTS. (a) An association is exempt from the capital and surplus requirements of Section 887.502(2) if the association:

(1) possesses capital in an amount equal to at least \$100,000 and unencumbered surplus in an amount equal to at least \$100,000; and

(2) converted to a stock legal reserve life insurance company before September 1, 1999.

(b) An association that is exempt under Subsection (a) and that converts on or after September 1, 1989, shall immediately increase its capital and surplus to amounts that satisfy Section 887.502(2) on:

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

(2) if the converted company or the holding company that controls the converted company, if any, is not controlled by voting securities, a change of at least 50 percent of the ownership of the converted company or its holding company.

(c) For purposes of Subsection (b), a transfer of ownership because of death, regardless of whether the decedent died testate or intestate, is not considered a change of control of a converted company or its holding company if ownership is transferred only to one or more individuals, each of whom would have been an heir of the decedent had the decedent died intestate. (V.T.I.C. Art. 14.63, Sec. 2.)

Source Law

Sec. 2. (a) The requirement under Section 1 of this article that a converted local mutual aid association or statewide mutual assessment company or association have capital of at least Seven Hundred Thousand (\$700,000.00) Dollars and surplus of at least Seven Hundred Thousand (\$700,000.00) Dollars does not apply to a local mutual aid

association or statewide mutual assessment company or association that converts to a Chapter 3 company, if:

(1) a converted local mutual aid association or statewide mutual assessment company or association shall be possessed with at least One Hundred Thousand (\$100,000.00) Dollars in capital and at least One Hundred Thousand (\$100,000.00) Dollars in free and unencumbered surplus; and

(2) the conversion takes effect before September 1, 1999.

(b) A local mutual aid association or statewide mutual assessment company or association that is converted on or after September 1, 1989, and that has, after conversion, less than Seven Hundred Thousand (\$700,000.00) Dollars capital and Seven Hundred Thousand (\$700,000.00) Dollars surplus may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority. However, a local mutual aid association or statewide mutual assessment company or association that is converted on or after September 1, 1989, must increase its capital to at least Seven Hundred Thousand (\$700,000.00) Dollars and its surplus to at least Seven Hundred Thousand (\$700,000.00) Dollars immediately after any change of control of the converted local mutual aid association or statewide mutual assessment company or association or any holding company controlling the converted local mutual aid association or statewide mutual assessment company or association if, after August 31, 1989:

(1) there is a change of control of at least 50 percent of the voting securities of the converted company or association; or

(2) if the converted company or association or holding company is not controlled by voting securities, there is a change of at least 50 percent of the ownership of the local mutual aid association or statewide mutual assessment company or association or holding company.

(c) For the purposes of Subsection (b) of this section, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, is not considered a change of control of a converted local mutual aid association or statewide mutual assessment company or association 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(b), V.T.I.C. Article 14.63, provides that an association exempted from capital and surplus requirements under Section 2(a) "may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority." The revised law omits the quoted language because the association's certificate of authority is unchanged by the conversion and permits the company to transact only those kinds of business.

Revised Law

Sec. 887.509. LIMITS ON OPERATION OF CONVERTED ASSOCIATION. Unless the association increases the association's capital and surplus to the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under Chapter 841, an association that converts to a stock legal reserve life insurance company under this subchapter may not:

- (1) operate in a territory as to which the association was not authorized under the converted association's previous charter or articles of association;
- (2) insure a life for more than \$5,000 in event of death; or
- (3) declare or pay cash dividends. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

e. [After compliance with the provisions hereof, and approval of the same by the State Board of Insurance, such company or association shall be and become a legal reserve stock life insurance company,] except that such company so converted shall not: (1)

operate in any territory not previously authorized under the old charter or articles of association, as the case may be; nor (2) insure any life for more than Five Thousand (\$5,000.00) Dollars in event of death; nor (3) declare or pay any cash dividends; unless and until the capital and surplus of such converted company or association shall be increased to the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code.

Revised Law

Sec. 887.510. INCREASE OF CAPITAL AND SURPLUS REQUIRED. (a) An association that converts to a stock legal reserve life insurance company under this subchapter shall, not later than the 10th anniversary of the date of conversion, increase its capital and surplus to the minimum capital and surplus required for a stock legal reserve life insurance company organized under Chapter 841.

(b) The commissioner shall revoke a converted association's certificate of authority to engage in the business of insurance if the association does not comply with Subsection (a).

(V.T.I.C. Art. 14.63, Sec. 3.)

Source Law

Sec. 3. Any such company or association so converted shall within ten (10) years from the date of its conversion increase its capital and surplus to the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of the Insurance Code, or its certificate of authority to do business shall be revoked by the Board of Insurance Commissioners.

Revisor's Note

Section 3, V.T.I.C. Article 14.63, refers to the minimum capital and surplus required to organize a stock legal reserve life insurance company under V.T.I.C. Chapter 3. The portions of Chapter 3 that relate to the organization of stock legal reserve life insurance companies that are subject to the appropriate minimum capital and surplus requirements are revised as Chapter 841. The

revised law is drafted accordingly.

[Sections 887.511-887.550 reserved for expansion]

SUBCHAPTER L. GENERAL FINANCIAL REGULATION

Revised Law

Sec. 887.551. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION. Articles 1.32, 21.28, and 21.28-A apply to an association engaged in the business of insurance in this state. (New.)

Revisor's Note

V.T.I.C. Article 14.33 established procedures for conservatorship of an association that is insolvent or that is in a condition that renders continuance of its business hazardous to the public. Article 14.33 was last amended in 1965. After the enactment of Article 14.33, the legislature established comprehensive procedures applicable to those associations. Together with V.T.I.C. Article 21.28, the later enacted provisions, which are contained in V.T.I.C. Article 1.32, originally enacted in 1975, and V.T.I.C. Article 21.28-A, originally enacted in 1967, completely subsume and replace the procedures established under Article 14.33. As a result, the revised law omits Article 14.33 as impliedly repealed and adds a reference to Articles 1.32, 21.28, and 21.28-A for the convenience of the reader. The omitted law reads:

Art. 14.33. If, upon an examination or at any other time, it appears to the Commissioner that such association be insolvent, or its condition be, in the opinion of the Commissioner, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such association appears to have exceeded its powers or failed to comply with the law, or has a membership of less than five hundred (500) paying their assessments, then the Commissioner shall notify the association of his determination and said association shall have thirty (30) days under the supervision of the Commissioner within which to comply with the requirements of the Commissioner; and in the event of its failure to comply within such

time, the Commissioner, acting for himself, or through a conservator appointed by the Commissioner for that purpose, shall immediately take charge of such association, and all of the property and effects thereof.

If the Commissioner is satisfied that such association can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Commissioner, pending the election of new directors and officers by the membership in such manner as the Commissioner may determine, the same shall be done, and the conservator may, with the approval of the Commissioner, reinsure any part of such company's policies or certificates of insurance with some solvent insurance company or association authorized to transact business in this State. The conservator may transfer to the reinsurance company such mortuary funds or other assets or portions thereof as may be required to reinsure such policies or certificates. If the Commissioner, however, is satisfied that such association is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Commissioner shall proceed to reinsure the outstanding policies in some solvent association or company, authorized to transact business in this State, or the Commissioner shall proceed through such conservator to liquidate such association, or the Commissioner may give notice to the Attorney General who shall thereupon apply to any court in Travis County having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such corporation or to require it to comply with the law or to satisfy the Commissioner as to its solvency. The court may, in its discretion, appoint agents or receivers to take charge of the effects and wind up the business of the corporation, under usages and practices of equity; and may make disposition of the business and membership of the corporation as in the

discretion of the court may seem proper. No suit for receiver shall be filed against any such corporation, nor shall any receiver be appointed, except upon the application therefor by the Attorney General, and in no event shall any receiver for any such corporation be appointed until after reasonable notice has issued and a hearing had before the court.

It shall be in the discretion of the Commissioner to determine whether or not he will operate the association through a conservator, as provided above, or proceed to liquidate the association, or report it to the Attorney General, as herein provided.

When the policies of an association are reinsured or liquidated, as herein provided, the Commissioner shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the association so reinsured or liquidated. Where the Commissioner lends his approval to the merger, transfer, or consolidation of the membership of one association with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the association from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of associations reinsured or liquidated. No merger or transfer shall be approved unless the association assuming the members transferred or merged is operating under the supervision of the Commissioner of Insurance. The cost incident to the conservator's services shall be fixed and determined by the Commissioner and shall be a charge against the assets and funds of the association to be allowed and paid as the Commissioner may determine.

[Sections 887.552-887.700 reserved for expansion]

SUBCHAPTER O. PENALTIES

Revised Law

Sec. 887.701. UNLAWFUL CONVERSION; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney

in fact of an association commits an offense if the person:

(1) fraudulently takes, misapplies, or converts to the person's own use any money, property, or other item of value belonging to the association or coming into the person's custody, control, or possession by virtue of the person's office, agency, or employment;

(2) conceals any item described by Subdivision (1) with the intent to take, misapply, or convert the item to the person's own use; or

(3) pays or delivers any item described by Subdivision (1) to any other person, knowing that the other person is not entitled to receive the item.

(b) 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 more than 10 years or less than 2 years. (V.T.I.C. Art. 14.55.)

Source Law

Art. 14.55. If any director, officer, agent, employee, attorney at law or attorney in fact, of any association under this chapter, shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such association, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Revisor's Note

(1) V.T.I.C. Article 14.55 refers to "the penitentiary." Throughout this subchapter, the revised law substitutes "the institutional division of the Texas Department of Criminal Justice" to conform to the changes in law made by Chapter 785, Acts of the 71st Legislature, Regular Session, 1989, transferring to that division the powers and duties that were previously those of the Texas Department of Corrections, the state agency with jurisdiction over the

penitentiaries in this state.

(2) V.T.I.C. Article 14.55 refers to "custody, control, possession or management" of an item. The revised law omits the reference to "management" as included within the meaning of "custody, control, or possession."

Revised Law

Sec. 887.702. DIVERSION OF SPECIAL FUNDS; CRIMINAL PENALTY.

(a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association commits an offense if the person wilfully borrows, withholds, or diverts from its purpose all or part of a special fund that:

(1) belongs to or is under the management and control of an association; and

(2) is designated by law or by rule of the commissioner for a specific use.

(b) 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 more than 10 years or less than 2 years. (V.T.I.C. Art. 14.56.)

Source Law

Art. 14.56. If any director, officer, agent, employee, attorney at law, or attorney in fact of any association under this chapter, shall willfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any association under this chapter, which has been set apart by law or by any valid rule or regulation of the Board of Insurance Commissioners of the State of Texas for a specific use, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Revised Law

Sec. 887.703. APPROPRIATION OF MONEY; CRIMINAL PENALTY. (a) An officer or employee of a mutual accident insurance company commits an offense if the person uses or appropriates, or knowingly permits the use or appropriation by another of, any money belonging to the company in a manner not provided for by the law authorizing the organization of the company.

(b) 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 more than 10

years or less than 2 years. (V.T.I.C. Art. 14.56-1.)

Source Law

Art. 14.56-1. Any officer or any employe of a mutual accident insurance company, incorporated under the laws of this State, who shall use or appropriate, or knowingly permit to be used or appropriated by another, any money belonging to such mutual insurance company, in any manner other than is provided in the law authorizing the organization of such company, shall be confined in the penitentiary not less than two nor more than ten years.

Revised Law

Sec. 887.704. VIOLATION OF COMMISSIONER ORDER; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association commits an offense if the person wilfully fails to comply with a lawful order of the commissioner.

(b) An offense under this section is punishable by:

- (1) a fine not to exceed \$500;
- (2) confinement in jail for a term not to exceed six months; or
- (3) both the fine and confinement. (V.T.I.C. Art. 14.58.)

Source Law

Art. 14.58. If any director, officer, agent, employee, or attorney at law or attorney in fact of any association under this chapter, shall willfully refuse or fail to comply with any lawful order of the Board of Insurance Commissioners of this State he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Revised Law

Sec. 887.705. OTHER VIOLATIONS; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association or other person commits an offense if the person violates a provision of this chapter other than Section 887.701, 887.702, 887.703, or 887.704.

(b) An offense under this section is punishable by:

- (1) a fine not to exceed \$500;
- (2) confinement in jail for a term not to exceed six months; or
- (3) both the fine and confinement. (V.T.I.C. Art. 14.59 (part).)

Source Law

Art. 14.59. If any director, officer, agent, employee or attorney at law or attorney in fact of any association under this chapter, or any other person, shall violate any of the provisions of this chapter not specifically set out in Articles 14.55, 14.56, 14.57, 14.58 and [14.46] of this chapter, he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Revisor's Note

V.T.I.C. Article 14.59 provides that a person commits an offense if the person violates "any of the provisions of this chapter not specifically set out in Articles 14.55, 14.56, 14.57, [and] 14.58." The revised law omits the reference to Article 14.57 because the part of that article that creates an offense is omitted as impliedly repealed. See the revisor's note at the end of this subchapter. The revised law includes a reference to Section 887.703, which is derived from V.T.I.C. Article 14.56-1. Article 14.56-1 was transferred to Chapter 14 from Article 588, Vernon's Texas Penal Code (1925), by authority of Section 5, Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, which enacted the current Penal Code, and is clearly an exception to Article 14.59.

Revisor's Note

(End of Subchapter)

The revised law omits part of V.T.I.C. Article 14.57 as impliedly repealed. Article 14.57 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. Article 14.57 in part provides that "any

officer, director, agent, employee, attorney at law or attorney in fact, of any association under this chapter" commits an offense if the person "shall willfully make any false affidavit in connection with the requirements of this chapter." Section 37.02, Penal Code, which was enacted by Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, provides that a person commits an offense if, "with intent to deceive and with knowledge of the statement's meaning . . . he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath." Section 37.02 applies to any false statement under oath, including a "false affidavit," and, as the later enactment, impliedly repealed the part of Article 14.57 dealing with false affidavits. The omitted law reads:

Art. 14.57. . . . If any officer, director, agent, employee, attorney at law or attorney in fact, of any association under this chapter shall willfully make any false affidavit in connection with the requirements of this chapter, he shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

Revisor's Note

(End of Chapter)

Subsection (b), V.T.I.C. Article 14.06, provides that V.T.I.C. Chapter 14 may not be construed to "validate or otherwise sanction any unlawful act" of an association except to the extent that the association violates a law because the law under which the association was created was subsequently repealed or amended so as to omit the association from the applicability of Chapter 14. The revised law omits that provision as unnecessary. The first clause is unnecessary because a statute is not normally construed

to validate unlawful acts. The second clause is unnecessary because under the ex post facto principle in Section 16, Article I, Texas Constitution, an action taken under a statute cannot become unlawful if the statute is repealed or amended. The omitted law reads:

(b) Nothing in this chapter shall be construed to validate or otherwise sanction any unlawful act of any such corporation, except when such unlawful act may have been construed to be unlawful simply by reason of the fact that the law under which said corporation was created has since been repealed or amended so as to omit therefrom such corporations as are described in this chapter.

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CHAPTER 888. BURIAL ASSOCIATIONS
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 888.001. DEFINITIONS. In this chapter:

(1) "Burial association" means an individual, firm, partnership, association, or corporation engaged in the business of providing burial or funeral benefits payable partly or wholly in merchandise or services, not to exceed \$150 or the value thereof. The term includes a burial company and a burial society.

(2) "Insurance certificate" and "member" have the meanings assigned by Section 887.001. (V.T.I.C. Art. 14.37 (part); New.)

Source Law

Art. 14.37. Any individuals, firms, co-partnerships, corporations or associations doing the business of providing burial or funeral benefits, which under any circumstances may be payable partly or wholly in merchandise or services, not in excess of One Hundred and Fifty (\$150.00) Dollars, or the value thereof, are hereby declared to be burial companies, associations or societies, and

Revisor's Note

V.T.I.C. Article 14.02, revised as Section 887.001, defines "insurance certificate" and "member." Those definitions are applicable to the articles in V.T.I.C. Chapter 14 that are revised in this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 888.002. LIBERAL CONSTRUCTION. Sections 888.051, 888.052, 888.102(b), 888.151, 888.152, 888.153, 888.154, 888.155, 888.156, 888.157, 888.202, 888.203, and 888.204 shall be

liberally construed. (V.T.I.C. Art. 14.51 (part).)

Source Law

Art. 14.51. . . . the provisions of Articles 14.42 through 14.52 of this chapter shall be liberally construed and

Revised Law

Sec. 888.003. BYLAWS OF BURIAL ASSOCIATIONS. The bylaws of a burial association may not contain any provision in conflict with this chapter. (V.T.I.C. Art. 14.04 (part).)

Source Law

Art. 14.04. . . . Such by-laws . . . shall not contain any provision in conflict with this chapter. . . .

Revised Law

Sec. 888.004. RULES TO IMPLEMENT PURPOSES OF CHAPTER. The commissioner may adopt reasonable rules to implement the purposes of this chapter. (V.T.I.C. Art. 14.39.)

Source Law

Art. 14.39. The Board is hereby authorized to promulgate reasonable rules and regulations to carry out the purposes of this chapter.

Revisor's Note

(1) V.T.I.C. Article 14.39 refers to "the Board," meaning the State 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 that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and 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.

(2) V.T.I.C. Article 14.39 refers to "rules and regulations." Throughout this chapter, the revised law omits "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.

Revised Law

Sec. 888.005. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a burial association. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to burial associations.

(b) On advance approval of the commissioner, a burial association may pay dividends to its members. (V.A.C.S. Art. 1396-10.04, Sec. B (part).)

Source Law

B. In so far as the same are not inconsistent with or contrary to any applicable provision of the Insurance Code of Texas, or any amendment thereto, the provisions of this Act shall apply to and govern burial associations as defined in Article 14.37, Texas Insurance Code . . . ; provided however, (a) that any such mutual insurance associations or companies may, upon advance approval of the Commissioner of Insurance, pay dividends to its members, and (b) that wherever in this 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 in so far as such . . . associations are concerned.

Revisor's Note

(1) Section B, V.A.C.S. Article 1396-10.04, states that the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) shall "apply

to and govern" burial associations. The revised law omits the reference to "govern" because, in context, "govern" is included within the meaning of "apply to."

(2) Section B, V.A.C.S. Article 1396-10.04, refers to the Insurance Code "or any amendment thereto." The revised law omits the reference to "any amendment thereto" because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(3) Section B, V.A.C.S. Article 1396-10.04, refers to a "duty, responsibility, power, [or] authority" of the secretary of state and commissioner of insurance. The revised law substitutes "power and duty" for the quoted phrase because "responsibility" is included within the meaning of "duty" and "authority" is included within the meaning of "power."

(4) Section B, V.A.C.S. Article 1396-10.04, refers to an act "vested in, required of, or to be performed by" the secretary of state and commissioner of insurance. The revised law omits the references to "vested in" and "required of" because, in context, these phrases are included within the meaning of the phrase "to be performed by."

Revised Law

Sec. 888.006. APPLICABILITY OF OTHER LAW. A burial association is subject to Chapter 887. (New.)

Revisor's Note

V.T.I.C. Chapter 14, revised as this chapter and as Chapter 887, applies to a burial association. See V.T.I.C. Article 12.01, revised in pertinent part as Section 886.002. For the convenience of the reader, the revised law adds a reference to Chapter 887.

Revisor's Note

(End of Subchapter)

V.T.I.C. Article 14.37 requires a burial company to organize under provisions of V.T.I.C. Chapter 12 and operate under and be

governed by that chapter and V.T.I.C. Chapter 14. Article 14.37 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. The revised law omits the requirement that a burial company organize under Chapter 12 as impliedly repealed by the subsequent enactment of V.T.I.C. Article 22.21 (revised as Section 886.004), which provides that "no . . . local mutual burial association may be organized under and pursuant to the provisions of Art. 12.05 of the Insurance Code of Texas." Article 22.21 was enacted by Chapter 180, Acts of the 57th Legislature, Regular Session, 1961. The revised law omits the requirement that a burial company operate under and be governed by V.T.I.C. Chapter 12 as unnecessary. Section 886.001, which revises part of V.T.I.C. Article 12.01, and Section 886.002, which revises part of V.T.I.C. Articles 12.01 and 12.16, make clear that Chapter 886 applies to a burial association, and it is unnecessary to include an express statement of the applicability of that law in this chapter. The revised law omits the requirement that a burial company operate under and be governed by this chapter, meaning V.T.I.C. Chapter 14, as unnecessary because those provisions of V.T.I.C. Chapter 14, revised as this chapter, and those provisions of V.T.I.C. Chapter 14, revised as Chapter 887, clearly apply by their own terms to a burial association. The omitted law reads:

Art. 14.37. . . . [burial companies, associations or societies] . . . shall organize under provisions of Chapter 12, and shall operate under and be governed by Chapter 12 and this chapter. . . .

[Sections 888.007-888.050 reserved for expansion]

SUBCHAPTER B. ANNUAL ASSESSMENT

Revised Law

Sec. 888.051. IMPOSITION OF ANNUAL ASSESSMENT; AMOUNT. (a) An annual assessment is imposed on each burial association that holds a certificate of authority to engage in the business of insurance in this state. The assessment is in addition to any other fee that the association is required to pay.

(b) The amount of the assessment is equal to the greater of:

(1) the amount computed by multiplying one-half cent by the number of members in the burial association on December 31 of the applicable year; or

(2) \$5. (V.T.I.C. Art. 14.42 (part).)

Source Law

Art. 14.42. There is levied upon each burial association having a permit to do business in Texas, an annual assessment of one-half of one cent (1/2 of 1¢) per member in the association as of December thirty-first of each year but not less than Five (\$5.00) Dollars annually, which shall be in addition to any other fees now payable and

Revisor's Note

V.T.I.C. Article 14.42 refers to the "permit" of a burial association. Throughout this chapter, the revised law substitutes "certificate of authority" for "permit" 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. 888.052. PAYMENT OF ANNUAL ASSESSMENT. (a) Each burial association shall pay the annual assessment imposed by Section 888.051 to the department between January 1 and March 1 at the same time the association files its annual statement with the department.

(b) Annual assessments collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account. Article 1.31A applies to the assessments.

(c) All assessments paid to the department under this section are for the use and benefit of the department to:

(1) obtain advice, information, and knowledge relating to adequate and reasonable rates for burial associations in this state;

(2) compile records for purposes of Subdivision (1); and

(3) implement Sections 888.051, 888.052, 888.102(b), 888.151, 888.152, 888.153, 888.154, 888.155, 888.156, 888.157, 888.202, 888.203, and 888.204. (V.T.I.C. Art. 14.42 (part).)

Source Law

Art. 14.42. . . . which assessment shall

be paid by each association between January first and March first of each year. Said assessments shall be paid to the State Board of Insurance along with and at the same time each association files with said Board its annual statement. Said assessment shall be based upon the calendar year. All assessments paid to the State Board of Insurance under this article shall be and the same are here and now appropriated for and to the use and benefit of the State Board of Insurance for the purpose of obtaining advice, information, and knowledge relative to adequate and reasonable rates to be charged by burial associations of Texas and compiling records thereof and carrying out Articles 14.42-14.52 of this code. All assessments collected under this article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to assessments under this article.

Revisor's Note

(1) V.T.I.C. Article 14.42 provides that an assessment shall be paid "between January first and March first of each year." That article also provides that the assessment shall be paid "along with and at the same time each association files . . . its annual statement." The revised law omits as unnecessary the requirement that the assessment be paid "along with" its annual statement. The quoted language is included within the meaning of the requirement that the assessment be paid "at the same time" the association files its annual statement.

(2) V.T.I.C. Article 14.42 provides that the annual assessment "shall be based upon the calendar year." The revised law omits the quoted language as misleading because other language in Article 14.42, revised as this section, provides that the assessment is annual and states the period during which the assessment must be paid.

(3) V.T.I.C. Article 14.42, last amended by Chapter 622, Acts of the 68th Legislature, Regular Session, 1983, purports

to appropriate fees to the State Board of Insurance for particular purposes. The revised law omits the putative appropriation because Section 6, Article VIII, Texas Constitution, prohibits continuous appropriations by limiting the maximum duration of an appropriation to two years.

(4) V.T.I.C. Article 14.42 requires that the annual assessments be deposited "in the State Treasury to the credit of the State Board of Insurance operating fund." The revised law substitutes "Texas Department of Insurance operating account" for "State Board of Insurance operating fund" to conform to the conversion of the fund to an account in the general revenue fund by the comptroller of public accounts under authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, and to the change in the name of the fund made by Section 1.09, Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993. The revised law omits the reference to the state treasury as unnecessary because Section 2, V.T.I.C. Article 1.31A, provides that the Texas Department of Insurance operating fund is in the state treasury.

[Sections 888.053-888.100 reserved for expansion]

SUBCHAPTER C. INSURANCE CERTIFICATES; PAYMENT OF BENEFITS

Revised Law

Sec. 888.101. INSURANCE CERTIFICATES ISSUED BY BURIAL ASSOCIATION. (a) Except as provided by Subsection (c), an insurance certificate issued by a burial association must provide for the payment of the benefit in specified merchandise or burial services.

(b) The merchandise or services to be provided must be:

(1) stated in the insurance certificate; and

(2) approved by the department as being of the reasonable value stated on the face of the certificate.

(c) Subsections (a) and (b) do not apply if, at the time the insurance certificate is issued, the insured elects to have the benefit paid in cash.

(d) An election under this section must be stated in the insurance certificate. (V.T.I.C. Art. 14.38 (part).)

Source Law

Art. 14.38. Policies or certificates issued by burial associations shall provide

for payment of the benefit in certain stipulated merchandise and burial service, which shall be scheduled in the policy or certificate and approved by the Board of Insurance Commissioners as being of the reasonable value as stated in the face of the policy, unless the insured shall at the time said policy is issued elect to have same paid in cash. The policy shall show in writing the election made. . . .

Revised Law

Sec. 888.102. PAYMENT INSTEAD OF MERCHANDISE OR SERVICES.

(a) If a burial association that issues an insurance certificate fails or refuses to provide the merchandise or services specified by the certificate, the association shall pay the benefit in cash.

(b) If a burial association that issues an insurance certificate is not given the opportunity to provide the merchandise or services specified by the certificate, instead of the specified merchandise or services, the association shall pay the greater of:

(1) the total amount paid into its mortuary fund to the credit of that certificate's account; or

(2) the percentage of the certificate's face value specified by the certificate. (V.T.I.C. Arts. 14.38 (part), 14.52.)

Source Law

Art. 14.38. . . . If the association issuing said policy shall fail or refuse to furnish the merchandise and services provided for in the policy same shall be paid in cash.

Art. 14.52. If a burial association is not given the opportunity to provide the merchandise and services stipulated in the policy it shall be required to pay not less than the total amount paid into its mortuary fund for account of said policy in lieu of the stipulated merchandise and services unless a greater per cent of the face value is specified in the policy.

Revised Law

Sec. 888.103. INSURANCE CERTIFICATE FORMS. An insurance certificate form used by a burial association on or after May 12, 1939, must comply with this chapter. (V.T.I.C. Art. 14.18

(part).)

Source Law

Art. 14.18. . . .

. . . All certificate forms hereafter used must be in accord with the provisions of this chapter and

Revisor's Note

V.T.I.C. Article 14.18 provides that certificate forms "hereafter used" must comply with that article and other laws regulating associations. The quoted language can only be read as meaning "certificate forms used on or after the effective date of this Act." Article 14.18 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. Section 2 of that act provided that "[n]othing contained in this Act shall be held or construed to effect any substantive change in the laws existing prior to the passage of this Act." Article 14.18 was derived from Article 5068-1, Vernon's Texas Civil Statutes. Article 5068-1 was enacted by Chapter 6, page 401, General Laws, Acts of the 46th Legislature, Regular Session, 1939; that act took effect May 12, 1939. Accordingly, the revised law substitutes "on or after May 12, 1939," for "hereafter."

[Sections 888.104-888.150 reserved for expansion]

SUBCHAPTER D. RATES FOR BURIAL ASSOCIATIONS

Revised Law

Sec. 888.151. DATA COLLECTION RELATED TO RATES. (a) The commissioner shall:

(1) collect data, statistics, and information on the death rates, lapses, experiences, and other information relating to burial association rates in and outside of this state that the commissioner considers useful in determining reasonable and adequate rates for burial associations; and

(2) study the statistics, rates, and experiences of burial associations.

(b) The commissioner may distribute information collected under Subsection (a)(1) to burial associations in this state.

(V.T.I.C. Arts. 14.47, 14.48 (part).)

Source Law

Art. 14.47. It shall be the duty of said

State Board of Insurance to gather such data, statistics, and information as it can from time to time as to the death rates, lapses, experiences and other information relative to burial association rates within, and without the State of Texas as may be deemed beneficial in fixing reasonable and adequate burial association rates and which information may be disseminated by the Board among the burial associations of Texas.

Art. 14.48. The Board's duties and power shall not cease upon the adoption of its first rate schedule, but it shall continue to study the statistics, rates, and experiences of burial associations and

Revisor's Note

V.T.I.C. Article 14.48 provides that "[t]he Board's duties and power shall not cease upon the adoption of its first rate schedule," meaning the initial rate schedule the State Board of Insurance was required to adopt following the abolition of the Burial Association Rate Board and the transfer of the rate board's ratemaking authority to the State Board of Insurance by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979. The revised law omits the quoted language as executed. Section 3 of that act required the State Board of Insurance to adopt its initial rate schedule for burial associations "within 90 days after the effective date of this Act." Chapter 593 was effective June 13, 1979.

Revised Law

Sec. 888.152. ADOPTION OF RATE SCHEDULE. (a) The commissioner shall adopt a schedule of reasonable and adequate rates that a burial association may charge its members. The schedule of rates must be adopted in compliance with Chapter 2001, Government Code.

(b) The schedule must show the maximum and minimum rates that a burial association may charge per week, per month, per quarter, per six months, and per year, for the definite benefits at the definite ages. The commissioner must designate the ages in convenient groups.

(c) To ensure the adequacy and reasonableness of the rates, the commissioner may consider information gathered from an area of this state that is sufficiently large to include the varying

conditions of the risks involved and during a period sufficiently long to ensure that the minimum and maximum rates authorized are:

- (1) just and reasonable as they apply to members of the public who become insured under this chapter; and
- (2) adequate and non-confiscatory as they apply to the burial associations.

(d) The commissioner may require:

- (1) sworn statements from any burial association in this state showing its experience in rates collected and claims paid over a reasonable period; and
- (2) any other information the commissioner considers necessary or useful in adopting the rate schedule.

(e) The department shall mail a copy of the adopted rate schedule to each burial association that holds a certificate of authority to engage in the business of insurance in this state. (V.T.I.C. Art. 14.44.)

Source Law

Art. 14.44. The State Board of Insurance shall adopt a schedule of reasonable and adequate rates, giving the maximum and minimum rates which may be charged per week, per month, per quarter, per six (6) months and per annum by burial associations for the definite benefits at the definite ages, which ages will be in convenient groups as designated by said Board. Such schedule of rates shall be adopted in compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). To insure the adequacy and reasonableness of rates the Board may take into consideration experience gathered from a territory within this State sufficiently broad to include the varying conditions of the risks involved and over a period sufficiently long to insure that the minimum and maximum rates determined therefrom shall be just and reasonable as they may apply to the insuring public, and adequate and non-confiscatory as they may apply to the burial associations. The Board is hereby authorized and empowered to require sworn statements from any burial association within this State showing its experience in assessments collected and claims paid over a reasonable period of time and such other information as the Board shall find to be

necessary or helpful in making the maximum and minimum rate schedules. After said rate schedules have been adopted, the Board shall cause to be mailed a copy of such rate schedule to each burial association having a permit to do business in Texas.

Revisor's Note

(1) V.T.I.C. Article 14.44 requires that the schedule of rates adopted under that article be adopted in compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The relevant part of that article was codified in 1993 as Chapter 2001, Government Code, and the revised law is drafted accordingly.

(2) V.T.I.C. Article 14.44 refers to "assessments" collected. Throughout this revision, the term "rates" is used instead of "assessments" or "premiums" because, in the context of this revision, "assessments" and "premiums" are included within the meaning of "rates" and "rates" is more commonly used.

Revised Law

Sec. 888.153. NEW OR AMENDED RATE SCHEDULES. (a) At any time the commissioner considers appropriate, the commissioner may adopt:

- (1) a new rate schedule for burial associations; or
- (2) an amendment to an existing rate schedule.

(b) After the commissioner adopts a new rate schedule or an amendment to an existing rate schedule and sends a copy to the burial associations, each burial association shall use the new or amended rate schedule for individuals who the association subsequently accepts as members. (V.T.I.C. Art. 14.48 (part).)

Source Law

Art. 14.48. . . . at any time it deems proper, it may adopt a new rate schedule or amendment to a previous schedule and when any such amendment or new schedule is adopted, it shall thereafter be considered the official rate schedule of burial associations. When a new or amended schedule is adopted and copies forwarded to the burial associations by the State Board of Insurance, the new or amended rate schedule shall be thereafter used by it as to members thereafter accepted and such

procedure shall be followed from time to time, when and as often as the Board shall adopt an amended or new rate schedule for the State.

Revised Law

Sec. 888.154. CONTRACTS WITH EXPERTS AND CONSULTANTS. The department may contract with experts and consultants to assist the department in exercising the department's powers and performing the department's duties under this subchapter. (V.T.I.C. Art. 14.43, Sec. (b) (part).)

Source Law

(b) The State Board of Insurance may contract with experts and consultants to assist it in carrying out its powers, duties, and functions under Articles 14.44, 14.45, 14.47, and 14.48 of this code. . . .

Revisor's Note

(1) Section (b), V.T.I.C. Article 14.43, refers to the "powers, duties, and functions" of the State Board of Insurance. The revised law omits "functions" as included within the meaning of "powers and duties."

(2) Section (b), V.T.I.C. Article 14.43, requires that a contract for a rate expert or consultant be let by competitive bids and awarded to the lowest and best bidder. That section also provides for the State Board of Insurance to adopt rules concerning procedures for soliciting bids and awarding contracts. Section (b) was added to Article 14.43 by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979. The revised law omits those provisions as superceded by Section 2155.063, Government Code, which requires the obtaining of a service by a state agency to be accomplished through competitive bidding, and in Section 2254.003(a), Government Code, which requires the procurement of professional services by a governmental entity, including a state agency, to be accomplished by demonstrated competence and qualifications rather than by competitive bidding.

Section 2155.063, Government Code, was derived from Section 3.10(a), State

Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). Section 3.10(a), Article 601b, was enacted by Chapter 773, Acts of the 66th Legislature, Regular Session, 1979, and subsequently amended by Section 5, Chapter 677, Acts of the 72nd Legislature, Regular Session, 1991. Section 2254.003(a), Government Code, was derived from Section 3, Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes). Section 3, Article 664-4, was enacted by Chapter 38, Acts of the 62nd Legislature, Regular Session, 1971, and subsequently amended by Chapter 1036, Acts of the 71st Legislature, Regular Session, 1989. Those sections are applicable to the commissioner of insurance. The omitted law reads as follows:

(b) . . . Before entering into a contract, the Board shall solicit competitive bids, and the contract shall be awarded to the lowest and best bidder. Procedures for soliciting bids and awarding contracts shall be provided in the rules of the Board.

Revised Law

Sec. 888.155. RETENTION OF BURIAL ASSOCIATION'S INITIAL RATE SCHEDULE. Each burial association shall retain, as part of its permanent records, the initial rate schedule adopted by the association under former Article 14.45, Insurance Code, following the amendment of that article by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979. (V.T.I.C. Art. 14.45 (part).)

Source Law

Art. 14.45. . . . [the other copy returned to the association] to be kept as a part of its permanent files. . . .

Revised Law

Sec. 888.156. CHANGE OF RATES BY BURIAL ASSOCIATION. (a) With the department's consent, a burial association may change its rates by adopting a new rate schedule and filing that schedule with the department.

(b) The new rate schedule must be similar in all respects to the initial schedule adopted by the burial association and each new rate must be not less than the minimum or more than the maximum rate adopted by the commissioner. (V.T.I.C. Art. 14.45

(part).)

Source Law

Art. 14.45. . . . With the consent of the State Board of Insurance an association may change its rates by adopting and filing with the Board, a new rate schedule in all respects similar to the first schedule but in each instance each rate must be within the maximum and minimum as adopted by the State Board of Insurance.

Revised Law

Sec. 888.157. CONTINUATION OF FORMER RATES. (a) A burial association that had rates adopted and in use before June 12, 1947, may continue to apply those rates to individuals who were members of the burial association on that date.

(b) With the department's approval, the burial association may:

- (1) change the rates described by Subsection (a); and
- (2) make the new rates correspond to the rate schedule most recently filed by the burial association with the department. (V.T.I.C. Art. 14.49.)

Source Law

Art. 14.49. Rates which were adopted and in use by any association prior to June 12, 1947, may be continued to be used by such burial association as to its then members, but with the consent and approval of the Board of Insurance Commissioners of Texas, any association may change such rates and make the same comply and correspond with the rate schedule last filed by such association with the Board of Insurance Commissioners as herein designated.

Revised Law

Sec. 888.158. FAILURE TO COMPLY WITH COMMISSIONER RATE ORDERS. If a burial association refuses to comply with an order of the commissioner regarding rates under this subchapter, the commissioner shall consider the association insolvent. (V.T.I.C. Art. 14.23, Sec. 3.)

Source Law

Sec. 3. When any company or association shall refuse to comply with the order of the State Board of Insurance respecting rates or

assessments as in this Chapter authorized, it shall be treated as insolvent.

Revisor's Note

(End of Subchapter)

(1) The revised law omits Section (a), V.T.I.C. Article 14.43. Section (a), V.T.I.C. Article 14.43, requires the State Board of Insurance to assume and exercise the powers, duties, and functions of the Burial Association Rate Board under Articles 14.44-14.52. The Burial Association Rate Board was abolished by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979, effective June 13, 1979, and the requirement in Section (a), Article 14.43, that the State Board of Insurance assume the rate board's powers, duties, and functions is omitted as executed. The omitted law reads as follows:

Art. 14.43. (a) The State Board of Insurance shall assume and exercise the powers, duties, and functions provided by Articles 14.44-14.52 of this code.

(2) The revised law omits the part of V.T.I.C. Article 14.45 relating to the adoption of the initial rate schedule by burial associations and the endorsement of the associations' rates as executed. Article 14.45 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951, adopting the Insurance Code. As amended by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979, Article 14.45 required burial associations to adopt a rate schedule complying with the initial rate schedule adopted by the State Board of Insurance and to file two copies of their rates with the board. As amended, Article 14.45 also required the State Board of Insurance to keep one copy of each burial association's filed rates. The revised law omits that part of V.T.I.C. Article 14.45 as superceded by the subsequent enactment of Subchapter L, Chapter 441, Government Code, relating to maintenance of state records, by Chapter 873, Acts of the 75th Legislature, Regular Session, 1997. The

omitted law reads as follows:

Art. 14.45. After such rate schedule has been so mailed by the State Board of Insurance, it shall be the duty of the officers and directors of each burial association to convene and to adopt a rate schedule to be thereafter used and charged by such association for the different benefits at the different ages and which schedule shall use the same age groups and benefits as is given in the rate schedule so mailed to it by the State Board of Insurance and which rates so adopted shall not be less than the minimum nor more than the maximum rates adopted by the Board. Each burial association shall file with the State Board of Insurance, duplicate copies of the rate schedule adopted by it and which rate schedule must be so filed at least within thirty (30) days from the date the rate schedule was so mailed by the State Board of Insurance. Such copy shall be endorsed by the State Board of Insurance showing the date of its filing and one of such copies shall be retained by the Board and the other copy returned to the association

[Sections 888.159-888.200 reserved for expansion]

SUBCHAPTER E. PROHIBITIONS

Revised Law

Sec. 888.201. UNAUTHORIZED PROVIDING OF BURIAL OR FUNERAL BENEFITS. An individual, firm, partnership, corporation, or association may not engage in the business of providing burial or funeral benefits payable partly or wholly in merchandise or services unless the individual, firm, partnership, corporation, or association is authorized to engage in that business by this chapter, Chapter 886, Chapter 887, or another law. (V.T.I.C. Art. 14.37 (part).)

Source Law

Art. 14.37. [Any individuals, firms, co-partnerships, corporations or associations doing the business of providing burial or funeral benefits . . . are hereby declared to be burial . . . associations . . . and shall operate under and be governed by Chapter 12 and this chapter.] It shall be unlawful for any individual, individuals, firms,

co-partnerships, corporations, or associations, other than those defined above, to engage in the business of providing burial or funeral benefits, which under any circumstances may be paid wholly or partly in merchandise or services.

Revisor's Note

V.T.I.C. Article 14.37 provides that individuals and certain entities defined as burial associations are governed by "Chapter 12 and this chapter." V.T.I.C. Chapters 12 and 14 are revised as this chapter, Chapter 886, and Chapter 887, and the revised law is drafted accordingly. The revised law also adds a reference to "another law" to alert the reader to the fact that laws other than the Insurance Code and this revision govern the business of providing burial or funeral benefits payable in merchandise or services. For example, Chapter 154, Finance Code, "Prepaid Funeral Services," is applicable to and governs, among others, persons selling, accepting money or premiums for, or soliciting contracts for prepaid funeral benefits or contracts or insurance policies to fund prepaid funeral benefits in this state.

Revised Law

Sec. 888.202. RATE VIOLATIONS. (a) A burial association or an officer, agent, or employee of a burial association may not charge or collect any rate from a member of the association other than the rate applicable for the age and benefit stated in the association's rate schedule on file with the department and in force at that time.

(b) An officer, agent, or employee of a burial association commits an offense if the officer, agent, or employee violates Subsection (a).

(c) An officer of a burial association commits an offense if the officer knowingly permits a violation of Subsection (a).

(d) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.

(e) The department may revoke the certificate of authority of a burial association that violates this section. (V.T.I.C. Art. 14.46.)

Source Law

Art. 14.46. It shall be unlawful for any

burial association, its officers, agents, or employees to charge, receive, or collect any rate, premium, or assessment from any member of said association other than the rate, premium, or assessment applicable for the age and benefit as named in said association's rate schedule on file with the Board of Insurance Commissioners and in force at that time. Any officer, agent, or employee of any burial association who charges, receives, or collects any premium or assessment in violation of this article, or any officer, of any burial association who knowingly permits it to be done, shall be guilty of misdemeanor and upon conviction shall be fined not less than Fifty (\$50.00) Dollars nor more than Two Hundred (\$200.00) Dollars. The Board of Insurance Commissioners may cancel the permit of any burial association violating the provisions of this article.

Revisor's Note

(1) V.T.I.C. Article 14.46 provides that a burial association or others may not "charge, receive, or collect" an unauthorized "rate, premium, or assessment." The revised law omits "receive" as included within the meaning of "charge or collect."

(2) V.T.I.C. Article 14.46 states that the Board of Insurance Commissioners "may cancel" the permit of any burial association in certain circumstances. The revised law substitutes "revoke" for "cancel" because, in context, the terms are synonymous and "revoke" is more frequently used.

Revised Law

Sec. 888.203. CONNECTION BETWEEN BURIAL ASSOCIATIONS. (a) A burial association may not be directly or indirectly connected with another burial association.

(b) A member, director, or officer of a burial association may not be a member, director, or officer of another burial association.

(c) A person whose spouse or employee is an officer or director of a burial association may not be an officer or director of another burial association.

(d) A funeral director or funeral home directly or indirectly connected with a burial association or designated by a burial association as its funeral director or funeral home may

not be:

(1) connected in any manner with another burial association; or

(2) designated by another burial association as its funeral director or funeral home to:

(A) provide its members with services or merchandise; or

(B) service its policies. (V.T.I.C. Art. 14.50.)

Source Law

Art. 14.50. There shall be no connection directly or indirectly between two (2) or more burial associations. No member, director, or officer of one burial association shall be a member, director, or officer of any other burial association. No person whose husband, wife, or employee is an officer or director of one burial association shall be an officer or director of any other burial association. No funeral director, undertaker, or funeral home directly or indirectly connected with or designated by one burial association as its funeral director, undertaker, or funeral home shall be connected with or designated by any other burial association as its funeral director, undertaker, or funeral home to furnish its members with its services and/or merchandise or to service its policies or to be in any manner connected with its affairs.

Revisor's Note

V.T.I.C. Article 14.50 refers to a "funeral director, undertaker, or funeral home." The revised law omits the reference to "undertaker" as included within the meaning of "funeral director."

Revised Law

Sec. 888.204. CERTAIN AFFILIATIONS BETWEEN BURIAL ASSOCIATIONS AND FUNERAL HOMES PROHIBITED. (a) It is against the public policy of this state for a funeral home or an owner of an interest in a funeral home to be directly or indirectly connected or affiliated with more than one burial association.

(b) The commissioner shall adopt rules as necessary to implement this section. (V.T.I.C. Art. 14.51 (part).)

Source Law

Art. 14.51. It is against the public

policy of this State for a funeral home or for those who own it in whole or in part to be connected directly or indirectly or affiliated with more than one burial association and . . . the State Board of Insurance shall make such rules and regulations as may be necessary to carry out the spirit and purpose of this article.

Revised Law

Sec. 888.205. VIOLATION OF CHAPTER; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a burial association, or other person commits an offense if the person violates a provision of this chapter other than Section 888.202.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine not to exceed \$500;
- (2) confinement in jail for a term not to exceed six months; or
- (3) both the fine and confinement. (V.T.I.C. Art. 14.59 (part).)

Source Law

Art. 14.59. If any director, officer, agent, employee or attorney at law or attorney in fact of any association under this chapter, or any other person, shall violate any of the provisions of this chapter not specifically set out in Articles . . . 14.46 of this chapter, he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Revisor's Note

(End of Subchapter)

The revised law omits V.T.I.C. Article 14.37-1. Article 14.37-1 was transferred, without change, from Article 580a, Vernon's Texas Penal Code (1925), by authority of Section 5, Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, which enacted the current Penal Code. Article 14.37-1 has not been subsequently amended. The revised law omits Article 14.37-1 because

Article 580a, V.T.P.C., was held unconstitutional. Phillips v. State, 125 S.W.2d 585 (Tex. Crim. App. 1939). The omitted law reads as follows:

Art. 14.37-1

Sec. 1. It shall hereafter be unlawful for any person, corporation, insurance company, fraternal organization, burial association or other association to write, sell or issue any certificate, policy, contract or membership, maturing upon the death of the person holding the same or upon the death of some member of the holder's family, if such certificate, policy, contract or membership provides that it is to be paid or settled, or if the plan of such person, corporation, organization or association provides that its certificates, policies, contracts or memberships are to be paid or settled, in merchandise or services rendered, or agreed to be rendered, or by furnishing burial materials or burial services, or in discounts on the regular prices of merchandise, burial materials or funeral services or other services; or if such certificate, policy, contract or membership is to be paid at maturity in anything except money.

Sec. 2. Any person, corporation, insurance company, fraternal organization, burial association or other association which shall hereafter write, sell or issue any certificate, policy, contract, or membership prohibited by the foregoing section of this Act shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than Ten Dollars (\$10.00) nor more than Two Hundred Fifty Dollars (\$250.00), each sale of any such policy, contract or membership shall constitute a separate offense.

[Chapters 889-910 reserved for expansion]

SUBTITLE F. FARM AND COUNTY MUTUAL INSURANCE COMPANIES

CHAPTER 911. FARM MUTUAL INSURANCE COMPANIES

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CHAPTER 911. FARM MUTUAL INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 911.001. LIMITED EXEMPTION FROM INSURANCE LAWS;
APPLICABILITY OF CERTAIN LAWS. (a) A provision of this code,
other than this chapter, does not apply to a farm mutual
insurance company holding a certificate of authority under this
chapter unless farm mutual insurance companies are expressly
mentioned in the other law.

(b) A law enacted after May 20, 1973, does not apply to a
farm mutual insurance company unless the law states that it
applies to a farm mutual insurance company.

(c) Except to the extent of any conflict with this chapter,
the following provisions apply to a farm mutual insurance
company:

- (1) Subchapter A, Chapter 32;
- (2) Subchapter D, Chapter 36;
- (3) Sections 31.002(2), 32.021(c), 32.023, 32.041,
33.002, 38.001, 81.001-81.004, 801.051-801.055, 801.057, 801.101,
801.102, 822.204, 841.004, 841.251, 841.252, and 862.101;
- (4) Chapter 802;
- (5) Subchapter A, Chapter 805;
- (6) Chapter 824; and
- (7) Sections 2, 5, 6, and 17, Article 1.10, and
Articles 1.09-1, 1.11, 1.12, 1.13, 1.15, 1.15A, 1.16, 1.17, 1.18,
1.19, 1.20, 1.21, 1.22, 2.10, 21.21, 21.28, 21.28-A, 21.28-C,
21.39, and 21.39-A.

(d) After hearing, the commissioner may adopt rules

regarding the application of a law referred to in Subsection (c) to farm mutual insurance companies. The department may enforce rules adopted under this subsection. (V.T.I.C. Arts. 16.24, 16.27 (part).)

Source Law

Art. 16.24. (a) Unless farm mutual insurance companies are expressly mentioned, no provision of the Insurance Code, except as contained in this chapter, shall be applicable to insurers holding a certificate of authority under this chapter and no law hereinafter enacted shall apply to such companies unless such subsequent enactment states that it shall apply.

(b) Regardless of the preceding portion of this Article, Articles 1.01, 1.02, 1.04, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.29, 2.08, 2.10, 3.12, 3.13, 6.16, 21.21, 21.25, 21.28, 21.28-A, 21.28-C, 21.39, 21.39-A, and Sections 10(a), (b) and (c) of Article 3.01 and Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 17 of Article 1.10 of this code shall apply to and govern farm mutual insurance companies except where such Articles or portions thereof are in conflict with the provisions of Chapter 16 of the Insurance Code.

Art. 16.27. The State Board of Insurance is hereby vested with power and authority under this Act to promulgate, after public hearing, and enforce rules and regulations concerning the application to farm mutual insurance companies of the Articles referred to in Article 16.24 of the Insurance Code and

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 16.24, refers to "insurers" holding a certificate of authority under this chapter. The revised law substitutes "farm mutual insurance company" for "insurers" because a farm mutual insurance company is the only type of insurer that holds a certificate of authority under this chapter.

(2) Subsection (a), V.T.I.C. Article 16.24, refers to a law "hereinafter enacted." That provision was enacted by Chapter 139, Acts of the 63rd Legislature, Regular Session, 1973, which took effect May 21, 1973. The revised law is drafted accordingly.

(3) Subsection (b), V.T.I.C. Article 16.24, provides that "Articles 1.01, 1.02, . . . [and] 1.09" of the Insurance Code apply to a farm mutual insurance company. Articles 1.02 and 1.09 have been revised in Chapters 31 and 33 of this code. The revised law omits the reference to Article 1.01 because that article provides the short title for the Insurance Code and will apply to this revised chapter by its own terms without the necessity of a reference in this chapter. The revised law omits the references to Article 1.02 and to Article 1.09, except to the extent that article is revised in Section 33.002 of this code, because the substance of the omitted provisions relates only to the internal operations of the commissioner of insurance and the Texas Department of Insurance and has no application to farm mutual insurance companies.

(4) Subsection (b), V.T.I.C. Article 16.24, refers to V.T.I.C. Article 1.23. The revised law omits the reference because V.T.I.C. Article 1.23 was repealed by Chapter 101, Acts of the 76th Legislature, Regular Session, 1999, as duplicative of Rules 902(1) and (4), Texas Rules of Civil Evidence, and Rules 902(1) and (4), Texas Rules of Criminal Evidence.

(5) Subsection (b), V.T.I.C. Article 16.24, provides that a farm mutual insurance company is subject to "Section[s] . . . 7 . . . of Article 1.10" of the Insurance Code, which was codified in 1999 in part as Section 82.002 of this code. The revised law omits that provision as unnecessary because Section 82.002 applies by its own terms to a farm mutual insurance company.

(6) V.T.I.C. Article 16.24 states that certain laws "apply to and govern" farm mutual insurance companies. Throughout this

chapter, the revised law omits references to "govern" in this context because "govern" is included within the meaning of "apply to."

(7) V.T.I.C. Article 16.27 refers to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the board have been changed appropriately.

(8) V.T.I.C. Article 16.27 provides that the State Board of Insurance (now the Texas Department of Insurance) may "promulgate . . . rules and regulations." Throughout this chapter, the revised law substitutes "adopt" for references to "promulgate" because the terms are synonymous and the former is more commonly used. In addition, the revised law omits references to "regulations" in this section and in similar contexts throughout this chapter 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. 911.002. GENERAL RULEMAKING AUTHORITY; ENFORCEMENT. After hearing, the commissioner may adopt rules to clarify and augment this chapter as determined by the commissioner to be necessary to accomplish the purposes of this chapter. The department may enforce rules adopted under this section. (V.T.I.C. Art. 16.27 (part).)

Source Law

Art. 16.27. The State Board of Insurance is hereby vested with power and authority under this Act to promulgate, after public hearing, and enforce rules and regulations . . . for the clarification, amplification and augmentation of the terms and provisions of Chapter 16 of the Insurance Code (as it

now exists or as it may be amended in the future) which in the discretion of said Board are deemed necessary to accomplish the purposes of this Act.

Revisor's Note

(1) V.T.I.C. Article 16.27 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.

(2) V.T.I.C. Article 16.27 authorizes the State Board of Insurance (now the Texas Department of Insurance) to adopt rules for the "clarification, amplification and augmentation" of V.T.I.C. Chapter 16, revised as this chapter. The revised law omits "amplification" because "amplification" is included within the meaning of "augmentation."

Revised Law

Sec. 911.003. FEES. (a) The department shall charge and collect the following fees:

(1) \$10 for an amendment to a farm mutual insurance company's charter; and

(2) \$1 for the issuance of a company's certificate of authority.

(b) The department shall charge and the comptroller shall collect a fee of \$20 for the filing of an annual statement required by the department. (V.T.I.C. Art. 16.22, Subsecs. (a) (part), (b).)

Source Law

Art. 16.22. (a) [For the renewal and extension of the granting of any charter, the department shall charge and collect a filing fee of Ten (\$10.00) Dollars] and a like amount for any amendment to the charter of any such company.

(b) The department shall charge and collect a fee of One (\$1.00) Dollar for the issuance of a certificate of authority or renewal thereof to all companies operating under this chapter. The department shall charge a filing fee of Twenty (\$20.00) Dollars for filing an annual statement required by the department. The comptroller

shall collect the annual statement filing fee.

Revisor's Note

V.T.I.C. Article 16.22 provides that the Texas Department of Insurance shall charge and collect "a fee of One (\$1.00) Dollar for the issuance of a certificate of authority or renewal thereof." The revised law omits the reference to the renewal of a certificate of authority as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is revoked, canceled, or suspended. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . to the extent that they require periodic renewal of certificates of authority."

Revisor's Note

(End of Subchapter)

(1) V.T.I.C. Article 16.21, in part, provides that certain fire and storm mutual insurance companies "shall become subject to . . . this chapter" on May 21, 1973, and that those companies may take certain actions required to comply with this chapter. The revised law omits that part of Article 16.21 as executed. The omitted law reads:

Art. 16.21. . . .

Such fire or storm mutual insurance companies as included in this article, heretofore operating under the now repealed provisions of 4860a-20, Revised Civil Statutes of Texas, shall become subject to the provisions and requirements of this chapter in lieu of any act heretofore governing such companies. Any such company shall have the right to change its name so as to include the words "Farm Mutual" or "Farmers Mutual," and may amend its constitution and by-laws and/or charter for the purpose of adopting any provision or meeting any requirement of this chapter. The Board shall charge and collect a filing fee

of Ten (\$10.00) Dollars for each amendment to the charter of any such company.

(2) V.T.I.C. Article 16.26 provides that V.T.I.C. Chapter 16, revised as this chapter, does not apply to the extent it cannot under the United States Constitution or the Texas Constitution. The revised law omits the reference to the federal constitution as unnecessary because under the Supremacy Clause of the United States Constitution (Clause 2, Article VI), federal law always takes precedence over a state statute. The revised law also omits the reference to the Texas Constitution as unnecessary because the state cannot modify constitutional requirements by statute. The omitted law reads:

Art. 16.26. This chapter and law do not apply to any insurer or other person to any extent that it cannot validly apply under the Constitution of the United States or the Constitution of the State of Texas.

[Sections 911.004-911.050 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF FARM MUTUAL
INSURANCE COMPANY; DIRECTORS

Revised Law

Sec. 911.051. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. Except to the extent of any conflict with this chapter, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a farm mutual insurance company. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to farm mutual insurance companies. (V.T.I.C. Art. 16.23.)

Source Law

Art. 16.23. Insofar as the same are not inconsistent with or contrary to any applicable provision of this chapter as it now exists or may be amended in the future, the provisions of the Texas Non-Profit Corporation Act shall apply to and govern farm mutual insurance companies, provided, however, that wherever said Texas Non-Profit Corporation Act imposes some duty, authority,

responsibility, power; or some act is vested in, required of, or is to be performed by the Secretary of State, such is hereby vested in, required of, or shall be performed by the State Board of Insurance.

Revisor's Note

(1) V.T.I.C. Article 16.23 refers to V.T.I.C. Chapter 16, revised as this chapter, "as it now exists or may be amended in the future." The revised law omits the quoted language in this section and omits similar language throughout this chapter as unnecessary because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(2) V.T.I.C. Article 16.23 states that the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) shall "apply to and govern" farm mutual insurance companies. The revised law omits the reference to "govern" because, in context, "govern" is included within the meaning of "apply to."

(3) V.T.I.C. Article 16.23 refers to a "duty, authority, responsibility, [or] power" of the secretary of state and State Board of Insurance. The revised law substitutes "power and duty" for the quoted phrase because "responsibility" is included within the meaning of "duty" and "authority" is included within the meaning of "power."

(4) V.T.I.C. Article 16.23 refers to an act that is "vested in, required of, or is to be performed by" the secretary of state and State Board of Insurance. The revised law omits the references to "vested in" and "required of" because, in context, these phrases are included within the meaning of the phrase "to be performed by."

Revised Law

Sec. 911.052. FORMATION OF COMPANY: INCORPORATION
REQUIRED. To form a farm mutual insurance company, an association of individuals that does not hold a certificate of authority issued by the department must obtain a charter as required by

this subchapter. (V.T.I.C. Art. 16.03, Subsec. (b) (part); Art. 16.06 (part).)

Source Law

[Art. 16.03]

(b) Any association of individuals which has not prior to the effective date of this Act been issued a certificate of authority by the State Board of Insurance will be required to secure a charter in compliance with Articles 16.04, 16.05 and 16.06 of the Insurance Code dealing with incorporation of companies not heretofore issued such a certificate of authority, and

Art. 16.06. . . .

(b) . . . All companies organized after the effective date of this Act under this Chapter must have received a charter to operate and

Revisor's Note

Subsection (b), V.T.I.C. Article 16.03, requires an association of individuals that has not been issued a certificate of authority "prior to the effective date of this Act" to incorporate as a condition to forming a farm mutual insurance company. Throughout this chapter, the revised law omits language referring to the issuance of a certificate of authority before the effective date of the act as unnecessary because the incorporation requirement applies to all newly formed farm mutual insurance companies, and a newly formed company will not have a certificate of authority issued before the specified date.

Revised Law

Sec. 911.053. INCORPORATION REQUIREMENTS. (a) In this section, "separate risk" means one or more items of real property and the property's contents, if any, that is not exposed to any other property on which insurance is applied for in the association seeking the charter.

(b) To be granted a charter as a farm mutual insurance company, an association must:

(1) demonstrate that the association:

(A) has existed as an association of individuals

for at least three years;

(B) has at least 100 individual members;

(C) operates for the purpose of membership recreation or welfare under a system of subordinate lodges, locals, or districts;

(D) does not have capital stock;

(E) is organized and operates solely for the mutual benefit of its members and not for profit;

(F) has a representative form of government; and

(G) has decided by a majority vote of the association's members to apply for a charter as a farm mutual insurance company under this chapter; and

(2) have:

(A) at least 100 written applications for insurance on at least 400 separate risks; and

(B) an unencumbered surplus as required by Section 911.308(b).

(c) Coverage for a risk described by Subsection (b)(2)(A) may not be in an amount that exceeds one percent of the total amount of insurance coverage to be issued by the association as stated in its application for a charter. (V.T.I.C. Art. 16.03, Subsec. (b) (part); Art. 16.06 (part).)

Source Law

[Art. 16.03]

(b) [Any association of individuals which has not prior to the effective date of this Act been issued a certificate of authority] . . . must show that it has theretofore been in existence as a bona fide association of individuals for a period of not less than three years, containing a membership of not less than 100 persons, operating under a system of subordinate lodges, or locals, or districts, without capital stock, organized and carried on solely for the mutual benefit of its members, and not for profit, having a representative form of government, operating for the purpose of membership recreation or membership welfare, and who now have by a majority vote of said association decided to apply for a charter as a farm mutual insurance company under the provisions of this Chapter 16.

Art. 16.06. Before a charter shall be granted a farm mutual insurance company not heretofore holding a certificate of authority

from the State Board of Insurance, the incorporators must have on hand:

(a) Not less than one hundred (100) applications in writing for insurance on not less than four hundred (400) separate risks; provided that no one (1) risk shall be for more than one (1%) per cent of the total amount of insurance applied for in the new company, and that a separate risk shall be one (1) or more items of real estate and its contents, if any, which is not exposed to any other property on which insurance is applied for in the new company;

(b) The free surplus required herein [All companies organized after the effective date of this Act under this Chapter must have received a charter to operate and] shall at time of incorporation and [at all times thereafter have free surplus equal to \$2.00 for each \$100.00 of insurance in force, or \$200,000.00 whichever amount is greater invested as provided in Article 2.08 of this Code as now provided or as amended in the future. . . .]

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 16.03, refers to a "bona fide" association. Throughout this chapter the revised law omits references to "bona fide" as unnecessary in this context because it does not add to the clear meaning of the law.

(2) Subsection (b), V.T.I.C. Article 16.06, requires that a farm mutual insurance company maintain "free surplus." Throughout this chapter, the revised law substitutes "unencumbered surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

Revised Law

Sec. 911.054. CHARTER AND ARTICLES OF INCORPORATION. (a) The charter and articles of incorporation of an association that wants to form a farm mutual insurance company must state the names and post office addresses of at least 25 charter members of the company, all of whom are residents of one or more adjoining counties in this state and each of whom must:

- (1) be a member of the association;
 - (2) own at least \$5,000 of insurable property for which the member has applied in writing for insurance coverage from the company to be formed; and
 - (3) sign the charter and articles of incorporation.
- (b) In addition to the requirements of Subsection (a), the charter must:
- (1) be acknowledged before a notary public by at least five of the charter members described by Subsection (a);
 - (2) state:
 - (A) the name of the company, which must include the words "Farm Mutual" or "Farmers Mutual";
 - (B) the location of the company's principal office;
 - (C) the number, names, and post office addresses of each of the company's first directors, of which there must be at least five; and
 - (D) the type of property the company will insure and the risk to be insured against; and
 - (3) include any other provision the incorporators want consistent with this chapter. (V.T.I.C. Art. 16.01, Subsec. (c) (part); Art. 16.04.)

Source Law

[Art. 16.01]

(c) Each farm mutual insurance company shall include the words "Farm Mutual" or "Farmers Mutual" in its name, and

Art. 16.04. The charter and articles of incorporation of a farm mutual or farmers mutual insurance company not holding a certificate of authority on the effective date of this Act shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, all of whom must be bona fide inhabitants in any one or more adjoining counties in this state, owning each not less than \$5,000.00 of insurable property, and have applied in writing for insurance thereon in the company to be formed, and which charter is to be acknowledged before a notary public by not less than five (5) of them and all charter members are members of an association as described in Article 16.03(b).

It shall state the name of the company which shall include the words "Farm Mutual"

or "Farmers Mutual," the place of its principal office, the number, names and post office addresses of its first directors, who shall not be less than five (5), the kind of property it will insure, and the risk to be insured against; and such other provisions as the incorporators may desire to set out therein in keeping with this chapter.

Revised Law

Sec. 911.055. APPLICATION FOR PERMIT TO SOLICIT INSURANCE.

(a) At least 10 residents described by Section 911.054(a) that want to form a farm mutual insurance company may apply to the department for a permit to solicit insurance on the mutual or cooperative plan.

(b) The application for a permit to solicit insurance must:

(1) state:

(A) that at least 100 individuals are members of an association described by Section 911.053(b)(1);

(B) that the association has indicated, by majority vote, that the association wants to:

(i) insure property of the association's members under this chapter; and

(ii) be chartered as a farm mutual insurance company;

(C) the name of the company, which must include the words "Farm Mutual" or "Farmers Mutual";

(D) the location of the company's principal office;

(E) the risks the company proposes to insure; and

(F) the names and places of residence of at least 10 of the applicants; and

(2) be accompanied by:

(A) affidavits of at least two of the applicants, each of whom must:

(i) state the applicant's name and residence; and

(ii) verify the facts stated in the application; and

(B) a filing fee in the amount of \$25. (V.T.I.C. Art. 16.05 (part).)

Source Law

Art. 16.05. Any ten (10) or more of such inhabitants, desiring to form a farm mutual insurance company, may apply to the State Board of Insurance for permission to solicit insurance on the mutual or cooperative plan,

which application shall state:

(a) That not less than one hundred (100) individuals have heretofore been members of an association as described in Article 16.03(b) and said association has by majority vote indicated its desire to insure property of its members under Chapter 16 of the Insurance Code and for said association to be chartered as a farm mutual insurance company;

(b) The name of the company shall include the words "Farm Mutual" or "Farmers Mutual;"

(c) The locality of the principal business office of such company;

(d) The risks the company proposes to insure;

(e) The names and places of residence of not less than ten (10) persons making such application;

(f) An affidavit of at least two (2) of such applicants correctly stating the names and residences of such applicants and verifying the facts stated in the application.

[Upon receipt of such application,] together with a Twenty-five (\$25.00) Dollar fee for filing same, [the State Board of Insurance]

Revisor's Note

(1) V.T.I.C. Article 16.05 refers to an affidavit that "correctly" states certain information. The revised law omits "correctly" as unnecessary because a person who executes an affidavit under oath is required to state the information correctly.

(2) V.T.I.C. Article 16.05 states that certain persons may apply to the department of insurance for "permission" to solicit insurance. Throughout this chapter, the revised law substitutes "permit" for "permission" in this context to provide for consistent use of terminology in this code.

Revised Law

Sec. 911.056. ISSUANCE OF PERMIT TO SOLICIT INSURANCE;
TERM. (a) On receipt of an application for a permit to solicit insurance under Section 911.055, the department shall examine the

application. If the department finds that the application complies with this chapter, the department shall issue to the applicants a permit to solicit insurance.

(b) A permit issued under this section authorizes the permit holders to solicit insurance on the mutual or cooperative plan in accordance with the terms of the application. The permit does not authorize the permit holders to:

- (1) issue insurance policies; or
- (2) pay losses.

(c) A permit issued under this section is valid for six months. On receipt of an application for renewal and a fee in the amount of \$10, the department may renew a permit issued under Section 911.055 as frequently and for the period as the department determines necessary. (V.T.I.C. Art. 16.05 (part).)

Source Law

Art. 16.05. . . .

Upon receipt of such application, . . . the State Board of Insurance shall examine it and upon finding that it complies with this chapter shall issue a permit for a period of six (6) months, authorizing said applicants to solicit insurance on the mutual or cooperative plan in accordance with the terms of the application, but not to issue policies of insurance or pay losses. Such permit may be renewed as often and as long as the State Board of Insurance finds it necessary upon application therefor and upon the payment of Ten (\$10.00) Dollars for each renewal. . . .

Revisor's Note

V.T.I.C. Article 16.05 refers to the issuance of a permit "authorizing . . . applicants to solicit [certain] insurance" The revised law substitutes "permit holders" for "applicants" because an applicant to whom the Texas Department of Insurance has issued a permit is no longer an applicant, but is a permit holder.

Revised Law

Sec. 911.057. COLLECTION AND REFUND OF MONEY FROM CERTAIN INDIVIDUALS APPLYING FOR INSURANCE. An association described by Section 911.053(b)(1) of which the applicants for a permit to solicit insurance are members shall hold in trust money collected from an individual applying for insurance in the association until the association is incorporated. If the association's incorporation is not perfected, the association shall refund the

money to the individual applying for the insurance. (V.T.I.C. Art. 16.05 (part).)

Source Law

Art. 16.05. . . .

. . . Moneys collected from applicants for insurance shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

Revised Law

Sec. 911.058. MEMBERSHIP CONTROL OF COMPANY. (a) The control of a farm mutual insurance company must be ultimately vested as provided by this chapter in the company's members through a supreme legislative or governing body, the members of which must be elected directly by the company's members or by delegates elected by the company's members.

(b) Through the company's governing body, the company's members may establish local chapters, branches, lodges, or similar organizations.

(c) The methods provided by this section for the control of a farm mutual insurance company are exclusive. (V.T.I.C. Art. 16.01, Subsec. (d).)

Source Law

(d) A characteristic of a farm mutual insurance company as defined by Section (a) of this article is that control must be ultimately vested in the membership as provided by this article, and that control by its members through a supreme legislative or governing body whose members are elected directly by the members or by delegates elected by the members. Through this governing body the members may also establish local chapters, branches, lodges, or similar organizations. The methods provided by this section for exercising control over a farm mutual insurance company are exclusive.

Revised Law

Sec. 911.059. ELIGIBILITY OF BOARD OF DIRECTORS; TERM. (a) An individual is eligible to serve as a director of a farm mutual insurance company if the individual is a policyholder who maintains insurance coverage in the amount of at least \$3,000 written by the company on the individual's property.

(b) Except as otherwise provided by the company's bylaws or constitution, a director serves for a term of one year or until

the director's successor qualifies for office. (V.T.I.C. Art. 16.12.)

Source Law

Art. 16.12. Directors of farm mutual insurance companies shall hold their office for one (1) year after their election, and until their successors qualify, unless otherwise provided in their constitution and by-laws.

Only bona fide policyholders who carry insurance on their property in an amount not less than Three Thousand (\$3,000.00) Dollars each in a company, shall be eligible to become or remain directors of the same. When a director reduces his said insurance below such amount, he shall no longer be qualified to act as such director.

Revised Law

Sec. 911.060. GENERAL POWERS OF BOARD OF DIRECTORS. The board of directors of a farm mutual insurance company has the powers provided by:

- (1) this chapter; and
 - (2) the company's charter, constitution, and bylaws to the extent those powers do not conflict with this chapter.
- (V.T.I.C. Art. 16.14.)

Source Law

Art. 16.14. The Board of Directors of farm mutual insurance companies shall have all powers granted by Chapter 16, and those granted by the charter, constitution and by-laws if not in conflict with the provisions of this Chapter 16.

Revised Law

Sec. 911.061. AUTHORITY TO BORROW MONEY. (a) The board of directors of a farm mutual insurance company, acting through its authorized officers, may borrow money in an amount determined to be necessary to pay the company's accrued or unaccrued losses.

(b) The board may pledge as security for a loan the assets of the company, including the contingent liability of its policyholders. (V.T.I.C. Art. 16.13.)

Source Law

Art. 16.13. The Board of Directors of farm mutual insurance companies may, acting

by and through its duly authorized officers, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge the assets of the company including the contingent liability of the policyholders for such losses as security for such loans.

Revised Law

Sec. 911.062. REMOVAL OF OFFICER OR DIRECTOR. (a) The board of directors of a farm mutual insurance company, at a meeting, may remove an officer or director of the company if, by a two-thirds majority vote of all the company's directors, the board determines that the removal of the individual is in the best interest of the company. The board may remove an officer or director under this subsection without stating a reason for the removal.

(b) The board may appoint one or more individuals to assume the duties and serve the unexpired term of an officer or director removed under this section. (V.T.I.C. Art. 16.16.)

Source Law

Art. 16.16. The Board of Directors of a company may at any time, in any meeting by a two-thirds (2/3) majority vote of all the directors, remove any officer or director of the company from his office without assigning any reason therefor, and name another person or persons to assume the duties of the one or ones removed, and to fill any unexpired term, when, in their judgment, it shall be deemed to the best interest of the company.

Revised Law

Sec. 911.063. CREATION OF LOCAL CHAPTERS AND DISTRICTS. (a) A farm mutual insurance company's bylaws may provide for:

(1) the organization of local chapters to transact the company's business; and

(2) the creation of districts in and for which directors may be elected.

(b) The bylaws may also provide that delegates from the company's local chapters are the company's supreme governing body.

(c) The company may consider the hazards against which the company insures and the company's classes of risks and territory of operation in organizing the local chapters and creating the districts. (V.T.I.C. Art. 16.08, Subsec. (f).)

Source Law

(f) The by-laws of farm mutual insurance companies may provide for the organization of local chapters for the transaction of their business and for the creation of districts in and for which their directors may be elected. The by-laws may also provide that delegates from local chapters constitute the supreme governing body of the company. In the organization of local chapters, and the creation of the districts, the hazards insured against, and the classes of risks, as well as the territory of operation, may be taken into consideration.

Revised Law

Sec. 911.064. POLICYHOLDER MEETINGS. (a) A farm mutual insurance company shall hold a policyholder meeting to elect directors and transact business at the time and place and in the manner prescribed by the company's bylaws.

(b) A special meeting of a company's policyholders may be called by:

(1) the president, the general manager, or one-third of the company's directors; or

(2) the commissioner. (V.T.I.C. Art. 16.08, Subsec.

(g) (part).)

Source Law

(g) The meetings of the policyholders of farm mutual insurance companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third (1/3) of the Directors of the Company, or the State Board of Insurance.

. . .

Revised Law

Sec. 911.065. VOTING BY POLICYHOLDER. (a) Each policyholder of a farm mutual insurance company is entitled to only one vote at a policyholders' meeting.

(b) A policyholder may not vote by proxy. (V.T.I.C.

Art. 16.08, Subsec. (g) (part).)

Source Law

(g) . . .

Each policyholder in a farm mutual insurance company shall be entitled to only one vote in all policyholders' meetings.

No voting by proxy shall be permitted.

Revised Law

Sec. 911.066. AUTHORITY TO PROHIBIT WAIVER OF BYLAWS. A farm mutual insurance company may provide in its bylaws that a company adjuster, representative appointed by the company, or local chapter or officer or agent elected by the local chapter may not waive a provision in the company's constitution or bylaws or in a policy issued by the company. (V.T.I.C. Art. 16.09.)

Source Law

Art. 16.09. Such companies may provide in their by-laws that local chapters, and the officers and agents elected by such local chapters, company adjusters or appointed representatives, do not have the power to waive any provision of the constitution, by-laws or policy.

Revised Law

Sec. 911.067. APPLICATION FOR EXTENSION OF CHARTER FOR CERTAIN COMPANIES; TERM. (a) Before a farm mutual insurance company's charter expires, the company may apply to the department for an extension of the company's charter if:

(1) the company was chartered, holding a certificate of authority, and operating before May 21, 1973, under Chapter 16, Insurance Code, as it existed on that date; or

(2) the company was organized and engaging in business before April 6, 1937, and the company continues to engage in business.

(b) A farm mutual insurance company described by Subsection (a) and whose charter has expired may apply to the department to have the charter extended perpetually if the company is engaged in business in this state.

(c) The term of the charter begins on the date that the charter is extended or, if the original charter expired before the charter is extended, the date the original charter expired.

(d) An application for an extension must be authorized by either a two-thirds majority vote of the company's directors or by a simple majority vote of those voting at a policyholders' meeting and must:

- (1) state in full the charter to be extended;
- (2) state the period for which the charter is to be extended; and
- (3) be signed and acknowledged by the president and secretary of the company.

(e) A company whose charter is extended retains the rights, privileges, and immunities granted the company under the company's original charter.

(f) The department shall charge and collect a fee of \$10 for the extension of a farm mutual insurance company's charter. (V.T.I.C. Art. 16.03, Subsec. (a) (part); Art. 16.21 (part); Art. 16.22, Subsec. (a) (part).)

Source Law

Art. 16.03. (a) Farm mutual companies now chartered and duly operating under Chapter 16, Insurance Code, and having heretofore issued to them a certificate of authority by the State Board of Insurance may renew their charters as provided in Article 16.21 of this chapter.

. . .

Art. 16.21. Any farm mutual insurance company, organized and in business prior to April 6, 1937, and still in business, may at any time before its charter expires by lapse of time, have its charter extended perpetually, and shall, under the extended charter, continue to have and enjoy all the rights, privileges and immunities that it had under the original charter; provided, however, that it is first authorized to extend its said charter either by a two-thirds majority vote of all of its directors, or by a simple majority vote of those voting at a meeting of its policyholders. The application for such extensions shall set out in haec verbae the charter to be extended and it shall state the time to which it is to be extended and be signed and acknowledged by the president and secretary of the company.

Any such company whose charter has expired or may hereafter expire by lapse of time, but is or shall be still doing business in this State, may have its charter renewed for a perpetual term from the time of the

expiration of the former existing charter in like manner as charters may be extended as provided in the paragraph preceding, and from the time of such renewal it shall be entitled to all the rights, privileges and immunities it had and enjoyed under the prior existing charter.

. . .

Art. 16.22. (a) For the renewal and extension of the granting of any charter, the department shall charge and collect a filing fee of Ten (\$10.00) Dollars

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 16.03, refers to farm mutual insurance companies "now chartered." That provision was enacted by Chapter 139, Acts of the 63rd Legislature, Regular Session, 1973, which took effect May 21, 1973. The revised law substitutes that date for the quoted language.

(2) Subsection (a), V.T.I.C. Article 16.03, provides that a farm mutual insurance company may "renew" the company's charter. The revised law substitutes "extend" for "renew" because, according to the Texas Department of Insurance, "extension" and "renewal" of a farm mutual insurance company's charter are synonymous. Throughout this chapter, comparable changes have been made to ensure consistent use of terminology.

(3) V.T.I.C. Article 16.21 requires that an application for an extension of a farm mutual insurance company's charter "set out in haec verbae the charter to be extended." The revised law substitutes "in full" for "in haec verbae" because it is clear from the context that the charter must be set out "in full" and that term is more commonly used.

Revisor's Note

(End of Subchapter)

V.T.I.C. Article 16.03, in part, and Article 16.21, in part, provide procedures by which certain unincorporated farm mutual insurance companies may apply for a charter

not later than May 21, 1976. The revised law omits those provisions as executed. The omitted law reads:

Art. 16.03. (a) . . .

Those farm mutual companies or associations now operating under a certificate of authority issued by the State Board of Insurance which were organized and operating prior to April 6, 1937, but not yet incorporated, shall be granted a charter as provided in Article 16.21 of the Insurance Code if application therefor is made prior to the expiration of three (3) years from the effective date of this Act.

Art. 16.21. . . .

Any such unincorporated farm mutual insurance company which has heretofore been in business prior to April 6, 1937, and is still in business, and permitted currently to operate under a certificate of authority issued by the State Board of Insurance and has paid all its losses promptly according to contract, shall at any time prior to the expiration of three (3) years from the effective date of this Act, when authorized to do so by two-thirds of its directors, or by a majority vote of its policyholders voting at any annual meeting or special meeting called for that purpose, apply for a charter and be incorporated for a perpetual term as a farm mutual insurance company under this chapter without compliance with the preceding Articles 16.03, 16.04, 16.05 and 16.06. The application for such charter shall state its name, its purpose, the location of its principal office, the number and names of its directors, and the nature and value of its assets, and it shall be signed and acknowledged by its president and secretary. It shall thereupon be entitled to a charter and to function and do business as a farm mutual insurance company, and to enjoy the same rights, privileges and immunities that it had and enjoyed as an unincorporated company, except as otherwise herein provided.

Any such unincorporated farm mutual insurance company until receiving its charter

shall nevertheless be subject to the provisions and requirements of this chapter to the extent pertinent.

. . .

[Sections 911.068-911.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Revised Law

Sec. 911.101. AUTHORITY TO ENGAGE IN BUSINESS. Except to the extent of any conflict with this chapter, a farm mutual insurance company must hold a certificate of authority under Section 801.051 to engage in the business of insurance in this state under this chapter. (V.T.I.C. Art. 16.24, Subsec. (b) (part).)

Source Law

(b) Regardless of the preceding portion of this Article, Articles . . . 1.14, . . . of this code shall apply to and govern farm mutual insurance companies except where such Articles or portions thereof are in conflict with the provisions of Chapter 16 of the Insurance Code.

Revisor's Note

Subsection (b), V.T.I.C. Article 16.24, provides that a farm mutual insurance company is subject to V.T.I.C. Article 1.14. That article, revised as part of Chapter 801 of this code, relates to the issuance of a certificate of authority to engage in business in this state. For clarity and consistency within this code, the revised law substitutes for the reference to the cited article an explicit statement that a farm mutual insurance company must obtain a certificate of authority to engage in the business of insurance in this state.

[Sections 911.102-911.150 reserved for expansion]

SUBCHAPTER D. POLICIES AND COVERAGE

Revised Law

Sec. 911.151. KINDS OF INSURANCE AUTHORIZED. (a) A farm mutual insurance company may insure property against loss or damage by:

- (1) fire, lightning, explosion, theft, windstorm, hurricane, hail, riot, civil commotion, smoke, aircraft, or land

vehicles; or

(2) any other hazard against which any other fire or windstorm insurance company operating in this state under Chapter 862 may write insurance on property described by Subsection (b).

(b) The company may write insurance against the hazards described by Subsection (a) on:

(1) a rural or urban dwelling and attendant outhouses and yard buildings and all their contents for home and personal use, musical instruments and libraries, barns and ranch buildings of any description and vehicles and implements used on or about barns or ranch buildings;

(2) agricultural products that are produced or kept on farms or ranches;

(3) a church building, fraternal lodge hall, private or church school, or nonindustrial use building owned by a nonprofit organization, regardless of the location;

(4) a trailer or mobile home; and

(5) growing crops if the insurance is reinsured by:

(A) the Federal Crop Insurance Corporation under Section 508, Federal Crop Insurance Act (7 U.S.C. Section 1508); or

(B) a property and casualty insurance company that:

(i) is authorized to write insurance in this state; and

(ii) has a rating by the A.M. Best Company of A- or better. (V.T.I.C. Art. 16.01, Subsecs. (a) (part), (b) (part).)

Source Law

Art. 16.01. (a) [Farm mutual insurance companies are companies organized on the mutual or cooperative plan] against loss or damage to property below specified by fire, lightning, explosion, theft, windstorm, hurricane, hail, riot, civil commotion, smoke, aircraft and land vehicles, [and heretofore issued a certificate of authority by the State Board of Insurance to operate under the provisions of Chapter 16 of the Insurance Code;] such farm mutuals are authorized to write insurance against loss or damage from any hazard specified herein or that any other fire or windstorm insurance company operating in Texas under the provisions of Chapter 6 of the Insurance Code may write on property below specified.

(b) Farm mutual insurance companies may

insure rural and urban dwellings and attendant outhouses and yard buildings, and all their contents for home and personal use, musical instruments and libraries, barns and ranch buildings of every description together with vehicles and implements used thereon, and agricultural products produced or kept on farms and ranches. . . . except church buildings, fraternal lodge halls, private and church schools, and non-industrial use buildings owned by non-profit organizations may be insured, wherever situated. [Farm mutual insurance companies shall not insure any type of commercial or private passenger motor vehicle] except trailers and mobile homes. A farm mutual insurance company may not insure growing crops unless that insurance is reinsured by:

(1) the Federal Crop Insurance Corporation under Section 508, Federal Crop Insurance Act (7 U.S.C. Section 1508); or

(2) a property and casualty insurance company licensed to write insurance in this state that has a rating by the A.M. Best Company of A- or better.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 16.01, defines "farm mutual insurance company." The revised law omits the definition as unnecessary because it is duplicative of the substantive provisions of this chapter. The omitted law reads:

(a) Farm mutual insurance companies are companies organized on the mutual or cooperative plan [against loss or damage to property below specified by fire, lightning, explosion, theft, windstorm, hurricane, hail, riot, civil commotion, smoke, aircraft and land vehicles,] and heretofore issued a certificate of authority by the State Board of Insurance to operate under the provisions of Chapter 16 of the Insurance Code;

(2) Subsection (b), V.T.I.C. Article 16.01, refers to a property and casualty insurance company "licensed" to write insurance in this state. The revised law

substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 911.152. PROPERTY AND HAZARDS AGAINST WHICH COMPANY MAY NOT INSURE. (a) A farm mutual insurance company may not insure:

(1) a building, or the building's contents, with more than 40 percent of the building's floor space or more than 500 square feet of floor space, whichever is less, used for business purposes, except as provided by Section 911.151(b)(3); or

(2) any type of commercial or private passenger motor vehicle, except as provided by Section 911.151(b)(4).

(b) A farm mutual insurance company may not assume or issue an insurance policy that:

(1) indemnifies an insured for liability to a third party the insured incurs in committing a tortious act; or

(2) covers an insured for liability the insured incurs under a contract to maintain, hold, or store property belonging to another. (V.T.I.C. Art. 16.01, Subsec. (b) (part); Art. 16.02.)

Source Law

[Art. 16.01]

(b) . . . No building, or its contents, with more than 40 per cent of its floor space or more than 500 square feet of floor space, whichever is the lesser amount, used for business purposes may be insured by a farm mutual insurance company [except church buildings, fraternal lodge halls, private and church schools, and non-industrial use buildings owned by non-profit organizations may be insured, wherever situated.] Farm mutual insurance companies shall not insure any type of commercial or private passenger motor vehicle [except trailers and mobile homes.] . . .

Art. 16.02. No farm mutual insurance company shall assume or issue any contract of insurance that seeks to indemnify an insured for liability incurred by the insured to third parties for the commission of any tortious act by the insured. No farm mutual insurance company shall assume or issue any contracts of insurance covering the liability

of any insured under a contract to maintain, hold or store property belonging to others.

Revisor's Note

V.T.I.C. Article 16.02 prohibits a farm mutual insurance company from issuing a "contract of insurance" against certain risks. For consistency of terminology in this chapter, the revised law substitutes "policy" for "contract" in this section and throughout this chapter.

Revised Law

Sec. 911.153. CONTRACT TERMS: INCORPORATION OF BYLAWS. (a) A farm mutual insurance company's bylaws are part of each contract between the company and an insured.

(b) Each policy issued by the company must state that the company's bylaws are part of the contract. (V.T.I.C. Art. 16.08, Subsec. (e).)

Source Law

(e) By-laws of the company shall always constitute a part of the contract with the insured and the policy shall so state.

Revised Law

Sec. 911.154. CONTRACT TERMS: ADOPTION OF ADDITIONAL PROVISIONS. (a) A farm mutual insurance company may adopt as part of the company's bylaws and insurance policies any provision contained in the standard policies of companies writing fire or windstorm insurance as adopted by the commissioner to the extent the provision applies to a farm mutual insurance company.

(b) A company that adopts a provision as provided by Subsection (a) shall state in the company's bylaws or in each policy issued by the company that the provision has been adopted as provided by Subsection (a). (V.T.I.C. Art. 16.08, Subsec. (c).)

Source Law

(c) Farm mutual companies may adopt all rules, regulations, provisions and requirements contained in the standard policies of companies writing fire or windstorm insurance as promulgated from time to time by the State Board of Insurance, insofar as they are applicable to farm mutual insurance companies, as a part of their by-laws and contracts of insurance, which adoption shall be evidenced either by

statement to that effect in the by-laws or in the policies.

Revisor's Note

Subsection (c), V.T.I.C. Article 16.08, refers to "rules, regulations, provisions and requirements." The revised law omits the references to "rules," "regulations," and "requirements" because, in context, those terms are included within the meaning of "provisions."

Revised Law

Sec. 911.155. REPAIR OR REPLACEMENT OF INSURED PROPERTY. The company's bylaws may authorize the company to require, at its option, that all or a percentage of the money paid for a loss be used to replace or repair the damaged or destroyed property. The requirement may apply equally to personal and real property, including personal and real property exempt from execution, such as a homestead or a building on the homestead. The company may provide in its bylaws that the requirements of Section 862.053 do not apply to its insurance policies. (V.T.I.C. Art. 16.08, Subsec. (d).)

Source Law

(d) The by-laws may also provide that when a loss occurs, the companies may, at their option, provide and require that all or a certain per cent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed, provided such provision may be made equally applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homesteads and exempt personal property. Provided also, that farm mutual companies may in their by-laws provide that the requirements of Article 6.13 of this Code shall not be applicable to their contracts of insurance.

[Sections 911.156-911.200 reserved for expansion]

SUBCHAPTER E. CHARGES, PREMIUMS, AND ASSESSMENTS

Revised Law

Sec. 911.201. PAYMENT OF PREMIUM OR ASSESSMENT. (a) A farm mutual insurance company's bylaws must:

- (1) state the time and manner of the levy and payment

of a premium or assessment for policies written by the company;

(2) in addition to the regular premium or assessment under Subdivision (1), establish the contingent liability of a policyholder for all losses accrued while a policy is in force in the amount of at least \$1 for each \$100 of insurance coverage, except as provided by Subsection (b); and

(3) state the time and manner of payment of a policyholder's contingent liability established under Subdivision (2).

(b) A company's bylaws may provide for the issuance of policies without contingent liability as required by Subsection (a)(2) if the company has policyholder surplus in the amount of at least \$1,000,000.

(c) As required by its bylaws, a farm mutual insurance company shall establish and levy premiums and assessments, including the contingent liability of a policyholder, for all insurance written by the company.

(d) A policyholder shall pay premiums and assessments as required by the company's bylaws.

(e) The premium or assessment for a policy shall be secured by a lien on each item of real or personal property, other than a homestead, covered by the policy, including the land on which an insured building is located. The lien remains on the property while the insured owns the property.

(f) A conservator, receiver, or liquidator of a farm mutual insurance company may not make an assessment against a policyholder for the contingent liability established under Subsection (a)(2). (V.T.I.C. Art. 16.08, Subsecs. (a), (b); Art. 16.10 (part); Art. 16.11 (part).)

Source Law

Art. 16.08. (a) The by-laws will state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

(b) They shall also fix the liability of the policyholders for all losses accrued while the policies are in force in addition to the regular premium or assessments for the same and the time and manner of the payment of such liability; provided that the amount of such contingent liability shall not be less than One (\$1.00) Dollar for each One Hundred (\$100.00) Dollars of insurance in such policy. However, the by-laws may provide for the issuance of policies without such contingent liability if the company has policyholder surplus of at least One Million

(\$1,000,000.00) Dollars.

Art. 16.10. All premiums and assessments, including the contingent liability of policyholders for all insurance written by farm mutual insurance companies shall be fixed, levied and paid as and when required by the by-laws of the companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remain the property of the insured.

. . .

Art. 16.11. . . .

No assessment may be made against a policyholder for the contingent liability established under Article 16.08(b) of this code by the conservator, receiver, or liquidator of a farm mutual insurance company.

Revised Law

Sec. 911.202. NONPAYMENT OF PREMIUMS OR ASSESSMENTS: FILING OF ACTION. (a) A farm mutual insurance company may bring an action in the county in which the company's home office is located against a policyholder who defaults on the payment of a premium or an assessment.

(b) The company is entitled to judgment against the policyholder for:

- (1) delinquent premiums or assessments;
- (2) foreclosure of the lien described by Section 911.201; and
- (3) the costs of an action, including a reasonable attorney's fee. (V.T.I.C. Art. 16.10 (part).)

Source Law

Art. 16.10. . . .

If default is made by a policyholder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home county of the company and the company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said

lien, together with all costs of suit including a reasonable attorney's fee.

Revisor's Note

V.T.I.C. Article 16.10 provides that a farm mutual insurance company may file suit "in any court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.0011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 911.203. POLICYHOLDER LIABILITY. A policyholder is liable for the losses of a farm mutual insurance company only as provided by the company's constitution and bylaws, and only in proportion to the amount that the premium or assessment for the policyholder's policy bears to the total amount of premiums or assessments for all policies written by the company in the class to which the policyholder's policy belongs. (V.T.I.C. Art. 16.11 (part).)

Source Law

Art. 16.11. Policyholders shall be liable for losses of the company only as prescribed in the constitution and by-laws of the company, and that only in proportion that the premiums or assessments for the insurance of any policy bear to the total amount of the premiums or assessments for all the insurance in the class to which the policy belongs.

. . .

[Sections 911.204-911.250 reserved for expansion]

SUBCHAPTER F. AGENTS

Revised Law

Sec. 911.251. LICENSING AND APPOINTMENT OF CERTAIN AGENTS.
(a) An individual or firm may not solicit, write, sign, execute, or deliver insurance policies, bind insurance risks, collect premiums, or otherwise act on behalf of a farm mutual insurance company in the capacity of a local recording agent in the solicitation or sale of crop insurance unless the individual or firm is licensed under Article 21.14.

(b) A farm mutual insurance company may not appoint and act

through an agent who qualifies for a license as an agricultural insurance agent under Article 21.14-2. (V.T.I.C. Art. 16.24A.)

Source Law

Art. 16.24A. (a) No person or firm shall solicit, write, sign, execute or deliver insurance policies, bind insurance risks, collect premiums, or otherwise act in the capacity of a local recording agent in the solicitation or sale of crop insurance for a farm mutual insurance company unless the person or firm is licensed under Article 21.14 of this code.

(b) A farm mutual insurance company may not appoint and act through an agent who qualifies for a license as an agricultural insurance agent under Article 21.14-2 of this code.

[Sections 911.252-911.300 reserved for expansion]

SUBCHAPTER G. REGULATION OF FARM MUTUAL INSURANCE COMPANY;
FINANCIAL REQUIREMENTS

Revised Law

Sec. 911.301. GENERAL OPERATING REQUIREMENTS. (a) In this section, "rural property" means property located outside an area of land subject to the taxing authority of a municipality with a population of more than 2,500.

(b) A farm mutual insurance company shall:

(1) maintain a majority of the company's total insurance in force on rural property at all times the insurance is written; and

(2) operate on a regular and special assessment basis.

(c) Except as otherwise approved by the commissioner, a farm mutual insurance company may not use more than 33 percent of the company's gross income for expenses.

(d) Property that is rural property at the time the property is originally insured continues to be classified as rural property if:

(1) the policy or policies that insure the property are written by the same farm mutual insurance company; and

(2) the coverage continues in effect without lapse of coverage for more than 60 days. (V.T.I.C. Art. 16.01, Subsec. (c) (part).)

Source Law

(c) Each farm mutual insurance company . . . must maintain a majority of its total

insurance in force on rural property at all times at the time of writing thereof, and operate on a regular and special assessment basis and use not more than 33 per cent (33%) of their gross income for expenses unless otherwise approved by the Commissioner of Insurance. "Rural property" shall mean any property located outside an urban area. "Urban area" as used herein shall mean that land area subject to the taxing authority of any incorporated city or town having a population by the last published federal census figures of more than 2,500 inhabitants. Property located in what is defined as rural property by the preceding sentence at the time it is first insured shall thereafter continue to be classified as rural property so long as insurance thereon continues by policy or policies written by the same farm mutual insurance company without lapse in effective coverage for longer than sixty (60) days.

Revisor's Note

(1) Subsection (c), V.T.I.C. Article 16.01, refers to an "incorporated city or town." The revised law omits "incorporated" and substitutes "municipality" for "city or town" because under the Local Government Code all municipalities must be incorporated and "municipality" is the term used in that code.

(2) Subsection (c), V.T.I.C. Article 16.01, describes a population of more than 2,500 inhabitants to be determined according to the "last published federal census figures." The revised law omits the reference to the federal census as unnecessary. Section 311.005(3), Government Code (Code Construction Act), and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

Revised Law

Sec. 911.302. LOCATION OF BUSINESS. (a) Except as provided by Subsection (b), a farm mutual insurance company may write insurance in:

(1) the county in which the company's home office is

located at the time of incorporation and in any county adjoining the county in and for which the company is organized;

(2) any county in which another farm mutual insurance company is not organized; and

(3) any county in this state if the company's reserve fund exceeds \$200,000 in cash or securities in which the reserve fund of a stock fire insurance company may be invested.

(b) This section does not apply to a farm mutual insurance company organized and operating in this state under a certificate of authority issued before May 21, 1973, under former Chapter 16 of this code. (V.T.I.C. Art. 16.07.)

Source Law

Art. 16.07. A farm mutual insurance company may write insurance (a) in the county where its home office is located at the time of incorporation and in any county adjoining the county in and for which it is organized; or (b) in any county in which no farm mutual insurance company has been organized; or (c) anywhere in Texas if its reserve fund exceeds the sum of Two Hundred Thousand (\$200,000.00) Dollars in cash or securities in which the reserve fund of stock fire insurance companies may be invested; provided, however, that the provisions of this entire article shall not apply to any farm mutual insurance company now organized and operating in Texas and having heretofore been issued a certificate of authority under Chapter 16 prior to the effective date of this Act.

Revisor's Note

V.T.I.C. Article 16.07 provides an exemption from the application of the article for a farm mutual insurance company organized and operating under a certificate of authority issued before "the effective date of this Act." The quoted language was enacted by Chapter 139, Acts of the 63rd Legislature, Regular Session, 1973, which took effect May 21, 1973. The revised law substitutes that date for the quoted language.

Revised Law

Sec. 911.303. REINSURANCE. (a) A farm mutual insurance company may reinsure the company's risks with another company against any hazard against which the farm mutual insurance

company is permitted to insure.

(b) The farm mutual insurance company may contract for mutual or reciprocal reinsurance with another company on the mutual or cooperative plan subject to the following conditions:

(1) the farm mutual company may assume the reinsurance on the risks of the other company only if the other company reinsures the risks of the farm mutual insurance company; and

(2) the farm mutual company may write or assume the reinsurance only on property that the company is authorized to insure and that is located in this state.

(c) A farm mutual insurance company that reinsures another company's property is liable for the losses of the other company only as specified in the reinsurance contract. The farm mutual insurance company does not become a member or partner of the other company as a result of the reinsurance.

(d) A farm mutual insurance company may pay or collect additional assessments or premiums for the purpose of a contract described by Subsection (b). (V.T.I.C. Art. 16.17.)

Source Law

Art. 16.17. Farm mutual insurance companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other companies on a mutual or cooperative plan; provided that no farm mutual shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a farm mutual reinsures the property of another company, it shall not by reason of such fact be, or become a member or partner, of such company, but shall only become liable for the losses of such other company as specified in the contract of interinsurance and not otherwise; and provided further, that a farm mutual shall only have authority to reinsure the risks of another company in consideration of the fact that such other company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

Revisor's Note

V.T.I.C. Article 16.17 refers to mutual or reciprocal "reinsurance" and to a contract of "interinsurance." The revised law substitutes "reinsurance" for "interinsurance" because, in this context, the terms are synonymous and "reinsurance" is the term more commonly used.

Revised Law

Sec. 911.304. ANNUAL REPORTS REQUIRED. (a) A farm mutual insurance company shall annually prepare a written report as required by this section and submit the report to the company's policyholders.

(b) The annual report must show:

(1) the rate and total amount of premiums or assessments paid during the year for the policyholders' insurance;

(2) the company's operating expenses; and

(3) the name of each claimant and the amount paid for each loss suffered, except as provided by Subsection (c).

(c) The company is not required to report the names of claimants and the amounts paid to claimants in one class of insurance to the policyholders in another class of insurance, unless the policyholders in the other class are liable for the losses of the class in which the claimants are members.

(d) The company shall make available to each policyholder a copy of the annual report at the time and in the manner prescribed by the company's bylaws.

(e) A farm mutual insurance company shall make annual reports to the department as required by the commissioner or by law. (V.T.I.C. Art. 16.18.)

Source Law

Art. 16.18. Farm mutual insurance companies shall annually make and submit written reports to their policyholders showing (a) the rate and total amount of premiums or assessments paid during the year for their insurance, (b) the operating expenses, (c) the names of the claimants and the amounts paid each for the losses suffered; and make available to each policyholder a copy of such report as and when prescribed in the by-laws of the company; provided, however, that it shall not be necessary to report the names and amounts of claims of policyholders of one class of insurance to the policyholders in another

class, unless the policyholders in such other class are liable for the losses of the former class.

They shall also make such reports annually to the State Board of Insurance as the Board may require of them, or as shall be required by law.

Revised Law

Sec. 911.305. EXAMINATION OF COMPANY. The department shall examine each farm mutual insurance company as often as the department determines necessary. (V.T.I.C. Art. 16.19.)

Source Law

Art. 16.19. The State Board of Insurance shall as often as it deems necessary, examine farm mutual insurance companies.

Revised Law

Sec. 911.306. SOLVENCY REQUIREMENTS. (a) A farm mutual insurance company is solvent if:

(1) the company's assets, including the policyholders' contingent liability for the company's losses, are reasonably sufficient to pay the company's losses according to the terms of the policies; and

(2) the company's required unencumbered surplus, if any, has not been impaired in excess of 16-2/3 percent of the required unencumbered surplus.

(b) A company that is solvent as provided by this section may continue to engage in the business of insurance. (V.T.I.C. Art. 16.20.)

Source Law

Art. 16.20. A farm mutual insurance company or association shall be considered solvent and entitled to continue business if its assets, including the contingent liability of its policyholders for its losses, are reasonably sufficient to pay its losses, according to the terms of the policies and it has not impaired its required free surplus, if any, to any extent in excess of 16 2/3 per cent of such surplus.

Revisor's Note

V.T.I.C. Article 16.20 provides that a farm mutual insurance company "or association" is solvent if, in addition to

other requirements, the company or association has sufficient assets to pay losses. The revised law omits the reference to "association" because under the law all farm mutual insurance companies must be incorporated. V.T.I.C. Article 16.05, revised in relevant part as Section 911.056(b), prohibits an association from issuing insurance policies and paying losses under a permit to solicit insurance. Thus, an association will not have sufficient assets to pay losses because the association is prohibited from issuing policies or paying losses. An association will have assets and the authority to pay losses only after it forms a farm mutual insurance company.

Revised Law

Sec. 911.307. RESERVE REQUIREMENTS. (a) A farm mutual insurance company's board of directors may provide for the accumulation of reserve funds.

(b) The company shall invest the reserve funds in the same type of securities in which the reserve funds of other fire insurance companies are required to be invested by law. (V.T.I.C. Art. 16.15.)

Source Law

Art. 16.15. The Board of Directors of farm mutual insurance companies may provide for the accumulation of reserve funds, to be invested in such securities as the reserve funds of other fire insurance companies are by law required to be invested.

Revised Law

Sec. 911.308. SURPLUS REQUIREMENTS. (a) A farm mutual insurance company organized between January 1, 1955, and May 21, 1973, shall maintain an unencumbered surplus of \$2 for each \$100 of insurance in force or an unencumbered surplus of \$200,000, whichever amount is less.

(b) A farm mutual insurance company organized under this chapter on or after May 21, 1973, shall maintain an unencumbered surplus in cash of \$2 for each \$100 of insurance in force or an unencumbered surplus of \$200,000, whichever amount is greater.

(c) A company described by Subsection (b) shall invest the minimum unencumbered surplus as provided by Section 822.204. The company may invest funds in excess of the minimum unencumbered surplus as provided by Article 2.10.

(d) A company described by Subsection (b) shall, without

delay, restore the minimum unencumbered surplus if the surplus is impaired. The department shall proceed as provided by Section 5, Article 1.10. (V.T.I.C. Art. 16.06 (part); Art. 16.25.)

Source Law

Art. 16.06. . . .

(b) [The free surplus required herein] in cash. All companies organized after the effective date of this Act under this Chapter . . . [shall at time of incorporation and] at all times thereafter have free surplus equal to \$2.00 for each \$100.00 of insurance in force, or \$200,000.00 whichever amount is greater invested as provided in Article 2.08 of this Code as now provided or as amended in the future. Funds in excess of such minimum surplus may be invested as now provided in Article 2.10 of this Code or as amended in the future. If such free surplus is at any time impaired, it must be restored without delay under the provisions of this Chapter; the State Board of Insurance shall proceed as is provided in Section 5 of Article 1.10 of this Code as it now exists or as amended in the future.

Art. 16.25. All farm mutual insurance companies organized between January 1, 1955, and the effective date of this Act shall always have a free surplus of \$2.00 for each \$100.00 of insurance in force; or a free surplus of \$200,000.00 whichever amount is less.

Revisor's Note

V.T.I.C. Articles 16.06 and 16.25 refer to the "effective date of this Act." That provision was enacted by Chapter 139, Acts of the 63rd Legislature, Regular Session, 1973, which took effect May 21, 1973. The revised law substitutes that date for the quoted language.

CHAPTER 912. COUNTY MUTUAL INSURANCE COMPANIES

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CHAPTER 912. COUNTY MUTUAL INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 912.001. DEFINITIONS. In this chapter:

(1) "Member" includes a policyholder or another person who is insured by a county mutual insurance company.

(2) "Policy" includes a certificate or contract of insurance, certificate of membership, or other document through which insurance is effected or evidenced. (V.T.I.C. Art. 17.25, Sec. 3 (part).)

Source Law

[Art. 17.25]

Sec. 3. The following terms when used in this article shall be defined:

. . .

"Member" shall include

policyholders or any persons insured by a company, by whatsoever means the insurance may be effective.

"Policy" shall include any insurance certificate or contract or insurance, certificate of membership or other document through which insurance is effected or evidenced.

. . .

Revisor's Note

(1) Section 3, V.T.I.C. Article 17.25, defines "board" to mean the Board of Insurance Commissioners. Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state 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. The
omitted law reads:

Sec. 3. . . .

"Board" shall refer to the Board of
Insurance Commissioners of the State of
Texas.

. . . .

(2) Section 3, V.T.I.C. Article 17.25,
defines "member" to include a policyholder or
other insured "by whatsoever means the
insurance may be effective." The revised law
omits the quoted language as unnecessary
because it is clear from the definition of
"policy" under that section, revised as
Section 912.001(2) of this chapter, that
insurance provided by a county mutual
insurance company may be effected through a
variety of documents.

(3) Section 3, V.T.I.C. Article 17.25,
defines "insolvent." The revised law omits
the definition as unnecessary because it is
duplicative of the substantive provisions of
this chapter relating to insolvency. The
omitted law reads:

Sec. 3. . . .

"Insolvent" shall refer to and
include any condition or situation which is
so designated herein and which is violative
of the provisions of this article.

. . . .

Revised Law

Sec. 912.002. LIMITED EXEMPTION FROM INSURANCE LAWS;
APPLICABILITY OF CERTAIN LAWS. (a) A county mutual insurance
company is exempt from the operation of all insurance laws of
this state, including the flexible rating program under Article
5.101, except laws that are made applicable by their specific
terms or except as specifically provided by this chapter.

(b) A county mutual insurance company is subject to:

(1) Sections 38.001 and 822.204; and

(2) Articles 1.15, 1.15A, 1.16, 2.10, 4.10, 5.12,
5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49. (V.T.I.C.
Art. 17.22.)

Source Law

Art. 17.22. (a) County mutual insurance companies shall be exempt from the operation of all insurance laws of this state, except such laws as are made applicable by their specific terms or as in this Chapter specifically provided. In addition to such other Articles as may be made to apply by other Articles of this Code, county mutual insurance companies shall be subject to:

(1) Subdivision 7 of Article 1.10 of this Code; and

(2) Articles 1.15, 1.15A, 1.16, 1.24, 2.04, 2.05, 2.08, 2.10, 4.10, 5.12, 5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49 of this Code.

(b) The flexible rating program created under Subchapter M, Chapter 5, of this code does not apply to county mutual insurance companies.

Revisor's Note

Section (a), V.T.I.C. Article 17.22, provides that a county mutual insurance company is subject to "Subdivision 7 of Article 1.10" of the Insurance Code, which was codified in 1999 in part as Section 82.002 of this code. The revised law omits that provision as unnecessary because Section 82.002 applies by its own terms to a county mutual insurance company.

Revised Law

Sec. 912.003. FEES. The department shall charge and collect a fee in the amount of \$1 for the issuance of a county mutual insurer's certificate of authority. (V.T.I.C. Art. 17.21(a).)

Source Law

Art. 17.21. (a) The department shall charge and collect a fee of One (\$1.00) Dollar for the issuance of a certificate of authority or renewal thereof to all companies operating under this chapter.

Revisor's Note

Section (a), V.T.I.C. Article 17.21, authorizes the Texas Department of Insurance to charge and collect a fee for the issuance

or renewal of a county mutual insurance company's certificate of authority. Under V.T.I.C. Article 17.02, revised in part as Section 912.004, no new county mutual insurance company may be formed, and thus the department may not issue a certificate of authority to a new company. As a result, the provision has application only to the extent that the department may reissue a certificate of authority to a company whose certificate has been revoked.

The revised law omits the reference to the renewal of a certificate of authority as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending V.T.I.C. Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . to the extent that they require periodic renewal of certificates of authority."

Revised Law

Sec. 912.004. FORMATION OF NEW COUNTY MUTUAL COMPANY PROHIBITED. A new county mutual insurance company may not be formed under this chapter. (V.T.I.C. Art. 17.02 (part).)

Source Law

Art. 17.02. No county mutual insurance company may be formed under the provisions of this Chapter after the effective date of the Act of which this section is a part, except such as are formed pursuant to permits issued under Article 17.03 of this Code prior to the effective date of this amendment. . . .

Revisor's Note

V.T.I.C. Article 17.02, in part, prohibits the formation of a county mutual insurance company "after the effective date of the Act of which this section is a part, except such as are formed pursuant to permits issued under Article 17.03 of this Code prior to the effective date of this amendment." The referenced amendment took effect September 6, 1955. The revised law omits the quoted language as executed.

Revisor's Note
(End of Subchapter)

(1) V.T.I.C. Article 17.01 in part describes a "county mutual insurance company" and Section 3, V.T.I.C. Article 17.25, defines "company." The revised law omits the description and definition as unnecessary because they are duplicative of the substantive provisions of this chapter. The omitted law reads:

Art. 17.01. County Mutual Insurance Companies are companies organized for the purpose of insurance on the mutual or cooperative plan

[Art. 17.25]

Sec. 3. . . .

"Company" shall refer to and include all types of organizations, corporations, associations, companies or groups subject to the provisions of this article.

. . .

(2) V.T.I.C. Article 17.25 regulates the operation of companies subject to V.T.I.C. Chapter 17, revised as this chapter. Section 2, V.T.I.C. Article 17.25, states that the article applies to any company operating under Chapter 17, except for a farm mutual insurance company. The revised law omits Section 2 as unnecessary. The provision stating that Article 17.25 applies to a county mutual insurance company is omitted because it is clear from the remainder of that article that it applies to a county mutual insurance company. The provision excepting farm mutual insurance companies is omitted because it duplicates a provision contained in V.T.I.C. Chapter 16, revised as Chapter 911, which exempts farm mutual insurance companies from all other insurance laws except as specifically provided. This exemption would include an exemption from V.T.I.C. Chapter 17. Although the definition of "farm mutual insurance company" that is used in Chapter 16 differs from the

definition used in Article 17.25, it is clear from the legislative history that the currently applicable definition is contained in Chapter 16, and the legislature intended the two provisions to refer to the same companies. The omitted law reads:

Sec. 2. Any company operating under or subject to the provisions of this chapter excepting those companies which out of the total amount of insurance in force maintain more than sixty (60%) per cent in force on rural property and those companies operating on the assessment-as-needed plan, which shall hereafter be known as "Farm Mutual Insurance Companies," shall become subject to the provisions of this article and shall comply with the following requirements, to-wit:

. . .

(3) Section 3, V.T.I.C. Article 17.25, defines "assessment-as-needed plan" and "rural property." The revised law omits the definitions as unnecessary. Article 17.25 uses the terms "assessment-as-needed plan" and "rural property" only in Section 2, V.T.I.C. Article 17.25, which is also omitted from the revision for the reason stated in Revisor's Note (2) to the end of this subchapter. The omitted law reads:

Sec. 3. . . .

"Assessment-as-needed plan" shall refer to companies that other than for nominal reserve purposes assess members only when a loss or losses occur and who use not more than twenty-five (25%) per cent of their gross income for expenses.

. . .

"Rural Property" as the term is used in this article shall mean any property which has at least five (5) acres of cultivated or grazing land used exclusively with such insured property.

. . .

[Sections 912.005-912.050 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF COUNTY MUTUAL INSURANCE
COMPANY; DIRECTORS

Revised Law

Sec. 912.051. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a county mutual insurance company. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to county mutual insurance companies.

(b) On advance approval of the commissioner, a county mutual insurance company may pay dividends to its members. (V.A.C.S. Art. 1396-10.04, Sec. B (part).)

Source Law

[Art. 1396-10.04]

B. In so far as the same are not inconsistent with or contrary to any applicable provision of the Insurance Code of Texas, or any amendment thereto, the provisions of this Act shall apply to and govern . . . county mutual insurance companies; provided however, (a) that any such mutual insurance . . . companies may, upon advance approval of the Commissioner of Insurance, pay dividends to its members, and (b) that wherever in this 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 in so far as such mutual insurance companies . . . are concerned.

Revisor's Note

(1) Section B, V.A.C.S. Article 1396-10.04, states that the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) shall "apply to and govern" county mutual insurance companies. The revised law omits the reference to "govern" because, in context, "govern" is included within the meaning of "apply to."

(2) Section B, V.A.C.S. Article

1396-10.04, refers to the Insurance Code "or any amendment thereto." The revised law omits the reference to "any amendment thereto" because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(3) Section B, V.A.C.S. Article 1396-10.04, refers to a "duty, responsibility, power, [or] authority" of the secretary of state and commissioner of insurance. The revised law substitutes "power and duty" for the quoted phrase because "responsibility" is included within the meaning of "duty" and "authority" is included within the meaning of "power."

(4) Section B, V.A.C.S. Article 1396-10.04, refers to an act "vested in, required of, or to be performed by" the secretary of state and commissioner of insurance. The revised law omits the references to "vested in" and "required of" because, in context, these phrases are included within the meaning of the phrase "to be performed by."

Revised Law

Sec. 912.052. ELIGIBILITY OF BOARD OF DIRECTORS; TERM. (a) An individual is eligible to serve as a director of a county mutual insurance company if the individual is a policyholder who maintains insurance coverage in the amount of at least \$1,000 written by the company on the individual's property.

(b) Except as otherwise provided by the company's bylaws, a director serves for a term of one year or until the director's successor qualifies for office. (V.T.I.C. Art. 17.12.)

Source Law

Art. 17.12. Directors of county mutual insurance companies shall hold their office for one year after their election, and until their successors qualify, unless otherwise provided in their by-laws.

Only bona fide policyholders who carry insurance on their property in an amount not less than One Thousand (\$1,000.00) Dollars each in a company, shall be eligible to become or remain Directors of the same. When a Director reduces his said insurance below

such amount, he shall no longer be qualified to act as such Director.

Revised Law

Sec. 912.053. GENERAL POWERS OF BOARD OF DIRECTORS. The board of directors of a county mutual insurance company has the powers provided by the company's charter. (V.T.I.C. Art. 17.13.)

Source Law

Art. 17.13. The Board of Directors of county mutual insurance companies shall have such discretion, power and authority as their charter shall provide.

Revisor's Note

V.T.I.C. Article 17.13 refers to the board of director's "discretion, power and authority." The revised law omits the references to "discretion" and "authority" because the terms are included within the meaning of "power."

Revised Law

Sec. 912.054. AUTHORITY TO BORROW MONEY. (a) The board of directors of a county mutual insurance company may borrow money in an amount determined to be necessary to pay the company's accrued or unaccrued losses.

(b) The board may pledge as security for a loan the assets of the company, including the contingent liability of its policyholders. (V.T.I.C. Art. 17.10.)

Source Law

Art. 17.10. The Board of Directors of county mutual insurance companies may, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge the assets of the company including the contingent liability of the policyholders for such losses as security for such loans.

Revised Law

Sec. 912.055. CHARTER AND ARTICLES OF INCORPORATION. The charter and articles of incorporation of a county mutual insurance company must state:

(1) the name of the company, which must include the words "County Mutual Insurance Company";

(2) the location of the principal office of the company; and

(3) the number of the directors, which must be at least five. (V.T.I.C. Art. 17.04 (part).)

Source Law

Art. 17.04. [The charter and articles of incorporation of a county mutual insurance company shall state]

It shall also state the name of the company, which shall include the words "County Mutual Insurance Company," the place of its principal office; the number, . . . of its first directors, the number never to be less than five (5); and

Revised Law

Sec. 912.056. CREATION OF LOCAL CHAPTERS AND DISTRICTS. (a) A county mutual insurance company's bylaws may provide for:

(1) the organization of local chapters to transact the company's business; and

(2) the creation of districts in and for which directors may be elected.

(b) The bylaws may also provide that delegates from the company's local chapters are the company's supreme governing body.

(c) The company may consider the hazards against which the company insures and the company's classes of risks and territory of operation in organizing the local chapters and creating the districts. (V.T.I.C. Art. 17.07.)

Source Law

Art. 17.07. The by-laws of county mutual insurance companies may provide for the organization of local chapters for the transaction of their business and for the creation of districts in and for which their directors may be elected. The by-laws may also provide that delegates from local chapters constitute the supreme governing body of the company. In the organization of local chapters, and the creation of the districts, the hazards insured against, and the classes of risks, as well as the territory of operation, may be taken into consideration.

Revised Law

Sec. 912.057. POLICYHOLDER MEETINGS. (a) A county mutual insurance company shall hold a policyholder meeting to elect

directors and transact business at the time and place and in the manner prescribed by the company's bylaws.

(b) A special meeting of a company's policyholders may be called by:

(1) the president, the general manager, or one-third of the company's directors; or

(2) the commissioner. (V.T.I.C. Art. 17.15.)

Source Law

Art. 17.15. The meetings of the policyholders of county mutual insurance companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third (1/3) of the Directors of the company, or the Board of Insurance Commissioners.

Revised Law

Sec. 912.058. VOTING BY POLICYHOLDERS. (a) Each policyholder of a county mutual insurance company is entitled to only one vote at a policyholders' meeting.

(b) A policyholder may not vote by proxy unless the company's bylaws specifically authorize voting in that manner. (V.T.I.C. Art. 17.14.)

Source Law

Art. 17.14. Each policyholder in a county mutual insurance company shall be entitled to only one vote in all policyholders' meetings.

No voting by proxy shall be permitted unless it is specially authorized by the by-laws.

Revised Law

Sec. 912.059. AMENDMENT TO BYLAWS. (a) A majority of the members of a county mutual insurance company, either in person or by proxy when ratified by the board of directors, may amend the company's bylaws at a regular meeting or at a special meeting called for that purpose.

(b) Notice of a regular or special meeting at which an amendment to the bylaws will be considered must be mailed or delivered personally to each member.

(c) An amendment to the bylaws is not effective until approved by the commissioner as meeting the requirements of this chapter. (V.T.I.C. Art. 17.25, Sec. 13.)

Source Law

Sec. 13. By-laws of any such company may be amended by a majority of the members of the company present or represented by proxy when ratified by the board of directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners as being in conformity with this Act. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered must be mailed or delivered personally to all members.

Revised Law

Sec. 912.060. AUTHORITY TO PROHIBIT WAIVER OF BYLAWS. A county mutual insurance company may provide in its bylaws that a local chapter or an officer or agent elected by the local chapter may not waive a provision of the bylaws. (V.T.I.C. Art. 17.24.)

Source Law

Art. 17.24. Such companies may provide in their by-laws that local chapters and officers and agents elected by them do not have the power to waive any provision of such by-laws.

Revised Law

Sec. 912.061. APPLICATION FOR EXTENSION OF CHARTER; TERM.

(a) Before a county mutual insurance company's charter or extension of the charter expires, the company may apply to the department for an extension of the charter for a term of 50 years from the date the charter would otherwise expire.

(b) The application for an extension must:

- (1) demonstrate that the application was authorized either by a two-thirds vote of the company's directors or by a majority vote at a policyholders' meeting;
- (2) state in full the charter to be extended;
- (3) state the period for which the charter is to be extended;
- (4) be signed and acknowledged by the president and secretary of the company; and
- (5) be accompanied by a fee of \$50.

(c) A company whose charter is extended retains the rights, privileges, and immunities granted a county mutual insurance company by this chapter. (V.T.I.C. Art. 17.19.)

Source Law

Art. 17.19. Any such company at any time before its charter or any extension thereof expires may have such charter extended for a term of fifty (50) years from the date of expiration. It shall continue under the extended charter to have all the rights, privileges and immunities granted by this chapter. The application for such extension shall be made to the Board, shall show that the application was authorized either by a two-thirds (2/3) vote of the directors or by a majority vote at a policyholders' meeting, shall set out in have verbae the charter to be extended, shall state the time for which it is to be extended, shall be signed and acknowledged by the president and secretary of the company, and shall be accompanied by a fee of Fifty (\$50.00) Dollars.

Revisor's Note

V.T.I.C. Article 17.19 requires that an application for an extension of a county mutual insurance company's charter "set out in have verbae the charter to be extended." The revised law substitutes "in full" for "in have verbae" because it is clear from the context that the charter must be set out "in full," and that term is more commonly used.

[Sections 912.062-912.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Revised Law

Sec. 912.101. OPERATION UNDER CERTIFICATE OF AUTHORITY. A county mutual insurance company engages in the business of insurance under a certificate of authority issued by the department. (V.T.I.C. Art. 17.21, Sec. (a) (part).)

Source Law

Art. 17.21. (a) [The department shall charge and collect a fee] . . . for the issuance of a certificate of authority . . . to all companies operating under this chapter.

Revised Law

Sec. 912.102. AUTHORITY TO ENGAGE IN BUSINESS. A county mutual insurance company may engage in business in accordance with this chapter and other applicable laws only if:

(1) the company was formed before September 6, 1955, and was actively engaged in the business of insurance on that date; or

(2) the company was formed under a permit to solicit insurance issued before September 6, 1955. (V.T.I.C. Art. 17.02 (part).)

Source Law

Art. 17.02. . . . County mutual insurance companies formed prior to the effective date of this Act and actively engaged in the insurance business at the time of such effective date or formed pursuant to permit issued prior to the effective date of this amendment under Article 17.03 shall be permitted to engage in business in accordance with the provisions of Chapter 17, as amended, and other applicable laws;

Revisor's Note

(1) V.T.I.C. Article 17.02 refers to "the effective date of this Act," meaning the effective date of Chapter 117, Acts of the 54th Legislature, Regular Session, 1955. The revised law substitutes September 6, 1955, the effective date of the act, for the quoted language.

(2) V.T.I.C. Article 17.02 refers to V.T.I.C. Chapter 17, as amended. The revised law omits the reference to "as amended" because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

[Sections 912.103-912.150 reserved for expansion]

SUBCHAPTER D. POLICIES AND COVERAGE

Revised Law

Sec. 912.151. KINDS OF INSURANCE AUTHORIZED. (a) A county mutual insurance company that qualifies to write casualty lines for statewide operation may write all lines of automobile insurance. The company may not assume a risk on any one hazard that is greater than five percent of its assets, unless the company promptly reinsures the excess amount of risk.

(b) A county mutual insurance company may insure property against loss or damage by:

(1) fire, lightning, gas explosion, theft, windstorm, and hail or for any combination of these hazards; or

(2) any other hazard against which any other fire or windstorm insurance company operating in this state may write insurance on property described by Subsection (c).

(c) Unless restricted by its charter, the company may write insurance against the hazards described by Subsection (b) on:

(1) a rural or urban dwelling and attendant outhouses and yard buildings;

(2) the contents, for home and personal use, of a rural or urban dwelling, an attendant outhouse, or a yard building, including a family vehicle, musical instrument, and library;

(3) a barn or other farm, dairy, truck garden, hennery, or ranch building and any other improvement;

(4) a vehicle, harness, implement, tool, or machinery of any description used on and about a farm, truck garden, dairy, hennery, or ranch;

(5) fruit and products, other than growing crops, and any fowl, livestock, or domestic animals that are produced, raised, grown, kept, or used on a farm, truck garden, dairy, hennery, or ranch;

(6) a church house, country school house, country lodge room, or country recreation hall, other than a road house or public dance hall; and

(7) the contents of a church house, country school house, country lodge room, or country recreation hall. (V.T.I.C. Art. 17.01 (part); Art. 17.25, Sec. 1.)

Source Law

Art. 17.01. [County Mutual Insurance Companies are companies organized for the purpose of insurance] . . . against loss or damage by fire, lightning, gas explosion, theft, windstorm and hail, and for all or either of such purposes.

Unless they are restricted by their charters, they may write insurance against said hazards:

(a) On both rural and urban dwellings and attendant outhouses and yard buildings and all their contents for home and personal use--including family vehicles, musical instruments and libraries;

(b) On barns and other farm, dairy, truck garden, hennery and ranch

buildings and improvements of every description;

(c) On all vehicles, harness, implements, tools and machinery of every kind and description used on and about farms, truck gardens, dairies, henneries or ranches;

(d) On all fruits and products, other than growing crops, and all fowls, domestic animals and livestock of every description, produced, raised, grown, kept or used on truck gardens, henneries, farms, ranches and dairies; and

(e) On church houses, country school houses, country lodge rooms and country recreation halls, other than road houses and public dance halls and their contents.

Art. 17.25

Sec. 1. County mutual insurance companies operating under the provisions of this Chapter shall be authorized to write insurance against loss or damage from any hazard provided therein or that any other fire or windstorm insurance company operating in Texas may write on property described in Article 17.01 of this Chapter. County mutual insurance companies qualifying to write casualty lines for state wide operation may write all lines of automobile insurance, provided that no such company shall assume a risk on any one hazard greater than five (5%) per cent of its assets, unless such excess shall be promptly reinsured.

Revised Law

Sec. 912.152. POLICY FORMS. (a) A county mutual insurance company is subject to Articles 5.06 and 5.35.

(b) The commissioner, in accordance with Article 5.35, may adopt for use by county mutual insurance companies uniform policy forms that differ from the forms adopted for use by other companies and shall prescribe the conditions under which a county mutual insurance company:

(1) may use the policy forms adopted under this subsection; or

(2) shall use the policy forms adopted for other companies. (V.T.I.C. Art. 17.25, Sec. 5.)

Source Law

Sec. 5. Each county mutual insurance company shall be subject to the provisions of Article 5.06 and Article 5.35 of this Code. The Board of Insurance Commissioners pursuant to Article 5.35 may in its discretion make, promulgate and establish uniform policies for county mutual insurance companies different from the uniform policies made, promulgated and established for use by companies other than county mutual insurance companies, and shall prescribe the conditions under which such policies may be adopted and used by county mutual insurance companies, and the conditions under which such companies shall adopt and use the same forms and no others as are prescribed for other companies.

Revisor's Note

Section 5, V.T.I.C. Article 17.25, authorizes the commissioner of insurance to "make, promulgate and establish" policies. The revised law substitutes "adopt" for the quoted language to provide for consistent use of terminology within this code.

Revised Law

Sec. 912.153. CONTRACT TERMS: INCORPORATION OF BYLAWS. (a) A county mutual insurance company's bylaws are part of each contract between the company and an insured.

(b) Each policy issued by the company must state that the company's bylaws are part of the contract. (V.T.I.C. Art. 17.23.)

Source Law

Art. 17.23. By-laws of the company shall always constitute a part of the contract with the insured and the policy shall so state.

Revised Law

Sec. 912.154. AMOUNT OF INSURANCE UNDER MULTIPLE HAZARDS POLICY. The amount of risk or insurance coverage in a policy that insures a risk against more than one hazard is the maximum loss the county mutual insurance company may sustain under the policy at any one time, regardless of the number of hazards against which the company insures. (V.T.I.C. Art. 17.25, Sec. 20 (part).)

Source Law

Sec. 20. . . . Where any risk is insured against more than one hazard, for the purposes of this Chapter and of this Article, the amount of risk or insurance in any policy shall be the maximum loss that may be sustained at any one time by the company under the policy, regardless of the number of hazards insured against.

Revised Law

Sec. 912.155. REPAIR OR REPLACEMENT OF INSURED PROPERTY.

(a) The county mutual insurance company's bylaws may authorize the company to require, at its option, that all or a percentage of the money paid for a loss be used to replace or repair the damaged or destroyed property. The requirement may apply equally to personal and real property, including personal and real property exempt from execution, such as a homestead or a building on the homestead. The company may provide in its bylaws that the requirements of Section 862.053 do not apply to its insurance policies.

(b) This section does not apply to a company that meets the requirements of Section 912.308(a)(3), but such a company is subject to Sections 883.154, 883.155, and 883.156. (V.T.I.C. Art. 17.06 (part).)

Source Law

Art. 17.06. . . .

The by-laws may also provide that when a loss occurs, the companies may, at their option, provide and require that all or a certain per cent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed; provided such provision may be equally made applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homestead and exempt personal property. County mutual companies may in their by-laws provide that the requirements of Article 6.13 of this Code shall not be applicable to their contracts of insurance.

Provided, however, that a county mutual insurance company which meets the requirements of Article 17.11, subsection (c) shall not be subject to the provisions of the

next two (2) preceding paragraphs, but shall be subject to the provisions of Article 15.11 of this Code.

Revisor's Note

V.T.I.C. Article 17.06 states that a county mutual insurance company's bylaws may provide that certain requirements do not apply to the company's "contracts of insurance." The revised law substitutes "policies" for "contracts" for consistency of terms in this chapter.

Revised Law

Sec. 912.156. CONTESTING CLAIM FOR CERTAIN PURPOSES PROHIBITED. (a) In this section, "full payment" means payment of the full amount of a loss actually sustained on the occurrence of the contingency against which the insurance coverage is obtained, not to exceed the maximum amount stated in the policy.

(b) A county mutual insurance company may not contest a claim:

(1) only for delay or a captious or inconsequential reason; or

(2) to force a settlement for less than full payment.

(V.T.I.C. Art. 17.25, Secs. 3 (part), 12 (part).)

Source Law

Sec. 3. The following terms when used in this article shall be defined:

. . .

"Paid in full" or "full payment" shall mean the payment of the full amount of loss actually sustained not to exceed the maximum stated in the policy on the happening of the contingency insured against.

Sec. 12. . . . claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. . . .

Revisor's Note

(1) Section 3, V.T.I.C. Article 17.25, defines "paid in full" and "full payment." The revised law omits the reference to "paid in full" as unnecessary because the term is not used in the source law for this chapter or in the revision.

(2) Section 12, V.T.I.C. Article 17.25,

provides that "[i]t shall not be unlawful for a [county mutual insurance] company to contest claims for valid reasons," but a company may not contest a claim for delay or for certain other reasons. The revised law omits the quoted language as unnecessary because prohibiting a county mutual insurance company from contesting a claim for certain reasons does not imply that the company may not otherwise contest a claim for a valid reason. The omitted law reads:

Sec. 12. It shall not be unlawful for a company to contest claims for valid reasons; but

Revised Law

Sec. 912.157. DENIAL OF CLAIM: NOTICE REQUIRED. (a) A county mutual insurance company shall notify a claimant of the company's intent to deny liability on a claim not later than the 60th day after the date the company receives due proofs that the claim will not be paid.

(b) A company that does not notify a claimant as required by Subsection (a) is presumed as a matter of law to have accepted liability on the claim. (V.T.I.C. Art. 17.25, Sec. 12 (part).)

Source Law

Sec. 12. . . . Therefore, if liability is to be denied on any claim, the company is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

. . . .

[Sections 912.158-912.200 reserved for expansion]

SUBCHAPTER E. CHARGES, PREMIUMS, AND ASSESSMENTS

Revised Law

Sec. 912.201. SCHEDULE OF CHARGES. A county mutual insurance company shall file with the department a schedule of the amounts the company charges a policyholder or an applicant for a policy, regardless of the term the company uses to refer to those charges, including "rate," "policy fee," "inspection fee," "membership fee," or "initial charge." (V.T.I.C. Art. 17.25, Sec. 6.)

Source Law

Sec. 6. Such companies shall file with the Board a schedule of its rates, the amount of policy fee, inspection fee, membership fee, or initial charge by whatever name called, to be charged its policyholders or those applying for policies.

Revised Law

Sec. 912.202. PAYMENT OF PREMIUM OR ASSESSMENT. (a) A county mutual insurance company's bylaws must:

(1) state the time and manner of the levy and payment of a premium or assessment for policies written by the company;

(2) in addition to the regular premium or assessment under Subdivision (1), establish the contingent liability of a policyholder for all losses accrued while a policy is in force in the amount of \$2 for each \$100 of insurance coverage; and

(3) state the time and manner of payment of a policyholder's contingent liability established under Subdivision (2).

(b) As required by its bylaws, a county mutual insurance company shall establish and levy premiums and assessments, including the contingent liability of a policyholder, for all insurance written by the company.

(c) A policyholder shall pay premiums and assessments as required by the company's bylaws.

(d) The premium or assessment for a policy shall be secured by a lien on each item of real or personal property, other than a homestead, covered by the policy, including the land on which an insured building is located. The lien remains on the property while the insured owns the property.

(e) Subsection (a) does not apply to a company that meets the requirements of Section 912.308(a)(3), but such a company is subject to Sections 883.154, 883.155, and 883.156. (V.T.I.C. Art. 17.06 (part); Art. 17.08 (part); Art. 17.25, Sec. 20 (part).)

Source Law

Art. 17.06. The by-laws shall state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

They shall also fix the liability of the policyholders for all losses accrued while the policies are in force, in addition to the regular premium or assessments for the same; and the time and manner of the payment of

such liability; provided that the amount of such liability shall be \$2.00 for each \$100.00 of insurance in such policy.

. . .

Provided, however, that a county mutual insurance company which meets the requirements of Article 17.11, subsection (c) shall not be subject to the provisions of the next two (2) preceding paragraphs, but shall be subject to the provisions of Article 15.11 of this Code.

Art. 17.08. All premiums and assessments, including the contingent liability of policyholders for all insurance written by county mutual insurance companies shall be fixed, levied and paid as and when required by the by-laws of the companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remains the property of the insured.

. . .

[Art. 17.25]

Sec. 20. The contingent liability of policyholders required under Article 17.06 of this Chapter shall be fixed in the by-laws of each company and shall be \$2.00 for each \$100.00 of property insured in any policy issued by companies subject to the provisions of this Article. . . .

Revised Law

Sec. 912.203. NONPAYMENT OF PREMIUM OR ASSESSMENT: FILING OF ACTION. (a) A county mutual insurance company may bring an action in the home county of the company against a policyholder who defaults on the payment of an assessment or premium.

(b) The company is entitled to judgment against the policyholder for:

- (1) delinquent premiums or assessments;
- (2) foreclosure of the lien described by Section 912.202; and
- (3) the costs of an action, including a reasonable attorney's fee in the amount of at least \$5. (V.T.I.C.

Art. 17.08 (part).)

Source Law

Art. 17.08. . . . If default is made by a policyholder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home county of the company and the company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said lien, together with all costs of suit including a reasonable attorney's fee in a sum of not less than Five (\$5.00) Dollars.

Revisor's Note

V.T.I.C. Article 17.08 provides that a county mutual insurance company may file suit "in any court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 912.204. POLICYHOLDER LIABILITY. A policyholder is liable for the losses of a county mutual insurance company only as provided by Section 912.202 and the company's bylaws, and only in proportion to the amount that the premium or assessment for the policyholder's policy bears to the total amount of premiums or assessments for all policies written by the company in the class to which the policyholder's policy belongs. (V.T.I.C. Art. 17.09.)

Source Law

Art. 17.09. Policyholders shall be liable for losses of the company only as prescribed in the by-laws of the company and Article 17.06 of this Code, and that only in proportion that the premium or assessments for the insurance of any policy bears to the total amount of premiums or assessments for all the insurance in the class to which the policy belongs.

[Sections 912.205-912.250 reserved for expansion]

SUBCHAPTER F. AGENTS

Revised Law

Sec. 912.251. LICENSING AND APPOINTMENT OF AGENTS. An agent or solicitor for a county mutual insurance company must be licensed and appointed as provided by Article 21.07 or 21.14. (V.T.I.C. Art. 17.25, Sec. 9.)

Source Law

Sec. 9. Agents or solicitors for such companies shall be licensed and appointed as provided in Article 21.07 or 21.14 of this Code.

Revised Law

Sec. 912.252. OVERCHARGING OR MISREPRESENTATION BY AGENT; REVOCATION OF LICENSE. (a) The department shall revoke the license of an agent or solicitor of a county mutual insurance company convicted of an offense under Section 912.253.

(b) The department may not issue another license to an agent or solicitor whose license is revoked under this section. (V.T.I.C. Art. 17.25, Sec. 15 (part).)

Source Law

Sec. 15. Should any agent or solicitor for any company be found guilty of [making a charge greater than that filed with the Board, or guilty of misrepresentation,] he shall have his license cancelled and shall not thereafter be again licensed by said Board. . . .

Revisor's Note

Section 15, V.T.I.C. Article 17.25, requires the department to "cancel" the license of an agent or solicitor "found guilty" of committing certain acts. The revised law substitutes "revoke" for "cancel" and "convicted" for "found guilty" because, in context, the terms are synonymous, and "revoke" and "convicted" are more commonly used.

Revised Law

Sec. 912.253. OVERCHARGING OR MISREPRESENTATION BY AGENT; CRIMINAL PENALTY. (a) An agent or solicitor of a county mutual insurance company commits an offense if the person:

- (1) charges an amount for a policy that is greater

than the amount in the schedule of charges filed with the department; or

(2) commits misrepresentation.

(b) An offense under this section is punishable by a fine of not less than \$50 or more than \$500. (V.T.I.C. Art. 17.25, Sec. 15 (part).)

Source Law

Sec. 15. Should any agent or solicitor for any company be found guilty of making a charge greater than that filed with the Board, or guilty of misrepresentation, [he shall have his license cancelled]
. . . . Any agent or solicitor who, upon conviction, is found guilty of overcharge or misrepresentation, shall be punished by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars.

[Sections 912.254-912.300 reserved for expansion]

SUBCHAPTER G. REGULATION OF COUNTY MUTUAL
INSURANCE COMPANY; FINANCIAL REQUIREMENTS

Revised Law

Sec. 912.301. REPORT REGARDING CONDITION OF COMPANY. (a) The commissioner may, at any time the commissioner determines advisable, compel written reports from a county mutual insurance company regarding the company's condition.

(b) The commissioner may require that the report be verified under oath by a responsible officer of the company. (V.T.I.C. Art. 17.25, Sec. 18 (part).)

Source Law

Sec. 18. The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such company whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the company. . . .

Revised Law

Sec. 912.302. ANNUAL STATEMENT FEE. The department shall charge and the comptroller shall collect a fee of \$20 for the filing of an annual statement by a county mutual insurance company. (V.T.I.C. Art. 17.21, Sec. (b).)

Source Law

(b) The department shall charge a filing fee of Twenty (\$20.00) Dollars for filing each annual statement. The comptroller shall collect the filing fee.

Revised Law

Sec. 912.303. BOOKS AND RECORDS. (a) A county mutual insurance company shall maintain the company's books and records in a form and manner that accurately reflects the condition of the company or the facts essential to the company's faithful and effective operation.

(b) The company shall use forms or systems that most effectively serve the purposes of this section. (V.T.I.C. Art. 17.25, Sec. 8.)

Source Law

Sec. 8. All the records and books of each company shall be kept in the shape, form and manner as to reflect truly and accurately the condition of the company, or the facts essential to its faithful and effective operation. The company shall at once adopt forms or systems which will serve the purpose most effectively.

Revisor's Note

(1) Section 8, V.T.I.C. Article 17.25, refers to the "shape, form and manner" of a county mutual insurance company's books and records. The revised law omits the reference to "shape" because "shape" is included within the meaning of "form and manner."

(2) Section 8, V.T.I.C. Article 17.25, refers to "truly and accurately" reflecting the condition of the company. The revised law omits the reference to "truly" because "truly" is included within the meaning of "accurately."

Revised Law

Sec. 912.304. REINSURANCE. (a) A county mutual insurance company may reinsure any or all of the company's risks with another company against any hazard against which the county mutual insurance company is permitted to insure.

(b) The county mutual insurance company may contract for mutual or reciprocal reinsurance with another company on the mutual or cooperative plan subject to the following conditions:

(1) the county mutual insurance company may assume the reinsurance on the risks of the other company only if the other company reinsures the risks of the county mutual insurance company; and

(2) the county mutual insurance company may write or assume the reinsurance only on property that the company is authorized to insure and that is located in this state.

(c) A county mutual insurance company that reinsures another company's property is liable for the losses of the other company only as specified in the reinsurance contract. The county mutual insurance company does not become a member or partner of the other company as a result of the reinsurance.

(d) A county mutual insurance company may pay or collect additional assessments or premiums for the purpose of a contract described by Subsection (b). (V.T.I.C. Art. 17.20.)

Source Law

Art. 17.20. County mutual insurance companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other companies on the mutual or cooperative plan; provided that no county mutual insurance company shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a county mutual insurance company reinsures the property of another company, it shall not by reason of such fact be, or become a member or partner, of such other company, but shall only become liable for the losses of such other company as specified in the contract of interinsurance and not otherwise; and provided further, that a county mutual insurance company shall only have authority to reinsure the risks of another company in consideration of the fact that such other company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

Revisor's Note

V.T.I.C. Article 17.20 refers to mutual or reciprocal "reinsurance" and to a contract of "interinsurance." The revised law substitutes "reinsurance" for "interinsurance" because, in this context, the terms are synonymous and "reinsurance" is the term more commonly used.

Revised Law

Sec. 912.305. SECURITY DEPOSIT. (a) A county mutual insurance company shall maintain with the comptroller through the department a deposit in cash or, subject to the commissioner's approval, convertible securities. The deposit must be equal to:

(1) the largest amount assumed by the company on any one risk; or

(2) on a demonstration of reinsurance acceptable to the commissioner, the largest amount retained by the company on any one risk after reinsurance.

(b) The deposit is liable for the payment of all judgments against the company and is subject to garnishment after final judgment against the company. The company, on the commissioner's demand, must immediately replenish the deposit when the deposit is impounded or depleted. If the company does not immediately replenish the deposit, the company may be regarded as insolvent.

(c) If a county mutual insurance company makes a statement, including a statement contained in an advertisement, letter, or literature, that the company deposited cash or securities as required by this section, the company must also state in full:

(1) the purpose, exact amount, and character of the deposit; and

(2) the conditions under which the deposit was made.

(V.T.I.C. Art. 17.25, Sec. 4.)

Source Law

Sec. 4. Each such company shall place with the comptroller through the Board of Insurance Commissioners a deposit equal to the largest amount assumed on any one risk, or upon a showing or re-insurance acceptable to the Board, the largest amount retained on any one risk after re-insurance, which deposit may be in cash or in convertible securities subject to approval of the Board. Such deposit shall be liable for the payment of all judgments against the company, and subject to a garnishment after final judgment against the company. When such deposit becomes impounded or depleted it shall at

once be replenished immediately on demand by the Board, or the company may be regarded as insolvent.

When any company shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

Revisor's Note

Section 4, V.T.I.C. Article 17.25, refers to "a showing or re-insurance" of a county mutual insurance company's risks. The revised law substitutes "of" for "or" to correct an apparent typographical error.

Revised Law

Sec. 912.306. REQUIRED BONDS. (a) A county mutual insurance company shall obtain a bond for:

(1) the officer responsible for handling the funds of the company's members; and

(2) all other office employees who may have access to the company's funds.

(b) The bonds required under this section must:

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

(2) be made payable to the department for the use and benefit of the company's members; and

(3) obligate the principal and surety to pay pecuniary losses that the company sustains through an act of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication, regardless of whether the act is committed by the officer or employee directly and alone, or in cooperation with another person.

(c) A bond under this section must:

(1) be in an amount that is at least the greater of \$1,000 or the amount of cash assets on hand, but not more than \$20,000, if the bond covers the officer; or

(2) be in an amount established by the department that is at least \$1,000 but not more than \$5,000, if the bond covers office employees.

(d) One or more persons may recover on a bond under this section until the bond is exhausted. (V.T.I.C. Art. 17.25, Sec. 11.)

Source Law

Sec. 11. Such companies shall furnish a

bond for the officer responsible for the handling of funds of the members in some surety licensed by the Board to do business in Texas in the minimum amount of One Thousand (\$1,000.00) Dollars, said bond to be kept at all times at least equal to the cash assets on hand, with a maximum of Twenty Thousand (\$20,000.00) Dollars, said bond shall be made payable to the Board of Insurance Commissioners for the use and benefit of the members of the company, and shall obligate the principal and surety to pay such pecuniary loss as the company shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others.

In addition to the bond required in the preceding paragraph each company shall procure a like bond for all other office employees, who may have access to any of its funds, in an amount or amounts fixed by the Board with a minimum of One Thousand (\$1,000.00) Dollars and a maximum of Five Thousand (\$5,000.00) Dollars. Successive recoveries on any of the bonds provided for in this section may be had on such bonds until same are exhausted.

Revisor's Note

Section 11, V.T.I.C. Article 17.25, refers to a "licensed" surety, meaning a surety who holds a certificate of authority and is thus authorized to engage in business in this state. The revised law substitutes "authorized" for "licensed" for consistent use of terminology within this code.

Revised Law

Sec. 912.307. RESERVE REQUIREMENTS. (a) A county mutual insurance company shall maintain unearned premium reserves as provided by Section 862.102.

(b) The company shall invest the unearned premium reserves and any other type of reserves authorized by the company's board of directors in the same type of securities in which the reserve funds of insurance companies engaged in the same kind of business are required to be invested by law. (V.T.I.C. Art. 17.11 (part).)

Source Law

Art. 17.11. County mutual insurance companies shall maintain at all times unearned premium reserves as provided in Article 6.01 of this Code. The unearned premium reserves and any other type of reserves authorized by the Board of Directors shall be invested in such securities as the reserve funds of other insurance companies doing the same kind of business are by law required to be invested.

. . .

Revised Law

Sec. 912.308. AMOUNT AND INVESTMENT OF SURPLUS. (a) A county mutual insurance company shall maintain an unencumbered surplus which may be invested only in items listed in Section 822.204. The unencumbered surplus must be at least:

(1) \$25,000, if the company is organized to write insurance coverage locally in only the county of its domicile;

(2) \$50,000, if the company is organized to write insurance coverage in only the county of its domicile and any adjacent county; or

(3) an amount equal to the aggregate of the minimum capital and minimum surplus required under Sections 822.054, 822.202, 822.210, and 822.211, for a fire insurance company if the county mutual insurance company is organized to write insurance coverage statewide.

(b) A county mutual insurance company is subject to Sections 822.203, 822.205, 822.210, and 822.212 and Section 5, Article 1.10. (V.T.I.C. Arts. 17.11 (part), 17.16.)

Source Law

Art. 17.11. . . .

There shall be maintained at all times free surplus invested only in items enumerated in Article 2.08 of this Code of:

(a) Not less than \$25,000.00 if the company is organized to write insurance locally in the county of its domicile only; or

(b) Not less than \$50,000.00 if the company is organized to write insurance in the county of its domicile and any adjoining counties only; or

(c) Not less than an amount equal to the aggregate of the minimum capital and

minimum surplus required of a fire insurance company by Article 2.02 of this Code if such company is organized to write insurance in a county other than the county of its domicile and any adjoining counties within this State.

Each county mutual insurance company shall be subject to the provisions of Section 5 of Article 1.10 and Article 2.20 of this Code.

Art. 17.16. A county mutual insurance company possessed of \$25,000.00 or more in surplus as provided in Article 17.11 may write insurance locally in the county of its domicile; and such company possessed of \$50,000.00 or more in surplus as provided in Article 17.11 may write insurance in the county of its domicile and any adjoining counties; and such company possessed of surplus equal to the aggregate of the minimum capital and minimum surplus required of a fire insurance company by Article 2.02 of this Code may write insurance anywhere within this State.

Revisor's Note

V.T.I.C. Article 17.11 requires that a county mutual insurance company maintain "free" surplus. The revised law substitutes "unencumbered" for "free" for consistent use of terminology within this code.

Revised Law

Sec. 912.309. POLICYHOLDER LOANS TO COMPANY. (a) A policyholder may loan to a county mutual insurance company money as necessary:

- (1) for the company to engage in the company's business; or
- (2) to enable the company to comply with a requirement of this chapter, including the unencumbered surplus requirement under Section 912.308.

(b) Subject to the approval of the commissioner, the county mutual insurance company may repay a loan and agreed interest, at an annual rate not to exceed 10 percent, only from the surplus remaining after the company provides for the company's reserves, other liabilities, and required surplus.

(c) A loan under this section or interest on a loan is not otherwise a liability or claim against the company or any of its assets.

(d) A county mutual insurance company may not pay a commission, promotion expense, or other bonus in connection with a loan made to the company.

(e) A county mutual insurance company shall report in its annual statement the amount of each loan made to the company.

(V.T.I.C. Art. 17.17.)

Source Law

Art. 17.17. One or more of the policyholders of the company may advance to the company such funds as are necessary for the purposes of its business or to enable it to comply with any requirement of this Chapter, including the surplus requirement of Article 17.11, and such moneys and interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum, shall be payable, subject to the approval of the Board of Insurance Commissioners, only out of the surplus remaining, after providing for all reserves, other liabilities and required surplus, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expense, or other bonus, shall be paid in connection with the advance of any such money to the company, and the amount of all such advances shall be reported in each annual statement.

Revisor's Note

V.T.I.C. Article 17.17 refers to the advancement of "funds" to a company. The revised law substitutes "money" for "funds" because, in context, the terms are synonymous and the former is more commonly used.

Revised Law

Sec. 912.310. CERTAIN COMPANIES EXEMPT. (a) Chapter 196, Acts of the 53rd Legislature, Regular Session, 1953, and Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, do not apply to a county mutual insurance company:

(1) that was organized and operating as a county mutual fire insurance company on May 22, 1953; and

(2) the business of which is devoted exclusively to the writing of industrial fire insurance policies covering dwellings, household goods and wearing apparel on a weekly, monthly, or quarterly basis on a continuous premium payment plan.

(b) The exemption established by this section applies only

so long as the company is engaged exclusively in the writing of industrial fire insurance policies described by Subsection (a). (V.T.I.C. Art. 17.02 (part).)

Source Law

Art. 17.02. . . . provided, however, that neither the provisions of this Act nor the provisions of Senate Bill No. 107, Acts of 53rd Regular Session, Texas Legislature, 1953, effective May 22, 1953, shall apply to any county mutual insurance company organized and operating as a county mutual fire insurance company on May 22, 1953, whose business is devoted exclusively to the writing of industrial fire insurance policies covering dwellings, household goods and wearing apparel on a weekly, monthly or quarterly basis on a continuous premium payment plan. Provided further, that this exemption shall apply only so long as said companies are engaged exclusively in the writing of such industrial fire insurance policies. . . .

Revisor's Note

V.T.I.C. Article 17.02 refers to "this Act," meaning Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, and to "Senate Bill No. 107, Acts of 53rd Regular Session, Texas Legislature, 1953," meaning Chapter 196 as enacted by that legislature. The revised law is drafted accordingly.

[Sections 912.311-912.700 reserved for expansion]

SUBCHAPTER O. GENERAL FINANCIAL REGULATION

Revised Law

Sec. 912.701. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION. Articles 1.32, 21.28, and 21.28-A apply to a county mutual insurance company engaged in the business of insurance in this state. (New.)

Revisor's Note

Section 14, V.T.I.C. Article 17.25, established procedures for conservatorship of a county mutual insurance company that is insolvent or that is in a condition that renders the continuance of its business hazardous to the public. Section 14 was derived from V.A.C.S. Article 4860a-20 and has not been substantively amended since

1947. After the enactment of Article 4860a-20, the legislature established comprehensive procedures applicable to those companies. Together with V.T.I.C. Article 21.28, the later enacted provisions, which are contained in V.T.I.C. Article 1.32, originally enacted in 1975, and V.T.I.C. Article 21.28-A, originally enacted in 1967, completely subsume and replace the procedures established under Section 14. As a result, the revised law omits Section 14 as impliedly repealed and adds a reference to Articles 1.32, 21.28, and 21.28-A for the convenience of the reader. The omitted law reads:

Sec. 14. If, upon an examination or at any other time, and after proper notice and hearing, it appears to the Board of Insurance Commissioners that such company be insolvent, or its condition be, in the opinion of the Board, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such company appears to have exceeded its powers or failed to comply with the law, then the Board shall notify the company of its determination and said company shall have thirty (30) days under the supervision of the Board within which to comply with the requirements of the Board; and in the event of its failure to so comply within such time, the Board, acting for itself or through a conservator appointed by the Life Insurance Commissioner for that purpose, shall immediately take charge of such company, and all of the property and effects thereof. If the Board is satisfied that such company can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Board, pending the election of new directors and officers by the membership in such manner as the Board may determine, the same shall be done. If the Board, however, is satisfied that such company is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Board shall proceed to reinsure the outstanding

liabilities in some solvent company, authorized to transact business in this State, or the Board shall proceed through such conservator, to liquidate such company, or the Board may give notice to the Attorney General as provided under the General Laws relating to insurance corporations. It shall be in the discretion of the Board to determine whether or not it will operate the company through a conservator, as provided above, or proceed to liquidate the company, as herein provided, or report it to the Attorney General. When the liabilities of a company are reinsured or liquidated, as herein provided, the Board shall report the same to the Attorney General who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the company so reinsured or liquidated. Where the Board lends its approval to the merger transfer or consolidation of the membership of one company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the company from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of companies reinsured or liquidated. No merger or transfer shall be approved unless the company assuming the members transferred or merged is operating under the supervision of the Board of Insurance Commissioners. The cost incident to the conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the company to be allowed and paid as the Board may determine.

[Sections 912.702-912.750 reserved for expansion]

SUBCHAPTER P. DISCIPLINARY ACTION AND PROCEDURES IN GENERAL
Revised Law

Sec. 912.751. OFFICER OR DIRECTOR UNWORTHY OF TRUST:
REMOVAL AND REVOCATION OF CERTIFICATE OF AUTHORITY. (a) After notice and hearing, the commissioner shall order the removal of an officer or director of a county mutual insurance company holding a certificate of authority if the officer or director is

found unworthy of the trust or confidence of the public.

(b) If a county mutual insurance company does not remove an officer or director as required by an order issued under Subsection (a), the commissioner shall:

- (1) revoke the company's certificate of authority; and
- (2) treat the company as insolvent. (V.T.I.C.

Art. 17.25, Sec. 10 (part).)

Source Law

Sec. 10. [The Board of Insurance Commissioners shall not issue to any company a certificate of authority . . . when it shall find . . . any officer or member of the board of directors to be unworthy of the trust or confidence of the public.] After a certificate has been granted, the Board shall order, after notice and hearing, the removal of any officer or director found unworthy of trust, and if such officer or director be not then removed, the Board shall cancel the certificate and proceed to deal with the company as though it were insolvent.

Revisor's Note

Section 10, V.T.I.C. Article 17.25, states that the commissioner "shall cancel" a certificate of authority in certain circumstances. The revised law substitutes "revoke" for "cancel" because, in context, the terms are synonymous and "revoke" is more frequently used. Similar changes are made throughout this chapter.

Revised Law

Sec. 912.752. FRAUDULENT OPERATION OR IMPROPER CONTESTS: REVOCATION OF CERTIFICATE OF AUTHORITY. After notice and hearing, the commissioner shall revoke the certificate of authority of a county mutual insurance company that is:

- (1) operating fraudulently; or
- (2) improperly contesting the company's claims.

(V.T.I.C. Art. 17.25, Sec. 12 (part).)

Source Law

Sec. 12. . . . The Board, after notice and hearing, shall cancel the certificate of authority of any company found to be operating fraudulently or improperly contesting its claims.

Revised Law

Sec. 912.753. TIME LIMIT TO APPEAL. An individual or a county mutual insurance company may appeal an order or a ruling of the commissioner under this chapter not later than the 60th day after the date of the order or ruling, in accordance with Subchapter D, Chapter 36. (V.T.I.C. Art. 17.25, Sec. 21 (part).)

Source Law

Sec. 21. It shall be the right and privilege of any individual or any such company to appeal within sixty (60) days from any order or ruling The action shall be tried and determined as provided by Article 1.04 of this code.

Revisor's Note

Section 21, V.T.I.C. Article 17.25, governs the appeal of an order or ruling of the commissioner issued under that article. The revised law omits part of that provision, relating to venue, as duplicative of V.T.I.C. Article 1.04, codified as Subchapter D, Chapter 36, of this code. The omitted law reads:

Sec. 21. [It shall be the right and privilege of any individual or any such company to appeal within sixty (60) days from any order or ruling] to the District Court in the County of Travis, Texas. . . .

[Sections 912.754-912.800 reserved for expansion]

SUBCHAPTER Q. GENERAL CRIMINAL PENALTIES

Revised Law

Sec. 912.801. VIOLATION OF CHAPTER; CRIMINAL PENALTY. (a) Except as otherwise provided by this subchapter, a person, including a director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company, commits an offense if the person violates this chapter.

(b) An offense under this section is punishable by:

- (1) a fine of not more than \$500;
- (2) confinement in jail for a term of not more than 180 days; or
- (3) both a fine and confinement as provided by Subdivisions (1) and (2). (V.T.I.C. Art. 17.25, Sec. 19.)

Source Law

Sec. 19. If any director, officer,

agent, employee or attorney at law or attorney in fact of any company under this article, or any other person, shall violate any of the provisions of this article not specifically set out in Sections 16, 17, and 18 of this article, he shall be punished by fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Revised Law

Sec. 912.802. CONVERSION; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person fraudulently takes or converts to the person's own use or secretes with the intent to take or convert to the person's own use, and with knowledge that the person is not entitled to receive it, any property or other thing of value of the company that is in the person's custody, control, or possession as a result of the person's office, directorship, agency, or employment or in any other manner.

(b) A director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person pays or delivers property or another thing of value described by Subsection (a) to another person knowing that the person is not entitled to receive it.

(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 more than 10 years or less than 2 years. (V.T.I.C. Art. 17.25, Sec. 16.)

Source Law

Sec. 16. If any director, officer, agent, employee, attorney at law or attorney in fact, of any association under this article shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such company, knowing that he is not entitled to receive it, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to

receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Revisor's Note

(1) Section 16, V.T.I.C. Article 17.25, refers to certain persons who fraudulently "take, misapply or convert" property. The revised law omits the references to "misapply" because the term is included within the meaning of "convert."

(2) Section 16, V.T.I.C. Article 17.25, refers to "money, property or other thing of value" of a county mutual insurance company. The revised law omits the reference to "money" because the term is included within the meaning of "property."

(3) Section 16, V.T.I.C. Article 17.25, refers to property in the "custody, control, possession or management" of a person. The revised law omits the reference to "management" because "management" is included within the meaning of "control."

Revised Law

Sec. 912.803. UNLAWFUL DIVERSION OF FUNDS; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person wilfully borrows, withholds, or diverts from its purpose in any manner all or part of a special fund that:

(1) belongs to or is under the control and management of the company; and

(2) is designated by law for that purpose.

(b) 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 more than 10 years or less than 2 years. (V.T.I.C. Art. 17.25, Sec. 17.)

Source Law

Sec. 17. If any director, officer, agent, employee, attorney at law, or attorney in fact of any company under this article, shall wilfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any company under this article, which has been set apart by law, he shall be confined in the

penitentiary not less than two (2) nor more than ten (10) years.

Revised Law

Sec. 912.804. FALSE AFFIDAVIT; CRIMINAL PENALTY. (a) An officer, director, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person wilfully makes a false affidavit in connection with the requirements of this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not more than \$500; or

(2) confinement in jail or imprisonment in the institutional division of the Texas Department of Criminal Justice for a term of not more than two years. (V.T.I.C Art. 17.25, Sec. 18 (part).)

Source Law

Sec. 18. . . . If any officer, director, agent, employee, attorney at law or attorney in fact, of any company under this article, shall wilfully make any false affidavit in connection with the requirements of this article, he shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

Revisor's Note

(End of Chapter)

(1) V.T.I.C. Article 17.02, in part, repeals Section 22, V.T.I.C. Article 17.25. The revised law omits the repeal as executed. The omitted law reads:

Art. 17.02. . . . Section 22 of Article 17.25 is hereby repealed.

(2) V.T.I.C. Articles 17.03, 17.04, and 17.05 specify the procedures and requirements for incorporation as a county mutual insurance company. However, V.T.I.C. Article 17.02 provides that no county mutual insurance company may be formed under V.T.I.C. Chapter 17, revised as this chapter, after September 5, 1955, unless it is formed under a permit issued under V.T.I.C. Article 17.03 before that date. V.T.I.C. Article 17.03 was amended in 1955 to repeal the application process for a permit and, as amended, provided that a permit previously issued under that article expired by its terms and was not renewable. Consequently, no new county mutual insurance companies may be formed under V.T.I.C. Chapter 17, and the revised law omits Articles 17.03, 17.04, and 17.05 as executed. The omitted law reads:

Art. 17.03. Permits issued prior to the effective date of this amendment pursuant to the provisions of Article 17.03 shall expire by their present terms and shall not be renewed. Moneys collected from applicants other than charter members shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

Art. 17.04. The charter and articles of incorporation of a county mutual insurance company shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, and be acknowledged before a notary public by not less than five (5) of them.

It shall also state . . . [the number,] names and post office addresses of its first directors, . . . and such other provisions as the incorporators may desire to set out therein.

Art. 17.05. Before a charter shall be granted a county mutual insurance company, the incorporators must have on hand:

(a) Not less than twenty-five (25) applications in writing for insurance on not less than one hundred (100) separate risks; provided that no one risk shall be for more than one (1%) per cent of the total amount of insurance applied for in the new company, and that a separate risk shall be one or more items of real or personal property which is not exposed to any other property on which insurance is applied for in the new company;

(b) Not less than One (\$1.00) Dollar for each One Hundred (\$100.00) Dollars of insurance applied for at the time of incorporation, in cash or securities in which the reserve funds may be invested;

(c) Not less than Ten Thousand (\$10,000.00) Dollars in free surplus which shall be in cash or securities in which its reserve funds may be invested, if the company is organized to write insurance locally in the county of its domicile and any adjoining counties; if such company is organized to write insurance in any county within this State, its surplus requirement as provided herein shall be Twenty-Five Thousand (\$25,000.00) Dollars in cash or securities in which its reserve funds may be invested; and

(d) Said application for charter shall also be accompanied by a copy of the by-laws of the company, and the bond of the secretary or manager of the same in such sum and conditioned as the Board may determine.

When the foregoing requirements have been complied with to the satisfaction of the Board of Insurance Commissioners, the Board, upon the payment of a fee of Fifty (\$50.00) Dollars, shall issue such company a charter to do business as an incorporated company.

(3) Section 10, V.T.I.C. Article 17.25, prohibits the Texas Department of Insurance from issuing a certificate of authority

to a county mutual insurance company under certain conditions. The revised law omits the provision for the reason stated in Revisor's Note (2) above. In addition, to the extent that the department may reissue a certificate of authority to a company whose certificate has been revoked, the provision duplicates Section 3, V.T.I.C. Article 1.14, revised as Subchapter C, Chapter 801, of this code. The omitted law reads:

Sec. 10. The Board of Insurance Commissioners shall not issue to any company a certificate of authority to do business in Texas, when it shall find after notice and hearing any officer or member of the board of directors to be unworthy of the trust or confidence of the public. . . .

[Chapters 913-940 reserved for expansion]

SUBTITLE G. LLOYD'S PLAN AND RECIPROCAL
AND INTERINSURANCE EXCHANGES

CHAPTER 941. LLOYD'S PLAN

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CHAPTER 941. LLOYD'S PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 941.001. DEFINITIONS. In this chapter:

- (1) "Affiliate" has the meaning described by Section 823.003.
(2) "Attorney in fact" means an attorney in fact authorized under a power of attorney to act for the underwriters of a Lloyd's plan.
(3) "Lloyd's plan" means an entity engaged in the business of writing insurance on the Lloyd's plan.
(4) "Underwriter" means an individual, partnership, or association of individuals that writes insurance on the Lloyd's plan. (V.T.I.C. Arts. 18.01 (part), 18.01-1 (part), 18.02 (part), 18.23A, Sec. (b); New.)

Source Law

Art. 18.01. [Individuals, partnerships or associations of

individuals,] hereby designated "underwriters," [are authorized to make any insurance, . . . on the Lloyd's plan, . . .].

Art. 18.01-1. [Individuals, partnerships or associations of individuals,] hereby designated "underwriters" [are authorized to make any insurance, except life insurance, on the Lloyds plan,] [Policies of insurance may be executed by] an attorney in fact or other representatives, hereby designated "attorney," authorized by and acting for such underwriters under powers of attorney.

Art. 18.02. [Policies of insurance may be executed by] an attorney or by attorneys in fact or other representative, hereby designated "attorney," authorized by and acting for such underwriters under power of attorney. . . .

[Art. 18.23A]

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

Revisor's Note

(1) V.T.I.C. Articles 18.01 and 18.01-1 provide that "[i]ndividuals, partnerships or associations of individuals, hereby designated underwriters" may write insurance on the Lloyd's plan. The definition of "underwriter" is added to the revised law to incorporate that concept and to eliminate the frequent, unnecessary repetition of the substance of the definition.

(2) V.T.I.C. Articles 18.01-1 and 18.02 refer to an attorney in fact "or other representative" acting under a power of attorney. The revised law omits the reference to "other representative" as unnecessary because any "representative" acting under a power of attorney is an attorney in fact.

(3) V.T.I.C. Articles 18.01-1 and 18.02 use the term "attorney" to refer to an attorney in fact. For clarity and consistency, the revised law defines the term "attorney in fact" and substitutes that term for "attorney" throughout this chapter as appropriate. The definition of attorney in fact is added to the revised law to eliminate the frequent, unnecessary repetition of the substance of the definition.

(4) The definition of "Lloyd's plan" is added for drafting convenience and to allow distinctions to be made throughout the chapter between underwriters and the entity created by underwriters under this chapter.

Revised Law

Sec. 941.002. LLOYD'S PLAN INSURANCE AUTHORIZED; LIFE INSURANCE PROHIBITED. (a) Except as provided by Subsection (b), a Lloyd's plan may write any kind of insurance that may be lawfully written in this state, including:

(1) fire insurance, including tornado, hail, crop,

and floater insurance;

(2) automobile insurance, including fire, theft, transportation, property damage, collision liability, and tornado insurance;

(3) liability insurance;

(4) marine insurance;

(5) accident and health insurance;

(6) burglary insurance;

(7) plate glass insurance; and

(8) fidelity and surety bonds insurance.

(b) A Lloyd's plan may not write life insurance. (V.T.I.C. Arts. 18.01 (part), 18.01-1 (part), 18.03 (part).)

Source Law

Art. 18.01. Individuals, partnerships or associations of individuals, . . . are authorized to make any insurance, except life insurance, on the Lloyd's plan,

Art. 18.01-1. Individuals, partnerships or associations of individuals, . . . are authorized to make any insurance, except life insurance, on the Lloyds plan,

Art. 18.03. . . .

(c) [The kinds of insurance to be effected,] which kinds of insurance may be as follows:

1. Fire insurance, which term shall be construed to include tornado, hail, crop and floater insurance.

2. Automobile insurance, which term shall be construed to include fire, theft, transportation, property damage, collision liability and tornado insurance.

3. Liability insurance.

4. Marine insurance.

5. Accident and health insurance.

6. Burglary and plate glass insurance.

7. Fidelity and surety bonds insurance.

8. Any other kinds of insurance not above specified, the making of which is not otherwise unlawful in this State, except life insurance.

. . .

Revised Law

Sec. 941.003. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICATION OF CERTAIN LAWS. (a) A Lloyd's plan is exempt from the operation of all insurance laws of this state except as specifically provided in this chapter or unless it is specifically provided in the other law that the law is applicable.

(b) A Lloyd's plan is subject to:

(1) Section 5, Article 1.10;

- (2) Article 1.15A;
- (3) Subchapter A, Chapter 5;
- (4) Articles 5.35, 5.38, 5.39, 5.40, and 5.49;
- (5) Articles 21.21 and 21.49-8; and
- (6) Sections 822.203, 822.205, 822.210, and 822.212.

(c) Subchapter M, Chapter 5, applies to rates for motor vehicle insurance written by a Lloyd's plan.

(d) Underwriters and their attorney in fact are subject to Sections 822.051, 822.057, 822.058, 822.059, 822.060, and 822.201, except that:

(1) the articles of agreement executed by the underwriters are instead of the articles of incorporation; and

(2) the aggregate of the guaranty fund and unencumbered surplus of the Lloyd's plan constitutes capital structure for purposes of Section 822.060. (V.T.I.C. Arts. 5.01-2 (part), 18.04 (part), 18.05 (part), 18.23.)

Source Law

Art. 5.01-2. (a) Lloyd's plan insurers and . . . are subject to this subchapter.

(b) On and after March 1, 1992, rates for motor vehicle insurance written by a Lloyd's plan insurer . . . are determined as provided by the flexible rating program adopted under Subchapter M of this chapter.

Art. 18.04. Such underwriters and their attorney shall be subject to the provisions of Article 2.01 and Article 2.04 of this Code, except that:

1. The Articles of Agreement shall be in lieu of Articles of Incorporation; and

2. The aggregate of guaranty fund and free surplus shall constitute capital structure within the meaning of Article 2.01.

. . .

Art. 18.05. No attorney shall be licensed for the Underwriters at a Lloyd's until and unless the provisions of Article 2.01 are fully complied with and

Art. 18.23. (a) Underwriters at a Lloyds' shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless it is specifically so provided in such other law that same shall be applicable.

(b) In addition to such Articles as may be made to apply by other Articles of this Chapter, underwriters at a Lloyds' shall not be exempt from and shall be subject to Articles 1.15A, 2.20, 5.35, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49-8 of this Code.

Revised Law

Sec. 941.004. WITHDRAWAL FROM THE BUSINESS OF INSURANCE.

(a) A Lloyd's plan may withdraw from the business of insurance only if the department determines that adequate provision has been made, through reinsurance or other means, for:

- (1) payment of all unadjusted losses of the Lloyd's plan; and
- (2) reinsurance of all outstanding risks in favor of residents of this state or covering property located in this state.

(b) On compliance with the requirements of Subsection (a):

- (1) any bond of the attorney in fact shall be released; and
- (2) the department shall release to the underwriters any net assets over which the department has joint control.

(V.T.I.C. Art. 18.18 (part).)

Source Law

Art. 18.18. . . .

In case underwriters at a Lloyd's shall desire to withdraw from the insurance business, they may be permitted to do so, if and when they shall satisfy the Board that adequate provision has been made, through reinsurance or otherwise, for the payment of all unadjusted losses, and for the reinsurance of all outstanding risks in favor of citizens of Texas, or covering property in Texas, and thereupon any bond of the attorney in fact shall be released, and said Board shall release to such underwriters the net assets over which it may have been given joint control.

Revisor's Note

(1) V.T.I.C. Article 18.18 refers to the "Board," meaning 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.

(2) V.T.I.C. Article 18.18 refers to "citizens" of this state. The revised law substitutes "resident" for "citizen" because, in context, the two terms are synonymous and "resident"

is more commonly used. Similar changes have been made throughout this chapter.

[Sections 941.005-941.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF LLOYD'S PLAN

Revised Law

Sec. 941.051. FORMATION OF LLOYD'S PLAN. (a) To write insurance on the Lloyd's plan, underwriters must:

- (1) execute articles of agreement expressing the intent to write insurance; and
- (2) comply with the requirements of this chapter.

(b) A Lloyd's plan must have at least 10 underwriters. (V.T.I.C. Arts. 18.01 (part), 18.01-1 (part), 18.03 (part).)

Source Law

Art. 18.01. [Individuals, partnerships or associations of individuals, hereby designated "underwriters," are authorized to make any insurance, except life insurance, on the Lloyd's plan,] by executing articles of agreement expressing their purpose so to do and complying with the requirements set forth in this chapter.

Art. 18.01-1. [Individuals, partnerships or associations of individuals, hereby designated "underwriters" are authorized to make any insurance, except life insurance, on the Lloyds plan,] by executing articles of agreement expressing their purpose so to do, and complying with the requirements set forth in the law authorizing such insurance. . . .

Art. 18.03. . . .

(f) [The names and addresses of all underwriters,] whose number shall not be less than ten.

. . .

Revisor's Note

V.T.I.C. Article 18.01-1, which was formerly a part of the Penal Code of Texas, 1925, refers to "the law authorizing such insurance," meaning the law authorizing insurance written on the Lloyd's plan. Section 5, Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, transferred Article 18.01-1 without amendment to Chapter 18, Insurance Code, revised as this chapter. This chapter is the law authorizing insurance written on the Lloyd's plan, and the revised law is drafted accordingly.

Revised Law

Sec. 941.052. ATTORNEY IN FACT. (a) The attorney in fact may execute insurance policies for the Lloyd's plan.

(b) The principal office of the attorney in fact must be maintained at the place designated by the underwriters in the articles of agreement. (V.T.I.C. Arts. 18.01-1 (part), 18.02 (part).)

Source Law

Art. 18.01-1. . . . Policies of insurance may be executed by an attorney in fact . . . [authorized by and acting for such underwriters under powers of attorney].

Art. 18.02. Policies of insurance may be executed by an attorney or by attorneys in fact . . . [authorized by and acting for such underwriters under power of attorney]. The principal office of such attorneys shall be maintained at such place as may be designated by the underwriters in their articles of agreement;

Revised Law

Sec. 941.053. DEPUTY OR SUBSTITUTE ATTORNEY IN FACT. An appointed deputy attorney in fact or substitute attorney in fact for an attorney in fact holding a certificate of authority under this chapter and accepting powers of attorney from underwriters is authorized by the certificate of authority to:

- (1) issue or make a policy or contract of insurance; and
- (2) perform any other act incident to issuing or making a policy or contract of insurance. (V.T.I.C. Art. 18.14 (part).)

Source Law

Art. 18.14. . . . the acts of the duly appointed deputy or substitute attorney of any attorney licensed under this chapter accepting powers of attorney from underwriters and in making and issuing policies and contracts of insurance and in doing any additional acts incident thereto shall be deemed authorized by the license issued to the original attorney.

Revisor's Note

V.T.I.C. Article 18.14 refers to a "license" issued to the original attorney in fact. 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. Also, under V.T.I.C. Article 18.04, revised in pertinent part as Section 941.103, it is a certificate of authority that is issued to the attorney in fact for a Lloyd's plan. Similar changes have been made throughout this chapter.

Revised Law

Sec. 941.054. NAME OF LLOYD'S PLAN. The name under which a Lloyd's plan engages in business:

- (1) must contain the word "Lloyd's"; and
- (2) may not be so similar to any name in use in this state as to be likely to confuse or deceive. (V.T.I.C. Art. 18.03

(part).)

Source Law

Art. 18.03. . . .

(a) [The . . . title under which the business is to be conducted,] which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this State as to be likely to confuse or deceive.

. . .

[Sections 941.055-941.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 941.101. CERTIFICATE OF AUTHORITY REQUIRED. (a) An attorney in fact may not write insurance in this state or for residents of this state or covering property located in this state unless the attorney in fact holds a certificate of authority issued under this chapter.

(b) Except as otherwise provided by this chapter, an attorney in fact must:

- (1) be a resident of this state; and
- (2) maintain the attorney in fact's office in this state. (V.T.I.C. Art. 18.02 (part).)

Source Law

Art. 18.02. . . . provided that no license shall be issued to any attorney at Lloyd's to bind risks or insurance in Texas, or with citizens of Texas or covering property in Texas, unless their attorneys in fact be residents of this State and maintain their office in this State, except as may be hereinafter specifically provided.

Revised Law

Sec. 941.102. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) The attorney in fact shall file with the department a verified application for a certificate of authority that states:

- (1) the name of the attorney in fact;
- (2) the name under which the Lloyd's plan will engage in the business of insurance;
- (3) the names and addresses of the underwriters;
- (4) the location of the principal office; and
- (5) the kinds of insurance to be written.

(b) The application must be accompanied by:

- (1) a copy of each form of policy or contract under which insurance will be written;
- (2) a copy of the form of the power of attorney under which the attorney in fact will act for and bind the

underwriters;

(3) a copy of the articles of agreement executed by the underwriters and the attorney in fact;

(4) a financial statement showing in detail:

(A) assets held by the attorneys in fact, committee of underwriters, trustees, or other officers of the Lloyd's plan;

(B) liabilities incurred and outstanding; and

(C) income received and disbursements made by the attorney in fact;

(5) an instrument executed by each underwriter authorizing the attorney in fact to accept service of process for each underwriter in any action on a policy or contract of insurance; and

(6) an instrument from the attorney in fact that delegates to the department the power of the attorney in fact to accept service of process.

(c) On filing the application, the attorney in fact shall pay to the department a fee of \$10. A fee collected under this subsection shall be deposited to the credit of the Texas Department of Insurance operating account.

(d) Article 1.31A applies to a fee collected under Subsection (c). (V.T.I.C. Arts. 18.03 (part), 18.03-1 (part), 18.04 (part).)

Source Law

Art. 18.03. The attorney shall file with the Board of Insurance Commissioners a verified application for license setting forth and accompanied by:

(a) The name of the attorney and the title under which the business is to be conducted, . . .

(b) The location of the principal office.

(c) The kinds of insurance to be effected, . . .

(d) A copy of each form of policy or contract by which such insurance is to be effected.

(e) A copy of the form of power of attorney by virtue of which the attorney is to act for and bind the several underwriters and a copy of the articles of agreement entered into between the underwriters themselves and the attorney.

(f) The names and addresses of all underwriters, . . .

(g) A financial statement showing in detail the assets contributed or accumulated in the hands of the attorneys in fact, committee of underwriters, trustees and/or other officers of such underwriters at Lloyd's, together with the liabilities incurred and outstanding and the income received and disbursements made by the attorney for the underwriters.

(h) An instrument executed by each and all of the underwriters specially empowering the attorney to accept services

of process for each underwriter in any action on any policy or contract of insurance and an instrument from the attorney to such Board delegating the attorney's powers in this respect to such Board.

Art. 18.03-1. The attorney for a Lloyds shall file with the Commissioner of Insurance a verified application for license setting forth the data and information required by law, and . . .

Art. 18.04. . . .

The attorney for such underwriters shall pay a fee of \$10.00 to the State Board of Insurance upon the filing of the application for license.

. . .

Fees collected under this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to fees collected under this article.

Revisor's Note

(1) Subdivision (g), V.T.I.C. Article 18.03, refers to the "assets contributed or accumulated in the hands of" specified persons. The revised law substitutes "held by" for "contributed or accumulated in the hands of" because the terms are synonymous and the former is more concise.

(2) V.T.I.C. Article 18.04 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. 941.103. ISSUANCE OF CERTIFICATE OF AUTHORITY. On determination by the department that the underwriters and attorney in fact have complied with the law, the department shall, in accordance with Sections 801.001, 801.002, 801.051-801.055, 801.057, and 801.101, issue a certificate of authority to the attorney in fact. (V.T.I.C. Arts. 18.03-1 (part), 18.04 (part).)

Source Law

Art. 18.03-1. . . . upon complying with the law such Commissioner shall issue to any attorney applying therefor a license

Art. 18.04. . . .

Upon determination by the State Board of Insurance that such underwriters and their attorneys have fully complied with the law the Board shall issue a Certificate of Authority as provided by Article 1.14 of this code.

. . .

Revisor's Note

V.T.I.C. Article 18.03-1 in part provides that the certificate of authority must specify the kind or kinds of insurance to be issued by the Lloyd's plan and that the certificate of authority continues in force until surrendered by the attorney in fact or revoked or suspended. The revised law omits these provisions as duplicative of the provisions of V.T.I.C. Article 1.14, revised as Chapter 801. V.T.I.C. Article 1.14 is applicable to a certificate of authority issued to a Lloyd's plan under V.T.I.C. Article 18.04, revised in pertinent part in this section. The omitted law reads:

Art. 18.03-1. [. . . such Commissioner shall issue to any attorney applying therefor a license] specifying the kind or kinds of insurance which he is authorized to make, which shall continue in force until surrendered by the attorney or revoked or suspended by such Commissioner as authorized by law.

[Sections 941.104-941.150 reserved for expansion]

SUBCHAPTER D. OPERATION, POWERS, AND DUTIES OF
LLOYD'S PLAN

Revised Law

Sec. 941.151. LIABILITY OF UNDERWRITER. (a) Subject to Subsection (c), an underwriter by contract with the persons insured may limit the underwriter's liability to the percentage of the loss that equals the ratio of the underwriter's subscription paid in cash or securities allowed by this chapter to the total guaranty fund contributed by all the underwriters.

(b) Subject to Subsection (c), an underwriter's total liability on all risks may be limited to the amount of the underwriter's subscription, as expressed in the underwriter's power of attorney and agreement with the attorney in fact.

(c) At least half of an underwriter's subscription must be paid or contributed to the guaranty fund in cash or admissible securities.

(d) An underwriter is responsible solely for the underwriter's liability as provided by the insurance contract. An underwriter is not liable as a partner. (V.T.I.C. Art. 18.13.)

Source Law

Art. 18.13. An underwriter at a Lloyd's may limit his total liability by contract with the persons insured to the proportionate part of the loss represented by the ratio which his subscription paid in, in cash and/or securities such as allowed by this chapter bears to the total guaranty fund contributed by the several underwriters and his total liability on all risks may

be limited to the amount of his subscription as expressed in his power of attorney and agreement with the attorney in fact, provided at least half of the subscription of each underwriter must be paid or contributed to the guaranty fund in cash and/or admissible securities. Each underwriter shall be responsible solely for his own liability as fixed in the contract of insurance and not be liable as a partner.

Revised Law

Sec. 941.152. LIABILITY OF ADDITIONAL OR SUBSTITUTED UNDERWRITER. An additional or substituted underwriter is liable in the same manner and to the same extent as an original subscriber to the articles of agreement and power of attorney on file with the department. (V.T.I.C. Art. 18.14 (part).)

Source Law

Art. 18.14. Additional or substituted underwriters shall be bound in the same manner and to the same extent as original subscribers to the articles of agreement and power of attorney on file with the Board; and

Revised Law

Sec. 941.153. ACCRUAL OF PROFITS. The profits of a Lloyd's plan may accrue to an underwriter only on the basis of the underwriter's actual investment in cash or convertible securities, without regard to any obligation or subscription of the underwriter to pay additional cash or securities in the future. (V.T.I.C. Art. 18.15.)

Source Law

Art. 18.15. No profits shall accrue to an underwriter, except upon the basis of his actual investment in cash or convertible securities, disregarding any obligation or subscription to pay in additional cash or securities at a later date.

Revised Law

Sec. 941.154. ASSUMPTION OF RISK BY CERTAIN AFFILIATED INSURERS. An insurer who is subject to Article 5.26 may not directly or indirectly assume all or a substantial part of a risk covered by a policy written by a Lloyd's plan that is an affiliate of the insurer if the risk is written at a rate less than the rate that may be lawfully charged by:

- (1) the insurer; or
- (2) one of the insurer's affiliates that is subject to

Article 5.26. (V.T.I.C. Art. 18.23A, Sec. (a).)

Source Law

Art. 18.23A. (a) An insurer subject to Article 5.26 of this code may not directly or indirectly assume all or a substantial part of any risk covered by a policy written by a Lloyd's that is an affiliate of that insurer if the risk is written at a rate less than the rate that may be lawfully charged by the insurer subject to Article 5.26 of this code, or any affiliate of the insurer that is subject to Article 5.26 of this code.

Revised Law

Sec. 941.155. PROMOTION OF LLOYD'S PLAN. (a) An individual, firm, or corporation may not be instrumental in organizing a Lloyd's plan if, in the organization of the Lloyd's plan, compensation is paid to the individual, firm, or corporation or to a representative of the individual, firm, or corporation for procuring underwriters or a guaranty fund for the Lloyd's plan unless the individual, firm, or corporation holds a permit issued by the department that authorizes the charging of a commission in connection with organizing the Lloyd's plan.

(b) Not more than 10 percent of the total amount of an underwriter's subscription to a Lloyd's plan may be paid to any person as a commission for the sale of units of or an interest in the Lloyd's plan or for procuring underwriters for the Lloyd's plan.

(c) This section applies to the continued organization or extension of a Lloyd's plan, if a commission is to be paid in connection with the organization or extension. With respect to a continued organization or extension of a Lloyd's plan, the commissioner may not refuse the permit because of the contemplated size or amount of the guaranty fund of the Lloyd's plan.

(d) After the permit has been granted, securities may not be accepted as contributions to the guaranty fund unless the securities have been approved in advance by the department as complying with this chapter with respect to the investment of the funds of a Lloyd's plan. (V.T.I.C. Art. 18.24, Secs. (1), (2), (4), (5).)

Source Law

Art. 18.24. (1) No person or persons, firm or corporation, shall be instrumental in the origination of a Lloyd's business if in such organization any money or property shall be paid over to such person, persons, firm or corporation, or their agent or representative, by way of commission or other compensation for procuring underwriters or guaranty fund for such Lloyd's, unless such person, persons, firm or corporation shall in advance make application to the Board of Insurance Commissioners and shall

receive a permit from such Board to organize such Lloyd's and charge a commission in connection with such organization.

(2) In no event shall more than ten (10%) per cent of the total amount of the subscription to such an enterprise by any underwriter be paid to any person by way of commission for the sale of "units" or interest in such Lloyd's business or in the procuring of underwriters therefor.

(4) This article shall apply to the continued organization or the continued extension of any Lloyd's business which has heretofore been licensed by the Insurance Department of this State, if in such further extension of such business any commission is to be paid, but such permit shall not be refused because of the contemplated size or amount of the guaranty fund of such Lloyd's.

(5) After such permission shall have been granted for the organization of enlargements of a Lloyd's, no securities shall be accepted as contributions to the guaranty fund of such Lloyd's, unless such securities shall have been approved in advance by the Board of Insurance Commissioners as complying with this law relative to the investment of the funds of such organizations.

Revisor's Note

(1) Section (1), V.T.I.C. Article 18.24, refers to an "agent or representative." The revised law omits the reference to "agent" because, in context, the meaning of that term is included within the meaning of "representative."

(2) Section (1), V.T.I.C. Article 18.24, refers to the receipt of "any money or property . . . by way of commission or other compensation." The revised law substitutes the term "compensation" for the quoted language because "compensation" includes the concepts of money, property, or a commission.

(3) Section (3), V.T.I.C. Article 18.24, describes circumstances under which the article does not apply. The revised law omits that description as unnecessary because the article by its own terms would not apply under those circumstances. The omitted law reads:

(3) This article shall not apply to the organization or the enlargement of a Lloyd's in which no promotion expense is deducted from the contributions made by the underwriters, and no commission of any sort is paid for the procuring of underwriters or subscriptions to the guaranty fund of such business.

(4) Section (4), V.T.I.C. Article 18.24, refers to a Lloyd's plan that "has heretofore been licensed." Article 18.24 was originally enacted as Chapter 11, Acts of the 41st Legislature, 1st Called Session, 1929. It is clear from the context of the section that the section is intended to apply to a

Lloyd's plan that was licensed before the effective date of that act and to have continuing application to a Lloyd's plan organized or extended on or after that date. Therefore, the revised law omits the quoted language as unnecessary.

Revised Law

Sec. 941.156. REINSURANCE PERMITTED. This chapter does not prevent a domestic Lloyd's plan from reinsuring:

(1) the Lloyd's plan's excess lines with a solvent foreign Lloyd's plan acceptable to the department that does not hold a certificate of authority to engage in the business of insurance in this state; or

(2) any business from a foreign Lloyd's plan described by Subdivision (1). (V.T.I.C. Art. 18.21.)

Source Law

Art. 18.21. The provisions of this Chapter shall not prevent any Texas Lloyd's from reinsuring its excess lines with a solvent foreign Lloyd's, acceptable to the Board of Insurance Commissioners, which has no license to do business in Texas nor from reinsuring any business from such foreign Lloyd's.

[Sections 941.157-941.200 reserved for expansion]

SUBCHAPTER E. FINANCIAL REQUIREMENTS

Revised Law

Sec. 941.201. REQUIRED NET ASSETS. The department may not issue a certificate of authority to an attorney in fact unless the net assets contributed to the attorney in fact, a committee of underwriters, a trustee, or other officers as provided for in the articles of agreement constitute a guaranty fund and surplus over and above all of the Lloyd's plan's liabilities that is at least equal to the minimum capital stock and surplus required of a stock insurance company engaging in the same kinds of business. (V.T.I.C. Art. 18.05 (part).)

Source Law

Art. 18.05. [No attorney shall be licensed for the Underwriters at a Lloyd's] . . . until and unless the net assets contributed to the attorney, a committee of underwriters, trustee or other officers as provided for in the Articles of Agreement shall constitute a guaranty fund and surplus over and above all of its liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business. . . .

Revised Law

Sec. 941.202. LIMITATION OF BUSINESS. (a) Except as provided by Subsection (c), a Lloyd's plan may not assume or

write insurance risks in this state, for residents of this state, or covering property located in this state that produce an amount of net premium income that exceeds 10 times the value of the net assets of the underwriters.

(b) If the insurance risks written or assumed by a Lloyd's plan produce a net premium income that exceeds the limit specified by Subsection (a), the Lloyd's plan may not write or assume an additional insurance risk until the net assets have been increased to a level that brings the net premium income produced by the additional insurance risk within that limit.

(c) The limit imposed by Subsection (a) does not apply to a Lloyd's plan if:

(1) the Lloyd's plan's net assets equal at least the amount of money required of a stock insurance company engaged in the same kind of business in this state; or

(2) the department determines that the Lloyd's plan, through reinsurance or other contracts with other responsible and solvent insurers, has reduced the net lines at risk carried by the Lloyd's plan so that its operations are safe and its solvency is not in danger.

(d) An attorney in fact for a Lloyd's plan may not assume an insurance risk that exceeds one-tenth of the sum of the amount of the net assets of the underwriters as described in this subchapter and the amount of the additional liability assumed by the individual underwriters in the articles of agreement and in policies or contracts of insurance, unless the excess insurance risk is promptly reinsured. (V.T.I.C. Arts. 18.06 (part), 18.16.)

Source Law

Art. 18.06. The underwriters at a Lloyd's shall not assume nor write insurance obligations in Texas nor for citizens of Texas, nor covering property located in Texas which produce a net premium income in excess of ten times the net assets of such underwriters, and if at any time the liabilities assumed upon such insurance shall produce a net premium income greater than ten times such net assets, then no further insurance obligation shall be assumed until the net assets have been increased so as to admit of additional insurance obligations which will produce a premium income not greater than ten times such net assets; provided that when the net assets at a Lloyd's shall equal the sum of money which will be required of a stock insurance company doing the same character of business in Texas, then his limitation upon the volume of business to be written shall not apply further; provided further that if in the judgment and discretion of the Board of Insurance Commissioners such underwriters at a Lloyd's shall have effected reinsurance, or other contracts, with responsible and solvent insurance carriers

reducing the net lines at risk carried by such underwriters at a Lloyd's so that their operations are safe and their solvency not in danger, then

Art. 18.16. No attorney for underwriters at a Lloyd's shall assume any one insurance risk exceeding one-tenth of the amount of the net assets of the underwriters as defined in this chapter and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured.

Revisor's Note

V.T.I.C. Article 18.06 states that the Board of Insurance Commissioners may "renew or extend" the certificate of authority of a Lloyd's plan without regard to the limitation imposed on net assets, if the Lloyd's plan effects reinsurance or other contracts. Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amended Article 1.14, Insurance Code, to eliminate the requirement that a certificate of authority be renewed annually and to provide that a certificate of authority remains "in full force and effect until it is revoked, canceled or suspended." The act also provided that "all laws and parts of laws in conflict" with the act are expressly repealed. Article 1.14, revised in this code as Chapter 801, applies to a Lloyd's plan. Therefore, the revised law omits the reference to renewal of a certificate of authority. The revised law also omits the reference to extension of a certificate of authority as unnecessary. While the meaning of the term "extension" in this context is unclear, it is clear from the law as revised that a Lloyd's plan that effects reinsurance or other contracts in accordance with this section may continue to maintain its certificate of authority, and that the law does not otherwise impose a limitation on extension of the certificate of authority. The omitted law reads:

Art. 1806. . . . such Board may renew or extend the licenses of such underwriters, irrespective of this limitation.

Revised Law

Sec. 941.203. COMPUTATION OF RESERVE. A Lloyd's plan shall compute reserve liabilities for outstanding business and incurred losses on the same basis required for a stock insurance company engaged in the same kinds of business in this state. (V.T.I.C. Art. 18.08.)

Source Law

Art. 18.08. Underwriters at a Lloyd's are required to compute reserve liabilities for all outstanding business and for

all incurred losses upon the same basis required for stock insurance companies doing the same classes and character of business in Texas.

Revised Law

Sec. 941.204. AUTHORIZED INVESTMENTS. (a) The minimum guaranty fund and surplus required of a Lloyd's plan under Sections 822.054, 822.202, 822.210, 822.211, and 941.201 must be:

- (1) in cash; or
- (2) invested as provided by:
 - (A) Section 822.204; or
 - (B) any other law governing the investment of the

capital stock and minimum surplus of a capital stock insurance company engaged in the same kind of business.

(b) Funds of a Lloyd's plan other than the minimum guaranty fund and surplus described by Subsection (a) must, if invested, be invested as provided by:

- (1) Article 2.10; or
- (2) any other law governing the investment of the

funds of a capital stock insurance company engaged in the same kind of business.

(c) A Lloyd's plan may purchase, hold, or convey real property in accordance with Section 862.002.

(d) A Lloyd's plan organized before August 10, 1943, and engaging in business under a certificate of authority issued by the former Board of Insurance Commissioners is not required to comply with this section except as to securities acquired on or after August 10, 1943, regardless of whether those securities were substituted for securities held before that date or were acquired from additional, successor, or substituted underwriters. (V.T.I.C. Arts. 18.05 (part), 18.09.)

Source Law

Art. 18.05. . . . The required net assets shall be invested following the licensing as provided in Article 2.08 as to minimum guaranty fund and surplus required, and as provided in Article 2.10 as to other funds.

Art. 18.09. The assets of Underwriters at a Lloyd's to the extent of the minimum required under the provisions of Article 2.02 and of Article 18.05 of this Chapter shall be cash or shall be invested in such securities as are eligible for investment of the capital stock and minimum surplus of stock insurance companies transacting the same sort of business, and the other assets of underwriters shall be invested, if at all, in such property or securities as the funds of the stock insurance companies doing the same sort of business may be invested in, except that only the surplus, in excess of the required minimum

guaranty fund and surplus of a Lloyds' may be invested in the securities eligible for investment of surplus in excess of capital and minimum surplus of such similar stock insurance companies. Lloyds' organized prior to August 10, 1943, and doing business under Certificate of Authority from the Board of Insurance Commissioners shall not be required to conform to this Article except as to securities thereafter acquired, whether in substitution for securities then held or from additional, successor or substituted underwriters. Underwriters at a Lloyds' shall be permitted to purchase, hold or convey real estate in accordance with the provisions and subject to the limitations of Article 6.08 of this Code.

Revised Law

Sec. 941.205. JOINT CONTROL OF MINIMUM ASSETS. (a) To the extent of the minimum required under this subchapter, the assets of a Lloyd's plan must be made subject to the joint control of the attorney in fact and the department, in a manner satisfactory to the department, so that the assets may not be withdrawn, diverted, or spent without the approval of the department or for a purpose not permitted under this chapter.

(b) The underwriters are entitled to the interest or income accruing from property or securities placed under joint control under Subsection (a) as the interest or income becomes payable.

(c) As an alternative to submitting assets to joint control under Subsection (a), an attorney in fact for a Lloyd's plan engaged in business before August 20, 1929, may execute a bond in the amount of \$25,000 for the safekeeping of assets, to be released only on approval of the department. The corporate surety and the form of the bond must be approved by the department. (V.T.I.C. Art. 18.10.)

Source Law

Art. 18.10. The assets of underwriters at a Lloyd's to the extent of the minimum required under the provisions of this chapter shall be submitted to and subjected to the joint control of the attorney in fact for such underwriters, and the Board of Insurance Commissioners, in some manner satisfactory to the Board, so that the same may not be withdrawn or diverted, or expended, except with the approval of the Board and the purposes provided for in this chapter. Such underwriters, however, shall be entitled to the interest or income accruing from such property or securities as may be placed under the joint control of such attorney in fact and the Board as and when the same is payable. Provided, however, in lieu of such joint control any attorney in fact at a Lloyd's now doing business in this State may give bond in the sum of Twenty-five Thousand (\$25,000.00) Dollars for the safe keeping of assets, to be released only on approval of the

Board of Insurance Commissioners, and in such form and with corporate surety as shall be approved by the Board of Insurance Commissioners.

Revisor's Note

V.T.I.C. Article 18.10 refers to a Lloyd's plan "now doing business in this State." The quoted language was added to the law by Chapter 11, Acts of the 41st Legislature, 1st Called Session, 1929, which took effect August 20, 1929. It is clear from the context of that act that the quoted language refers to a Lloyd's plan already engaged in business at the time the act took effect. Therefore, the revised law substitutes "engaged in business before August 20, 1929," for the quoted language.

Revised Law

Sec. 941.206. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION; IMPAIRMENT OF SURPLUS. (a) Articles 1.32, 21.28, and 21.28-A apply to a Lloyd's plan engaged in the business of insurance in this state.

(b) Section 5, Article 1.10, applies to a Lloyd's plan.
(V.T.I.C. Art. 18.07; New.)

Source Law

Art. 18.07. Lloyds' companies shall be subject to the provisions of Section 5 of Article 1.10 of this Code.

Revisor's Note

V.T.I.C. Article 18.18, in part, established procedures applicable to the winding up of affairs of a Lloyd's plan that is insolvent or that is in a condition that renders the continuance of its business hazardous to the public. Article 18.18 was derived from V.A.C.S. Article 5022 and has not been substantively amended since 1929. After the enactment of Article 5022, the legislature established comprehensive procedures applicable to those Lloyd's plans. The later enacted provisions, which are contained in V.T.I.C. Article 1.32, originally enacted in 1975, V.T.I.C. Article 21.28, derived from law originally enacted in 1939, and V.T.I.C. Article 21.28-A, originally enacted in 1967, completely subsume and replace the related procedures established under Article 18.18. As a result, the revised law omits the pertinent portion of Article 18.18 as impliedly repealed and adds a reference to Articles 1.32, 21.28, and 21.28-A for the convenience of the reader. The omitted law reads:

Art. 18.18. Whenever it shall appear to the Board of Insurance Commissioners that the minimum assets provided for in Article 18.05 have become impaired, the Board shall immediately give notice to the attorney in fact for such Lloyd's to appear and show cause why the license of such attorney shall not be revoked, and if within thirty (30) days from the giving of such

notice the impairment or insolvency shall not be made good by such underwriters, or their attorney, such license shall immediately be cancelled. If such attorney or other person shall make any advancement to make good such impairment, the claim for such advancement against the assets of such underwriters shall be deferred to the claims for losses under policies or contracts of insurance. If such impairment is not made good within the time prescribed, then the Board shall proceed to take charge of the assets of such underwriters, and to effect a reinsurance of all business outstanding in Texas or covering property located in Texas, and for that purpose, the Board shall have the right to use the net assets, and to make provision for the payment of outstanding claims and losses. In case reinsurance cannot be effected by the said Board, then the affairs of such underwriters at Lloyd's shall be wound up through receivership proceedings instituted by the Attorney General of Texas at the request of the Board.

. . .

[Sections 941.207-941.250 reserved for expansion]

SUBCHAPTER F. REGULATION OF LLOYD'S PLAN

Revised Law

Sec. 941.251. EXAMINATIONS. (a) The provisions of Articles 1.15 and 1.16 that relate to the examination of insurers apply to a Lloyd's plan.

(b) The department may examine the books and affairs of an attorney in fact for a Lloyd's plan. The attorney in fact and each deputy attorney in fact shall facilitate the examination and furnish any information reasonably required by the department. (V.T.I.C. Arts. 18.11, 18.11-1.)

Source Law

Art. 18.11. All of the provisions of Article 1.15 and of Article 1.16 relative to examination of companies shall apply to companies organized under this Chapter.

Art. 18.11-1. The Commissioner of Insurance may make examinations of the books and affairs of any attorney for underwriters at a Lloyds, and the attorney and his deputies shall facilitate such examination and furnish all information which such Commissioner may reasonably demand.

Revised Law

Sec. 941.252. ANNUAL REPORT. (a) An attorney in fact shall annually file with the department a verified report on a form prepared by the department of:

(1) the business conducted by the attorney in fact on behalf of the Lloyd's plan during the preceding year;

(2) the condition of the affairs of the Lloyd's plan;

and

(3) any other information required by the department.

(b) The report must cover all of the business conducted by the attorney in fact on behalf of the Lloyd's plan, without regard to the place where the business was conducted. (V.T.I.C. Art. 18.12.)

Source Law

Art. 18.12. The attorneys for such underwriters shall annually file with the Board of Insurance Commissioners a verified report of the business done by the attorney for such underwriters during the previous year, and of the condition of its affairs, together with such other information as the Board of Insurance Commissioners may demand; such report shall be filed upon blanks prepared by the Board and shall cover the report of all the business of such underwriters, wherever the same may be conducted.

[Sections 941.253-941.300 reserved for expansion]

SUBCHAPTER G. FOREIGN LLOYD'S PLAN

Revised Law

Sec. 941.301. FOREIGN LLOYD'S PLAN; BOND OR MINIMUM NET ASSETS REQUIRED. (a) Except as provided by Subsection (b), the commissioner may not issue a certificate of authority to an attorney in fact if:

(1) the underwriters are not residents of this state;
or

(2) the underwriters maintain their principal office outside of this state.

(b) The department may issue a certificate of authority to an attorney in fact in circumstances described by Subsection (a) if the underwriters, at their option:

(1) file a bond with the department that complies with Section 941.302; or

(2) maintain net assets in this state that:
(A) are subject to the joint control of the attorney in fact and the commissioner; and

(B) meet the requirements of Subchapter E regarding the minimum amount of net assets of a Lloyd's plan.

(c) A deposit of securities made under Subsection (b)(2) is considered to have been made on the same terms and conditions as a bond executed in accordance with Section 941.302.

(d) If there is recovery on a deposit or bond made under this section, the commissioner shall immediately demand that additional security be provided to increase the amount of the bonds to the minimum amount required by this section. The additional bond must be posted not later than the 30th day after the date the commissioner makes the demand. Successive

recoveries may be made on a bond made under this section until the principal amount of the bond is exhausted. (V.T.I.C. Art. 18.19 (part).)

Source Law

Art. 18.19. In case underwriters at a Lloyd's who are nonresidents of Texas, or who maintain their principal office outside of Texas, apply for a permit to do business in Texas, such permit shall not be granted unless such underwriters have and maintain net assets in Texas which are subject to the joint control of their attorney in fact and the Board of Insurance Commissioners of this State sufficient to meet the minimum requirements of this chapter relative to the amount of net assets which underwriters at Lloyd's must have; or unless they submit to and file with the Board a bond If any underwriters desiring to do so, at their option, in lieu of giving the bond authorized by this article, shall submit admissible securities subject to the joint control of its attorney in fact and the Board of Insurance Commissioners, such deposits of securities shall be deemed to have been made upon such terms and conditions as provided by such bond.

If there shall be any recovery upon the bond or from the deposit hereinabove provided for, then the Board shall immediately demand additional security so as to bring the amount of the bonds up to the minimum sum required hereunder, which additional bond must be posted within thirty (30) days from the date of such demand. Provided, there may be successive recoveries on said bond until the principal sum thereof is exhausted.

Revised Law

Sec. 941.302. BOND OF FOREIGN LLOYD'S PLAN. (a) A bond filed under Section 941.301 must:

- (1) be executed by corporate sureties that:
 - (A) meet the requirements imposed by the department; and
 - (B) are authorized to engage in guaranty, fidelity, and surety business in this state;
- (2) be in a principal amount that equals the minimum amount of net assets of a Lloyd's plan under this subchapter;
- (3) be payable to the department;
- (4) be conditioned for the payment of all claims arising under insurance policies or contracts:
 - (A) issued in this state;
 - (B) issued to residents of this state; or
 - (C) covering property located in this state; and
- (5) be held by the department for the benefit of any person with a valid claim arising under an insurance policy or

contract described by Subdivision (4).

(b) The bond must also provide that if a Lloyd's plan with outstanding insurance policies in favor of residents of this state or covering property located in this state becomes insolvent or ceases to engage in the business of insurance in this state, the department, after 10 days' notice to the attorney in fact for the Lloyd's plan or any receiver in charge of the Lloyd's plan's property and affairs, may contract with another insurer engaging in the business of insurance in this state for the assumption of and reinsurance by that insurer of:

(1) all of the Lloyd's plan's insurance risks outstanding in this state; and

(2) all unsatisfied lawful claims outstanding against the Lloyd's plan.

(c) If the department enters into a contract described by Subsection (b) and the attorney general approves the contract as reasonable, the assuming insurer is entitled to recover from the makers of the bond filed under Section 941.301 the amount of the premium or compensation for reinsurance that is specified in the contract.

(d) A bond filed under Section 941.301 binds any additional or substitute underwriters of the Lloyd's plan. (V.T.I.C. Art. 18.19 (part).)

Source Law

Art. 18.19. . . . [or unless they submit to and file with the Board a bond] executed by such corporate sureties as the Board may require, which corporate sureties must be licensed to do guaranty, fidelity and surety business in Texas, in a principal amount which would be required for net assets of underwriters at Lloyd's under foregoing provisions of this chapter, which said bond shall be payable to the Board of Insurance Commissioners, and which shall be conditioned for the payment of all claims arising upon contracts issued in Texas, or issued to residents and citizens of Texas, or covering property located in Texas, and which bond shall be held by the Board for the benefit of all persons having valid claims arising upon such contracts. It shall also provide that in the event the underwriters shall become insolvent or cease to transact business in this State at any time when there are outstanding policies of insurance in favor of citizens of this State, or upon property in this State, the Board shall have power, after having given ten (10) days' notice to the attorneys for such underwriters, or any receiver in charge of its property and affairs, to contract with any other insurance carrier transacting business in this State for the assumption and reinsurance by it of all insurance risks outstanding in this State of such underwriters, which contract shall also provide for the assumption by such reinsurance carrier

of all outstanding and unsatisfied lawful claims then outstanding against such underwriters. In the event of the Board making any such contract, and if the same shall be approved as reasonable by the Attorney General, the reinsuring carrier shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Such bond shall also bind any additional or substitute underwriters at such Lloyd's. . . .

[Sections 941.303-941.350 reserved for expansion]

SUBCHAPTER H. CONVERSION TO CAPITAL STOCK INSURANCE COMPANY

Revised Law

Sec. 941.351. CONVERSION AUTHORIZED. The underwriters may convert a Lloyd's plan to a capital stock insurance company governed by Chapter 822 by complying with this subchapter.

(V.T.I.C. Art. 18.23A, Sec. (c) (part).)